The EU-Turkey Visa Liberalization Saga: Lessons from the European Neighborhood

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The remaining benchmarks of the Visa Liberalization Dialogue (VLD) cannot be met due to severe shortcomings in the judiciary system, fundamental rights, the rule of law and legal framework in Turkey.

Turkey’s rhetorical overtures towards the European Union are meaningless unless matched by concrete reform actions.

The EU should become more explicit in pinpointing shortcomings of the rule of law in Turkey.

Lack of progress with the VLD mainly harms the pro-European segment of Turkey’s population, such as students or white-collar employees of the private sector.

While the EU should have a more consistent attitude towards Turkey’s democratic backsliding, maintaining trust and dialogue with Turkey’s pro-EU civil society is of paramount significance.
Introduction

The Visa Liberalization Dialogue (VLD) process between the EU and Turkey was first launched on 16 December 2013, in parallel with the signature of the EU-Turkey Readmission Agreement. It aimed to lift the visa requirements on Turkish citizens who wish to travel to the Schengen Area for short stays (i.e. up to 90 days within any 180 days). In the first three years of the VLD, Turkey put significant effort into fulfilling its conditions by opening up its labor market to non-Syrian refugees and allowing citizens of all the EU member states non-discriminatory visa-free access to Turkey. These efforts were acknowledged by the European Commission, and a goal was set to finalize the dialogue by the end of June 2016. The roadmap set out 72 requirements in five blocks: document security, migration management, public order and security, fundamental rights and readmission of irregular migrants. According to the European Commission, by June 2016, Turkey had to complete the following steps:

- issue biometric passports in compliance with ICAO and EU standards
- in a first phase, biometric passports with fingerprints and photos would be issued in line with ICAO standards
- in a second phase, as of October 2016, Turkish authorities would start issuing permanent biometric passports with chips, entirely in line with EU standards
- continue implementing the National Strategy and the Action Plan on the Fight against Corruption and the recommendations of the Council of Europe Group of States against Corruption (GRECO),
- provide effective judicial cooperation in criminal matters, including extradition, to all EU Member States
- conclude and implement an Operational Cooperation Agreement with EUROPOL
- adopt and implement legislation on the protection of personal data, in line with the EU standards
- revise --in line with the European Convention of Human Rights (ECHR), the European Court of Human Rights (ECtHR) case law, the EU acquis and EU member states practices- the legal framework, as regards organized crime and terrorism, as well as its interpretation by the courts, the security forces and the law enforcement agencies, to ensure the right to liberty and security, the right to a fair trial and freedom of expression, of assembly and association in practice
- implement the EU-Turkey readmission agreement in all its provisions (solid track record).

However, Turkey failed to meet the June 2016 deadline, and the process has remained inconclusive ever since. The European Commission confirmed that the number of remaining requirements fell to six following the fulfillment of the benchmark of
upgrading Turkish passports to the biometric standards of ICAO as of 8 December 2018. Nevertheless, a stalemate has prevailed, due to the lack of any further progress in the remaining six benchmarks. This stands in striking contrast with the successful completion of the VLD process by states such as Georgia, Moldova and Ukraine. These three states have succeeded in concluding the VLD, even though none is a candidate for EU membership, while Turkey has been a candidate since December 1999. This paper aims to analyze the reasons why the VLD with Turkey has not been successful through a comparison with Georgia, Moldova and Ukraine and lays out the policy steps necessary for the successful completion of the process.

The Main Stumbling Blocks

Democratic Backsliding

In the last ten years, especially following the Gezi protests in May-June 2013 and the 15 July 2016 coup attempt, Turkey has experienced democratic backsliding and a decline of the rule of law. Both developments have had a strong detrimental effect on EU-Turkey relations. The 16 April 2017 referendum resulted in the introduction of a new presidential system, which further weakened institutional checks and balances and facilitated the complete control of the executive over the legislative and the judiciary. The summer 2015 collapse of the “Kurdish peace process” has resulted in extensive removals and arrests of democratically elected MPs and mayors in the Kurdish-inhabited eastern and southeastern provinces. The crackdown against dissent was not limited to Turkey’s Kurdish minority. According to an Amnesty International report, in 2019, Turkey was the country with the largest number of imprisoned journalists worldwide. It ranked 123rd among the 128 countries in fundamental rights score list, which also includes low scores in freedom of expression, right to life and security, non-discrimination and freedom of association.

