

Turkey and EU at a Crossroads: How to Fix a Wrecked Relationship¹

Jul 07, 2017 by [Laura Batalla](#)²

After a re-energisation of relations in the context of the migration deal reached between the EU and Turkey in March 2016, EU-Turkey relations have steadily deteriorated. Within the last year, both the European Union and Turkey have experienced major challenges that have kept them busy dealing with their own internal affairs at the expense of their relationship.

On the EU's side, Britain's decision to leave caught everyone by surprise. Ever since, Brussels has been holding its breath as elections were held in several crucial Member States and a rise of populism and Euroscepticism across the continent was feared. So far, Austria, The Netherlands and France have passed the test, but Eurosceptic populist forces continue to haunt the continent. The electoral cycle will end this autumn with the German election, which – whatever the outcome may be – will allow the EU to relax and concentrate on the future of the integration process after Brexit.

On the external front, the crisis in Syria brought Turkey and the EU together for purely pragmatic reasons. While Turkey as a neighbour has been directly affected by the Syrian crisis and is currently hosting over 3 million refugees, the EU, unable to find a solution to the 'migration crisis' due to a lack of solidarity among EU Member States and the unwillingness of some to share the burden, turned to Turkey in desperation to stop the flow of migrants and refugees coming towards Europe. This rapprochement has in the meantime turned sour.

In Turkey, the political situation has been deteriorating steadily over a period of time. Last year, the country experienced one of the most traumatic days of its modern history, when on 15 July in a heinous coup attempt, at least 265 people were killed and more than 1,400 wounded. In the aftermath of the failed coup, the Turkish government declared the state of emergency – still in place nearly a year later – giving way to the arrest, dismissal or suspension of thousands of public officials, police officers, teachers, judges and prosecutors, all allegedly involved in the attempted coup. As the first anniversary of the coup approaches, the wounds have not healed.

While the post-coup measures have sparked EU-wide criticism, Turkey has slammed the EU for not having showed enough empathy and solidarity following the military putsch attempt. The two sides have been caught up in a highly inflammatory rhetoric since last summer, which has destroyed mutual trust to a great deal.

As a result, EU-Turkey relations have hit their lowest point since accession negotiations started in 2005. In a non-binding resolution adopted last November, the European Parliament called for a 'temporary freeze' of membership talks between the EU and Turkey.³ In practical terms this means that no new negotiation chapters will be opened until an improvement of Turkey's domestic situation is observed.

¹ This policy paper has been written on the basis of a closed-door workshop on the future of EU-Turkey relations, organised by the European Union office and Turkey office of the Heinrich-Böll-Stiftung in cooperation with the European Parliament Turkey Forum on 30 May 2017. The workshop was attended by Members of the European Parliament, officials from the EU Institutions, diplomats, policy-makers, academics as well as NGO and think tank experts.

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³ European Parliament resolution of 24 November 2016 on EU-Turkey relations (2016/2993(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0450+0+DOC+PDF+V0//EN>

Truth be told, the accession process has been frozen since its very beginning. In fact, even before membership talks officially kicked-off in 2005, Angela Merkel's CDU/CSU party⁴ and Nicolas Sarkozy, then French interior minister and prospective presidential candidate, started advocating a privileged partnership with Turkey instead of a full membership, an option that Ankara will never accept.

In 2006, the European Council decided to block eight chapters⁵ due to Turkey's failure to fulfil its obligation of applying the Additional Protocol to the Ankara Agreement to all EU Member States, notably Cyprus, as Turkey does not recognise the Republic of Cyprus and its government. As soon as Sarkozy arrived in power in 2007, he blocked the opening of five negotiating chapters.⁶ Following the EU Council meeting of December 2009, Cyprus unilaterally blocked the opening of another six chapters.⁷ To date only 16 chapters of the 35 have been opened, with merely one provisionally closed.

