

Conclusions on Turkey

(extract from the Communication from the Commission to the Council and the European Parliament "Enlargement Strategy and Main Challenges 2009-2010", COM(2009)533 final)

Turkey continues to sufficiently fulfil the **political criteria**. Free and fair municipal elections took place throughout the country. Some progress has been achieved in the areas of reform of the judiciary, civil-military relations, and cultural rights. The government has begun a process of broad consultation with political parties and civil society with a view to addressing the Kurdish issue. However, significant further efforts are needed in most areas related to the political criteria, -in particular fundamental rights- and as regards constitutional reforms.

As regards **democracy and the rule of law**, the investigation of the alleged criminal network Ergenekon has led to serious criminal charges, involving among others military officers. This case is an opportunity for Turkey to strengthen confidence in the proper functioning of its democratic institutions and the rule of law. However, it is important that proceedings in this context fully respect the due process of law, in particular the rights of the defendants. The Government reiterated its commitment to EU-related reforms, appointed a full-time Chief Negotiator and approved the National Programme for the Adoption of the *acquis*. However, the lack of dialogue and spirit of compromise between political parties is detrimental to the pursuit of reforms. Turkey still needs to bring its legislation on political parties in line with European standards.

As regards *public administration reform*, considerable further efforts are needed, in particular on the modernisation of civil service. Reducing red tape and promoting administrative simplification, as well as further developing a professional, independent, accountable, transparent and merit-based civil service remain priorities.

As regards *civilian oversight of the security forces*, some progress has been made in particular on limiting the jurisdiction of military courts. However, senior members of the armed forces continued making statements on issues going beyond their remit, and full parliamentary oversight of defence expenditure needs to be ensured. The alleged involvement of military personnel in anti-government activities, disclosed by the investigation on Ergenekon, raises serious concerns.

In the area of the *judiciary*, the adoption by the Government of the judicial reform strategy following a process of consultation with all stakeholders is a positive step. Measures to increase staff and funding are also positive. However, these efforts need to be continued, and concerns remain with regard to the independence, impartiality and effectiveness of the judiciary such as the composition of the High Council of Judges and Prosecutors and the establishment of the regional courts of appeal.

The legislative framework designed to prevent corruption has been improved. However, corruption remains prevalent in many areas. Turkey needs to finalise an anti-corruption strategy and to develop a track record of investigations, indictments, prosecutions and convictions.

Concerning **human rights and the protection of minorities**, some progress has been made but significant efforts are still needed. There was some progress as regards the *observance of international human rights law*. However, the ratification of the optional protocol to the UN Convention against Torture (OPCAT) and the implementation of some ECtHR judgements requiring legislative amendments remain outstanding. The institutional framework for promoting and enforcing human rights needs to be strengthened. An Ombudsman institution remains to be established.

While the Turkish legal framework includes a comprehensive set of safeguards against *torture and ill-treatment*, efforts to implement it and fully apply the government's zero-tolerance policy have been limited. Allegations of torture and ill-treatment, and impunity for perpetrators are still a cause for great concern. In order to assess accurately progress in this area it would be helpful that the Turkish authorities promptly authorise the publication of the Council of Europe's Committee for the Prevention of Torture (CPT) report.

As regards *prisons*, some progress was made on improving infrastructures and training, and recruiting additional staff. However, the problem of overcrowding and the high proportion of prisoners on pre-trial detention remain to be addressed.

Article 301 of the Turkish Criminal Code is no longer used systematically to restrict *freedom of expression*. However, there are prosecutions and convictions based on a number of other articles of the Criminal Code. Turkish law does not sufficiently guarantee freedom of expression in line with the European Convention of Human Rights (ECHR) and the ECtHR case law. Political pressures on the media and legal uncertainties affect the exercise of freedom of the press in practice.

Concerning *freedom of association*, the legal framework is broadly in line with European standards. However, considerable progress needs to be made as regards its implementation; associations face disproportionate scrutiny of their activities which in some cases has led to judicial proceedings.

As regards *freedom of religion*, implementation of the law on foundations has been smooth. The Government has undertaken a dialogue with the Alevi and non-Muslim religious communities. However, their specific problems still have to be addressed. The law on foundations does not address the issue of properties seized and sold to third parties, or of properties of foundations merged before the adoption of the new legislation. Attacks against minority religions still occur. A legal framework in line with the ECHR has yet to be established, so that all non-Muslim religious communities and the Alevi community can function without undue constraints, including as regards training of clergy. Further efforts are needed to create an environment conducive to full respect of freedom of religion in practice.

The overall legal framework guaranteeing *women's rights* and gender equality is broadly in place. However, further significant efforts are needed to turn the legal framework into reality and to narrow the gap between men and women in economic participation and opportunity, political empowerment, and access to education. Domestic violence, honour killings and early and forced marriages remain serious problems in some areas of the country. There is a need for further training and awareness-raising on women's rights and gender equality, for both men and women.

