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EU Enlargement Strategy and Turkey

Güven Sak:

17 Aralık kararından sonra AB'ye oryantasyonumuzu kaybettik AB süreci ile ilgili bugün Hoffmeister bize perspektif kazanmamızda yardımcı olacağını düşünüyorum. Bu sürecin ne anlama geldiğini özel olarak TR'nin tâbi olduğu durumlar varsa onların üzerinde de durulmasında elbette fayda var.

Bitirmeden ben bir iktisadi açıdan bakıldığında nasıl farklılık olduğunu söyleyeyim. Bence TR ne son dönemde genişleyen AB'ye katılan ülkelere benziyor ne de geçmişte ilk kurulurken AB'de olan ülkelere benziyor.

Son katılan ülkeler Orta Avrupa ülkeleri genelde özel gelişmiş bir özel sektörü olmayan ülkeler dolayısıyla onların geçtikleri değişim süreci onları katlandıkları maliyetler bizim yaşayacaklarımıza örnek teşkil etmiyor. Onlar olmayan bir özel sektörü oluşturmaya çalışıyorlar. Yabancı sermaye olmayan özel sektörün yerini alıyor, oldurmaya çalışıyor. AB'yi ilk kuran ülkelerde ise zaten gelişmiş bir özel sektör var ve belli kurallar dahilinde çalışıyor.

Bizim özel sektörümüz var ancak bizim özel sektörümüz belli kurallar dahilinde çalışmaya alışık bir özel sektör değil. Dolayısıyla TR'nin asıl problemi, ben tarım deyince de aynı problemi algılıyorum aslında, biz ona *kayıtdışılık* diyoruz ama aslında *kurumsallaşma*. TR ekonomisinin AB sürecinde yaşayacağı asıl sıkıntı kurumsallaşma sıkıntısı olacak.

Kurallara uymaya alışkın olamayan insanlara ve şirketlere aslında o kurallara uymayı öğretmek zorundayız. O kurallara uyacaklar ki rekabet şartlarına ayak uydurabilsinler; Uluslararası ölçekte rekabet edebilsinler. Buradan gelecek bir zorluğumuz olacak.

Frank Hoffmeister:

I am very pleased to be invited and speak to you today. As a preliminary remark I will present my personal view but this personal view is of course fed by my experience so I would like to give you today is a little bit academic overview on enlargement; especially about the last enlargement. I would like to give you some concrete examples of how that transferred into practice.

Theory and Practice of EU Enlargement

Overview of the framework which accession takes place

As you are all aware there is the substance of accession criteria. When the EU was formed in 1957 there was no great thought about its size. The original founding members did not have a certain mind on where the continent will end.

In the times of the Cold War confrontation of the east and the West Europe, that was not the important topic. Therefore in the leading foundations of the European Community it was not the case. That only came up 20-30 years later when after the Velvet Revolutions (especially Spain and Portugal) in Southern Europe, especially after the overcoming of authoritarian regimes they claimed that they have democratic regimes and they wanted to join to the EU. They claimed that they have a right to join the Union and ask for some solidarity to benefit Union's great project of a single European market. 1980s this was accepted by EU countries so that the political overtone was decisive. There was less care about the economic situation of these countries. After fall of the iron wall and the dissolution of the Soviet Empire this situation had to be over thought again and the EU countries had to face what to do with the Eastern European fellows, which had been under the Soviet influence for so long. Can we also give them a political benefit or do we have to be more careful. And here we see in 1993 in **Copenhagen** the EU Governments said again we are very happy that Eastern European countries want to join but they need to have a **stable democracies** and **stable institutions under the rule of law** and as an x-socialist that would not be self-evident. It should be considered to be essential. (*Political criterion*)

The **2nd economic** viewpoint was also said out namely if these countries would become a member immediately to the EU that would maybe cause an internal problem of withstanding competition. If these countries are not strong enough to compete against big European investors, then they may face a setback such as a lot of bankruptcies of the local production (industry); which again translate to social unrest. That can neither be in the interest of an accession country, nor in the interest of the EU at large. This economic view led to the second criteria saying "We can only accept countries that are **able to withstand competition** and who work as a **market economy**." We can actually predict only after a country joins the Union. But there should be reasons and confidence that a country could match such criteria. For that confidence we need several years of close assessment of that countries economy.

