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Tracing Ebbs and Flows in Political and Legislative Reforms in Turkey in View of EU-Turkey Relations

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Abstract

This paper analyses and assesses the political and legislative reforms in Turkey since 1999. It assumes a somewhat circular relationship. This means, in addition to domestic critical junctures that influenced the reform process in Turkey the paper will also assess in how far EU-Turkey relations can drive political and legislative reforms in Turkey and how this affects in turn the EU-Turkey relationship. Such an assessment will allow us to draw the full picture of elements that could reinforce or reverse the trends.

Özet

Bu makale, 1999'dan bu yana, Türkiye'deki siyasi ve yasal reformları analiz etmekte ve değerlendirmektedir. Kısmen genelge bir ilişki olduğu varsayılmaktadır. Bu demektir ki, Türkiye'deki reform sürecini etkileyen yerel kritik bağlantılara bu makalede ek olarak AB-Türkiye ilişkilerinin Türkiye'de siyasi ve yasal reformları ne kadar sürdürebileceğini ve bunun AB-Türkiye ilişkilerini nasıl etkilediğini de değerlendirmektedir. Böyle bir değerlendirme, eğilimleri güçlendirebilecek veya tersine döndürebilecek unsurların genel bir görünüm oluşturmamıza sağlamaktadır.

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Introduction

In 2017 a group of senior members of European Parliament stated that “with the current state of democracy in Turkey, full membership of the EU is no longer realistic” (Weber et.al., 2017). They further recommended that the “European Council must look reality in the eye, stop accession negotiations and put the relationship on new footing”, because continuing the “falsehood of accession talks” would drive the EU-Turkey relations towards a “dead end” (ibid.). This was neither the first nor the last time that the European Parliament demanded suspension of accession negotiations with Turkey.¹ The main points of concern are democracy, the rule of law and human rights issues. The European Union (EU) clearly defined the reintroduction of the death penalty in Turkey as a red line for accession negotiations (European Parliament, 2016).

This highlights the fact that the EU is not prepared to compromise on the political criteria for accession. The EU’s core values, just like the four freedoms of the Single Market, constitute the foundations of the European integration project. If the EU compromised on them for Turkey, it would lose one of its focal causes and would, therefore, risk the coherence of the Union to fall apart, because other countries, EU member states and accession countries alike, could follow suit (see also Werz, 2017: 4). Hence, political and legislative reforms in Turkey in order to (re)adapt to the political Copenhagen Criteria represent a key driver for EU-Turkey relations.

Yet, after the failed coup attempt of 15 July 2016 in Turkey and the constitutionalisation of the presidential system, Turkey’s return to Western European democratic values seems highly unlikely.

The crucial questions are therefore where to go from here and how to solve this deadlock in the EU-Turkey relationship. In reference to the three ideal-type scenarios as defined by the FEUTURE project², political and legislative reforms in Turkey or their absence are most likely going to drive EU-Turkey relations into a conflict scenario, where the EU and Turkey alike would opt for open and sustained confrontation. We do not have to consider any convergence scenario implying Turkey’s EU membership including various forms of differentiated integration, as the time frame of 2023 is too short for any substantial changes to the democratic system. The question is, however, which areas and forms of cooperation would be conceivable in spite of substantial divergences on rule of law issues.

Contrary to other FEUTURE papers, the analysis of this paper does not identify, weigh and rank several drivers within one focal issue of the political dimension of the EU-Turkey relationship but focuses on the assessment of one key driver of ‘political and legislative reforms in Turkey’ and its effects on EU-Turkey relations. Hence, this paper analyses these reforms between 1999 and today in order to project trends for the EU-Turkey relationship to the year 2023. Building on the “conditionality” argument in academic literature regarding the EU’s ability to transfer its

¹ Just recently, in March 2019 the European Parliament repeated its recommendation on suspending accession negotiations with Turkey in its resolution on the Turkey Report 2018 (European Parliament 2019).

² For a presentation and discussion of FEUTURE’s ideal-type scenarios see Nathalie Tocci, Turkey and the European Union: Scenarios for 2023, FEUTURE Background Paper, September 2016, <http://www.feuture.uni-koeln.de/publications/feuture-online-paper-series/>.



norms and values to accession candidates facilitating their internal transformation processes (see e.g. Müftüler-Baç, 2016; Schimmelfennig et.al., 2003)³, we assume a somewhat circular relationship. This means, in addition to domestic critical junctures that influenced the reform process in Turkey the paper will also assess in how far EU-Turkey relations can drive political and legislative reforms in Turkey and how this affects in turn the EU-Turkey relationship. Such an assessment will allow us to draw the full picture of elements that could reinforce or reverse the trends.

The analysis, hence, analyses two mediating factors for the relationship between political and legislative reforms in Turkey and EU-Turkey relations. On the one hand there is the credibility of the EU’s conditionality, which is analysed and explained in the paper’s first section. On the other hand, domestic politics plays an important role for reforms and how they affect the EU-Turkey relationship. This second mediating factor is taken into consideration in section two where the paper analyses and assesses the reforms in Turkey since 1999. The paper concludes by a discussion of possible trends for the f(e)uture in view of the analysis presented.

Setting the Scene: Peculiarities of the EU’s political conditionality towards Turkey

Article 49 of the Treaty on European Union (TEU) clearly states that “any European state which respects the values [of the Union] and is committed to promote them may apply to become a member of the Union”. The accession criteria, or Copenhagen Criteria, reflect these values of Article 2 TEU by requiring each country that aspires to join the EU to guarantee stability of institutions and hence democracy, the rule of law, human rights and respect for and protection of minorities (European Council, 1993). This set-up establishes the conditionality-mechanism between accession to the EU and political and legal reforms in Turkey (e.g. Kalkan, 2016; Müftüler-Bac, 2016; Schimmelfennig et.al., 2003; Tocci, 2005; Üstün, 2017), by which the EU would only start accession negotiations with a country that sufficiently fulfilled the political Copenhagen Criteria.

Following the utility-based line of argumentation, the EU’s strategy to enforce this conditionality is “reinforcement by reward” according to which “an international organization reacts to the fulfillment or non-fulfillment of its conditions by granting or withholding rewards” (Schimmelfennig et.al., 2003: 496). In this context, Turkey’s political actors would engage in political and legal reforms whenever the material benefits outweigh the costs of adaptation (see *ibid*; Müftüler-Bac, 2016).

Conditionality in Turkey’s case, however, faces a substantial problem that severely affects this causal relationship. The EU’s rewards in terms of assistance, e.g. financial assistance and pre-accession strategy and funds seemed an uncontested part of the accession negotiations for a

³ We are aware of the recent identity focused research on the quality of the EU’s normative power (see e.g. Aydın-Düzgit, 2017). Yet for reasons of limited space, this paper will limit its analysis to the rational-choice based arguments of the EU’s conditionality.



very long time but have been wavered just recently. In view of the rule of law and human rights situation in Turkey, the member states and the European Parliament took the decision to cut this assistance for 2018 (European Parliament, 2018; EUObserver, 2017). The EU’s offer in institutional ties has been unclear for a long time already. Hence, there are a series of factors that weaken the credibility of the full membership prospect and hence dilute the effectiveness of conditionality which could have been a strong driver for political and legal reforms in Turkey and for the overall EU-Turkey relationship.

This section will subsequently deal with veto players among member states, the debate on alternative forms to membership, the EU’s attractiveness and issue linkages that affect the credibility of its conditionality.

Member States - the EU’s door keepers?

Member States’ positions on Turkey’s full membership perspective become relevant if we assume their veto-positions to weaken the causal link between reforms in Turkey and the country’s accession to the EU.

Individual EU member states can directly influence the Turkish EU accession procedure. All relevant decisions, such as granting candidacy status, opening of accession negotiations, opening of individual negotiation chapters and the accession agreement between the EU and Turkey, require unanimity among member states. Moreover, the accession agreement “shall be submitted for ratification by all the contracting states in accordance with their respective constitutional requirements” (Art. 49 TEU). Each member state, thus, has a veto – and so far, a number of them have already played that card in the game. Three member states, Austria, France and Cyprus, deserve particular attention.

