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Review of UK and EU balance of competences: response to the call for evidence on EU enlargement

Lead contributor

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Impact on the national interest

Questions regarding the impact on national interest that are common to all balance of competences reviews are less relevant and applicable in the field of enlargement. This is because the Treaty articles on the process of European Union enlargement clearly define the balance of national and Union competences in this area; and they leave ample room for the accommodation of national interests: according to the intergovernmental procedure foreseen in Article 49 of the Treaty on European Union (TEU), European Council decides unanimously on the eligibility of an applicant to become a European Union Member State; and the official admission to Union membership requires a Treaty amendment that is ratified by all Member States. In other words, each individual Member State holds a veto card in either phase of the enlargement process. Member State governments involved in the process are expected to cast their vote on the basis of a cost-benefit analysis.

One serious caveat of the existing procedure is its limited democratic nature: European Parliament's consent is required for the Council decision on the eligibility of an applicant to become a Union member. European Parliament is also involved subsequently in the Treaty amendment phase in the light of Article 48 TEU. The consent procedure gives the Parliament a veto power in the process; but it does not make the Parliament an active party to the debate. Likewise, the Treaty amendment takes place only at the very end of the process. The Parliament cannot be expected to re-open to debate issues already closed by the European Commission and the Council at that stage. The overly bureaucratic nature of the enlargement process and the limited role of the European Parliament in the process appear ironic given that the criteria for admission to the Union requires *inter alia* a democratic system based on rule of law, human rights and minority protection (see Article 2 TEU). As the only Union institution enjoying direct electoral legitimacy, European Parliament is arguably the best placed institution to discuss and pass judgment on these issues.

Article 49 TEU requires national parliaments only to be informed about an application for Union membership. As a result, the involvement of national parliaments in the enlargement debate varies across the Member States. In the UK, the European Union Select Committee of the UK Parliament subjects the UK government to account in all Union related matters, including enlargement. The limited involvement of national parliaments in the process contributes to the emergence of a biased and negative national discourse on enlargement. Extremist parties across Member States abuse the national discourse on enlargement to increase their vote in national elections. Such national debates take place mostly after the enlargement process has been completed. Thus, even in rare cases in which the public is fairly informed, public opinion can no longer be accommodated in the process.

A more open and democratic process in which the European Parliament and national parliaments are involved would result in a better-informed and timely debate on the potential costs and benefits of enlargement. Creation and accommodation of public opinion in the earlier phases of the process through parliamentary involvement would also prevent the misrepresentation of enlargement decisions by extremists after the process has been completed.

Exercise of competence and conditionality

The fundamental structural differences between the candidates of different enlargement rounds render lesson drawing from the experiences of one enlargement round to the other difficult. This is primarily the case for the current candidate and potential candidate states that, apart from Iceland, represent relatively more difficult cases than the countries that joined the Union in the 2004, 2007 and 2013 enlargement rounds. Union accession of some current candidates and potential candidates does not only depend on the structural reform processes in those countries but also on the resolution of political conflicts they have with some Union Member States: For instance, Spain, Slovakia, Cyprus, Romania, and Greece do not recognise the statehood of Kosovo, a potential candidate for Union membership. Greece has blocked the opening of accession negotiations with the FYR of Macedonia due to the dispute on the name of this country. Accession negotiations with Turkey has stagnated after Cyprus' Union accession as a divided island; and the negotiations are not likely to revitalise unless the more than four-decades old dispute surrounding the island is resolved with unification.