Legal Framework Against Organized Crime and Terrorism

The reform of the legal framework regarding organized crime and terrorism in line with the ECHR has been one of the most significant thorns in EU-Turkey relations, as it is a benchmark in both the VLD and Turkey’s EU accession process. The current legal framework against organized crime and terrorism is so broad that it can result in serious human rights violations. Following the 2013 Gezi protests and the failed 15 July 2016 coup, thousands of people have been detained and dismissed, because of alleged links with terrorism or supporting a terrorist organization without being a member, several human rights activists were arrested and around 150 newspapers, TV channels, press organs and hundreds of NGOs have been closed. In a recent application of the controversial anti-terrorism legislation, hundreds of Boğaziçi (Bosphorus) University student protesters faced investigation and criminal prosecution. The students were arrested during weeks of protests against President Recep Tayyip Erdoğan’s appointment of Melih Bulu as rector of Boğaziçi (Bosphorus) University on 1 January 2021. They were accused of being terrorists by the President and the Minister of Interior Süleyman Soylu. This brought to mind the EU Commission recommendation for the successful conclusion of the VLD. Turkey should:

“revise—in line with the ECHR and with the European Court of Human Rights (ECtHR) case law, the EU acquis and EU Member States practices— the legal framework as regards organized
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"...political discourses have lost their credibility; regardless of whether the President praises the EU or condemns it, it means little for the state of relations, which remains unaffected."

Instead, on 31 December 2020 Turkish Parliament approved a law on “preventing terrorism financing” that strongly threatened the right to freedom of association and NGO activities. The law was proposed to combat international money-laundering and financing of terrorism. However, as stated by HRW, “its provisions greatly exceed the aim of preventing financing of terrorism and weapons proliferation. Instead, it would allow the Interior Ministry to target nongovernmental organizations' legitimate and lawful activities and the right to association of their members.” As stated in the 2020 Report on Turkey, by the European Commission; “While the government has a legitimate right to fight terrorism, it is also responsible for ensuring this is done in accordance with the rule of law, human rights and fundamental freedoms. Anti-terror measures need to be proportionate.”

**Strong Statements vs. Credibility Deficit**

"Against all odds in our accession negotiations, we are determined to reach full membership to the EU, which we consider as a strategic objective," said Erdoğan in his message for Europe Day on 9 May 2020. About five months later, on 24 October 2020, he argued that “Europe is preparing its own end because of Islamophobia and separatist policies”. Next, on 22 November 2020, just a month later, he stated that “Turkey sees itself as a part of Europe.” Considering that all these statements were made in a six-month period; it could be argued that political discourses have lost their credibility; regardless of whether the President praises the EU or condemns it, it means little for the state of relations, which remains unaffected. Yet for the relations to progress past the stalemate, discourses are not enough anymore. This also applies to the VLD where a breakthrough requires a substantial policy shift. Such inconsistent speeches increased the mistrust of key European actors, as seen in the words of Manfred Weber, leader of the European People’s Party (EPP), the largest group in the European Parliament: “You can understand that he [Erdoğan] is only playing with us. That is why now action is needed.” Therefore, it is significant to explore what actions could be taken by Turkey to result in the successful conclusion of the VLD.

**Learning from Georgia, Moldova and Ukraine**

**An Overview**

Currently, the citizens of 61 countries benefit from visa liberalization agreements with the European Union. The VLD process is not a privilege for Turkey; on the contrary, eight states, Albania, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, North Macedonia, Serbia and Ukraine, have succeeded in meeting their VLD criteria and received visa-free travel. To understand the reasons for Turkey’s stalemate one could explore the VLD of the last three countries who successfully ended the VLD: Georgia, Moldova and Ukraine.

First, the European Union, Georgia, Moldova and Ukraine have established obligatory cooperation mechanisms to fight organized crime and irregular migration, which is a
removing benchmark in Turkey’s VLD. The European Union has emphasized the importance of Joint Action Plans regarding counter-terrorism, since this is a crucial objective for the EU security goals. As a result, partner countries have to amend their domestic legal framework, if there are conflicting laws with the EU legislation on terrorism. Successful cooperation on migration, transnational crime and terrorism is a distinguishing element between Ukraine, Moldova, Georgia and Turkey. For instance, in the _final report_ of the European Commission regarding the Ukraine’s process, it was stated that:

“The Ukrainian authorities have ensured access to Interpol databases at border crossing points. In November, 39 border crossing points were connected to Interpol databases. The remaining 118 BCPs will be connected in 2016. Ukraine has taken further steps in cooperation on border control and border surveillance with neighboring countries, which already functioned fairly well.”