Austria has never been a supporter of Turkey’s full membership in the EU. Opposition to Turkish accession in the population has ranged between high levels of 65 percent to 80 percent since 2005. Consequently, enthusiasm across political parties has been similarly low (Gavenda, 2017). This has repeatedly caused rifts in the accession procedure. In 2005, accession negotiations were not off for a good start because of the then coalition government of the conservative Christian-democratic Austrian People’s Party (ÖVP) and the right-wing populist Freedom Party of Austria (FPÖ). Austria’s approval of starting negotiations was conditional upon the explicit inclusion of an alternative to full membership into the negotiation framework. Although, other member states managed to reach consensus in an emergency meeting on 3 October 2005 and avoid a substantial crisis right at the outset of the negotiation procedure, trust on the Turkish side received a severe blow (see also Keyman & Düzgit, 2013: 2). Particular so, because the negotiation framework establishes an emergency exit from the accession procedure through the possibility of fully anchoring Turkey in the European structures “through the strongest possible bond”, if Turkey is “not in a position to assume in full all the obligations of membership” (European Commission, 2005: No. 2).



Austria has remained a strong opponent of Turkey’s accession ever since and is the only member state that openly demands the suspension of accession negotiations with Turkey. In December 2016 the then coalition government of ÖVP and the Social Democratic Party of Austria (SPÖ) blocked a common position by the EU’s ministers of foreign affairs on how to continue this process – a precedent in the EU’s accession history with Turkey (see Handelsblatt, 2016).

France is a second member state that at times represented a veto player in EU-Turkey relations. At the beginning of the 2000s the French debate on this relationship was highly politicized. In 2006 opposition to Turkish accession in public opinion reached about 70 percent. One main concern was that Turkey would shift power balance within the EU once it had entered the Union and hence France would lose its influence (see Barysch, 2007). Different French governments have repeatedly considered submitting the eventual accession agreement between Turkey and the EU to a national referendum. Others played another veto card by blocking the opening of five chapters of accession negotiations that were directly linked to full membership in 2006 and 2007 (see Soler i Lecha et.al., 2018). France only lifted its vetoes on Chapters 17, Economic and Monetary Policy, and 33, Financial and Budgetary Provision, in 2015 and 2016 respectively and thereby effectively froze negotiations for nearly a decade (see Schröder & Tekin, 2019). Today, President Macron is still not promoting Turkey’s accession to the EU and is also considering a referendum on the Turkey question. Yet, bilateral relations between France and Turkey are improving in light of common interests and France has become one of Turkey’s allies in Europe (see Soler i Lecha et.al., 2018).

Even a stronger veto player concerning accession negotiations is Cyprus, resulting from the ongoing dispute between Turkey and Cyprus over the division of the island. In its December 2004 conclusions the European Council welcomed Turkey's decision to sign the Protocol regarding the adaptation of the 1963 Ankara Agreement and thereby the extension of the 1996 Customs Union Agreement to all new member states, one of which was Cyprus. Turkey, in an Additional Protocol of July 2005, however excluded Cyprus from this extension and insisted on its diplomatic recognition to be contingent upon the reunification of the island. Back in 2001, the then EU Commissioner for enlargement, Günther Verheugen, prognosed that if there was no agreement before Cyprus joined the EU, “Turkey would lose its chance to join the EU forever” (in Schimmelfennig et.al., 2003: 507). Indeed, the Cyprus issue has caused the Council and Cyprus to block eight and six chapters respectively. Hence, the Cyprus issue became a defining milestone in the accession negotiations considering that in addition to these blocked chapters the Council followed the recommendation of the Commission and announced that no chapter would be provisionally closed until Turkey fully applied the Protocol to the Customs Union (see also Önis 2010).

Moreover, since 2012, the Commission has been prioritizing rule of law and judicial reforms in accession negotiations (European Commission, 2012). As the Cyprus-veto includes the crucial chapters 23 and 24 on judiciary and fundamental rights and justice, freedom and security, it is therefore severely restricting the EU’s capacity to transfer its rule to the country.

Throughout the years, several windows of opportunity for solving the conflict went by unused. End of 2016 marks the latest missed opportunity that had been particularly promising because



the presidents of both sides, Mustafa Akıncı and Nicos Anastasiades, could have delivered on their election pledges to find a solution to the conflict (see also Tekin, 2017). Cyprus will hence remain a veto player in Turkey’s accession to the EU for the time being.

EU member states can exercise their veto on Turkish EU accession mainly in two different ways. On the one hand, they can slow down or even stall accession negotiations by blocking unilaterally opening of certain negotiation chapters. On the other hand, even if the EU was able to finish negotiations with Turkey, there would still be a high chance that not all member states agreed to and ratified the accession agreement. There are only very few promoters of Turkish membership among the EU member states – e.g. Bulgaria or the Visegrad countries – and this support is dwindling further. The United Kingdom (UK), that traditionally had been Turkey’s strongest ally, because it aimed for a rather large and inter-governmentally structured Union, not only took the decision to leave the EU but also turned against Turkey during the Brexit campaign.

These veto players threaten Turkey’s full membership prospects, which represents the key reward in terms of institutional ties of conditionality. Additionally, Cyprus is blocking chapters 23 and 24 that explicitly deal with the judicial reforms and human rights issues. As long as this blockade persists, Turkey’s reform process lacks an essential “external trigger or anchor” (see Tocci, 2005).

Alternative ideas to full membership – Just what exactly is the aim in EU-Turkey relations?

It is not only strong and persisting veto positions that have an impact on the effectiveness of the EU’s conditionality. Turkish doubts in the credibility of the EU’s commitment to eventually grant Turkey the right to join the Union plays an important role. The enhanced debate on the EU’s absorption capacity and alternative forms of membership or partnership does not help trust-building.

Triggered by the rejection of the proposed Constitutional Treaty in France and the Netherlands, the EU’s ‘absorption capacity’ quickly became a key element of the debate on Turkey’s accession during 2005 (Emerson et al., 2006). The debate focused upon Turkey’s size, its population, culture and unpopularity with EU citizens and conveyed the message that, unlike the Eastern enlargement, complying with the formal criteria alone might not be sufficient for Turkey’s full accession to the Union. The EU’s “capacity to absorb new members, while maintaining the momentum of European integration” (European Council, 1993: point 7.A.iii) gained importance in the catalogue of the Copenhagen Criteria (see also European Council, 2006: 18) and was subsequently incorporated into the Negotiating Framework for Turkey (European Commission, 2005). Additionally, the framework defines negotiations as an “open-ended” process and considers permanent safeguard clauses regarding the freedom of movement of Turkish labour, structural policies and agriculture (European Commission, 2005: par. 12). Thus, already at the start of the accession negotiations there was suspicion, particularly on the Turkish side, that the EU envisaged for Turkey some sort of ‘second-class membership’ (e.g. Ülgen, 2010).



Ideas and concepts of alternatives to full membership that officials and governments in several member states started to debate fueled these suspicions even further. In 2004, a group of German politicians officially coined the term ‘privileged partnership’. They were convinced that this would be better and more honest than an “underprivileged membership” (Guttenberg, 2004). Turkey would be closely tied to the EU, especially in the area of security, but would not be a full member. This in turn implied that it could not participate in EU institutions and would continue facing visa restrictions. But it would be required to follow EU norms. Turkey outright rejected this proposal and therefore, the term ‘privileged partnership’ disappeared from the open political discourse in the EU. Yet, similar ideas using only different terminology such as the Austrian concept of “union of interests” (see Gavenda, 2017) or associate membership (Duff, 2013) or realistic strategic partnership (Hahn, 2018) have resurfaced in the debates ever since.

The debate on absorption capacity and the consideration of alternative forms impact strongly on the effectiveness of the EU’s conditionality, because they question the main purpose of the accession procedure – which is full membership in the EU. If Turkey lost its general trust in the aim and purpose of the accession procedure, adaptation costs for any reform would be too high and Turkey would simply stop bothering.⁴

Recent developments, and particularly the UK’s decision to exit the Union, might have the potential, however, for requalifying the notion of ‘privileged partnership’ and its effect on the EU’s conditionality. The EU and the UK need to re-define form, scope and degree of their relation, which has triggered academic discussion on its potential to represent a blueprint and opportunity for changing tracks in the EU-Turkey relationship (Duff, 2013; Müftüler-Bac, 2017; Saaticioğlu 2017). The German Minister of Foreign Affairs, Sigmar Gabriel, in December 2017 spoke openly about the potential of a “smart agreement with the UK” for the EU’s external relations with other countries such as the Ukraine and Turkey (Zeit, 2017). This rather surprisingly re-animation of the ‘privileged partnership’ concept builds on the assumption that Turkey would not perceive such an association with the EU as ‘second-class association or membership’, if they had this in common with a country with a global and European reputation like the UK. As these different forms of close association or partial membership would still require Turkey to apply with the EU’s norms and values, they have the potential to become a driver on political and legislative reforms as long as Turkey accepts them as viable alternatives to full membership.

