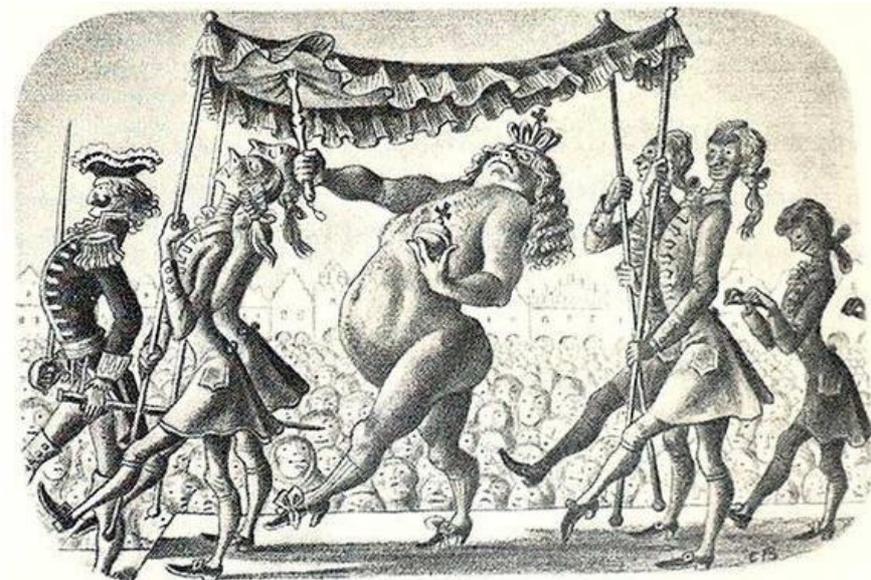


## THE CHAPTER ILLUSION

For honesty and clarity in EU-Turkey relations

15 May 2017



*The naked emperor: opening chapters and reform in EU-Turkey accession talks*

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## A baffling process

What can the EU do in the face of politicised justice, human rights violations and disregard for basic principles of the rule of law in Turkey today? What actions might make a difference? It is easy to state what should be avoided: silence in the face of repression, certainly; cutting links to Turkey, obviously; drawing “red lines” which cannot be defended because the EU lacks the tools or the consensus to do so, of course.

Consider the EU-Turkey accession process. Hardly anybody defends it, and the best argument in its favour appears to be that **breaking it off** would not help either, and might make things worse for both sides and for human rights in Turkey.

The basic problem with the accession process today is that it is incomprehensible. The transformative impact of the process is dependent on its ability to mobilise coalitions for change; yet the current EU-Turkey “negotiations” are baffling even to experts, to say nothing of the general public. For a good reason: there is no logic to many aspects of how this accession process is being handled.

To take one emblematic issue: why does the EU not open chapter 23 (on “Judiciary and fundamental rights”) if it is concerned about the state of the rule of law and fundamental rights in Turkey? This is what members of the Turkish government keep asking. The conventional answer is: Cyprus and its veto. But this answer hides a much more important question: what if, due to some change of heart in Nicosia, chapter 23 were to be “opened” tomorrow?

Would the EU and Turkey then start “negotiating” over the rule of law and fundamental rights? How would such negotiations change the situation in Turkey for the better? At this moment, nobody can even say whether **opening chapter 23 would be a gift or a punishment** for the Turkish government; or what difference it might conceivably make to the lives of Turkish citizens. The same questions can be asked for every other chapter.

## Opening chapters – what is the point again?

Nor are most observers able to explain what it even means to open a chapter. What happened in the months after the chapter on “regional policy” was “opened” in autumn 2013 that would not have happened otherwise? (The answer is: nothing.) What difference did the opening of the chapter on “financial and budgetary provisions” in summer 2016 make? (The answer: none.) Would Turkey move an inch closer to joining the EU if *all* chapters were to be opened tomorrow? (No.) The debate on whether to open chapters is like a debate on the naked emperor’s new clothes. There is really nothing there to justify any intense emotions.