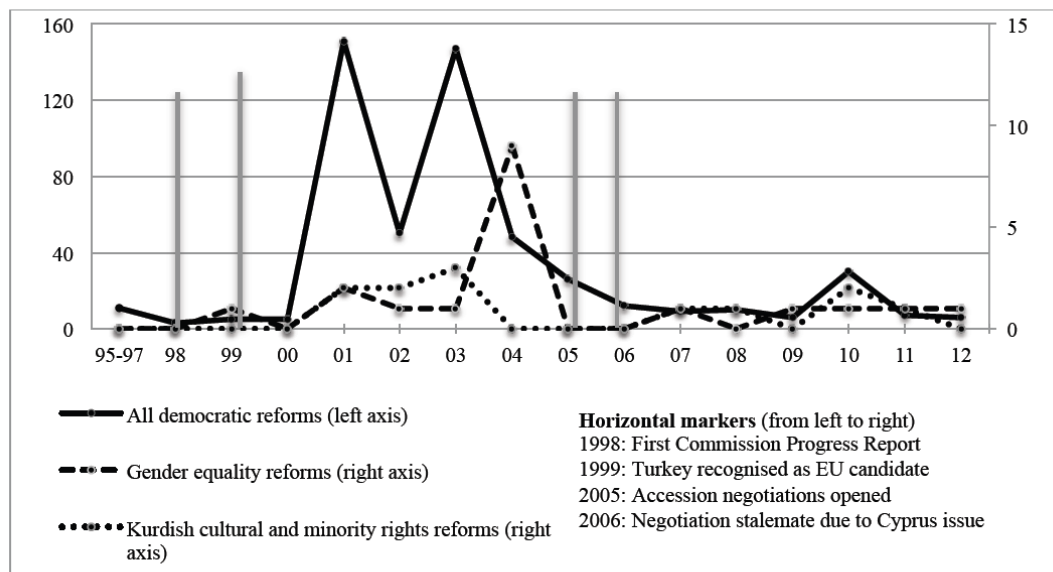
Union conditionality has been largely effective in the democratic and economic transformation of the Member States that joined the Union in the last three enlargement rounds. Thus, Union conditionality's contribution to the building of peace and prosperity in the Central and Eastern Europe cannot be denied. Nevertheless, without grassroots bottom-up democratization of the candidate countries, Union conditionality can offer only partial and temporary solutions to the structural issues facing those countries. Below I summarise the positive effects and limitations of Union conditionality from the viewpoint of candidate countries using the Turkish experience as the primary example.

- Union conditionality is a powerful tool that provides legitimacy to political reforms that are considered contentious by the conservative national political actors, such as reforms improving minority rights, gender equality and human rights protection in general. The legitimacy that comes with Union conditionality certainly helped the Turkish Parliament to keep the country's conservative bureaucracy and military at bay whilst adopting reforms that were considered ambitious at the time, such as the abolition of the death penalty, the provision of public broadcasting and private courses in Kurdish and other minority languages and the reform of the criminal justice system. The positive effect of the Union conditionality is exemplified in the rapid increase in the number of democratic reforms adopted in Turkey during the period in which Union conditionality was particularly strong: between the recognition of Turkey's Union candidanship in 1999 and the stalemate that emerged in accession negotiations in 2006 due to Cyprus' Union accession as a divided island (see Figure 1 and Table 1 on the next pages).
- The European Union might apply conditionality with varying degrees across policy areas and with more emphasis on issues that are strategic for its own interests. For instance, in the case of Turkey, since the European Commission's first progress report in 1998 the peaceful resolution of the Kurdish conflict has occupied the primary position in the evaluation of the progress in political criteria. This is not to deny that the peaceful resolution of

the Kurdish conflict and the recognition of Kurdish minority rights would improve Turkey's democracy and economy tremendously. Nevertheless, issues that are as substantial for the development of democracy and that are subject to a more extensive Union internal legal framework than minority protection, such as gender equality, have not received the same level of attention in the accession process. Presumably, the principal reason for this differential treatment is the security threats raised to the Union's interests by the armed conflict surrounding the Kurdish issue.

Figure 1 and Table 1 given on the next pages show the Union's varying effect on constitutional and legal reforms in Turkey: the number of reforms improving democracy and the rule of law in general as well as those improving Kurdish minority rights specifically increased significantly during the period in which the Union enjoyed strong conditionality (between 1999 and 2006). Similarly in the same period, the Commission has evaluated Turkey's progress in democratic criteria and minority protection positively.

