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Alternatives required!

European Union Membership Policy in the Context of Relations with Turkey

Andreas Maurer

In light of recent developments in Turkey, the debate on alternatives to full EU membership, presented for example in Germany as privileged partnerships or in France as a Mediterranean Union, remains current. The new opt-outs from the Charter of Fundamental Rights and other integration policies (cooperation in police and criminal matters), agreed on 23 June 2007 in the mandate to convene an inter-governmental conference to revise the Constitutional Treaty, also need to be considered in the context of the European Union's accession policy. This is necessary because it is becoming ever clearer that with accessions to the EU following the traditional pattern, only the question of official membership is being answered, not actual membership.

Moreover, with the deadlock announced by French President Nicolas Sarkozy in the EU-Turkey accession negotiations, underway since the start of October 2005, the problem arises as to how the EU can develop a coherent and—above all—successful foreign, cooperation and enlargement policy.

The opening of accession negotiations with Turkey (and were they to last the 10-15 year period recommended at that time) means that the EU needs to address potential consequential scenarios today. If Turkey were to become a member of the European Union, applications from other hopefuls could no longer be rationally rejected on the basis of geographical exclusion factors and comparable initial political and economic situations or conflicts of identity. There would soon be loud calls, from the Spanish Foreign Minister Moratino for example, for

equal treatment for Morocco along the lines of the example of Turkey. Poland and Lithuania would also argue along the same lines for Ukraine as would Romania in support of the Republic of Moldova.

From an Accession Policy towards a New Membership Policy

Should all countries that want to join the EU be accepted and thereby, however, a range of unlimited opt-outs be asserted? Or is it not about time to develop, within the framework of a subtly differentiated membership policy, modules of more or less-advanced capacity and desire for integration, that could then lead to distinguishable membership rights and duties, and ultimately graded layers of EU membership? Such a debate must not only be iso-

lated from the whirlwinds of election and lead in a level-headed manner, the solutions considered must also be tested for political compatibility with other countries along the EU's current borders.

Given the openly-declared resistance to Turkish membership and the planned referendums on the matter that have been announced in several EU member states, it would certainly be foolish to dismiss the debate on alternatives to full membership as an "academic Glass Bead Game" (especially since *realpolitik* appears to have long since been dismissed as such in France, Austria and Germany). If Turkey's accession to the EU fails, then other ways of linking the country to and within the EU, both economically and politically, must be brought to the negotiating table quickly. Otherwise there is the risk that the Islamic, anti-West and/or Eurosceptical forces in Turkey could become more radical and be encouraged in their efforts aiming to separate the country from the Euro-Atlantic community. Current forecasts suggest that such a path towards isolation would have serious consequences for the geostrategic arrangement of Turkey and, as a result, for the foreign and security policy situation along the south-eastern border of the EU. It is not currently possible to reliably predict whether or not Turkey can, wants to or will ever become a full member of the EU. It is for this very reason alone that a politically feasible alternative needs to be prepared in advance at ready as and when required.

The EU and its member states should therefore take their own decisions seriously and—in the true spirit of the transparency of the negotiation process—focus on developing a resilient solution, in good time, on how to manage to practically "anchor [Turkey] in European structures" should the negotiations collapse.

The EU's relations with EFTA and the Mediterranean countries are particularly relevant to further analysis of alternatives to full membership when it comes to economic and political interconnections and geographical factors. The value of a firm con-

nection between Turkey and Europe—a point that has of course also been supported by opponents to the country's accession—must also be measured in terms of the extent to which it involves attractive and innovative conditions for both sides, whether it generates political added value and the amount of political value it creates.

The Status quo

No uniform pattern exists for the EU's external relations with neighbouring countries. As regards the EU's relations with Turkey, the European Economic Area (EEA) and the Euro-Mediterranean Partnership (EMP) are particularly relevant to the following analysis.