The EU – a house in disorder?

For the past decade, the EU has been facing a series of substantial challenges and crises that affect its conditionality towards Turkey in different ways.

First, the global financial crisis of 2008 seemed to reduce the economic benefits of EU membership. While this crisis severely hit the EU, the changing economic dynamics in the EU

⁴ This even more so as the predominant narrative for the EU-Turkish relationship in Turkey is full membership (see Hauge et.al. 2019).



and the world at large did not directly affect the Turkish economy. Economic growth in Turkey also slowed down directly after the crisis, mainly due to a decline in Turkey’s exports with the EU (see Babacan, 2009) and a lack of sufficient immediate reaction to the crisis (see Önis et.al. 2007). Yet, reforms that the government had put in place after Turkey’s own severe financial crisis in 2001 and an expansion of its economic relations with the emerging economies as well as the Middle East helped the country to deal with the global financial crisis better than other European countries. The EU and the Eurozone in particular suffered for a long period as the financial crisis turned into a sovereign debt and along with it a governance crisis. These apparently diverging economic trends in the EU and Turkey created the impression among Turkish officials that “the EU anchor was not as essential as it used to be, or at least that the EU needed Turkey as much as Turkey needed the EU” (Soler i Lecha, 2014: 3).

Second, in recent years the EU has been facing the dilemma that “its foundations are under attack from the inside” (Grabbe & Lehne, 2017: 1). This means that latest developments in Hungary and Poland do not sufficiently comply with rule of law standards anymore, one of the EU’s core values. At the same time, the EU is lacking an efficient and effective tool for punishing respective governments. Article 7 TEU permits the Council of the EU to suspend certain rights of a member state including its voting rights in case of a unanimous decision on the fact that it is in “serious and persistent breach” of the EU’s values. This procedure is also known as the “nuclear option”, because both its success and failure can trigger an implosion of the EU’s coherence. If it fails, the target government could use this as legitimization of its actions. If the Council agreed on suspending the country’s rights, this could fuel nationalist or anti-EU sentiments (see *ibid*: 3). The fact that there are currently two member states that seem to have “systemic problems” with rule of law issues further complicates the Art. 7 TEU mechanism. They could use their vetoes respectively for blocking the decision on the “serious and persistent breach” of the EU’s values (see *Green European Journal*, 2017). Nevertheless, the Commission submitted a reasoned proposal for a decision of the Council on the determination of a clear risk of a serious breach of the rule of law in Poland under Article 7(1) TEU in December 2017 (European Commission, 2017).

Basically, these two issues that bring the EU’s house in disorder raise the costs of adaptation for political and legislative reforms in Turkey. The economic developments after the financial crisis corresponded with a decline in support of Turkey’s EU membership in Turkey’s population to 44 percent in 2013 – compared to 73 percent in 2004 (Soler i Lecha, 2014: 3). During these years, Turkish officials also openly considered alternative options to the EU, such as the Shanghai Cooperation Organisation (SCO). Erdoğan perceived the SCO more beneficial, because it did not require Turkey to reform its political system as it already shared more common values with the SCO than with the EU (see Szigetvari, 2014; Wang, 2016). Moreover, Turkey’s willingness to accept the EU’s demands for reforming its political and legislative system in order to comply with the Copenhagen Criteria might suffer from the realization that there are countries that already form part of the EU and are also in breach with its core values.



Issue linkage: The migration deal as a missed opportunity

At the end of 2015 the EU attempted to revitalize the stagnating accession negotiations with Turkey. Paradoxically, this did not coincide with progress in political and legal reforms regarding rule of law and human rights issues, but with a democratic backsliding in the country. The revitalization was rather motivated by the so-called refugee and migration crises in the EU at the time. The EU had become a destination of more than 1.3 million asylum seekers, which challenged the EU to the extent that the Schengen area was threatening to collapse. The Dublin regulation stipulating that the member state through which the asylum seeker enters the Union for the first time was responsible for the asylum procedure, could not provide the right frame for distributing the refugee pressure among the member states evenly. At the same time, there was not sufficient time or agreement among the member states for a substantial reform of this Dublin system.

Germany was one of the countries that were affected most by the refugee crisis in 2015 but was not able to negotiate an internal solution in form of permanent relocation mechanisms among member states. The Merkel-government, that had never been an open or strong promoter for Turkey’s EU accession, therefore planned to engage with Turkey as a “key strategic partner” in addition to acknowledging the country’s status as an “accession candidate” (Merkel ,2015; see also Reiners & Tekin, 2019). This strategy found its expression in an EU-Turkey statement on 29 November 2015 in which the cooperation in terms of migration policy was linked to a revitalization of accession negotiations, facilitation and acceleration of visa liberalization and an intensification of high level dialogues among other issues (European Council, 2015).

Soon after, the Turkish government realised that this issue linkage did not pay off, because both the accession negotiations and procedure for visa liberalization had their own conditions and criteria that the mutual interests in the refugee crisis could not leverage. In December 2015 and June 2016, the EU only opened the chapters on financial and budgetary provisions and on Economic and monetary policy. Chapters 23 and 24 that are crucial for political and judicial reforms in Turkey remained closed. Turkey put a lot of effort in launching sufficient reforms to comply with the list of more than 70 requirements for visa liberalization. In light of the increasing terrorist attacks in Turkey in 2015 and 2016, the government however did not see itself in the position to change its anti-terror law as requested by the EU. In summer 2016, the European Parliament put the visa-liberalisation procedure on hold (European Parliament, 2016).

In the EU and Turkey alike, there were lots of criticism on this issue linkage between the EU-Turkey migration deal and accession negotiations and visa liberalization procedure. They focused mainly on the dilution of the causal relationship in EU-Turkey relations and the conditionality at play (see also Üstün, 2017: 86). The ability of threatening to cancel the EU-Turkey migration deal provided the Turkish government an additional tool for gaining political or material reward in the EU-Turkey relationship. Additionally, the EU’s credibility was affected again because it did not keep its alleged promise of revitalizing accession negotiations and facilitating visa liberalization in return of the migration deal.



Political and legislative reforms in Turkey in light of the EU-Turkey relationship

Academic literature generally identifies three periods of political and legislative reforms in Turkey: the period of acceleration – or the “golden years” (Müftüler-Bac, 2016) – from 1999-2006, the period of recession in which reforms slowed down from 2007-2013, and the period of backsliding from 2013 till today. This section highlights, mainly based on the annual (progress) reports on Turkey issued by the European Commission, the main achievements, shortcomings and setbacks in each period and discusses the reasons behind them and the trends for the EU-Turkey relationship.

The Period of Acceleration: 1999-2006:...

... key developments...

The early 2000s marked a continuous series of substantial political and legal reforms in Turkey. These reforms root in the “National Program for the Adoption of the Acquis” (NPAA) (Republic of Turkey Ministry of EU Affairs, 2001) – the most ambitious Europeanisation programme that the Turkish government presented in 2001 in response to the “Accession Partnership Document for Turkey”, adopted by the European Council (Official Journal of the European Communities, 2001). The Program conceded Turkey’s EU membership as a “milestone confirming the founding philosophy of, and Atatürk’s vision for the Republic” (Republic of Turkey Ministry for EU Affairs, 2001: np). It was with this document that Turkey promised to satisfy a number of political reforms to be qualified for full membership and the issue of constitutional change landed on top of Turkey’s political agenda (see Gönenç, 2004).

In October 2001, the Turkish Grand National Assembly (TGNA) adopted within this framework a record number of 34 amendments to the 1982 Constitution particularly addressing the field of human rights.