3rd criterion has basically on the **legal background**. As we know the EU was found by a Treaty, a legal instrument. All its rules and adopted regulations are legal norms. Legal norms must be applied without discrimination and distinction. There must be **equality before the law**. That is an essential concept in the EU. Therefore it says whichever country wants to join; it must apply same rules with the others. For example: if we have very strict standards on product liability that are applied to western European companies and low standards on some other, it would be beneficial for those in the lower standards that corporate there. Because since they sell there they will face liability cases and they wouldn't be subjected to the liability sanctions. That is of course a thing which is essential for the EU. We need equality before the law. So the 3rd criterion says: "*A country must be able and actually do overtake the European acquis.*" This is sometimes referred to as neo-imperialist that EU wants to dictate all the time or all the others, but the reasoning behind is not that; the reasoning is we have level of integration which is quite high and to function in a Union base under the rule of law, the rules should apply also for the new comers.

The practical difficulty is how can you assess during a negotiation? How far a country takes over the European norms? Practically, you can look into the legislation. After comparing the new legislation of the country and the European norms, if the letters are matching, it is fine. But it is not enough by itself. The real difficulty then is to ask is the country also applying the new legislation. Do the people who working in the administration really understand the concept, if they have to apply it? Do we have enough public authority with special knowledge? So this is then referring to the **administrative capacity**. During the last negotiation round this is more less the key in the all the discussions.

Where are the people with specialized knowledge, where is the good training, do we have specialized bodies on let's say product standards. Do we competition authority. Do we have data protection officer? Do we have good asylum law office which is able to apply the immigration law in a modern way?

That is something for Europe to assess is quite difficult. Sitting in Brussels reading the laws are easy. But assessing the capability and knowledge of the local administration, judges and the old system, that is very difficult.

What the European Commission did all the time is such that trying to engage in fact finding missions; sending experts on specific areas into the country who then talk with the relevant

experts from the other side. So we had for example banking experts from the member states and who then went for a week or two going into very detail in the banking sector of a candidate country, having interviews with the Central Bank with the big financing institutions and so on. Asking them specific questions and also offering help and expertise. When a candidate country faces a problem, experts say “we usually do it this way and then you may have an idea how it can work.” These sorts of previews are essential to build up administrative capacity. This is the general concept of accession criteria.

Is there a right for the European States to reject a candidate even with the “equal bases” rule?

Even if a candidate country fulfils all the criteria by big efforts, European Union Institution may say nevertheless we would like to keep ourselves as we are. A candidate country could claim “you have all the time told me, I can accede and at the end, you don’t do it.” Here is the answer as a lawyer is “no, there is no right.” This is basically a political decision, there is no judicial remedy. So any candidate country cannot go then afterwards European Court of Justice and then say the decision to allow us or not to allow us is illegal. It is a political decision at the end; therefore it is important to develop relationships of trust and to know this. The end accession may not be subject to the judicial review.

In the cases of Greece, Spain and Portugal the economic factors did not played such a big role. With Austria, Sweden and Finland in 1990 and 1995 accession negotiations were rather short. Because these countries were already strong OECD and EFTA countries and there were only some little issues on transitional periods; whereas the accession project on Eastern Europe took more less ten years. We had the first applications in 1992, 1993 and the accession entered in to force in 2004. That had to do, especially with a need to negotiate transitional periods on very sensitive issues.

EU Accession Procedure

Accession is regarded as basically relationship between the accession country and Brussels; as a symbol for the EU. If we look into the procedure, we see it is much more complicated.

Because on the one hand, we have relations directly with the EU institutions and then we have relations to the members.