We noted in 2014 that the political focus on opening chapters was counterproductive:

“In 2014 Turkey had 14 open and 18 closed chapters (leaving out two where the Commission provided no assessment of alignment, 23 and 34). The *Commission’s own assessments in its progress report* showed that there was no link between alignment/progress in a chapter and whether it is open/closed. In other words: how many chapters a country has opened does not indicate in any way where it stands in terms of preparedness. At the same time, opening chapters did not make future progress more likely. This is what the European Commission found in Turkey in 2013, when there had been more progress in closed than in open chapters during the year. Having open chapters does **not**

**indicate progress** towards meeting standards and opening them does not **make future progress more likely. So what is the point?**<sup>1</sup>

At the same time, what does *suspending* such a process, *ending* it, *freezing* it, mean concretely? It is telling that some senior officials in the EU suggest that a suspension of EU-Turkey accession talks has *already happened* in practice, while others warn that it *might happen* in response to future actions<sup>2</sup> A process whose effectiveness depends on clarity and straightforwardness is lost in a plethora of confused concepts and unclear definitions.

### **The naked process – explaining accession**

A credible EU policy needs to be strict, fair and based on the interests of both sides, otherwise either side will walk away. Here, then, is a concrete suggestion **how to think and talk about accession**, and how to revive its credibility and effectiveness to inspire change in the process.

(1)

Accession policy has three parts. First, it is about the situation in the country that declares one day (in the case of Turkey thirty years ago, in 1987) that it wants to join the EU. By submitting an application a country commits itself publicly to the goal of meeting EU standards and rules in a vast number of areas of public policy, from managing toxic waste to gathering essential statistics to how to organise public tenders (as well as abolishing torture, the death penalty and political imprisonment). **There is nothing to negotiate here.** EU standards are a given. Nor is there any coercion: at any moment, the applicant country can get up from the table and walk away (as Iceland did in 2015).

**This part of the accession process is all about things happening in Turkey.** As the website of the EU delegation in Ankara puts it:

“The speed of the accession negotiations is determined by the progress on implementation of the reforms in the candidate country, in line with the Copenhagen Criteria for membership.”

It is therefore confusing to refer to this as accession “negotiations” when an applicant country simply has to accept EU standards. The more important point is this: if Turkey moves closer to EU standards it “makes progress” in its accession talks. If it moves away from EU standards, it “falls behind” in its accession process. To say that the EU wants this to “end” makes no sense. Nobody wants Turkey’s reforms to end. Nor is there any logical or practical reason why the EU should *not* want Turkey to make progress on human rights or environmental rules as soon as possible. Nor is it the EU’s fault if a candidate fails to reform, and “negotiations” slow down. Finally, none of this has nothing to do with the political ritual of “opening chapters.”

(2)

The accession process is, secondly, an **invitation by Turkey to the EU to point out regularly where it is falling short.** This is the European Commission’s primary role in the accession

<sup>1</sup> Rumeli Observer, [Enlargement 2.0 – The ESI Roadmap Proposal](#), 27 November 2014.

<sup>2</sup> EU Commissioner Johannes Hahn recently told an Austrian daily: “There is no movement any more in the topic of EU-accession ... If no new negotiation chapters are opened, this is automatically like a suspension of talks. We lead a somewhat artificial discussion. The situation is quite clear.” *Der Standard*, [“Hahn: Österreich ist in der Türkei-Frage nicht isoliert”](#), 2 May 2017.

process, from the first to the last moment: to judge, to criticize, to assess and to compare. It is a hugely important role, and it is up to the Commission to define how to best manage this.

The principal tool the European Commission developed to fulfil this task is its annual report, which used to be called the Progress Report and is currently in search of a memorable name. Producing these reports takes up much of the time of the civil servants who work on accession. The EU can stop providing this feedback, of course. But why would it want to deprive itself of a tool to assess Turkey?