Certain amendments repeated almost verbatim the articles of the European Convention of Human Rights (ECHR) (ibid). For instance, the amended Article 13 of the Constitution required that fundamental rights and freedoms could only be restricted for reasons provided in the relevant articles of the Constitution and included the principle of proportionality (see also Yüksel, 2007). The death penalty represented a more controversial issue, with only 38 percent of public support (Şenyuva, 2006), and was removed from the reform package at the very beginning of the process (Gönenç, 2004). The European Commission still described the modifications to the constitution as a “[...] significant step towards strengthening guarantees in the field of human rights and fundamental freedoms and limiting capital punishment” (European Commission, 2001: 19). Following the constitutional amendments, a New Civil Code was adopted in November 2001, which ushered in considerable progress in gender-equality (Müftüler-Bac, 2016).



The Turkish government was able to keep the pace of reforms high. Three sets of reform packages were adopted in February, March and August 2002, of which the latter was the most extensive. It abolished the death penalty in peacetime (although terrorism remained an exception). It increased freedom of expression and cultural rights through allowing broadcasts in languages other than Turkish, revised the Anti-Terror Legislation, and paved the way for the retrial of the cases that the European Court of Human Rights (ECtHR) found Turkey to be in violation of (Republic of Turkey Ministry of Foreign Affairs, 2007).

In 2003, four harmonization packages kept the reform process alive. The first two packages operationalized the retrial of the cases decided in State Security Courts. Additionally, these two reform packages limited the duties and powers of the National Security Council (NSC), which aligned civil-military relations in Turkey further with European standards. Another important achievement was the adoption of Protocol 6 of the ECHR, which restricts death penalty only to times of war or imminent threats of war (Council of Europe, 1983).

In structural terms, the AKP government established a Reform Monitoring Group in response to allegation of unevenly implemented reforms in 2003 and adapted the NPAA to the revised version of the Accession Partnership Document for Turkey (Republic of Turkey Ministry for EU Affairs, 2003).

In 2004, another round of ten constitutional amendments heralded the end of prospering political and legal reform processes in Turkey. They broadened the freedom of press, by *inter alia* revoking the closure of publications. Moreover, the amendments recognized the primacy of international law over national legislation in the field of human rights. One of its main achievements, however, was the settling of the death penalty issue by abolishing it in accordance with Protocol 13 of the ECHR, which restricts death penalty in all circumstances, including wartime (Council of Europe, 2002).

In addition to these constitutional amendments, a series of additional reforms deserve mentioning. Consolidating Turkey's claim on the implementation of reforms to meet the EU's political criteria, 2004 marked the year during which the Democracy Party parliamentarians were released from jail. A civilian was appointed Secretary General of the National Security Council, for the first time in Turkish history; a development to which the EU responded positively. The AKP adopted a new Penal Code, including more favorable clauses on women's rights, discrimination and torture. Changes to the Anti-Terror Law downsized legal restrictions on the exercise of freedom of expression.

In 2006, the AKP government proposed another harmonization package, addressing a wide spectrum of issues within the scope of the Copenhagen political criteria. For better regulation, the AKP introduced Regulatory Impact Assessments (RIA) into the judicial system. One could also observe some level of progress on the capability of military courts in trying civilians. The new law adopted in June 2006 stipulated that no civilian would be tried in military courts in peacetime except in circumstances where military personnel and civilians committed a felony together. Additionally, the new law allowed for retrial in military courts in line with the rulings of the ECtHR. Regarding freedom of expression, including the freedom of the media, the Ministry



of Justice’s circular in January 2006 instructed prosecutors to consider both Turkish legislation and the ECHR.

However, reverse developments also took course. As a response to the escalation of terrorism, the government adopted changes to the Anti-Terror Legislation in June 2006, expanding the understanding of what constituted a terrorist offence. Although the Parliament adopted a Law Establishing an Ombudsman, which qualified as one of the priorities of the Accession Partnership document, the Constitutional Court suspended the implementation of the law (European Commission, 2006).

... and drivers:

One main driver for the above outlined reform prosperity between 1999 and 2006 was the materialization of the (realistic) perspective for Turkey’s accession to the EU; the EU’s credible and consistent promise of membership provided the basis for an increased commitment to meet its political conditionality. In terms of this driver, the 1999 Helsinki Summit, which granted Turkey candidate status (European Parliament, 1999: 12), was a landmark event. It brought certainty to EU-Turkey relations and endowed Turkey with a realistic political vision as the EU finally gave Turkey the permission to join the club of candidates. This elevated Turkey’s status and at the same time subjected it to a concrete set of criteria and conditions for opening accession negotiations.

Further proof of the EU’s credible commitment is the then President of the Commission Romano Prodi’s visit to Turkey in January 2004. He was the first Commission President to visit Turkey after Walter Hallstein in 1963 (Müftüler-Baç, 2005). In October 2004, five years after the Helsinki Summit had granted Turkey official candidate status, Turkey’s continued efforts to consolidate its democracy paid off when the European Commission recommended accession negotiations with Turkey, stating that Turkey now sufficiently met the EU’s political criteria.

Additionally, domestic factors facilitated the reform process in Turkey. The prospect for EU membership appeared for the first time in Turkish history as the only uniting theme between political parties (Kardas, 2002: 146). The voting on the 34 constitutional amendments in 2001, for instance, built on a “strong cross-party consensus” (European Commission, 2001: 14), amid a rather thorny coalition government composed of national rights (Nationalist Action Party (MHP)), national lefts (Democratic Left Party (DSP)) and conservative liberals (Motherland Party (ANAP)) with an overarching commitment to the EU accession prospect. The MHP, a Turkish party with the most radical opinions on recognizing Kurdish minority rights as concessions to terrorism, gave its consent to issues as sensitive to them as the increased freedom of expression and cultural rights including minority groups such as the Kurdish. Additional domestic factors that intensified the EU’s influence on reforms were the ongoing economic crisis at the time and criticism for the 1982 Constitution, which was a product of the military rule, strengthening the hegemony of the state at the expense of fundamental rights and liberties (Friedrich Ebert Stiftung, 2011). These intensified domestic demands for democracy and the pressure to adopt a series of new laws respectively. A milestone in Turkey’s political history was the general



elections of November 2002: the coalition government was defeated and the Justice and Development Party (AKP) won single-handedly with 35.7 percent of the votes, forming a majority government. The AKP government’s parliamentary majority, a weak opposition and the unwavering attractiveness of the EU accession, decreased the perceived costs of adoption to meet the EU’s rules.

In its first years as a majority government, the AKP fully committed itself to EU accession. Although some of the reforms impinged upon sensitive domestic topics, including Kurdish opening, the AKP government was able to adopt four harmonization packages in 2003 alone. The success of these reforms met with two suspicions among the liberal political elites as well as business and academic communities. On the one hand there was the perception that the AKP’s democratization efforts harbored a discreet Islamist agenda and that the AKP devoutly embraced the goal of the EU accession as part of its effort to disprove that it was Islamist (e.g. Ülgen 2010). On the other hand, there was the argument that the AKP instrumentalised the EU membership perspective for the realization of its own domestic political concerns (see Aydın-Düzgüt and Keyman, 2008: 4; Saatçioğlu, 2010: 6). This foreshadowed the tragic polarization that eventually blinded Turkey in the years to come.

The fact that Turkey experienced such a rapid political transformation since its candidacy in 1999, demonstrates not only the EU’s ability to transfer its rules to Turkey but also Turkey’s capacity to adopt the rules of the EU. In fact, in 2004, support for EU membership stood at 73 percent in Turkey (Independent Commission on Turkey, 2014), and in September 2005, the-then Prime Minister Recep Tayyip Erdoğan said, if the membership prospect failed, then the Copenhagen criteria would be called the Ankara criteria (CNN Türk, 2005). This should have implied that political reforms in Turkey were not contingent upon externally formulated criteria, but they were consistent with Turkey’s own needs.

Yet, the run-up to the opening of accession negotiations in 2005 marked a breaking point in EU-Turkey relations: the EU Copenhagen Summit in December 2002 did not set a date for starting accession negotiations with Turkey, though only two years later, ten new member states were admitted into the EU, including a divided Cyprus. This strengthened the view of Europe-skeptics in Turkey that the Union was leery of Turkey. In fact, public opinion polls from 2005 demonstrate the limited support for Turkey’s accession in EU member states even when the government was committed to political reforms: just 25 percent in Greece, 20 percent in France and 10 percent in Austria supported Turkey’s accession (BBC News, 2005).