EFTA-EEA

Measured against the standards of economic integration theory, the EU's relations with countries in the European Free Trade Area (EFTA) as part of the EEA are *technically* (i.e. economically speaking) the most advanced. The agreement creating the joint European Economic Area between the EU and the EFTA member states, with the exception of Switzerland, entered into force in 1994. Fundamental elements of the EU's body of legislation (*acquis communautaire*) on the internal market were adopted by countries that were not party to the EU Treaty. The common internal market officially consists of the 27 EU member states plus four other participating countries. In *reality*, there remain, as before, exceptions, in particular for fisheries and the EU's common agricultural policy. The EEA Agreement, however, offered the signatories the opportunity to strengthen cooperation in areas that were not originally required for a functional internal market. It establishes guidelines, for example, on how EFTA countries can actively and financially participate in EU programmes and major political projects, such as European cohesion policy. The institutional arrangement of the EEA reflects this relationship which is both close

and bilateral. It is based on a two-pillar structure whereby the EU and EFTA firstly act and consult separately. Although the EFTA signatories only hold the right to consultation and no voting rights within the EU legislation process, and cannot therefore directly influence internal EU decision-making processes, new measures must be implemented downstream as part of the EEA by its joint institutions. In the EEA's main body, the *Joint Committee*, legislative acts are, enjoying equal rights, adopted by consensus. The other bodies (EEA Parliamentary Committee and the Consultative Committee for the social partners) by contrast are more advisory in nature.

Euro-Mediterranean Partnership (EMP)

The EMP, launched in 1995, should place the EU's relations with its Mediterranean neighbours on new foundations that are both firmly bilateral and multilateral. Alongside the EU member states, 10 Mediterranean countries are currently part of the EMP which, on the basis of its official foundations, should cover all policy areas. Cooperation is divided into three areas (or baskets): a political and security partnership; an economic and financial partnership; and a cultural, social and human partnership. The very core of the overall partnership can be summed up in the objective of the second basket, namely to create a Euro-Mediterranean free trade area by 2010. These efforts are accompanied by the MEDA financing programme through which the EU supports its measures and projects in Mediterranean partner countries. Additional financial resources are also available to these partner countries via the European Investment Bank (EIB). In terms of institutions, the EMP is following the path laid out at the founding meeting in Barcelona. At the highest level, EU foreign ministers regularly meet with their counterparts in EMP partner countries. These meetings are also prepared at regular intervals at meetings of the Euro-Mediterranean Com-

mittee (senior official meetings). Ad-hoc subject-area meetings also take place at minister, civil servant or expert level. The Euro-Mediterranean Parliamentary Assembly is another forum. Ten years after the process was launched the general mood is nonetheless clear: leaving aside the comparatively fast-moving activities in connection with economic objectives, the developments and achievements of the EMP are generally disappointing. Several points have been observed and criticised, such as the failure to apply conditional clauses (linking EU funding to political conditions that must be met in the partner countries), the strain of conflict in the Middle East, the dualism of multilateral and bilateral policies (including the resulting tensions in terms of responsibilities) on the part of the EU and Brussels' excessive concentration on the objective of political liberalisation as a result of economic liberalisation.

EU-Turkey Customs Union

The special political relations between the EU and Turkey go back to the Association Agreement signed in 1963 that was then substantially extended by an Additional Protocol in 1970. In the course of this process Turkey achieved a special position in 1996 as the only non-member state to be part of a customs union with the EU. From this perspective, the association negotiations that opened on 3 October 2005 could appear to be a logical consequence of a long-standing partnership leading towards a specific objective. Such an observation, however, must not fail to take account of the many frictions and crises this process has encountered or the inconsistency in the EU's position. Relations between Turkey and the EU are based on two pillars: a customs union in which Turkey has already accepted the relevant sections of the *acquis communautaire*; and the contractual conditions of the original Association Agreement and the new Accession Partnership, introduced in 2000 and revised in 2003, which establishes the short and medium-

term reform objectives and guidelines on the allocation of the EU pre-accession aid set aside for this purpose. On the legal basis of the Association Agreement and with reference to the Copenhagen Criteria, the European Commission publishes an annual progress report on Turkey's readiness to join the EU. An institutional link between the EU and Turkey exists through the Council and a joint parliamentary assembly created under the Association Agreement.