On the one hand, what I have referred as the Union procedure is directly engaging the Union as an organization. The applicant has to apply to the organization and institution of the organization, namely the Commission makes the recommendation, another institution the European Parliament, has to give its view as you know majority is needed in the European Parliament. Then you have to have the decision by the Council with the unanimity. So all the governments represented in the Council have to say “yes”. That is the Union procedure, the road directly to the organizational level.

Then we also have the negotiations of the accession Treaty. This accession Treaty is concluded between the candidate country and all the old member states together. It is treaty relation not between the organizations, but between the member states and the new candidate country. That makes life then complicated. In the accession negotiations then a candidate country goes into an intergovernmental conference. So you have candidate country on the one side, and all the other member states on the other side, sitting there, in an intergovernmental conference. That is mainly dictated by the normal rules of classical diplomacy.

The interesting bit is that in the conduct of such intergovernmental conference, the EU member states have decided that the substance matter is so complicated, so technical that it would be too difficult for the level of Ambassadors or even level below to have a full understanding of the issues. Member states had let put in the expertise of the European Commission and all the European Commission officials, who understand their specific subject. There are Director- Generals who only deal of a certain directives and they are in the best position to say and to assess where the progress lies. So the member states therefore authorized the Commission to come up with “draft common positions”. The commission always proposes to the members states that in this or that area the progress is enough or certain reforms still are to be carried out. The Commission in this particular frame is only doing a recommendation, the decision lies then in the member states. The member states

would say “we believe the analysis of the commission or we don’t.” So there can be quite big differences between the assessment of the commission and the member states.

For example there was environment chapter that Commission asked for closing certain chapters where the member states say “no, it is too early we cannot accept this. The environmental standards still are too low.” Enforcement of the intellectual property rights there was big divergence and also in the justice and home affairs is a very sensitive subject; how good is border control, how efficient is your immigration system. They are naturally, the Commission officials in Brussels may be more liberal than the member states who have all border concerns and who face the consequences of such decisions immediately.

Commission makes a draft, the member states decide on a common position and then normally the candidate country replies. Here the question rises what is the negotiation all about? Candidate country basically has to fulfill criteria and these are not negotiable. “Either you take it or leave it.” That is not normal negotiation situation. So where is the negotiation?

Negotiation is mainly about exception. These exceptions take the form of transitional periods. For example: We have in the banking acquis certain requirements under which you may set up a bank, you need certain minimum capital, certain accounting standards and so on. One of the requirements is to have saving guarantees for those who give you the money. And these thresholds of saving guarantees, is of course scheduled in view of general savings in the country. I don’t know the exact figures but in a Western Country, the normal citizen would give about €10.000 to his bank from his own savings. Then the director would say, in order to have a guarantee that you get your money back from the bank; the bank should at least set aside € 500.000 that it may not invest in other purposes. So that, in the case of a bankruptcy, the citizens protected against the economic risks. So then the director would say “each bank would set aside €5000”. That is perfectly reasonable in a society when an average saver gives €10.000. Let’s imagine in a country where transformation takes place. People have little salaries and even more little possibilities to bring savings to bank. So there may the average saving would be €3000. Same director says “every bank would set aside € 5000, what is the economic impact of it? It is an over guarantee and overprotection. It doesn’t make sense. It is not adapted to the economic situation of an applicant country. A reasonable reply of a candidate country would be “We need transitional period. First need to ensure that our savers have more less a same level than you have and then €5000 of guarantee deposit; only at that stage we apply it. Before that it would be an undo burden for our banks” So the candidate

country would come up with a proposition asking for transitional period. Saying we would apply this after a transition period of 5 years, 7 years or even 10 years. EU must assess if the economic rational of such proposition is understandable, does it make sense. Then you need some analyses and some analytical figures to look at an issue. The commission may then say “okay, you have a point here. But you are asking for ten year transitional period, we believe you should achieve it after 7.” Then it goes back and forward that is called negotiation. The negotiation is mainly the need and the length of the transitional period. The rest is clear. One has to take over the European legislation.

