

## ***Quo Vadis Türkiye?, Turkey's 50 year old EU candidacy***

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On the 12<sup>th</sup> of September, the *Amsterdam Centre for European Law and Governance* ([ACELG](#)), the *Centre for European Policy Studies* ([CEPS](#)) and the *Economic Development Foundation/İktisadi Kalkınma Vakfı* ([IKV](#)) organised a symposium to mark the 50<sup>th</sup> anniversary of the Treaty of Ankara establishing the EU-Turkey Association. The event had a mixed character with several speakers emphasizing different elements (legal, economic and political) of the EEC-Turkey Association. The central theme of this event could be said to be time itself (and its passing): the mere fact that the Association is now after 50 years performing a function (*a de facto* privileged partnership) for which it was never designed leads to new questions, both for lawyers, academics and politicians.

In that respect **Doctor Zeynep Pirim** (*Bahçeşehir University Istanbul*) questioned the sustainability of the EU-Turkey Custom's Union. She expanded on the legal architecture of the Customs Unions and its political, legal and economic asymmetry. The shortcomings in the decision taking procedures and dispute settlements arrangements as well as the painstakingly difficult task for Turkey to align its external commercial policy with that of the EU is cause for great concern. These aspects of the Custom's Union render the present framework, suitable as it might have been for a transitory regime, unfit for the purpose of a (quasi-) definitive stage of EU-Turkey relations. These asymmetries cannot be countered by performing a balancing exercise whereby the economic benefits of the Custom's Union for Turkey, despite their institutional drawbacks, can still be said to outweigh the 'costs' that Turkey incurs from its continued participation in the Custom's Union as was suggested by **Prof. Nanette Neuwahl** (*College of Europe (Natolin)/ University of Montreal*).

**Mrs. Narin Tezcan** (*Leiden University*) provided an appraisal of the legal framework that regulates free movement of persons between the EU and Turkey with particular emphasis on the nature and effect of the stand-still clauses (Art. 13 of the Association Council Decision 1/80 and Art. 41(1) of the Additional Protocol) and their consistently broad interpretation by the ECJ. The effects of this jurisprudence on policy areas like visa requirements where Member States as well as the EU were held to act in violation of the stand-still clauses are spectacular. Yet, there are reasons to expect that the ruling in *Demirkan* (Case C-221/11) might be a turning point' in this long line of case law. Its implications are potentially wide. If Turkish service recipients will indeed benefit from the standstill clauses, the implications of *the case* might go well beyond the visa regimes of some (older) EU Member States and affect diverse issues such as discriminatory fees for all kind of public services such as museum entry tickets, tuition fees etc. etc. There is room for doubt as to whether the ECJ will go this far since the Opinions of AG Cruz Villalón in this case and that of AG Bot in the earlier *Ziebell case* (Case C-371/08) may have paved the way for a reappraisal of the EU-Turkey Association regime, stressing its 'purely economic nature' which could signal the limits of this transitory regime regarding free movement of persons.

In response, **Dr. Thomas Vandamme** (*ACELG*) agrees with the negative appraisal of the Opinion of AG Cruz Villalón in *Demirkan* as provided by Mrs Tezcan. Yet, he wonders if cases like *Demirkan* do not also highlight the fact that the standstill clauses become

increasingly difficult to apply as they were never intended to last for several decades. Since they are 'static' in nature they do not allow for exceptions by analogy to the 'normal maturing' of any legal system in the course of time such as that taking place in the basic internal market rules. In that regards it is suggested that a rule such as Article 9 AA (non-discrimination of Turkish citizens in the Association) would in the long run not prove to be a more viable key-norm in EU-Turkey relations.

**Prof. Marc Maresceau** (*Ghent University*) went deeper into the historic, structural and teleological elements of the Association regime and its effects on the interpretation of certain legal concepts of the Association by the ECJ (its 'so far as possible' case law). In particular the accession-oriented set up (most notably article 28 AA) renders the Association quite unique. Not even the Europe Agreements with the former communist countries in Eastern Europe were initially conceived as treaties preparing these countries for accession. The 'so far as possible' case law in which the ECJ interprets legal concepts of the Association as far as possible in conformity with parallel internal market concepts seems to have found its limitations in the *Ziebell* case and its reference to the 'solely economic nature' of the EU-Turkey Association. Prof Maresceau holds this reference to be false and totally unnecessary in that particular case that dealt with expulsion measures. The idea that the Citizens Directive cannot be transplanted one-on-one to Turkish nationals (as was suggested in that case) may be reasonable yet the reference to the economic nature of the association to support that idea was uncalled for and remains a mystery.

**Dr. Andrea Ott** (*University of Maastricht*) painted the differences between the association and accession frameworks, yet she also underscored the interesting links between the two, one example being the obligation of Turkey to apply the Additions Protocol of 1970 to Cyprus before the opening of eight accession negotiation chapters. Despite the cumbersome and slow pace of the accession negotiations she also stressed the 'positive agenda' of the Commission since 2012, complementing and strengthening the accession talks. However, it remains to be seen what the true motives are that underlie this initiative: to kick-start the official accession negotiations or perhaps to rebranded the 'privileged partnership' concept'?

The day was concluded by **His Excellency, Mr. Selim Yenel** who gave a historic overview of the EU Turkey relations since the Treaty of Ankara. He brought back into memory that at different times the political will regarding accession shifted back and forth both in the EU as well as in Turkey (Turkey at one point even declined full membership although it was offered on a 'on a silver platter'). Nowadays, the accession negotiations are progressing at a very low pace, not to mention stagnant with many of the crucial chapters being frozen. As a result the interest in Turkey dwindles, which for instance is evident from the lack of interest in Turkey for the annual Accession Progress Reports. Solving the issues of the readmission agreements in connection with the establishment of a visa free regime could in his eyes provide the necessary 'boost' to counter the 'accession fatigue' but he is sceptical as the negotiations to that effect take up several years already. That being said, the Ambassador stresses that the overall willingness to accede still prevails to date, but this will only last if Turkey obtains a serious perspective of success. He stressed that that perspective excludes the notion of 'permanent derogations' leading to a Turkish EU membership where certain rights would be denied to Turkish citizens indefinitely (like free movement of

workers). In case of a definite halt to the accession process the ambassador predicts in any event a continuation of strong links between the EU and Turkey, yet it would be an arrangement that leaves Turkey room to manoeuvre in a number of policy areas.

A collection of articles covering in detail the proceeds of this conference is currently in preparation and will be published as a special issue for *Legal Issues of Economic Integration*.