Things indeed started to get difficult after the hiccup with the opening of accession negotiations when Turkey started to lose trust in the reliability of the full EU membership promise. Against this backdrop, Oli Rehn verified in September 2006 in view of the lack of progress towards the political criteria that the momentum for reform in Turkey had been harmed. The then-Commissioner for Enlargement stressed that freedom of expression remained under threat as journalists, publishers or human rights activists faced judiciary proceedings for violating Article 301 of the Penal Code, on the vague grounds for offending Turkishness. Freedom of religion was another area where tangible progress was needed, as non-Muslim religious communities were subject to restrictions on property rights or management of foundations (Rehn, 2006). Putting



Turkey and the EU at a crossroads, the Council decided in December 2006 to block the opening of negotiations on eight chapters of the acquis and not to provisionally close any additional chapter until Turkey fully implemented the Additional Protocol to the Ankara Agreement (Council of Europe, 2006). The ruins of this decision; the erosion of trust in the sincerity of the EU, remain in Turkey to this day.

Overall, the 1999 to 2006 period laid empirical proof that the interplay of the EU’s credibility, clarifying the possible rewards of the accession prospect, and Turkey’s willingness to incur the costs of adoption of the rules of the EU have made political reforms possible. The reforms pertaining to this period also helped the AKP to legitimize its agenda and position in Turkey. Although there were controversies, the constitutional reform packages the AKP government adopted seemed to augur a more pragmatic, democratic and unified Turkey, closely integrated into the European order. In fact, this period was evaluated as remarkable in much of the related literature on EU-Turkey relations (see Müftüler-Baç, 2016; Erdenir, 2012). At the same time, the developments in EU-Turkey relations particularly towards the end of this period also proved that political and legislative reforms in Turkey alone might not be a sufficient driver for opening the Union’s door to full membership.

The Period of Recess: 2007-2012:...

... key developments...

In line with its earlier rhetoric, the AKP government reiterated its intention to advance the implementation of the Turkish road map for EU accession in 2007. The European Commission noted some progress towards better regulation, most notably through the circular on the application of the Regulatory Impact Assessment. However, the tendency for the military to publicly address topics beyond its remit increased and there was no evidence of a consistent and comprehensive framework of political reforms by the European Commission’s own metrics (European Commission, 2008). Concerns lingered over the impartiality of the judiciary, which remain a priority of the Accession Partnership. The institutional framework for human rights promotion and enforcement, with the establishment of the Ombudsman long-overdue, were found to disregard the European principle of independence. Adding to these, although the European Commission acknowledged the amendment to Article 301 of the Penal Code to advance guarantees for freedom of expression, the wording remained largely the same, conducive to political concessions (European Commission, 2008). Prosecutions and convictions for expressing “non-violent opinions” (European Commission, 2008: 16) continued unabated; the European Commission urged Turkey to bring its interpretation of the phrases “incitement to violence” and “public order” in closer practice to European standards. No progress was observed to promote respect for and protection of minorities.

In 2009 certain reform initiatives and plans insinuate a call for renewed commitment to the EU’s accession prospect: The AKP appointed its first full-time EU accession negotiator, State Minister Egemen Bağış. Additionally, some judicial changes were introduced to fulfill the EU’s criteria of impartiality. For instance, clauses that permitted civilians to be tried in military courts were



revoked from the Constitution. The Minister of Justice approved a Judicial Report Strategy to address certain shortcomings particularly envisaged by Chapters 23 and 24 of the acquis. Article 301 of the Penal Code did no longer systematically constrain freedom of expression – yet the European Commission noted that others still did. In an effort to end Turkey’s decades-long conflict with its Kurdish population, the government announced its “Democratic Opening” to offer more cultural rights to Kurds, some local autonomy and incentives for the PKK to disarm. The initiative allowed for the opening of a 24-hour Kurdish-language TV channel TRT6 (now called TRT Kurdî) (Bengio, 2014). Yet, these changes were not accompanied by an overall acceleration of political reforms in line with the Copenhagen Criteria, in spite of the AKP’s large majority in parliament and firm popular mandate. In March 2009 the members of the European Parliament noted in a resolution the “continued slowdown of the reform process” and called on Turkey to “prove its political will to continue the reform process” (European Parliament, 2009: F1).

In 2010, Turkey in an attempt to reinforce its reform efforts, launched another constitutional reform package and the European Commission approved of it as a step in the right direction. The main provisions of the proposed amendments addressed the structure of High Courts – i.e. Constitutional Court and the Supreme Board of Judges and Prosecutors – and formed part of a 25-article package that also included provisions on reinforcing rights and liberties and the rule of law. This amendment-package strengthened the rights of disadvantaged groups, introduced the Office of Ombudsman with an own complaint mechanism and created a separate secretariat and budget for the Supreme Board of Judges and Prosecutors (HSYK). Additionally, it increased the working majority of the Constitutional Court in proceedings to ban a political party or enforcing the right of shared bargaining for civil servants and created new rights, such as personal data protection (Yeğen, 2017). The European Commission concluded that after a substantial slowdown in the political reform agenda over the past years, these 2010 constitutional reforms inferred progress, albeit of limited scope and amid tense relations between different bodies of the state (European Commission, 2010: 10). The Report called on Turkey to increase its efforts in freedom of expression and religion. In response, Turkey’s Chief EU Negotiator, Egemen Bağış, described the 2010 Progress Report as the “most positive and encouraging” Turkey had ever received (Wall Street Journal, 2010).

General elections took place in June 2011, with the AKP obtaining 49.9 percent of all votes. Yet, during the election campaign, the EU accession prospect appeared to have carried little weight. This fueled the assumption that the Turkish political leadership and the general population were veering away from the belief that the EU was a catalyst for political reform in Turkey. In its 2011 Progress Report, the European Commission raised grave concern over the state of freedom of expression in Turkey, including media freedom, where the court cases launched against journalists and writers as well as multiple restrictions on access to the Internet continued (European Commission, 2011). As regards the functioning of the parliament, the TGNA enacted a large number of laws, several of which covered issues directly under the mandate of the Copenhagen political criteria, such as the adoption of the Law on the Turkish Court of Accounts (TCA). This granted the TCA the right to audit public expenses on behalf of the parliament. Yet,



the European Commission identified the political climate in Turkey with its lacking effective dialogue and polarization between different political parties responsible for the derailed reform process in Turkey. This atmosphere was not “[...] conducive to holding the executive to account on policy matters” (European Commission, 2011: 9).

In 2012, the EU launched together with Turkey the “Positive Agenda” that identified judicial reforms as a critical component of Turkey’s political transformation. Some perceived this as an important process to keep the EU’s membership-offer alive, while “others referred to it as an ‘institutional trick’ intended to circumvent Ankara’s refusal to accept “Southern Cyprus” taking over the EU’s Presidency, which was set to begin on July 1, 2012” (Morelli, 2013: 11). Proposing to work on a new constitution to fulfill the demands of a modern democracy, the government committed itself to further political reforms in its Annual Plan for 2012 and Medium-Term Programme for 2012-2013 (European Commission, 2012). Just like in 2011, however, the European Commission’s 2012 Progress Report criticized the political climate in Turkey for being characterized by restrained dialogue and recurrent tensions, even though the work on the new constitution promised a democratic and inclusive progress (ibid). Additional points of the Commission’s criticism were the very broad application of the judicial framework on terrorism and organized crime that caused constant infringements of the right to liberty and security, the freedom of expression, assembly and association as well as the right to a fair trial (ibid). Sensitive topics, such as the role of the military, continued to be addressed, and limitations on the freedom of expression, particularly the imprisonment of several journalists, writers, academics and media workers and the court causes launched against mainly left-wing writers and journalists addressing the Kurdish issue remained a cause of concern for the European Commission (ibid).

...and drivers:

Considering these developments, we can identify the period beginning with 2007 as essentially different from the previous one of accelerated reforms. In the post-2007 era, Turkey’s course of accession “[...] muddled along with a mixed sense of direction and very little accomplishment” (Morelli, 2013: 5). What drove this period more than any other factor was Turkey’s disillusionment with the EU as the certainty of its commitment to Turkey eroded. This was represented by the European Council’s decision to suspend eight chapters over Turkey’s restrictions on Cyprus. This assured the then-Foreign Minister Ahmet Davutoğlu that talks were at a stalemate because of political blockages, rather than technical shortcomings (Davutoğlu 2011 in Gatesone Institute, 2011 and Morelli, 2013).