Figure 1: Number of Democratic Reforms in Turkey (1995-2011)



Source: database of the Turkish Grand National Assembly

Table 1: Commission's Evaluation of Reforms in Annual Progress Reports

Year	95-98	99	00	01	02	03	04	05	06	07	08	09	10	11	12
Evaluation of all democratic reforms	0	1	1	2	3	2	3	1	1	0	1	1	1	1	0
Evaluation of progress in Kurdish issue	0	0	0	1	3	2	2	1	1	0	1	1	1	0	0
Evaluation of progress in gender equality	-**	-**	0	1	1	1	1	1	2	2	1	1	1	1	1

Source: European Commission Annual Progress Reports

Grading*: 0 – no progress; 1 – limited progress; 2 – some progress; 3 – good progress

*Grades awarded by the author and based on the evaluation of the European Commission Annual Progress Reports. Years where the Commission found no positive development: 'no progress'; years where the Commission was mostly critical but still found some positive development: 'limited progress'; years where the Commission was largely positive with some criticism: 'some progress'; years where the Commission was almost completely positive with no or very limited criticism: 'good progress'.

**No direct evaluation of gender equality.

On the other hand, Union conditionality did not have an equally positive effect in the field of gender equality: even though there was a rapid increase in reforms in this field in 2004, this was primarily due to the adoption of a new Criminal Code on which national political actors and the civil society have been working for a long time without the help of Union conditionality.¹

This example also illustrates that national political and economic interests and national actors still play a substantial role in the reform process. Without the cooperation of national actors, including political institutions and businesses, Union conditionality alone cannot guarantee the adoption of required reforms. For instance, in the Turkish example, economic actors have supported the resolution of the Kurdish conflict in the light of the economic stability this would bring to the country. They have, nevertheless, not been equally supportive of gender equality reforms that would increase the production costs.

Reflecting the same strategic approach to conditionality, the Union has been relatively silent against serious breaches of human rights and the rising authoritarianism in Turkey particularly since the outbreak of the Gezi Park protests in the summer of 2013. Arguably, this is because the Union is reluctant to further marginalize the Turkish government and lose a significant security partner in the face of the recent security threats raised by Russia.²

- Despite its overall positive effect, Union conditionality also comes with certain drawbacks that render it a double-edged sword: the Union subjects

¹ The figures have been originally published in Firat Cengiz, 'Rethinking Conditionality: Gender Equality and the Kurdish Issue in Turkey's EU Accession Framework', in Firat Cengiz, Lars Hoffmann (eds.), *Turkey and the European Union: Facing New Challenges and Opportunities* (London: Routledge, 2014).

² See also Firat Cengiz, 'Turkey's growing civil unrest shows that citizens are prepared to defend democracy, with or without help from the EU', LSE European Policy and Politics Blog, available at <<http://blogs.lse.ac.uk/euoppblog/2014/06/02/turkeys-growing-civil-unrest-shows-that-citizens-are-prepared-to-defend-democracy-with-or-without-help-from-the-eu/>>.

candidate countries in many areas of democratic criteria (such as minority protection, gender equality, the structural organization of the state's political and administrative regime) to higher standards than it subjects its existing Member States. This is primarily because the Union's existing legal framework does not offer concrete standards in those areas that will apply to the existing members. As a result, the Union's approach to conditionality can be seen as a 'political construct' reflecting double standard that jeopardises the legitimacy of conditionality.³

- The Union conditionality imposes the same democratic standards to structurally different countries. Also, reforms required by the Union take over the parliamentary agenda: for instance, in the Turkish case in the year 2001 alone more than 150 constitutional and legal reforms were adopted. This limits the domestic actors' and civil society's access to the parliament who might have a better idea of what kind of particular reforms will provide effective solutions to the problems facing the particular country in question. The Union's categorisation of certain reforms as short-term priorities (to be adopted within the next one to three years) results in a rapid reform process. Nevertheless, this approach leaves little room for a national debate on reforms and for the preparation of the administrative structure that will be responsible for implementation. As a result, problems of implementation become almost inevitable either because state administration has not digested the reforms or because they do not enjoy the necessary resources.
- Governments in candidate countries might rely on conditionality strategically to increase their own powers vis-à-vis other actors in the domestic political regime. This has been the case in Turkey's Union accession process: whilst coming into power for the first time in 2002 the then newly established Justice and Development Party (AKP) relied heavily on Turkey's Union accession objective to secure the support of liberal intellectuals both at home and in Europe. Once in power, the AKP adopted reforms demanded by the Union strategically and selectively to increase the powers of the executive against the national veto players, most notably the military and the judiciary.⁴ This is not to deny that those reforms initially appeared promising for the establishment of a more democratic regime in Turkey. Nevertheless, once the AKP entrenched its powers with consecutive victories in the following 2007 and 2011 elections, the party abandoned Turkey's Union accession project almost entirely. The stalemate that emerged in Turkey's accession negotiations after Cyprus' 2004 accession further deteriorated the Turkish government's increasing apathy towards the Union.
- The Union is a strategic ally for domestic civil society in candidate countries: not only does the Union conditionality open windows of opportunity for democratic reforms long sought by the civil society but the Union also provides direct financial support to civil society through various programmes.