Efforts need to be stepped up in all areas related to *children's rights*, including administrative capacity, health, education, the juvenile justice system and child labour. Cases of juveniles tried as adults under the anti-terror law, and facing disproportionate sentences raise serious concerns.

Legislation is still needed to ensure that *trade union rights* are fully respected in line with EU standards and the relevant International Labour Organisation (ILO) conventions, in particular the rights to organise, to strike and to bargain collectively.

The situation with *minority rights* remains unchanged. Some progress has been made on *cultural rights*, especially in the form of starting a national TV channel broadcasting in Kurdish. However, restrictions remain, particularly on the use of languages other than Turkish in private TV and radio broadcasting, in political life, education, and contacts with public services. The legal framework on the use of languages other than Turkish gives room to restrictive interpretations, and implementation is inconsistent. There has been no progress in the situation of the *Roma*, who frequently face discriminatory treatment. Demolitions of Roma districts without provision of alternative housing continue.

As concerns the *East and Southeast*, the government has opened a wide-ranging public debate -covering cultural, political and economic matters- on the Kurdish issue. It is crucial that this debate be followed by concrete measures. The adoption of a Law on the de-mining of the Syrian Border is another positive step. However, the broad interpretation of anti-terror legislation has resulted in undue restrictions on the exercise of fundamental rights. The village guard system still needs to be phased out.

Terrorist attacks by the PKK, which is on the EU list of terrorist organisations, continued and claimed many lives.

Compensation of *internally displaced persons* (IDPs) has continued. However, the government lacks an overall national strategy to address the IDP issue, and needs to step up efforts to address IDPs' needs.

With regard to **regional issues and international obligations**, Turkey has expressed public support for the ongoing negotiations under UN auspices to find a comprehensive settlement of the *Cyprus problem*. However, there has been no progress towards normalisation of bilateral relations with the Republic of Cyprus. Turkey has not fully implemented the Additional Protocol to the Association Agreement and has not removed all obstacles to the free movement of goods, including restrictions on direct transport links with Cyprus.

As regards *relations with Greece*, further exploratory talks were held but no agreement reached on border disputes. Further confidence-building steps have been taken. A considerable number of formal complaints were made by Greece about continued violations of its airspace by Turkey, including flights over Greek islands. Relations with *Bulgaria* remain positive. Good neighbourly relations remain key.

Turkey continues to play a positive role in the *Western Balkans*.

Since June 2009, Turkey holds the rotating Chairmanship of the South East European Cooperation Process (SEECP).

The **economy** of Turkey contracted following the drop of both external and domestic demand, in particular investment. However, the impact of the crisis was largely limited to the real sector of the economy also due to previous structural reforms and countercyclical measures. Macroeconomic stability has been largely preserved. Inflation decreased significantly, mainly because pressures stemming from energy inputs and previously buoyant economic activity eased. Unemployment increased significantly. In a difficult economic environment, the structural reform process has somewhat decelerated, in particular in the first half of 2009. The absence of credible fiscal plans and anchors added some uncertainty to the investment climate.

As regards the **economic criteria**, Turkey is a functioning market economy. It should be able to cope with competitive pressure and market forces within the Union in the medium term, provided that it continues implementing its comprehensive reform programme in order to address structural weaknesses.

The consensus on economic policy essentials has been maintained under the current challenging circumstances. Turkey accommodated demands for expansionary policies to counter the marked economic contraction and largely embedded them in a broader development strategy entailing higher public investment, job creation and sectoral reforms. Some progress was made in upgrading the country's human and physical capital, although the economic crisis represents a challenge to this process. Access to external financing remained open and the official reserves declined only moderately from a high level. External imbalances were reduced significantly and inflationary pressures subsided. Privatisation continued with some major operations, in particular in the energy sector. In spite of several bouts of global financial instability, the Turkish financial sector has shown remarkable

resilience. Turkey diversified its trade towards new markets, thereby partly alleviating the impact of the crisis.

However, while the anti-crisis fiscal measures cushioned somewhat the economic downturn, they could put benefits from previous years of fiscal consolidation and medium-term sustainable policies at risk if they are not withdrawn timely. Measures to increase fiscal transparency were put on hold and even reversed in some cases. Labour market conditions became increasingly challenging and unemployment increased sharply. Job creation continued to be hampered, notably by a skills mismatch between labour demand and supply, relatively high social contribution rates and by the rigidity of employment practices. In spite of various new initiatives by the Turkish government, the economic crisis is complicating the access of SMEs to finance and slowing down the sectoral transformation of the Turkish economy. The allocation of state aid continued to lack transparency. While market entry has benefited from the adoption of new legislation, there are still obstacles in market exit. The legal environment, and in particular court procedures, pose practical challenges and create obstacles to a better business environment. Turkey adopted a comprehensive action plan to reduce the informal economy, which remains an important challenge.