Despite the negative impact of the refugee flow, benchmarks related to migration and border management could be met, if Turkey takes the necessary legal and practical steps in a cooperative manner with the European Union. This illustrates that heavy work focused on the revision of Turkey’s legal framework as regards organized crime and terrorism is vital.

Second, Ukrainian authorities were successful in changing the legal framework where the EU noted shortcomings. The Ukrainian _National Security Strategy_ was fully transformed to “reduce the pre-trial investigative powers of the Security Service for intelligence and counterintelligence.” Moreover, the authorities also considered a specialization of judges and prosecution for organized crime. These new policies show the successful adaptation of the Joint Action Plan and the cooperative manner of the partner country that is also visible in the cases of Georgia and Moldova, but is lacking in Turkey’s VLD process. _Georgia_ effectively implemented new anti-discrimination legislation and policies to ensure equality for all its citizens. On its part, Moldova implemented major reforms emphasized in the _Action Plan_ regarding the rule of law, organized crime, corruption, and migration. According to the _European Commission’s First Progress Report_, the Moldovan government successfully adopted not only new legislative frameworks on preventing and combating organized crime and corruption, but also new national strategies to better implement the Action Plan’s requirements such as the National Migration Management Strategy. The eagerness of cooperation and effectiveness of the domestic law reform was also visible in Ukraine’s VLD. According to _European experts_, “Ukraine has rebooted its judicial system on a truly unique scale.” The EU project called “Pravo-Justice” played a vital role in the evaluation of the reform and combatting corruption. As a result of this project, new policies were introduced to raise the Ukrainian judicial system to the EU standards. These successful projects illustrate that cooperative bilateral policies are great options to combat problems in the VLD process. These would be more difficult to solve if they were dealt with nationally; they could set an excellent example for Turkey. It is important to note that instead of taking concrete steps with European counterparts, Turkey heavily relies on its national legal framework in criminal matters, even though the VLD was signed knowing the necessity for revision and cooperation.

Although the legal framework in Turkey was, by and large, aligned with the EU legal framework, political discourses and the domestic political environment do not successfully fight discrimination. Instead, Turkish authorities repeatedly stated that the
EU “does not understand the current threatening environment in Turkish domestic policies especially after the coup attempt.” The disproportionate treatment of unsubstantiated or weakly substantiated security threats has posed a formidable challenge to any positive steps regarding the VLD.

**Rule of Law and VLD in Georgia, Moldova and Ukraine**

Having explored divergent approaches between the three countries who successfully achieved visa-free travel and Turkey, it is significant to analyze differences in the state of the rule of law. According to the World Justice Project’s (WJP) Rule of Law Index, while Turkey ranks 107th out of 128 countries with a score of 0.43; Georgia ranks 42nd with 0.60 points, Ukraine is 72nd with 0.51 and Moldova ranks 82nd with 0.50 points. Georgia’s process has been the smoothest of all, as most of the benchmarks were deemed to be achieved in the earlier stages. It is important to highlight the effect of the VLDs on the rule of law in those three countries. Ukraine’s general rule of law score increased to 0.51 in 2020 from 0.48 in 2015. A similar increase is visible in Moldova’s overall score which increased to 0.50 in 2020 from 0.48 in 2015. However, Turkey’s score on the rule of law decreased from 0.46 in 2015 to 0.43 in 2020, which indicates that the VLD did not result in developments for the reasons explained above, under Section 2.2.

**Recent Statements of the European Council and Leading EU Officials**

While the Eastern Mediterranean crisis remained the top priority on the EU’s agenda in the European Council meeting of 25-26 March 2021, there was some reference to democratic backsliding, rule of law and human rights. Article 16 of the Statement of the members of the European Council stated:

“Rule of law and fundamental rights remain a key concern. The targeting of political parties and media and other recent decisions represent major setbacks for human rights and run counter to Turkey’s obligations to respect democracy, the rule of law and women’s rights. Dialogue on such issues remains an integral part of the EU-Turkey relationship.”

In his remarks, the European Council President Charles Michel stressed regarding mobility and migration:

“The conclusions are based on the idea that, first, we have decided to task the Commission and the High Representative to propose a possible positive agenda, but conditional. It means that we hope that Turkey will maintain a moderate behavior, a positive behavior in the next weeks and in the next months.”