Lets assume a candidate country pass thru all the chapters and one found good arrangements. Then what happens is the signature of the accession treaty. This is normally under the international law, so all the governments put their signature under the text on each side; but it not enough. Signature is not committing the state such, you need ratification. Ratification goes in all the member states along their constitutional traditions. So in some member states ratification means parliamentary approval, in other it means referendum and even other it means both. It depends on the national systems. The important bid here is you need ratification in all the old member states and ratification in the exceeding states. We had one important example where ratification was failed. This was a case of Norway. In 1993, 1994 successfully negotiated the treaty and later on went home do it to its own people and the referendum in the Norway there was not a majority. Because of that the ratification of the treaty with Norway failed and Norway did not become a member only at the very last stage.

What is important for us to know now is in the December 2004, in the Council the member states said we have to learn certain lessons from the old procedure and among these lessons you will find the conclusions on the framework of accessions is first of all the exceptions may be transitional period as well as derogations. May be in the future one may need to accept the certain parts of the acquis need full derogation. The second lesson learned is; how do we actually close chapters. Here in the practice, governments made promises, they submitted plans saying “in 2002 we will adopt this law and in 2003 this will be in place and in 2004we are ready for accession.” If you got such time schedule in 2002, then the Commission said “okay, fine let’s close it, these are mainly promises.” What was not sufficiently ensured is whether then after closing the certain chapter, this progress really happened in the ground. So, there were specifically some Directorate-Generals who were unhappy with this. I can cite you the example of our Directorate –General Competition who said “we do not trust these

countries in full; they may have set up a very good competition council. But we want to see how it works, we want to see decisions, we want to know how many mergers that they prohibit, how many cartels did they discover.” This is called in diplomatic language “*track records*.” So, the actual functioning of these institutions must be checked as well. You find this in the framework which was decided in December that in future the EU will look much more in the *track records* rather than into promises.

Important Chapters

Where were the big problems? What did the EU and the candidate countries have to settle? How were the solutions framed?

The first concept one has to understand is a little bit technical. European legislation can be divided into two categories. The first category is **broad principles** that are driving directly from the **Treaty**; sometimes also referred to as the fundamental freedoms. That is just a sentence saying “all measures having equivalent effect shall be prohibited. There shall be a right to free establishment.” These sentences, principles have very important practical effect, because one can challenge national restrictions just against the principle. It is a work of a good lawyer to say there is a certain national regulation that restricts my freedom in one particular area therefore it is against EU law. These principles can apply all over. You can look through all sorts of economic sector and you can try to make an assessment whether the principles are applied in national legislation. That is a very difficult task and you need to scrutinize more the legislation and to say “Is it a reasonable legislation, does it comply with our extract principle or not?”

The second category of EU legislation is what I already referred to are the **specific measures, regulations and directives** which try to harmonize the conditions. Here the task is a little bit easier, because you exactly know what is in the directive. You know what the law should look like whereas in the first task you know the law should not look like. It should not be incompatible with the principle, the rest is unclear. In the second category you exactly know it should look like this, this and this. The principles and directives are specific for harmonization purposes.

With these two broad categories, we go into each of the negotiations and look at a sector.

Free movement of goods, EU already has *Custom's Union* with Turkey. This is essentially about **removing barriers of trade** especially quantitative restrictions and measures having equivalent effect. That goes into the harvest product standards. There is a whole doctrine of mutual recognition of assessment with technical requirements. Basically here that is liberalization of the mutual compatibility of product standards.

Then we have **public procurement**. That is a very hot topic and it also was in the EU for a very long time, not resolved. Public procurement rules in the EU follow very easy idea saying “whatever the state is going to invest in a public area (wants to construct a building, wants to build a road or wants to set up a complicated institution), it has to get its goods in the free market. The question is how the government finds its contractors. Basically, all systems tend to favor either their friends or their nationals. In the EU the idea of that is of course a discrimination against other EU companies. For example in Germany if there is big bid for constructing autobahn in a particular area, there is no reason why there shouldn't be a French constructor or even someone else who could carry out the contract. It may be even beneficial because it is much cheaper and the knowledge is much less the same. But how does the French know that the German state is going to do this. The EU law comes into play here and would say “we need transparent bidding procedures, information should be also inside the common market and we need to have a fair selection procedure.” So, you need to reason why you took one constructor and not the other and in case the state decides on one constructor there must be judicial remedy against that decision. So, a competitor has a right to go before certain bodies to challenge the decision. That is economically very very important. More than 10% of the nation's income, sometimes this goes into public procurement. Also in the EU, we have big problems to implement it in the member states and there are a lot of court cases. But it is an important liberalization factor and in the negotiations it takes a big role.