Turkey continued improving its **ability to take on the obligations of membership**. Progress, at times uneven, was made in most areas. Alignment is advanced in certain areas, such as free movement of goods, intellectual property rights, anti-trust policy, energy, enterprise and industrial policy, consumer protection, statistics, Trans-European Networks, and science and research. Efforts need to continue to pursue alignment in areas such as environment, state aid, social policy and employment, company law, public procurement, food safety, veterinary and phytosanitary policies and free movement of services. As regards the Customs Union and external relations, alignment needs to be completed, particularly with regard to coordination of positions in the WTO. A number of longstanding trade irritants remain unresolved and new ones have been created. It is essential that Turkey respects fully its commitments under the Customs Union. For most areas it is crucial that Turkey improves its administrative capacity to cope with the *acquis*.

With regards to *free movement of goods* legislative alignment is quite advanced, but limited progress was made in the reporting period. Trade has been increasingly hampered by technical barriers related to conformity assessment and standardisation. Alignment in the areas *right of establishment and the freedom to provide services* is at an early stage. No progress has been recorded in the field of postal services, nor on mutual recognition of professional qualifications. As regards the *free movement of capital* Turkey made some progress, in particular concerning the action plans on capital movements and payments and on anti-money-laundering. Turkey made progress on liberalisation of its insurance legislation. However, alignment with the *acquis* on capital movements and payments remains limited. Little progress has been made in the area of *freedom of movement for workers*. Alignment is at an early stage.

Some progress can be reported in the area of *public procurement*, in particular with regards to administrative capacity; some contracting authorities indicate good procurement practices. However, the strategy for the reforms necessary to ensure legislative alignment and institutional capacity-building is still outstanding. Derogations from the general provisions are increasing, as are domestic preferences, reducing competition and efficiency in public tenders. As regards *company law* no substantial progress can be noted in the reporting period. The new Commercial Code has not been adopted. Alignment on *intellectual property law* is relatively advanced. Coordination and cooperation between the different IPR-related public bodies and their specialisation improved further. However, enforcement remains insufficient. The

adoption of the aligned and updated laws regulating intellectual and industrial property rights, including criminal sanctions, is crucial.

Turkey shows a high level of alignment in the field of *anti-trust*, including its merger control rules. However, no further legal alignment in the area of *state aid* can be reported and the long-awaited state aid law is still pending.

Some progress has been made in the area of *financial services*. Turkey's legislation is partially aligned with the *acquis* in all three sub-areas of financial services. With regard to *information society and the media* some progress can be reported in the area of electronic communications. However, adoption of implementing legislation is key to ensure an effective impact of the primary law on the market. There has been little progress in the area of audiovisual policy.

In the area of *agriculture and rural development* alignment with the *acquis* remains limited. Current agricultural support policies and strategic policy-making are increasingly dissociated from the CAP, while the slipping timetable for accreditation of the IPARD structures reveals difficulties in setting up functioning administrative and organisational structures and procedures for the management of rural development funds in line with EU standards. Technical barriers to trade in bovine products, in breach of bilateral commitments, remain an urgent issue. Overall, progress has been limited in this area. Turkey has made limited progress on *food safety, veterinary and phytosanitary policy*. Efforts continued, but transposition and implementation of the *acquis* in this area is still at an early stage. In *fisheries* some progress has been made on resource and fleet management and implementation of international agreements. However, no progress has been made on legislative alignment in this chapter.

Turkey has made limited progress on alignment in the *transport sector*. Implementation capacity is lagging behind in the road sector and no progress can be reported in the rail sector. There has been limited progress on air transport. The lack of communications between air traffic control centres in Turkey and the Republic of Cyprus continues seriously to compromise air safety. Turkey remains outside the efforts to integrate European airspace. Progress in the maritime sector has been limited, the move of Turkey to the white list of the Paris MoU confirms Turkey's good performance as a flag state.

There has been some, but uneven, progress in the *energy* sector. Developments on renewable energy, energy efficiency and the electricity market have been encouraging. However, in the cases of natural gas, nuclear energy, nuclear safety and radiation protection Turkey needs to implement its legislation and strategies.

On *taxation* there has been progress towards legislative alignment, in particular towards reducing the discriminatory taxation on alcoholic beverages. However, several discrepancies need to be addressed before achieving full alignment.

Turkey has made some progress on *economic and monetary policy*. Alignment with the *acquis* in the field of monetary policy remains incomplete. There are still shortcomings in the legal framework, for instance as regards the full independence of the Central Bank, prohibition of monetary financing of the public sector and prohibition of privileged access for the public sector to financial markets.