Recent studies have suggested that Turkey's accession to the EU could well break down due to political factors rather than economic conditions. Despite the undisputed major economic and structural hurdles (in particular in connection with the lower standard of living and the predominance of the agricultural sector in the Turkish economy), experience through the customs union shows that individual industrial sectors in Turkey are already able to withstand European market forces. The customs union, particularly in consideration of its limited scope, can however hardly be invoked as evidence that efforts towards political reform have been stepped up.

Privileged Partnership Concept

There is one peculiarity that stands out in the debate on possible alternatives to Turkey's accession: public attention to a concept such as a privileged partnership and the actually identifiable substance thereof are disproportionate. The term privileged partnership has all too quickly become a cliché that is causing a sensation primarily to the effect it has in political discourse as opposed to whatever substance it may refer. A crucial aspect of the privileged partnership concept is firstly the fundamental conviction that Turkey's accession to the EU would pose irresolvable problems. Political, social, economic and institutional reasons are given as to why the EU would be placed under excessive pressure. Supporters of a privileged partnership also claim that the EU's ability to integrate further would be jeopardised by

Turkey's land mass, population figures and growth, the aforementioned economic underdevelopment and the dominance of the country's agricultural sector. The inevitable consequences would be overstretched resources, a loss of identity and disintegration of the "ever closer" union strived for previously. By contrast, a privileged partnership is understood to be a genuine alternative to membership that involves both a close and sustainable integration and inclusion of Turkey into the EU as an integration project and also as a geostrategic project within international governance of the south-eastern border of the EU. To achieve and substantiate such a privileged partnership, several options, that should be seen as complementary, are currently open for discussion.

Development of economic relations: Since the customs unions entered into force in 1996, all trade in goods between the EU and Turkey is, in principle, no longer subject to any restrictions. In reality, however, the customs union only applies to industrial goods and processed agricultural products. Supporters of a Comprehensive Free Trade Area (CFTA) want to see gradual inclusion of areas that have been excluded until now, such as unprocessed agricultural produce, capital goods, services and textiles. The term comprehensive free trade area, however, is misleading, especially when account is taken of the fact that CFTA supporters are very sceptical about a rapid opening of the European labour markets (as the last of the remaining fundamental freedoms of a common market). Assessed in terms of existing regulations, such as the seven-year transitional period for free movement of labour applied to countries that joined in the 2004 and 2007 enlargements, it would be more appropriate in economic terminology to talk of a gradual lead-up to participation in the internal market. Only the opening up of the labour markets would make it possible for Turkey to enter EFTA and the EEA.

Strengthening partnership projects and boosting financial resources: As regards aid programmes and financial plans, there is gen-

eral agreement in the privileged partnership concepts that have been presented. Proposals have been made to step up and extend cooperation and financial support within current transfers made as part of the accession partnership. Dr Karl-Theodor zu Guttenberg, a member of the German federal parliament, for example has called for a new partnership fund that could bring together all current EU aid. Possible areas for support include environmental protection, small and medium-sized enterprises, health care and infrastructure. Collaboration should also be developed in the areas of technical cooperation (like TAIEX) and science and research. Dr Zu Guttenberg, however, explicitly excludes Turkey's participation in the common agricultural policy or the structural and cohesion funds as part of a privileged partnership.

Integration into the CFSP and ESDP: Advocates of a privileged partnership are keen supporters of closer relations in foreign and security policy matters. Given the already extensive cooperation in these policy areas, this is by no means particularly surprising. As a member of NATO, Turkey is after all already closely involved in European security and cooperation structures. This is seen, for example, in regular political dialogue that takes place under the association agreement, comprehensive rights to information and Turkey's participation in EU-NATO meetings. As regards coherence between the contents of the EU's and Turkey's foreign-policy interests, it can be observed that Turkey already openly shares a large majority of the EU's common positions and strategies. As part of the Berlin Plus Agreement, that has made it possible for NATO facilities to be used for EU-led military deployments, Turkey has already been actively involved in the EU Concordia mission in Macedonia. Deeper and institutional integration of Turkey into the CFSP and ESDP, however, faces several obstacles. It is doubtful, for example, that Ankara would be prepared to support a binding declaration for which a consensus has been reached in the EU on European security

interests, in particular in connection with northern Iraq or the Middle East in general and how resilient this would be. Possible ways of deepening the partnership in this area could be for Turkey to adopt CFSP instruments, current political dialogue to be stepped up and, in the long term (taking into consideration the abovementioned conditions), also the possibility of equal membership in European structures.