³ See Bruno de Witte, 'Politics versus Law in EU's Approach to Ethnic Minorities', EUI RSCAS Working Paper 2000/04 (Florence: European University Institute).

⁴ See also Firat Cengiz and Lars Hoffmann, 'Rethinking Conditionality: Turkey's EU Accession and the Kurdish Question', (2013) *Journal of Common Market Studies* 51(3): 416-32.

Nevertheless, strong conditionality might also result in some adverse effects on the civil society's access to national political institutions and the national political agenda: once Union conditionality takes over the national political agenda, domestic actors have to talk to their governments via Brussels for their opinion to be reflected in the domestic reform agenda. Once conditionality disappears with the candidate country's becoming of a Union member or once it weakens for political reasons, as happened in the case of Turkey, civil society does no longer enjoy any solid platform for communication with the national government. Likewise, in policy areas where the Union follows a minimum harmonisation approach national governments might rely on Union standards to resist civil society's demands for the adoption of more ambitious standards: in Turkey this was the case in the debates surrounding reforms on gender equality and positive discrimination. Finally, whilst benefitting substantially from the Union's financial support during the accession phase, the civil society might face serious withdrawal effects once conditionality disappears or weakens. Also checks and balances should be introduced to avoid favouritism in cases where national authorities enjoy discretion in the distribution of funds: in the Turkish example, several women's rights organizations complained from the differential treatment of conservative organisations by the state authorities.

- The Union conditionality has inevitably a temporal dimension: once candidate states become Union members the powerful carrot-stick approach that comes with conditionality can no longer be applied. In cases where new Member States revert back to the pre-accession standards in any of the membership criteria, the Union cannot rely on any incentive structure other than the procedure for the breach of Union rules by the Member States (Article 258 Treaty on the Functioning of the European Union) and suspension of the membership rights (Article 7 TEU): the first option cannot be relied on if the issue in question is not addressed in the Union's legal framework, as in such cases the Member State in question does not technically breach Union rules. The second option is politically drastic and procedurally cumbersome; thus, it will be initiated only in extreme cases if ever. This has been exemplified in the powerlessness of the Union against the antidemocratic practices taking place in some new Member States, such as Hungary and Romania.⁵

Future Options and Challenges

At present, challenges facing the future of Union enlargement outnumber the opportunities. As mentioned above, current candidate and potential candidate countries, apart from Iceland who decided to discontinue accession negotiations, constitute relatively more difficult cases than the previous candidates. Also, the recent political and economic developments affect negatively the incentive structures of the Union, the Member States as well as the candidate and potential candidate countries with regard to the Union's enlargement.

⁵ See Ulrich Sedelmeier, 'Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession', (2014) *Journal of Common Market Studies* 52(1): 105-121.

In the face of the Eurozone economic crisis, it is not altogether clear whether the Union can successfully subsume any more Member States. Likewise, the political crisis that followed the economic crisis has resulted in an increasing questioning of the Union's imperfectly democratic governance structure. Union enlargement requires candidate countries to go through a painstaking reform process. For candidate countries to successfully adopt the required reforms Union membership must be more than desirable attributing a power asymmetry to the Union in its relationship with the candidates. In the face of the Eurozone economic and political crisis it is not altogether clear whether such power asymmetry still exists. It might be more plausible for the Union and its Member States to focus on the Union's own structural problems, most notably its problematic relationship with citizens, and mechanisms to resolve them in the near future.