**This part of the accession process is about the quality of the EU's regular feedback: how informative and convincing it is and how many people it reaches.**

The EU has to communicate to a broader public **what targets a country needs to meet, why meeting them is good for Turkey, and how Turkey compares to other countries in the accession process.** The better it does this, the more people the European Commission convinces, the more influence will have.

Some in Ankara are in favour of the EU stopping this process of providing feedback. There are whispers of a preferred model, a "transactional relationship", by which they mean a frictionless relationship where the EU stops pointing out where Turkey falls short, and where leaders and civil servants only bring to the table issues that both sides would like to discuss. The extreme view is that all it would take for the EU and Turkey to get on well is to abandon the accession process and to focus on issues such as the reform of the Customs Union or migration. In such a scenario, the EU is also expected to pay less attention to human rights issues.

This would truly be the end of the accession process. What it would certainly not achieve, however, is that publics and governments in the EU would stop caring about human rights in Turkey. **There was no frictionless pre-accession relationship in the 1990s**, and there would not be one after the end of accession talks.

The EU's interests include a Turkey based on the rule of law and respectful of human rights. The idea that parliaments and governments in the EU will stop caring about human rights in Turkey is as much an illusion as any notion that Turkish governments will stop taking an interest in their citizens living in the EU. This will not change. The only way for a genuine improvement in the relationship passes via an improvement in the human rights situation in Turkey.

(3)

The final element of the accession process is **a vision of the future of the relationship**: it is about what might happen once Turkey meets all required standards. At that moment politicians, parliaments and publics in EU member states (in some there will be referenda), as well as in Turkey, will decide **whether it is a good idea for Turkey to become a member of the EU.**

There is no guarantee that this will ever happen. **The accession process has always been open-ended, for every country that has taken part in it.** It is even more so today, when the EU itself is uncertain about its future. Enlargement scepticism is strong in many key EU member states. Nobody knows today whether there will be a majority in Turkey for joining the EU at that moment in the future (Norway's public decided, in the end, not to join the EU in 1995). Nobody knows today whether an EU government will oppose Turkey's accession even if Turkey meets the criteria for joining (As De Gaulle's France did in the case of the UK). At this

moment, such opposition seems likely, although the leaders who say so now will almost certainly no longer be in power then. In reality, though, this question is not on the table until Turkey is very close to meeting all standards. Looking more than a few years into the future of European politics is like trying to predict the weather one year from now. The analytical tools to seriously do so do not exist.

What exists is article 49 of the Treaty of the EU, which states:

“Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union ... The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, *shall be the subject of an agreement* between the Member States and the applicant State. This agreement *shall be submitted for ratification* by all the contracting States in accordance with their respective constitutional requirements.”

The question is whether it could possibly be in the EU’s interest to tell Turkey today that there will never be such an agreement, come what may. The EU has not said this to any other European country.

### **DCP, NP, EUCP and negotiating the non-negotiable**

Currently the European Commission explains the accession process as follows on its website:

“The Member States, meeting in the Council, assess and examine the findings in the screening report of the Commission. Based on unanimity, the Council *may decide* to accept the recommendation of the Commission. If the Council decides to open the chapter for negotiation, it will invite the candidate country to present its Negotiating Position (NP). Once this has been received, the Commission prepares a Draft Common Position (DCP). The Council assesses and examines the DCP and *on the basis of unanimity may adopt* the definitive European Union Common Position (EUCP). With the NP and the EUCP completed, the Council and the Candidate Country at the Accession Conference can formally open the chapter for negotiation.

The EUCP *may include ‘closing benchmarks’* which are concrete requirements that the Candidate Country needs to fulfil before a chapter can be provisionally closed. *There may be outstanding issues* that need further discussion and the candidate country and the 27 Member States *may exchange* several rounds of position papers until all issues are clarified. The *acquis* is not negotiable and the principle of the accession process is that the Candidate Country is expected to align fully with all of the *acquis*.”<sup>3</sup>

If this seems confusing - NP, DCP and EUCP, “closing benchmarks” which close nothing, “negotiating positions” about something that is presented as “non-negotiable” – it is because it is deeply confusing. It is also misleading, as references to a few “closing benchmarks” suggests that somehow not all the *acquis* needs to be adopted for a country to be admitted.