The already dim prospect of accession was equally fueled by the negative rhetoric championed by some EU leaders, primarily Nicolas Sarkozy (Ülgen, 2010). With little progress to note, Turkey-skeptics in Europe began to voice that Turkey’s accession prospect may have to be amended. In an interview in 2009, the then-French Secretary of State for European Matters, Pierre Lellouche, who was one of the few pro-Turkish right-wing politicians in the French debate, said, “we



wonder whether it is not the time to begin reflecting on alternative paths [for Turkey] without interrupting the negotiations” (in Morelli, 2011: 7).

In Turkey, consensus grew stronger that the EU had weakened its support for Turkey’s accession. The European Parliament’s resolution in 2011, which heavily condemned the AKP for a lack of dialogue between different political parties, its ongoing failure to extend the Additional Protocol and the continued lack of press freedom provoked the anger of different political parties across Turkey. A representative from the main opposition party, CHP, declared the Resolution “[...] the toughest worded document drafted since [...] formal negotiations began in 2005” (Kader Sevinc, 2011). Erdoğan claimed that the report was unbalanced and argued it was coined by people who did not know Turkey (in Morelli 2013: 12). In fact, Burhan Kuzu, a leading AKP figure and a constitutional law professor, stated that the European Commission’s 2012 Progress Report should be “put in garbage” (BBC Turkey, 2012). For the first time since it’s candidacy, Turkey issued its own progress report in 2012. Egemen Bağış declared that this move was in response to the “subjective, biased, groundless and narrow views” of the European Commission (European Parliamentary Research Service Blog, 2013).

In terms of Turkey’s domestic considerations AKP’s instrumental political calculations (see Saatçioğlu, 2010) are of relevance. The decline in the credibility of the EU’s commitment gave leverage to the AKP to gauge the benefits of the reform process for itself (Cengiz and Hoffman, 2013) amid a hostile political climate, increasingly captive to political tension and polarization (see Ülgen, 2010: 3). In fact, by Europe’s own metrics, the confrontational political climate and lack of political dialogue was why Turkey’s political reform process slowed down in this period (European Commission, 2010). For instance, the government’s announcement of the “Democratic Opening” in 2009 began to stagnate purely because of political opposition (Ülgen, 2010), which perceived of it not as a move towards the accession prospect but as an effort to recover Kurdish votes in the upcoming local elections (Kaygusuz, 2012). Additionally, the AKP faced the threat of closure for advocating anti-secular activities, indicted by the Constitutional Court (Müftüler-Baç, 2016). The AKP’s genealogy comprised of four parties that had been closed because of a coup or a court order (Cook, 2016), the ruling party, therefore, feared losing power. The fact that another closure case had been launched in 2008 against the Kurdish nationalist Democratic Society Party, that resulted in its ban in 2009, further polarized Turkey’s political atmosphere, and reinforced the already inherent lack of political dialogue. One of the AKP’s reactions was the ambition to fill the courts with AKP-sympathizer judges (ibid.). This not only sewed the seeds of the AKP’s political strategy based on polarization (ibid.), but also curbed its willingness for alignment with the EU’s values, as the costs of adaption to the rules of the EU increased, for instance, in the adoption of a fully independent judiciary (Shambayati and Kirdis, 2009 in Müftüler-Baç, 2016).

In addition to the AKP’s general reform strategy there were certain domestic events and incidents that affected Turkey’s political and legislative reform process. Worsening the political climate, the Kurdistan Worker’s Party (PKK) terminated the unilateral ceasefire after 2005. Attacks on civilian and military targets and a simultaneous rise in Turkish and Kurdish nationalism “[...] closed the doors for public approval on the necessity for further



democratization” (Kaygusuz, 2012: 167). Although, the AKP tightened its grip on power in the 2007 general elections, it faced structural opposition, particularly from the secular cadres. It was in 2007 that a constitutional crisis erupted over the presidency (Müftüler-Baç, 2016), with the opposition party trying to gridlock the election process, and later with the military publicly broadcasting that it rejected the AKP’s preferred presidential candidate because he was an Islamist (dubbed as the e-memorandum of April 27) (ibid). Amid these conflicts, the Istanbul police exposed an alleged plot to take over the government, better known as the Ergenekon case. This “[...] was the first case in Turkey to probe into a coup attempt and the most extensive investigation ever on an alleged criminal network [...]” (European Commission, 2009: 6). A similar judicial proceeding was launched into another alleged coup plot perpetuated by the military, under the name of Balyoz (“Sledgehammer”). These incidents justified both the slowing down of the reform process as well as referring the reforms to domestic needs that actually were not in line with the EU’s political criteria.

The responsibility for the slowing down of Turkey’s political reforms between 2007 and 2012 was a shared one. As in the previous period, it was the interplay of the credibility of the EU’s conditionality and the possible costs incurred by domestic political actors that determined the extent to which Turkey was committed to the path of political reform. This slowed down reform process further added to the stagnation in Turkey’s accession negotiations with the EU – although it was not yet the main point of contention.

The Period of Backsliding: 2013-Present:...

... key developments...

In September 2013, the AKP government re-opened its long-awaited “Democratization Package”. During the opening ceremony, Erdoğan referred to this as a “historic moment for Turkey”. The package opened discussions on changes to the current 10 percent election threshold to enter the parliament (an issue that the European Commission had repeatedly raised), easing of circumstances for the establishment of political parties and removing limitations on political party memberships. It also allowed election campaigns and education in private schools to be conducted in different languages and dialects and annulled the ban on the use of the letters Q, X and W used in Kurdish. That being said, the recognition of Alevi places of worship and the re-opening of the Greek Ecumenical Patriarchate of Istanbul’s Halki Seminary were missing from the reform package. Additionally, the PKK remained a highly sensitive issue. According to the then-Chairman of the Bar Association of Diyarbakir and Kurdish human rights lawyer, Tahir Elçi, Erdoğan’s remarks during the announcement of the package that the “rights and reforms will expand insofar as politics prevail” in effect meant “as long as the PKK disarms completely, we will take matching steps”. The fact that Elçi was shot dead during a press conference two years later highlights how polarized Turkey had become over this issue.

The “Democratization Package” coincided with the introduction of the fourth judicial reform package, endorsing a legal framework on the freedom of expression. It excluded, however, reforms on Article 314 of the Penal Code, which criminalizes membership of armed



organisations. Many of those detained or incarcerated academics, human rights advocates or journalists particularly working on the Kurdish issue were held under this article. The pressure on the media continued unabated, with the firing of dissident voices and arbitrary website bans. The 2007 Internet Law was amended, giving the Telecommunications and Communication Presidency excessive powers (European Commission, 2014; Zeldin, 2015; Venice Commission, 2015a).

The government introduced a decree in December 2013 to limit any investigation by public prosecutors (for instance in the form of issuing search and arrest warrants for suspected offenders) to the approval of their superiors, namely the Minister of Justice. The judicial reform packages of 2013 and 2014 impaired the independence of the judiciary from the executive, a reversal from earlier waves of judicial reforms, most notably the 2010 constitutional amendments. The Turkish government adopted changes to the Law on the Supreme Board of Judges and Prosecutors (HSYK) and the Law on the Justice Academy in February 2014. With the adoption of the changes, the Minister of Justice instantly re-assigned almost 70 percent of the judicial officers in the HSYK, which, according to the European Commission “[...] raised serious concerns over the independence and impartiality of the judiciary and separation of powers” (European Commission, 2014: 13). Marking a clear example of democratic backsliding, this bill increased the executive’s control over the HSYK and rendered the executive responsible for assigning some of the members of the HSYK without holding elections. These judicial changes effectively contradicted the mandate of the EU as the European Commission had asked the AKP to ensure the independence of the judiciary in its earlier progress reports. This apparently even raised criticisms within the AKP’s own ranks (see Müftüler-Baç, 2016). Hence, in 2014, the commitment of the Turkish political elite to the rules of the EU ceased as the executive reasserted its influence over the judiciary and domestic political priorities deviated significantly from the EU’s demands for the accession bid.