On **free movement of persons**, we have **free movement of workers** principle that would give any worker the right to go to another country to look for a job. But, if after 3 maximum 6 months he hasn't found anything then he ought to turn back. But the principle at first stage is you have the right to look for a job in other country. The EU was very reluctant to apply this to the Eastern European countries; and their transition periods were agreed amounting up to seven years. There the protection of the home labor market plays a big role and that was one of the big contentions in negotiations. As a personal note, this negotiation chapter was

deliberately negotiated rather early in the negotiations in order to avoid that it would be the stumbling rock at the end. Everybody knew that it is sensitive, that in elections it may play big role; especially if the governments are social democrat governments, they are very sensitive to that. So, it was clearly negotiated in the middle of the negotiations to avoid that it becomes a too politicized issue.

*Social security of workers, **mutual recognition of professions qualifications** and citizen's rights* are important as well. Your qualifications are worth something in another country. Your ability to move is seriously repeated. If you go elsewhere and say "I am an architect" but the country says "you are an architect at home, but here you are nothing." So, EU has a certain system of mutual recognition, certain requirements for that. That is important for the industry and also for students. If you say I am Master of Business in this University, you should have a certain procedure that allows you to have your title also in the EU.

Freedom to provide services is very a technical issue. What is important in here is the banking, insurance and security sectors are quite regulated with EU directives. There is a lot of it and it will lead to radical reform of whole sectors including the control office. The good thing is once you apply EU directives, these economic operators enjoy so called "homeland control". That means you apply the EU directive at home. Let's say that I am *Deutsche Bank* established in Frankfurt and I have applied the directive and then I want to set up a branch in Paris. Do I have to comply all the time the French law and who controls the application of the law? Normally the French stable says whenever an economic activity here my supervision takes place. So it will be the French control system to look up whether your banking business carried up correctly. But then as *Deutsche Bank* I may say why this, we have a European directive I comply with the standards that should be the same and I have a homeland control. It is German supervision that looks all the times into my books including books of my French branch. It is duplication, it makes life more difficult. Then the EU Directors would say "yes, indeed. If European standards would be applied, there is homeland control. There is no need to double all the time the supervision."

Free movement of capital is free flow of the foreign money. The exchange systems should be liberalized. We have important issues in negotiations on money laundering where some EU laws saying there must be transparency in order to detect suspicious transactions. In the negotiations the European Commission always asks to the candidate country "where is your

specific mechanism dealing with money laundering, do you have special task force, do you have special police, how do you tackle the problem?” It is an important problem.

On **company law**, what counted most is the level of intellectual property. For example, some of my colleagues made a mission to some of the Baltic countries and in the capitol they found all possibilities to buy cheap CDs. Only € 5 for CD, you pay € 25 at home. These EU officials didn't like that. They went home wrote a bad report about that country saying “there is no enforcement of intellectual property rights here.” It seems that the public authorities do not shut down these. There is a whole market you can get it in everywhere. Because as we all know the singer has the right that his song only sold when you pay him the appropriate contributions. So, all these counterfeiting activities are against intellectual property rights. These countries really have to enforce the law, which was a big issue during the accession negotiations.

Competition law I have already mentioned briefly. Anti-trust, you need a cartel control. State aid and authority that ensures the equal level of state aid in the European wide system. On the public undertaking is stony issue of privatization of former monopolies, telecoms, electricity, all these huge utilizes. We have European law on fields and sectors that have to be liberalized.