Integration into EU cooperation in police and criminal matters: Consolidated cooperation opportunities, similar to those for CFSP/ESDP, could be possible in this area which is currently highly intergovernmental in nature. In view of the gradual juridification of the internal security policy field and the objective of communitarisation of the Third Pillar (cooperation in police and criminal matters) in the new EU reform treaties from 2009, reflections need to be stepped up and legally binding agreements need to be negotiated. It can essentially be assumed that both sides have an interest in exchanging personal data for law enforcement purposes, closer judicial cooperation in civil and criminal matters, repatriation agreements and measures to combat terrorism. Turkey could offer interfaces for EUROPOL and EUROJUST as well as for the Schengen Information System and the new Visa Information System.

Implications of and Options for a New Membership Policy

When the current reform processes in Turkey, endorsed by the results of the recent parliamentary elections, are compared with those of other Euro-Mediterranean countries a fundamental dilemma for the EU emerges. If the options, that until now have been the most effective stabilisation, democratisation and development policies offered by an accession agreement become ever less feasible, or one day possibly even obstructed, then the inevitable problem arises as to how the EU can unabatedly implement its existing interests in an alternative manner. The prospect of EU membership ultimately

offers much greater incentives to “become European” than through association, co-operation or partnership agreements, since they are much weaker in terms of sanctioning and conditioning the Europeanisation of third countries.

This view raises a crucial question: which functional equivalents can the EU develop and offer in order to continue the stabilization and development of democracy in neighbouring countries in all circumstances?

Two proposals should be considered and developed further:

Extended Associated Membership (EAM). The basis of EAM would be Turkey’s full participation in the EEA (including the customs union). Turkey would join and be involved in the EEA institutions. New function-specific cooperation bodies would also be created as part of EAM: a security and defence council for CFSP matters and an advisory committee for economic and social issues. The countries involved would be permitted to express their positions in the EU Council of Ministers but would not, however, hold any official voting rights. In return, they would participate fully in the structural and cohesion funds.

Graded Integration (GI): The principle of this model is a gradual sectoral integration of Turkey into EU policies whereby, in contrast to the abovementioned concepts of privileged partnership and EAM, far-reaching political cooperation would not be excluded and the potential conclusion of GI could ultimately be full membership. This concept is, of course, conditional on reforms in Turkey which must be implemented to progress in terms of integration of policy areas and would therefore also grant entitlement to sectoral involvement in the EU Council of Ministers.

The remarks on the Barcelona Process (EMP), the EEA and the EU’s special relations with Turkey above lead to several cautious conclusions in connection with the concepts that have been introduced into the debate thus far:

In future, the EEA, as the highest level of integration under the EU, could create the

basis for a legally and politically realistic alternative to full membership. Over the past 50 years, economic integration has proven to be the area where the ground is laid for closer links with the EU. With the exception of the EFTA member states that would be capable of full membership, the EEA would be the first real “optional area” that would offer eastern European and Euro-Mediterranean countries, including Turkey, significant economic benefits. There is one prerequisite, however: such an EEA-II for new members would have to gradually remove the existing asymmetries in EU trade policy and therefore be complete, i.e. unlike the incomplete customs union, it would also include areas where countries that are not members of the EU could continue to enjoy comparative benefits (in particular agricultural and textile production and free movement of labour and services). EU policy must give greater attention to potential instruments that offer EEA members an incentive to comply with the regulations agreed. Instruments that could be used to encourage compliance with regulations or issue sanctions in the event of behaviour that violates regulations are the independent EFTA Court for disputes within the EEA group and the European Court of Justice for disputes between the EU and the EEA.