In June 2014, the parliament enforced a law to strengthen the legal framework of the settlement process targeting the solution of the Kurdish issue. The law included measures to reintegrate those who abandon the PKK and reinforce their social inclusion. According to the European Commission’s 2014 Progress Report, the law was a positive step towards stability and the guarantee of human rights in Turkey, however, the Anti-Terror Law remained excessive in scope and the society was still deeply polarized.

In the midst of these changes, Erdoğan consolidated his grip on power, winning the first direct presidential elections in August 2014 with 51.8 percent of the votes. In his inauguration speech, the first popularly elected President of Turkey expressed his enthusiasm for a new constitution, laying the groundwork for a shift to a presidential system.

In his first year as President, Erdoğan prioritized general aim and the fight against the alleged “parallel structure” (“a state within a state”) operating under the terrain of the Gülen movement (now officially declared a terrorist organization under the name Fetullah Terrorist Organization). The latter was included in the agenda of the National Security Council. According to the European Commission, the fight against the Gülenists at times “[...] encroached the independence of the judiciary” (European Commission, 2015: 8). Significant numbers of



dismissals and re-assignments in the civil service, police and judiciary continued in 2015. The government adopted a revised strategy for 2015-2019 to improve judiciary shortcomings, however, the European Commission found it to be lacking in detail on the steps to implement the reforms. The 2014 legislative changes impairing the independence of the HSYK remained intact, as a result of which judicial officers continued to be subjected to strong political pressure (ibid). The Venice Commission expressed grave concern over the interference with judicial independence in Turkey, particularly noting that the removal, dismissal and re-assignment of judges and prosecutors contradicted the basic standards of the rule of law (Venice Commission, 2015b).

The critical evaluation by the European Commission observed additionally Turkey's weak impetus for a more comprehensive public administration reform. The implementation of the Anti-Terror Law continued with far-reaching consequences, worsened by the resurgence of violence by the PKK. This brought the settlement prospect of the Kurdish issue to a halt. The European Commission noticed frequent restrictions on the freedom of expression and freedom of assembly in Turkey, via an arbitrary application of the legislation, court cases launched against journalists or constant dismissals. In view of the amendment to the Internet Law in 2015, “[...] which provided for another access-blocking procedure” (Venice Commission, 2015a: 29), the European Commission expressed in its 2015 Progress Report a serious backsliding on the freedom of expression. Yet, Turkey's accession process appeared to have reinvigorated at the end of 2015, owing to a common interest in solving the migration crisis (Consilium, 2015).

In 2015 Turkey was subjected to a prolonged election cycle, which added to the slowing down of political reforms in line with European standards (European Commission, 2015). The June 7 elections, in which the pro-Kurdish People's Democratic Party (HDP) competed for the first time and passed the 10 percent election threshold for representation in parliament, saw a record turnout of over 85 percent. Equally important, the AKP lost its parliamentary majority for the first time in 13 years. Looming the prospect of instability, a governing coalition could not be established by the constitutional deadline. Repeat elections took place on November 1, 2015, as a result of which, the AKP obtained 49.5 percent of the votes, retrieving its majority position in the parliament. The political campaign scene had been hit by waves of turbulence, as Turkey was shaken by the deadliest terrorist attack in its modern history on October 2015. Although international observers reported that citizens were able to choose freely between different political alternatives, the challenging security environment and lingering restrictions on the freedom of media curtailed the ability to campaign freely.

A new government convened in May 2016, which continued to be challenged by the deteriorating security situation. In July 15, 2016, a section of the Turkish military orchestrated an unsuccessful coup attempt against the AKP government. Five days after the failed coup attempt (the details of which are discussed below), the government declared a state of emergency across the country, allowing the Council of Ministers working under the remit of the President to rule by legislative decree without any prior consultation of the parliament. A day after, Turkey informed the Council of Europe to derogate from its obligations to secure numerous fundamental rights guaranteed by the ECHR, including inviolable rights, such as the



right to life and the presumption of innocence (European Commission, 2016). In October 2016, the state of emergency was extended for additional three months. The Venice Commission argued that the justification for sustaining the current state of emergency was “less clear” (Venice Commission, 2016: 10) and that it may not be “the best solution to re-establish public security and restore the rule of law” (ibid: 11). Turning a deaf ear to stronger warnings by the EU, Turkey has continuously been governed under a prolonged state of emergency only lifting it in July 2018 after the general and presidential snap elections had effectively constitutionalized the presidential system.

As it remains beyond the scope of this report to provide an exhaustive and complete list of all the legal changes that arise from the post-coup situation in Turkey, only a selected few will be discussed hereof. The decrees issued under the state of emergency in 2016 included the extension of the pre-trial detention period to 30 days (from a maximum of 4 days), the closure of institutions and media outlets, the dismissal of military and civil service personnel suspected of Gülenist sympathies and the re-organization of the police, the military academies, the gendarmerie and the Turkish armed forces (European Commission, 2016). The third decree following the introduction of the state of emergency brought significant amendments to the structure of the Turkish armed forces, by attaching force commanders to the Ministry of National Defense and granting the civilian executive the power to order top commanders without any attention to the chain of command. Deputies of the Prime Minister and the ministers of justice, foreign affairs and interior were made members of the Higher Military Council, changing its organizational structure (ibid).

According to the European Commission, the decrees raised fundamental questions on whether they complied with the principle of proportionality and access to and secured effectiveness of judicial remedies (ibid). It also noted continued shortcomings in the application of Turkey’s Anti-Terror Law. As a result of the approval of the bill in June 7, 2016 to lift the legislative immunity of 138 deputies under investigation, MPs from the HDP, including the Party’s two co-chairs were detained on charges of supporting terrorist activities in November 2016.

Revealing the weakening strategic significance of the EU, the Turkish President announced his plans to re-install the death penalty in October 2016, a move that would lead to a formal suspension of the accession process (see Pierini, 2017). In a powerful, albeit symbolic move, the European Parliament decided in November 2016 to demand temporarily freezing of accession talks with Turkey, on the grounds that the government lacked the necessary political will to cooperate with Europe. Particular emphasis was placed upon the measures taken in the aftermath of the failed coup and talks on the re-introduction of the death penalty (European Parliament News, 2016). This procedure was used for the first time against a candidate country and revealed that the prospect of EU membership had become irreversibly elusive for Turkey.

The AKP’s “confrontational and crisis-driven approach to constitution change” (Yeğen, 2017) surfaced in 2017, rapidly driving Turkey and the EU in opposite directions towards a re-defined path. In an effort to accord extensive power to the elected president, the government adopted several amendments to the constitution in January, which were approved by an extremely thin majority of 51 percent in a referendum on April 2017. For instance, the amendments abolish the



prime ministry and incorporate its duties under the office of the president; allow the president to be partisan (not above politics and representative of the whole nation); authorize the president to issue decrees on social, economic or political issues; permit the president to assign one or more vice presidents. As the parliament would no longer be responsible for supervising the council of ministers, the proposed amendments reduce the system of checks and balances previously enforced by the parliament. Another change is that, the president would be tasked with picking 18 out of the 28 most senior judges.

In the academic and political debate these constitutional changes were classified as introducing a “president’s system rather than a presidential system” (Paul and Seyrek, 2017) and criticised for the lack of the necessary checks and balances “required to safeguard against becoming an authoritarian system” (Venice Commission, 2017: 130). The European Parliament’s Turkey rapporteur repeated the EP’s demand for suspension of accession talks with Turkey if Brussels was serious about its own values (in Werz, 2017). Eventually, in November 2017, the EU decided to reduce EU funds to Turkey, indicative of Turkey’s stalled bid to join the bloc (Emmott, 2017).

... and drivers:

A reading of these reforms makes it clear that beginning with 2013, the AKP government intensified its efforts to strengthen its grip on power. Thus, in this final period the EU-Turkey relationship was less effected by a lack of reforms like in the previous period but by the quality and direction of larger reform projects in Turkey. The main drivers on these developments was the domestic political and security scene.

The country remains torn apart by either the supporters or the opponents of Erdoğan, increasing also the government’s costs of adoption to the rules of the EU. The Gezi Park protests in the summer of 2013 shook the country as it led to an outcry over police brutality. Turkey’s continued crackdown on the protestors elicited an angry response from several EU leaders, threatening to shelve the upcoming accession talks. In response, Turkey’s Chief EU Negotiator at the time, Egemen Bağış suggested some European countries to “get lost” if they decided to postpone the start of accession negotiations (World Bulletin, 2013 in Morelli, 2013).