Without a real membership prospect, the accession process has totally lost its credibility and thus the political incentive for reforms in Turkey. The opening of chapters is the EU's best tool to assist candidate countries to align with EU *acquis*. Regrettably, in Turkey's case it has been the exception rather than the norm. Meanwhile Erdogan's Justice and Development Party (AKP) has been losing its appetite for reform over the years. As a result, Turkey's democratic standards and human rights record today are at their worst ever level since AKP came to power in 2002.

An opportunistic rapprochement

An unexpected rapprochement between Turkey and the EU took place during the peak of the refugee crisis. After more than one million refugees and migrants reached Europe in 2015, the EU turned to Turkey in desperation to stem the migrant tide.

In October 2015, a few days after the deadliest terrorist attack in Turkey's modern history, chancellor Merkel travelled to Istanbul for talks about the refugee crisis. Merkel showered Turkey with promises seeking its cooperation on patrolling the EU's borders. Her visit spurred controversy as it was seen as a gift to Erdogan only two weeks before Turkey's repeat election on 1 November, where Erdogan won back the majority he lost in the election of 15 June.

On 29 November 2015, just a few days after Can Dündar and Erdem Gül, editors of the opposition *Cumhuriyet* newspaper were detained, the EU and Turkey agreed on a Joint Action Plan to bring order into the migratory flows and help to stem irregular migration. In exchange, the EU committed to re-energise Turkey's accession process by opening new negotiation chapters; to accelerate the lifting of visa requirements for Turkish citizens and to provide an initial €3 billion euro to improve the situation of Syrians in Turkey.

In a letter addressed to Commission President Juncker and the High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR/VP) Mogherini sent at the end of October 2015, more than 50 Members of the European Parliament warned the EU against linking the deal on migration to Turkey's accession process as it would only further undermine the

⁴ 'Preserving Europe: Offer Turkey a "privileged partnership" instead', Karl-Theodor zu Guttenberg, *The New York Times*, December 15, 2004.

⁵ The chapters are as follows: Free Movement of Goods (chapter 1), Right of Establishment and Freedom to Provide Services (chapter 3), Financial Services (chapter 9), Agriculture and Rural Development (chapter 11), Fisheries (chapter 13), Transport Policy (chapter 14), Customs Union (chapter 29) and External Relations (chapter 30).

⁶ Some of these vetoes have been subsequently lifted like in the case of Regional Policy and coordination of structural instruments (chapter 22), opened in 2013, as well as chapters 33 on Financial and Budgetary Provisions and chapter 17 on Economic and Monetary Policy, both opened under the framework of the EU-Turkey deal. In 2014, France officially removed its veto over chapter 11 on Agriculture and Rural Development; however, this chapter remains simultaneously blocked by the Council.

⁷ The chapters are as follows: Freedom of Movement for Workers (chapter 2), Energy (chapter 15), Judiciary and Fundamental Rights (chapter 23), Justice, Freedom and Security (chapter 24), Education and Culture (chapter 26), Foreign, Security and Defence Policy (chapter 31).

credibility of the enlargement policy. The members equally criticised the postponement of the annual progress report prepared by the European Commission, which is normally published in mid-October, in a move that was believed to silence EU criticism ahead of the November election in Turkey in exchange for cooperation on refugees.

In March 2016, the EU leaders met with Turkey again and agreed a set of new measures to end the irregular migration from Turkey to the EU. In return for Turkey's strengthened commitment, the EU decided to bring forward the visa liberalisation deadline from October to June 2016 and to mobilise an additional €3 billion funding for Syrians.

One year after its implementation, the deal has delivered mixed results. While the Commission has presented the dramatic decrease in arrivals from Turkey as evidence of success, questions remain regarding its compliance with international law and the effective protection of refugees. On the other hand, the deal has further pushed the EU and Turkey apart. Having so far lived up to its side of the deal, Ankara feels increasingly frustrated with Brussels over broken promises. Only two chapters – namely chapter 17 on Economic and Monetary Policy and chapter 33 on Financial and Budgetary Provisions – have been opened as part of the deal on migration. However, neither of them was on Turkey's list. Turkey asked for the opening of five critical chapters, all of them blocked by Cyprus, including chapters 23 on Judiciary and Fundamental Rights and chapter 24 on Justice, Freedom and Security.

