

Thinking out of the Accession Box: The Potential and Limitations of Internal and External Differentiated Integration Between Turkey and the EU

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EU on the Path to Extended Internal Differentiated Integration

The multiple crises the European Union (EU) has been facing – such as the rather “traditional” sovereign debt crisis, and the “new generation” crises including the Brexit, the rise of terror attacks within the EU borders and the refugee crisis – have led to increased focus on the possibilities to accomplishing extended internal differentiated integration within the EU. Internal differentiated integration in the EU could be defined as an arrangement among the Member States with regards to the formulation of a polity, which “displays variance across policy areas and across space, while maintaining an institutional core”¹. The aim is to “reconcile heterogeneity within the European Union.”² In other words, differentiated integration encapsulates “the multiple forms of European integration”³ as it reflects the particularities of a system that allows for “a variety of forms of cooperation and/or integration in which not all members of the EU take part.”⁴

Internal differentiated integration has long been one of the fundamental features of the EU. Member States’ differentiated approaches to participate in some of the Union’s key policy fields and treaties on the basis of both formal opt-outs and informal arrangements, such as the Schengen Area, Common Security and Defence Policy (CSDP), the Eurozone, the Banking Union and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG), illustrate some typical examples of differentiated integration.⁵ The EU’s enlargement politics, which foresees the gradual integration of the new Member States into the Eurozone can also be acknowledged as a clear indication of internal differentiated integration.

The significant fragmentation among the Member States over EU reform and the implementation of common policies in the face of the latest crises fuelled the EU-wide tendencies to formalise internal differentiated

integration. The 26-27 June 2014 European Council decisions endorsed that the “concept of ever closer union allows for different paths of integration for different countries, allowing those that want to deepen integration to move ahead, while respecting the wish of those who do not want to deepen any further.”⁶ In a similar vein, on 6 March 2017, during a joint press conference in France, the EU’s “new big four”, Germany, France, Italy and Spain, openly endorsed extended differentiated integration within the EU.⁷

Extended Internal Differentiated Integration: An Opportunity for EU-Turkey Dialogue?

Over the last decade, the possibility of an EU with several circles of membership has been brought forward by various scholars as an opportunity for Turkey to enter the EU by means of a more flexible arrangement. Turkey’s possible integration into the outer circle of a multi-speed EU has been regarded as an opportunity to eliminate the stalemate in the Turkish accession process and as a means to convince both Turkey sceptics in the EU and EU sceptics in Turkey.⁸ It has been argued that Turkey should be provided with the opportunity of “gradual membership” into the EU “in several steps.”⁹ Some even postulated that it was the Turkish accession process that was going to accelerate the creation of a multi-speed Europe.¹⁰ Similar statements were also employed in political circles. Ömer Çelik, Turkish Minister for EU Affairs and Chief Negotiator, stated, for instance, in March 2017 that “for Turkey, new opportunities may be found after 2017. The multi-speed Europe might be on our agenda.”¹¹

Despite the potential added value of an EU functioning on the basis of extended internal differentiated integration for Turkey’s EU accession process, Turkish prospects for full membership in the EU appear to be gradually diminishing. The latest testy exchanges between Turkey and the EU/various Member States and the de facto frozen accession negotiations widen the gap between Turkish and European political circles. And, perhaps even more crucially, the gradually decreasing functionality of the EU’s political conditionality vis-à-vis Turkey as a result of the unilateral vetoes of various Member States on negotiation chapters, together with the EU’s diminishing ability to transfer its norms and values to Turkey¹², severely shrinks both the mid- and long-term probability of Turkey’s inclusion in the EU – even by means of a more flexible arrangement.

That Turkey's full membership prospects appear to be increasingly weakening, regardless of the EU moving towards a multi-speed architecture founded on extended internal differentiated integration, has also more recently been reflected in the statements of key EU institutions and representatives of various Member States. On 24 November 2016 the European Parliament (EP) called the European Commission (EC) and the European Council to temporarily suspend the accession negotiations with Turkey.¹³ The government of Austria openly stated several times that it would veto any effort to open new chapters in accession talks between Turkey and the EU.¹⁴ In a similar vein, the German Chancellery emphasised, in one of its most recent public statements on the Turkish accession process that "under the current circumstances, the opening of further negotiating chapters is not conceivable."¹⁵

Turkey has been the only candidate country in the enlargement history of the EU to have successfully negotiated one out of 35 chapters for a duration of almost 12 years and to have entered talks in only 16 chapters. This makes Turkey "an anomaly"¹⁶ in EU's widening process. While 14 negotiation chapters remain blocked by either the Council or Cyprus, Ankara appears to be hesitant to launch talks on the remaining three chapters (competition policy, social policy and employment and public procurement) until the final phase of the accession negotiations owing to the particularly costly fulfilment of their benchmarks.