Much to Erdoğan’s distress, the political climate in Turkey deteriorated further in December 2013, when the judiciary accused four cabinet ministers and their family members, and acquaintances of Erdoğan of mass corruption Erdoğan defamed the investigation as a coup attempt against the government and went after judicial officers that carried out the investigation, and not those implicated in the charges. As a result, 2013 witnessed hundreds of police officers getting dismissed or re-appointed.

This, coupled with the Gezi Park protests, indicated that there was an organized societal demand to take down the AKP government. In the midst of this domestic turmoil, the new Commission President Jean-Claude Juncker stated in July 2014 that no enlargement would be possible until 2019, duly freezing Turkey’s accession prospect (Juncker, 2014). The EU anchor effectively withdrew from Turkey, as it was struggling domestically.



The night of 15 July 2016 was a monumental milestone not only in Turkey’s modern political history but also with regards to its relations with the EU. Although it was said in the 2016 Progress Report that, “the EU strongly and immediately condemned the attempted coup, which represented a direct attack on democracy in Turkey as such and reiterated its full support to the democratic institutions of the country” (European Commission, 2016: 4), Turkey’s reading of the EU’s response was and continues to be substantially different. The government repeatedly accuses the EU for its only ‘lukewarm’ and untimely responses right after the coup and not recognizing the scale of the threat posed by the Fetullah Terrorist Organization (see The Guardian, 2017).

Although both Turkey and the EU to a certain degree share blame for the present morass, the EU’s conditionality, that was weakened due to further dissolution of trust in Turkey and the migration deal in 2015, does not represent the strongest driver in this period. Domestic developments like the Gezi park protests, the failed coup attempt, the constitutional referendum and the presidential elections impacted on political and legislative reforms instead. This latest period of legislative and political reforms in Turkey marks a backsliding on democratic values in Turkey and on the country’s EU-accession prospects alike.

Moving straight into conflict?

This review of Turkey’s political and legislative reforms in light of the EU’s conditionality has highlighted ebbs and flows in the reform process since 1999. In 2016 and 2017, the EU accession process, however, reached rock bottom in view of the state of rule of law, democracy and human rights in Turkey. Both sides have started drifting apart. Turkish discussions on the reintroduction of the death penalty and the open demand for suspension of accession negotiations by EU institutions and individual member states are significant landmarks for the deadlocked relationship. Furthermore, these open discussions, both precedents, highlight that Turkey is running out of trust and interest and the EU, out of patience. The Turkish president has shifted his focus once and for all on securing his grip on power. And his campaigning in national elections and the constitutional referendum gave evidence of his capacity to risk his good bilateral relations at least with individual EU member states. In the EU, skepticism towards Turkish EU accession has been constantly rising – the Eurobarometer eventually stopped asking the question on support of Turkey’s accession to the EU because it monitored constantly rising opposition and in 2017 opposition to Turkey joining the EU in Germany, one of the core member states in the EU-Turkey relationship, was above 80 percent. Member states with a traditional veto position towards Turkey’s full membership are not likely to change their policy as long as there are no structural or geo-strategic changes in the case of Cyprus or rising support levels for Turkey in the public opinion. On the contrary, such opposition has become appealing for additional member states – most recently Germany has joined the camp of member states openly requesting a change in the EU’s policy towards Turkey. At the same time, Turkey has



found new allies in Poland and Hungary, because there seems to be a rapprochement between their democratic values and Turkey’s in terms of rule of law, democracy and stability of institutions – which however do not equal EU values as defined in Art. 2 TEU.

Against these developments, the EU and Turkey seem to head straight for a conflict scenario in the political and legislative realm and hence the accession procedure. Yet, this conclusion falls short of the consideration of areas of the EU-Turkey relationship such as security or economic relations that seem to gain importance and are less disturbed.⁵

So what trends can we project for 2023?

As stability of institutions, democracy, rule of law and human rights issues represent the political accession criteria we need to rule out the convergence scenario implying (full) membership in the EU. It is highly unlikely that such a scenario could materialize in the mid-term perspective of 2023 and even beyond. On the one hand, political and legislative reforms would have to make a full u-turn, which would even be difficult to imagine within this timeframe, given that the presidential and parliamentary elections in 2018 effectively established the executive presidential system in Turkey. On the other hand, the EU will not compromise on its core values – even in light of the current divergences of member states like Poland and Hungary. The Commission’s announcement to present a plan for a rule of law mechanism in the EU by October 2018 gives further evidence of the EU’s determination to solve this internal problem.

The currently reactivated debate on alternative forms to full membership does not necessarily provide an appropriate way out of this deadlock, either. Turkey is still not keen on accepting anything less than full membership. But more importantly, any form of partial membership would also require Turkey to comply with the EU’s constituting values (Art. 2 TEU). Looser forms of cooperation in terms of a ‘strategic partnership’, however, are not necessarily contingent on shared democratic and common values (see e.g. the EU’s strategic partnership with Russia).

The fact that convergence and differentiated integration are unlikely scenarios for 2023 in view of political and legislative reforms does not automatically imply that the conflict scenario is sustained. This would require rule of law and human rights to become the key issues for the EU’s foreign policy while its conditionality to enforce them further weakens. Turkey would seek other allies and partners in that case, like it has done with Russia in the past years. Yet, this rather unstable relationship does not qualify as a true alternative to the EU-Turkey relationship for the moment, either.

Thus, there are certain points worth considering that would contradict a sustained conflict scenario. First of all, EU-Turkey relations go beyond the mere accession procedure. This opens room for maneuver even in case of increasing divergences in political and legislative reform issues. Does this mean that a cooperation scenario is a likely option? Structural mutual interest

⁵ For analysis of drivers of the EU-Turkey relationship in other thematic dimensions see FEUTURE Online Paper series: <https://www.feuture.uni-koeln.de/de/publications/feuture-online-paper-series/>.



in trade, security, energy, migration might indeed allow for forms of association and cooperation in limited areas of interest. Furthermore, such a scenario might even allow for influencing political and legislative reforms in Turkey “through the back door”. For instance, in February 2018, the Turkish government presented a list of planned reforms of the Turkish anti-terror legislation to re-activate the visa-liberalisation track. Reforms to the procurement market that belong to the catalogue of reforms demanded by an upgrade of the Customs Union are another case in point. Still, this should not suggest that cooperation is a scenario that could easily materialize. While France seems to have strong interests in intensifying cooperation in the field of security, Germany is linking the upgrading of the Customs Union to the political and legislative reform process in Turkey.

The analysis in this paper has highlighted that political and legislative reforms in Turkey are decisive for the country’s accession prospects. The lack thereof or reforms that move Turkey’s democratic system away from the political accession criteria like in the latest reform period represent a strong driver towards a conflictual relationship. We can clearly link the EP’s demands for suspending accession negotiations to the state of rule of law and democracy in Turkey. At the same time, there does not seem to be sufficient evidence for concluding that a comprehensive reform package that would fully align Turkey with the EU’s *acquis* and Art. 2 TEU requirements would definitely open the EU’s doors for Turkey’s full membership. Turkey’s golden years of political and legislative reforms eventually motivated EU member states to open accession negotiations – yet not without having to compromise on doubts and objections by individual member states, such as Cyprus or Austria. Consequently, the potential for political and legislative reforms for driving the EU-Turkey relationship towards a convergence scenario also depends on political drivers in the EU and domestic politics in Turkey. We cannot conclude that political and legislative reforms in Turkey alone are the key driver in the EU-Turkey relationship.



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ABOUT FEUTURE

FEUTURE sets out to explore fully different options for further EU-Turkey cooperation in the next decade, including analysis of the challenges and opportunities connected with further integration of Turkey with the EU.

To do so, FEUTURE applies a comprehensive research approach with the following three main objectives:

1. Mapping the dynamics of the EU-Turkey relationship in terms of their underlying historical narratives and thematic key drivers.
2. Testing and substantiating the most likely scenario(s) for the future and assessing the implications (challenges and opportunities) these may have on the EU and Turkey, as well as the neighbourhood and the global scene.
3. Drawing policy recommendations for the EU and Turkey on the basis of a strong evidence-based foundation in the future trajectory of EU-Turkey relations.

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The FEUTURE consortium consists of 15 renowned universities and think tanks from the EU, Turkey and the neighbourhood.

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