The statement remained vague regarding what constitutes “moderate” or “positive behavior” and whether it is linked to the state of the rule of law in Turkey. However, it is doubtful that this would make any difference and would be taken seriously by Turkish authorities, as there was no further explanation about the dialogue, or direct criticism of the recent developments.
The same agenda was reiterated during the April 2021 joint visit of the President of the European Council Charles Michel and the President of the European Commission Ursula von der Leyen to Ankara. While the visit was marred by the “sofagate”, this was the first time that EU leaders put emphasis on the situation of human rights and the rule of law in Turkey. In her statements, European Commission President Ursula von der Leyen directly conveyed the EU’s concerns as follows:

“Today Charles Michel and I clearly underlined that respect for fundamental rights and the rule of law are crucial for the European Union. This must be an integral part of our relationship. Turkey must respect international human rights rules and standards to which, by the way the country has committed itself.”

Von der Leyen also expressed her concern about Turkey’s withdrawal from the Istanbul Convention:

“I am deeply worried about the fact that Turkey withdrew from the Istanbul Convention. This is about protecting women and protecting children against violence. And this is clearly the wrong signal right now. The European Union will never hesitate to point out further negative developments.”

In the words of the European Council President Charles Michel:

“Today we had frank discussions with President Erdoğan on the future of EU-Turkey relations.... The rule of law and respect of fundamental rights are core values of the EU. We shared with President Erdoğan our deep worries on the latest developments in Turkey in this respect, in particular on freedom of speech, and the targeting of political parties and media. The promotion of women’s rights and Turkey’s withdrawal from the Istanbul Convention have raised serious concern in Europe... Dialogue on these issues remains an essential part of our EU-Turkey relationship.”

Even though a positive and progressive relationship was favored, these statements indicated a conditionality depending on Turkey’s progress in terms of improving the state of its human rights and the rule of law. The meeting was considered to be “frank,” as it addressed all outstanding issues without hesitations. Public statements during the Michel-Von der Leyen visit indicated a new direction for EU-Turkey relations; they aimed to be honest and mutually beneficial for the economy, regional security and stability. It is clear that the EU wishes to maintain cooperation on migration and the customs union; however, these topics are not related to the membership process, but rather to an “enhanced cooperation” targeting four main areas: customs union, high-level dialogue regarding climate change and public health, people-to-people contacts and mobility, and refugees and migration.
As argued by the EU High Representative for Foreign Affairs and Security Policy Josep Borrell, “we can either move towards a mutually beneficial agenda or suffer the consequences of our reciprocal misunderstandings.” The parties have set the mutually beneficial agenda for the VLD since 2013. Considering that the dialogue has been going for more than seven years and only six benchmarks are left, these should not be an arduous task, because each party is knowledgeable about what needs to be done, if there is goodwill for concluding the process. As explained by the European Commission, “Visa liberalization is not a one-way street but must be conditioned and can always be withdrawn if the conditions are not met.” In other words, while a withdrawal option will always be available if the conditions are not met, this will not be necessary if a relationship based on trust and cooperation is built. Moreover, the fulfillment of all the benchmarks will indicate an improvement of the rule of law in Turkey, making the relations even more sustainable. Besides, it is worth highlighting that government officials and members of their families who hold special passports can already travel to the Schengen Area without a visa. Visa limitations are primarily a burden on citizens who hold regular passports and wish to travel to the European Union and strengthen their ties with its people. Therefore, lifting the visa requirement could be seen as a symbolic move towards the friends of the European Union in Turkey who often feel abandoned or ignored by the European Union in its negotiations with the Turkish government.

**Conclusion-The Way Ahead**

The importance of the rule of law in Turkey should be re-emphasized by the European Union as the key underlying problem in the unsuccessful VLD dialogue. Turkey should take all the necessary steps to reform its judicial system instead of action plans that do not result in any policy change. Political prisoners such as Osman Kavala should be released. Freedom of the press should be ensured, imprisoned journalists should be set free and all journalists should be free to express their views. The anti-terrorism legal framework should be revised according to the EU legal standards, as stated in the remaining benchmarks of the VLD.

In this context, the EU should not restrain its position on issues regarding the rule of law and the necessity of revising the legal framework, as they are strongly affecting Turkey’s fundamental rights. Turkey’s meeting the remaining benchmarks would be an essential step for reversing the course of democratic backsliding, the decline of the rule of law and human rights that have haunted EU-Turkey relations for almost a decade. While recent government decisions such as Turkey’s 20 March 2021 withdrawal from the Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence and the 2 April 2021 arrest of the opposition MP Ömer Faruk Gergerlioğlu on spurious allegations indicate that the political tide is currently moving towards the opposite direction, it is crucial that respect for the rule of law, human rights and democracy remains at the core of the EU-Turkey normative framework, with reference to the VLD and beyond.
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References


European Council. 2021. Remarks by President Charles Michel after his meeting in Ankara with President Recep