There is a better way to explain the process, in a way that is easier to follow – and to reform it:

**The goal of the process:** The EU has rules, regulations and standards (its *acquis*) which are not negotiable. Every country is expected to align fully with *all of the acquis*. During

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<sup>3</sup> Delegation of the EU to Turkey, [“Accession Negotiations”](#).

the accession process the European Commission describes the whole acquis for all seven candidates and potential candidates. *These descriptions should be found on its website.*

**How to get there:** Every candidate country adopts and implements national reform strategies in different sectors. The speed and progress of the accession process depends on the implementation of these reform strategies in each country. *The reform strategies are shared with the EU and should be found on its website.*

**The role of the EU:** The European Commission supports every candidate country by informing it in publicly available regular assessments how far it has advanced. These reports are public, and *should be written in a way to allow – as far as possible – comparison between the different candidate countries.*

**The finishing line:** the accession process is completed once the EU concludes that the acquis has been fully adopted and implemented in a candidate country.

### **Honesty, interests, reform**

Instead of fruitless talk about “freezing” a process that most observers feel got stuck years ago, the EU should focus on explaining these realities to a broader public. A good start would be to talk less about chapters and more about **EU standards and norms in different fields, and how far Turkey is from meeting these**. The better the EU communicates this, the more likely it is to have a positive influence on the Turkish reform process. This ball is in the court of the EU.

It is not in the EU’s interest for Turkey to stop reforming. It is not in the EU’s interest at this moment to stop providing feedback. It is not in the EU’s interest to rule out today that Turkey will ever be able to meet EU standards under any future government. **It is therefore not in the EU’s interest to end the accession process. But it is vital to reform it in order to restore its credibility.**

Is breaking off talks in the interest of this or future Turkish governments? This is a decision for Ankara to make, of course. Ending the accession talks would send a strong signal that Turkey *gives up on ever wanting to meet EU standards.*

The EU can also **decide by unanimity to walk away, of course**. Member states might conclude that it is hopeless even to continue to provide criticism and assessments. This is a card the EU can play once.<sup>4</sup> To “suspend” talks, if this means suspending the process of “opening chapters”, would be meaningless, since this process is stuck already. To break off talks is different: it would end the process of drafting annual reports on progress; stop pre-accession funds; and reduce the number of people in Brussels and Ankara engaged in assessing Turkey in light of EU standards. This would have consequences. The EU can draw red lines: but it should draw them before they are crossed, and only when they enjoy strong enough support so that crossing them would mean automatic sanctions.

Both Turkey and the EU need to find a framework where sensitive issues can be discussed fruitfully. A reformed accession process provides such a framework. The key to such a process is clarity: it needs to be clear what EU standards are, how far Turkey is from meeting them and

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<sup>4</sup> ESI argued elsewhere that the EU should commit itself to do this to dissuade Turkey from adopting the death penalty. See report: [“‘Hang them in Taksim’ – Europe, Turkey and the future of the death penalty”](#), 16 May 2017.

why it is useful for both sides to remain engaged in a dialogue on this. The EU needs a policy that is understood before it can have one that might be transformative.

### **More by ESI on the reform of the EU accession process**

- ESI newsletter: [Accession revolution in Brussels – a new flagship – Usain Bolt and the quality of statistics](#) (9 November 2015)
- [A reporting revolution in 2015? Towards a new generation of reports](#)
- Paris paper: [Enlargement and Impact: Twelve ideas](#) (January 2015)
- [Statistics Scorecard – how to compare 7 countries](#) (May 2015)
- [An effort of persuasion – Chronology of ESI activities](#) (November 2015)
- [Rankings that fail – Doing Business, Bosnia and Macedonia in 2015](#) (9 November 2015)

*This report has been supported by Stiftung Mercator*