The technically frozen status of the accession negotiations coupled with the gradual fading of the seriousness of Turkey's EU accession process as a result of its exceptionally slow pace, minimizes Turkey's chances of joining an EU on the basis of extended internal differentiated integration.

The Emergence of Thinking Out of the "Accession Box": Increasing Focus on Alternative Arrangements between Turkey and the EU

Although Turkey's chances of entering the EU appear to have been gradually diminishing, both European and Turkish leaders and representatives of key EU institutions have, until very recently, refrained from explicitly inquiring possible alternative forms of integration between Turkey and the EU. However, the latest tensions between both parties, coupled with the disappearance of the emotional pressure surrounding full membership in the Union following the "exit" decision of the United Kingdom (UK), one of the EU's so-called "big three", seem to have gradually brought about a

European-wide debate on options other than full membership for Turkey. During the last couple of months, various voices have emerged in the EU, explicitly calling for a move to search for alternative modes of deepened dialogue between Turkey and the EU.

Johannes Hahn, Commissioner for European Neighbourhood Policy (ENP) & Enlargement Negotiations, stated, for instance, on 24 April 2017 that he hoped that EU member states and Turkey were ready to look into a more essential discussion on a “new format for relations with Turkey, one that could ease mutual frustrations and reinforce cooperation.”¹⁷ Likewise, Guy Verhofstadt, leader of the Alliance of Liberals and Democrats for Europe Group (ALDE), argued on 27 April 2017, during a parliamentary debate that it would be critical to make a new proposal to Ankara outside the framework of full membership prospects.¹⁸ This message was echoed by German Vice-Chancellor and Federal Foreign Affairs Minister Sigmar Gabriel, who indicated on 28 April 2017, on the sidelines of a meeting between EU foreign affairs ministers and Turkish Foreign Affairs Minister Mevlüt Çavuşoğlu, that the EU might offer Turkey “a new, looser agreement”, whereas the Turkish accession process was not to be cancelled before the block had “something new to offer.”¹⁹ Just like the EU, Ankara seems to be getting more comfortable with referring to the possibility of ending accession talks, should the EU fail to “stick to earlier commitments it has made.”²⁰ It appears as if thinking out of the “accession box” has started to emerge as a new approach towards the reformulation of the scope, content and limits of the EU-Turkey dialogue.

External Differentiated Integration between the EU and the Third Countries and its Legal Basis

If the relations between Turkey and the EU are to be shaped outside the framework of accession negotiations, their institutional machinery is likely to be formulated on the basis of extended external differentiated integration between both parties.²¹ External differentiated integration between the EU and non-Member States can be defined as third countries’ various levels of alignment and/or intense familiarisation with particular sections of the EU’s *acquis communautaire* without access to the EU’s central decision-making bodies.²² Lately, however, the EU’s increasingly prominent sectoral transgovernmental bodies – EU agencies – incorporating both national and European technocratic circles and acting to some degree inde-

pendently from central administrations, have also emerged as satisfactory platforms for the inclusion of non-Member States in decision-making and policy-implementation processes at differentiated levels.²³

Non EU-countries' various levels and forms of participation in the European integration process owing to shared issue-specific interests and high-level interdependence with the EU, culminate in external differentiated integration. It is a particularly suitable arrangement when the full membership of the related third country in the EU does not seem to be a likely option as a result of its high politicisation, yet strong issue-specific interdependence exists between two parties in sectors where there is considerably less politicisation.²⁴ This mode of integration takes place, above all, in policy fields related to economic and monetary affairs (inclusion in the single market), security and defence (engagement with Eurocorps, Frontex and Europol), as well as research and development matters (including non-EU states' participation in Erasmus+ programs and European Research Area).²⁵

As far as the legal basis of external differentiated integration is concerned, Article 8 of the TEU enables the EU to establish "special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations, based on cooperation."²⁶ Article 217 of the TEU emphasises, in a similar manner, the Union's right to conclude association agreements with third countries, whereas Article 218 sets out the institutional procedures for the formulation of association agreements and other agreements establishing specific institutional frameworks for cooperation.²⁷ Since definitions such as "special relationship" and "association" are quite vague and broad, external dimension of differentiated integration displays a wide spectrum of models of cooperation between the EU and third countries.