The EU’s experience with the EMP, when compared with experience with Turkey and countries that joined in the most recent enlargements, shows the relative lack of political success achieved by loose cooperation processes, or in other words cooperation processes that offer few incentives. It would be advisable, therefore, to also implement the principle of conditionality to a greater extent in this connection as an intermediary resource, especially when the option of accession to the EU is not the ultimate condition. In this regard, the provision of resources from the structural and cohesion funds could primarily be considered as well as easier access to resources provided by the European Investment Bank, Trans-European Networks or research policy could be considered.

Prospects for Implementation of the Modular Integration Model

Starting from the considerations that the EEA could become the future cooperation and optional area just under full EU membership, another conceptual step could be considered that could make EU membership a possibility for hopeful candidates both in terms of function and institutions without leaving the normative “should” of the EU’s efficiency out of consideration. When the reality of the EU-27 with the long existing different integration levels is considered, a distinction should in all honesty be made between *official* full membership and *actual* partial membership. The latter is seen, as a somewhat negative aspect, in the opt-outs on the currency union (UK, Denmark, Sweden), the Schengen area (UK, Ireland, Denmark) or ESDP (Ireland and Denmark), and in future also in the Charter of Fundamental Rights (UK, Poland and Ireland).

At the same time, non-EU members are involved in structures created by the EU (e.g. Iceland, Norway and Liechtenstein in the Schengen area). Instead of the prospect of accession and full membership, partial EU membership could be consistently fitted into the existing institutional reality.

This model of *modular integration* can be differentiated from the political and legal benchmark of full membership in two ways, i.e. both in terms of institutional procedures and in terms of specific policy areas. This would make it possible to offer Turkey a *specific* participation structure without prejudicing alternative modular memberships in other cases. Greater attention must therefore be accorded to the development of bodies and institutional structures in order to also present modular integration in different areas for which the other concepts have provided little information until now. Two basic options should be discussed in this regard:

A relatively loose link with EU bodies would be limited to the creation of specific *EEA curiae* for the Council of Ministers and the European Parliament. Depending on

the level of integration in the respective policy areas and the actual participation of the EEA countries in these areas, these curiae could be granted a simple right to speak, consultation or even suspensive veto rights in EU bodies. The advantage of this solution would primarily lie in the preservation of the EU bodies and their decision-making procedures. The EEA curia would exist as independent institutions and would be called upon to shape their consultation and decision-making processes in line with the EU bodies. The necessary incentives for keeping to the cooperation and partial integration regulations agreed with the EU could be created whereby the EU would reserve the right to unilaterally appeal to the common court of arbitration (i.e. the European Court of Justice) for a suspension of certain EEA curia rights of participation or to decide this suspension for itself under the court’s supervision.

The disadvantage of this model, however, would be the potential reinforcement of a “second-class Europe” which would obstruct the path towards full membership for the countries involved in the long term.

For closer links with the EU bodies, however, a decision would need to be taken as to when the EEA countries would be allowed to participate in specific policy areas in the special formations of the Council of Ministers, European Parliament, European Commission administration and other EU institutions and agencies. Institutional privileges in core EU bodies that cross several policy areas (e.g. Commissioners, Council Presidencies, the Parliament and its committees, the Court of Justice) would be excluded. There would be few conceptual objections, however, to granting those EEA members full participation rights in Council formations where they had formally adopted and implemented at national level the entire *acquis* connected with that policy area, that is to say to have adopted them *in the same way as the EU*. A similar condition could apply to the parliament that could expand to include EEA countries in the same that it has already done several

times when it granted observer status to members of parliament from accession candidates.

The clear disadvantage of this option would be the further complication of the European institutional structures because functional and country-specific participation rules would need to be established for each EU body. The advantage, however, would be that candidates would have a greater prospect of full membership and that by being partial members at the institutional heart of the EU, elite politicians would have a better chance of “becoming European”.

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