Turkey made limited progress in the field of *social policy and employment*. The establishment of a Parliamentary Commission on Equal Opportunities for Men and Women is a positive step. Preparations for participation in the European Social Fund have accelerated. However, the legislation on labour law, health and safety at work and on anti-discrimination is not in line with EU standards. There has been no progress towards achieving full trade union rights

in line with EU standards and ILO Conventions. Women's participation in the labour market is very low. Efforts to combat undeclared work and social exclusion need to be stepped up.

In the area of *enterprise and industrial policy* Turkey has made further progress, in particular in preparing a new industrial strategy and new sectoral strategies, which now need to be completed and published. There is also a wider availability of enterprise and industrial policy instruments and some improvements in the business environment. Turkey has achieved a sufficient level of alignment with the *acquis* in the field of enterprise and industrial policy.

Turkey has made some progress in the area of *trans-European networks*. In July 2009 Turkey signed the Intergovernmental Agreement on the Nabucco gas pipeline. This project is an important strategic step towards closer energy cooperation between the EU, Turkey and other States in the region as well as towards the diversification of energy sources. The timely completion of the Southern Gas corridor, through notably the swift implementation of the Nabucco Intergovernmental Agreement, remains one of the EU's highest energy security priorities. Some progress can be reported in the field of *regional policy and co-ordination of structural instruments*. The legislative and institutional framework for implementation of IPA components III and IV was finalised, local and regional stakeholders were involved in preparing projects and further development agencies were set up. However, further strengthening of administrative capacity is needed. Overall, Turkey's alignment with the *acquis* in this chapter remains limited.

As regards the *judiciary*, the adoption by the government of the judicial reform strategy is a positive step. The measures taken to increase staff and resources are also positive and need to be continued. However, concerns about the independence, impartiality and effectiveness of the judiciary have yet to be addressed. With respect to *anti-corruption*, there has been some progress on strengthening the legislation and institutional set-up to fight corruption. Corruption, however, remains prevalent in many areas. The adoption and effective implementation of the national anti-corruption strategy will be crucial.

Some, but uneven, progress was made on *justice, freedom and security*. Turkey has achieved limited progress on external borders and Schengen, as well as in the field of migration and asylum. In the face of a sharp increase of asylum seekers efforts need to continue to reorganise the system. Turkey recently accepted to resume formal negotiations on an EC-Turkey readmission agreement.

In the area of *research*, Turkey has made substantial efforts in increasing its participation under the Seventh EC Framework programme for Research and Development and in improving its national research capacity. However, further efforts are needed for integration into the European Research Area.

On *environment*, Turkey has made progress in the field of chemicals and on horizontal legislation by signing the Kyoto Protocol. Some progress can be reported on waste, air quality, industrial pollution, risk management and chemicals. However, the overall level of alignment remains insufficient. Turkey has made no progress in the areas of water quality, nature protection and GMOs.

Some progress has been made on *consumer and health protection*. However, as regards consumer protection, more efforts remain necessary, in particular on non-safety-related issues and to ensure due enforcement of consumer protection in general. In the area of public health, some progress can be reported, in particular on tobacco control and on strengthening the administrative capacity on communicable diseases.

Turkey has achieved a high level of alignment in the field of *customs* legislation, thanks to its Customs Union with the EU. Nevertheless, further alignment with the EU *acquis* is still needed in some areas, such as free-trade zones and customs duty relief. Turkey has achieved a high level of alignment in *external relations*, however, particularly with regard to

coordination of positions in the WTO, alignment needs to be completed. A number of longstanding trade irritants remain unresolved and continue to disrupt the proper functioning of the Customs Union.

Turkey's alignment with the EU's *common foreign and security policy* continued. Turkey has further strengthened its contribution to the stabilisation of regions such as the South Caucasus and the Middle East. Turkey has strengthened its diplomatic relations with Iraq, including contacts with the Kurdish regional government. Significant diplomatic efforts to normalise relations with Armenia were made.

Turkey is contributing substantially to ESDP and seeking greater involvement in ESDP activities. However, Turkey objects to EU-NATO cooperation which would involve all EU Member States. Turkey has not aligned with the EU position on membership of the Wassenaar Arrangement.

Limited progress can be reported in the area of *financial control*, in which alignment is fairly advanced. Legislation implementing the public financial management and control (PFMC) law is in place, but a number of amendments relating to internal control are still missing and revision of the PIFC policy paper and action plan has not been completed. The External Audit Law, which would bring external audits into line with relevant international standards, has not been adopted. The anti-fraud cooperation structure remains to be developed. Turkey has re-minted Turkish coins to eliminate similarities with Euro coins. Turkey's alignment with the basic principles and institutions of the *acquis* in the area of *financial and budgetary* provisions is well advanced.