In the past years, there have been growing concerns over the lack of media freedom and the independence of the judiciary in Turkey, which are at the core of those two chapters. However, despite repeated calls from the European Parliament on the Commission and the Member States to open them, the chapters have remained blocked. Interestingly enough, in its 2011-2012 'Enlargement Strategy', the Commission decided to include a stronger emphasis on rule of law issues. With this new approach, it was agreed that chapters 23 and 24 would be opened at an early stage in all future negotiations (and the last to be closed), like it was the case with Montenegro and Serbia. Nowadays some say that opening these chapters with Turkey would have no impact on the democratisation of the country, as it comes too late. The question remains whether things would have been different if the chapters had been opened earlier in the negotiations.

One of the other promises made to Ankara was the acceleration of the lifting of the visa requirements for Turkish citizens. Turkey is the only candidate country whose citizens are required to apply for a visa to enter the EU. Even non-candidate countries, like Moldova are currently negotiating the removal of the visa regime with the EU, and Ukraine has just been granted visa-free travel in the EU.

Visa liberalisation talks with Turkey have reached a stalemate over five outstanding benchmarks contained in its visa liberalisation roadmap.⁸ Among the remaining five, there is one of critical importance: the revision of Turkey's anti-terror law. The EU demands Turkey to narrow its definition of terrorism to bring it into line with European norms. However, Turkey refuses to change its anti-terrorism law considering the terrorist threat the country has faced over the last year and a half. The controversy surrounding this law arises from its political instrumentalisation to crack down on opponents, who have been put on trial as 'terrorist supporters', long before the attempted coup. Since May last year, when the third progress report on the implementation of Turkey's Visa Liberalisation Roadmap was published, there has not been any improvement.⁹

Finally yet importantly, the EU-Turkey statement welcomed the ongoing work on the upgrading of the Customs Union, which has been in force since 1995. In December 2016, the Commission proposed to

⁸ Roadmap towards a visa-free regime with Turkey, European Commission, 16 December 2013, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/docs/20131216-roadmap_towards_the_visa-free_regime_with_turkey_en.pdf

⁹ Third report on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap, 4 May 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/third_progress_report_on_turkey_visa_liberalisation_roadmap_en.pdf

modernise the Customs Union and to extend the bilateral trade to areas such as services, public procurement and sustainable development, as recommended in the World Bank report.¹⁰

The Commission's proposal is being discussed in the European Parliament and the Council. The work of the European Parliament's International Trade Committee on this file has been however put on hold. The committee vote on the draft report¹¹ was scheduled for early May but it has been postponed without date. In light of the deteriorating situation in Turkey, the opinion of the Foreign Affairs Commission adopted in February contains a call on the Commission to include a clause on human rights and fundamental freedoms in the upgraded Customs Union.¹² As unanimity is required in the Council to start the negotiations, even if the state of democracy in Turkey would be better, a prompt launch of the talks is not likely to occur and a successful outcome of the negotiations can neither be guaranteed.

Turkey's constitutional referendum and whether or not to suspend negotiations

In April 2017, Turkey held a historic referendum to change the current system of government from parliamentary to presidential. The constitutional amendments were adopted by a narrow margin in a contested election.

The findings of the OSCE/ODIHR international observation mission revealed that the election did not meet the international standards for a fair election, as the two sides in the campaign did not have equal opportunities.¹³ Despite all odds, the 'No' camp still received 48.5% of the votes.

At first, the EU showed caution over the referendum results, while awaiting OSCE/ODIHR's final report with regard to alleged regularities.¹⁴ However, following an informal meeting of foreign affairs ministers held at the end of April, Mogherini said the EU respects the outcome of the vote and she added that the accession process would not be halted nor suspended.¹⁵

A few days before the meeting, the European Parliament held a plenary debate on the outcome of Turkey's referendum and called to end the status quo in EU-Turkey relations. In a report that was adopted on 6 July, the European Parliament calls for the 'formal suspension' of accession negotiations with Turkey 'without delay' if the constitutional reform is implemented 'unchanged', as some amendments are not consistent with the Copenhagen political criteria.