This does not necessarily mean that the Union should be indifferent to its periphery. Arguably, the Union has relied on enlargement and conditionality extensively to transform its periphery in the lack of any other equally strong external governance tool. The increasing difficulties facing enlargement and the increasing security issues arising from the Middle East and Russia imply that enlargement may have reached its limits as an external governance tool. Thus, it might be more plausible for the Union and the Member States to strengthen Union's foreign policy mechanisms, such as the neighbourhood policy, rather than relying on enlargement as an external governance tool.

The Union's relationship with Turkey will most probably continue to be in stalemate in the foreseeable future barring any political miracle. The Union has lost its leverage over Turkey to a large extent after Cyprus' Union accession and the consequent conflict regarding the extension of Turkey-European Union customs union to Cyprus in the face of economic isolation of Turkish Cypriots in the north.⁶ Since then, the Turkish government has largely abandoned Turkey's Union accession agenda and shifted the country's foreign policy focus towards Middle East whilst embarking on an authoritarian path in the country's governance. Turkey's relatively positive economic performance in contrast to the Eurozone economic crisis further deteriorated the government's incentives for Union membership.

The European Commission's launch of a new 'positive agenda' in May 2012⁷ to provide a new momentum in accession negotiations seems to have made no significant effect on Turkey-European Union relations. Since the opening of accession negotiations in 2005 only the rather light chapter on 'Science and Research' has been closed. Although after the launch of the positive agenda a new chapter, chapter 22 on Regional Policy, has been opened to negotiation, in the 2012 Progress Report European Commission reiterated that the eight key accession chapters⁸ will not be open to negotiation unless Turkey extends the customs union to Cyprus.

⁶ See Council of the European Union, General Affairs and External Relations, Brussels, 11 December 2006, 16289/06 (Presse 352).

⁷ 'Positive EU-Turkey agenda launched in Ankara', European Commission MEMO/12/359, Brussels, 17 May 2012.

⁸ Those are chapters covering policy areas relevant to Turkey's restrictions as regards the Republic of Cyprus, namely Chapter 1: free movement of goods, Chapter 3: right of establishment and freedom to provide service, Chapter 9: financial services, Chapter 11: agriculture and rural development, Chapter

Additionally, the Union seems to have largely lost the support of Turkish people in the accession process. Historically, the Union enjoyed a very positive image in Turkey, as the public looked up to the Union as a promoter of democratic values and principles. The 2013 Spring Eurobarometer results show that the Union's image has deteriorated significantly following the stalemate in accession negotiations. Among the peoples of the current candidate states, Turks are the most Eurosceptic after Icelanders: only 48% of the population believe that the country would benefit from Union membership, whereas 37% believe that it would not benefit from Union membership.

Arguably the key reasons for the Union's deteriorating image among the Turkish population are some Member States' (particularly Germany, the Netherlands and Austria) increasingly sceptical rhetoric towards Turkey's Union membership and the draconian visa policies facing Turkish citizens.

Among the current Union candidates and potential candidates Turkey is the only country whose citizens do not enjoy visa free travel to the Schengen area apart from FYR Macedonia and Kosovo for whom the Commission has proposed a visa facilitation agreement in 2009 and published a visa liberalisation roadmap in 2012 respectively. As Turkey enjoys a higher GDP per capita than any of the current Union candidates and potential candidates apart from Iceland, the differential treatment of Turkish citizens cannot be justified on the basis of immigration related reasons. Given their large and historical family ties with immigrant communities in almost all Union Member States, Turkish citizens feel that they face discrimination on the basis of race and religion.

This is not to deny that Turkey and the Union have a strong and stable economic relationship: Turkey is the Union's sixth trading partner, whereas the Union is Turkey's first trading partner. The Turkey–European Union customs union that is built on strong economic ties will continue to provide a platform for relations between the two sides until positive political developments provide a new momentum for accession negotiations in the future. At the very minimum progress in the accession negotiations will depend on: the commitment of Member States (most importantly the currently Turkey-sceptical Germany, Netherlands and Austria) to Turkey's Union accession; equal treatment of Turkish citizens in all policies targeting candidate countries; progress in the unification of Cyprus; and a shift in the incentive structure of the increasingly authoritarian Turkish government.

13: fisheries, Chapter 14: transport policy, Chapter 29: customs union and Chapter 30: external relations.