¹⁰ Evaluation of the EU-Turkey Customs Union, World Bank, 28 March 2014, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial_assistance/phare/evaluation/2014/20140403-evaluation-of-the-eu-turkey-customs-union.pdf

¹¹ Draft report on 'Towards a new trade framework between the European Union and Turkey and the modernisation of the Customs Union', European Parliament, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-595.643+01+DOC+PDF+V0//EN&language=EN>

¹² Opinion of the Committee on Foreign Affairs for the Committee on International Trade, European Parliament, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-597.544%2b02%2bDOC%2bPDF%2bV0%2f%2fEN>

¹³ Final report on Turkey's constitutional referendum, International referendum observation mission, OSCE/ODIHR, 22 June 2017, <http://www.osce.org/odihr/elections/turkey/324806>

¹⁴ Statement by President Juncker, High Representative/Vice-President Mogherini and Commissioner Hahn on the referendum in Turkey, 16 April 2017, http://europa.eu/rapid/press-release_STATEMENT-17-981_en.htm

¹⁵ Remarks by High-Representative/Vice President Federica Mogherini at the joint press conference with Minister for Foreign Affairs of Malta George Vella, 28 April 2017, https://eeas.europa.eu/headquarters/headquarters-homepage/25302/remarks-high-representativevice-president-federica-mogherini-joint-press-conference-minister_en

Article 5 of the Negotiating Framework with Turkey sets out the conditions for the suspension of negotiations.¹⁶ It is up to the Commission, on its own initiative or on the request of one third of the Member States, to recommend the suspension of negotiations and propose the conditions for eventual resumption. Then the Council has to decide by qualified majority on such a recommendation. The European Parliament, on its side, can only make recommendations, which are not binding. So far, the Commission and the Council have disregarded EP's call, resulting in a cacophony among the different European institutions.

As much as some Member States would want to terminate the process, they find themselves hostage to their own stakes, like having to accept a bigger share of responsibility in the EU's migration crisis. Suspending membership talks with Turkey would however be a fatal strategic mistake as the accession process – even if frozen – remains the best tool for democratic change in the country. Moreover, suspending would virtually mean 'termination' as unanimity is required to restart talks.

Either way, one thing is clear: business as usual is no longer an option. While many have been calling for an alternative framework for relations with Turkey, what matters is the strategy. The EU should abandon the pragmatism that has guided its relations with Turkey in the past and engage in an honest, sincere and open political dialogue. From its side, the Turkish government should bring the country back to normality and address the current rule of law and fundamental rights deficits as a matter of urgency.

It is time to place rule of law and human rights at the centre of EU concerns with Turkey. In this regard, the EU should oversee the implementation of the constitutional reforms in Turkey in line with the Venice Commission's concerns.¹⁷ This should be accompanied by a demand to lift the derogation to the European Convention on Human Rights (ECHR), which allows the European Court of Human Rights to determine whether the measures taken under the state of emergency are in conformity with the ECHR.

On the other side, the referendum results have shown that at least half of the Turkish people think that the country should not change its form of government and concentrate all power in one person. The great majority of them are equally disappointed with the EU for having traded away human rights in exchange for a utilitarian relationship. Hence, the need to give the much delayed and needed support to the democratic forces in Turkey.

Without the EU anchor provided by the membership perspective, even if we cannot be certain of the result, the country is likely to slide further away from EU values. Cooperation in other areas – namely trade, energy, transport and counter-terrorism – can be carried out independently from the accession process, as it has been the case until now. However, without an improvement in the overall political situation in Turkey making progress in any area seems virtually impossible.

¹⁶ Negotiating framework, Council of the European Union, 3 October 2005, http://trade.ec.europa.eu/doclib/docs/2007/september/tradoc_135916.pdf

¹⁷ Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017, Opinion No. 875/2017, Venice Commission, 13 March 2017, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2017\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e)