A Fundamental Feature of EU-Turkish Dialogue

As a result of high-level and issue-specific interdependence between Turkey and the EU, external differentiated integration has been a key feature of the institutional machinery of EU-Turkish dialogue for many decades.²⁸ Since the signing of the Association Agreement in 1963, Turkey has been conveniently, yet restrictedly, integrated into the EU in various key policy areas. Turkey's alignment with the EU standards was

boosted with the launch of accession talks on 35 chapters of the *acquis communautaire* in 2005. Until now, Turkey has achieved a good level of preparation in 11 chapters, a moderate level of preparation in 13 chapters and an early stage of preparation in 9 chapters out of 33 chapters of the *acquis*.²⁹ While Müftüler-Baç identifies four policy areas where external differentiated integration between Turkey and the EU has been widely achieved³⁰, two policy areas seem to stand out lately, either due to the progressively increasing integration in the related policy area or as a result of its high relevance.

Economic relations appear to be at the very forefront of external differentiated integration between Turkey and the EU. Whereas the political dialogue between Turkey and the EU has experienced great ebbs and flows over the last few decades, bilateral economic relations have continued to progressively improve since the initiation of the Customs Union (CU) in 1996.³¹ CU enabled the free circulation of Turkish industrial products and processed agricultural goods in the EU and fostered Turkey's alignment with the *acquis*, above all in the field of industrial standards. Following the initiation of the CU, the value of the EU-Turkish bilateral trade in goods has multiplied more than fourfold between the period 1996-2015.³² The 2016 EC Progress Report on Turkey notes that Turkey has achieved an advanced level of integration into the EU market in terms of trade and investment and has a good level of preparation in fulfilling the requirements to cope with competitive pressure and market forces.³³ Turkey's external integration into the EU market was fuelled – along-side the launch of the CU – by the initiation of the accession negotiations. This has also been reflected in the evolution of Turkey's economic dialogue with its key trading partner Germany. Following the December 2004 European Council decision to start accession negotiations with Turkey, the annual value of German exports to Turkey has increased from €11.8 billion in 2004 to €21.9 billion in 2015.³⁴

A relatively new, yet highly substantial matter of extended external differentiated integration between Turkey and the EU has been the area of Justice and Home Affairs (JHA). In fact, Turkey and Europol already signed a strategic cooperation agreement in 2004 regarding the prevention of international crime. Furthermore, a working arrangement between Turkey and the Frontex was established in 2012 in the field of border control.³⁵ An even more extensive external differentiated integration between Turkey and the EU started to emerge with the Readmission Agreement (RA), signed in December 2013.³⁶ Under the terms of the RA, Turkey

agrees to take back third country nationals, stateless persons and Turkish citizens crossing into the EU via Turkish territory in an irregular manner. In return for Turkish efforts to implement the RA, a visa liberalisation dialogue between Turkey and the EU was launched with the aim of lifting the Schengen visa obligations imposed on Turkish citizens. The visa liberalisation has been tied to Turkey's fulfilment of the 72 benchmarks stated in the Roadmap towards a visa-free Regime with Turkey. This addresses various issues including visa policy, asylum procedures, document security and extended cooperation with neighbouring Member States on border management.³⁷ According to the 3rd Report of the EC on Turkey's progress in fulfilling the requirements of the visa liberalisation dialogue, Turkey has already fulfilled 65 out of 72 benchmarks,³⁸ indicating the high degree of harmonisation between Turkey and the EU with regards to visa and asylum policies.

The Refugee Crisis: A Catalyst for Extended External Differentiated Integration between Turkey and the EU

With the unprecedented flow of irregular migrants to the EU in the second half of 2015, the Syrian refugee crisis, which had previously been perceived as the "crisis of the Middle East and the immediate neighbourhood"³⁹, has now also turned into a European crisis. Turkey's increased strategic importance as a transit and destination country for Syrian refugees made enhanced cooperation between Turkey and the EU indispensable. The EU-Turkey "deal" of 18 March 2016 on the management of irregular migration flows⁴⁰, formulated to a great extent by German-Turkish intergovernmental consultations⁴¹, was largely founded on the conclusions of the 29 November 2015 EU-Turkey Summit. The conclusions of this bilateral summit did not only outline the scope, content and conditions of the enhanced partnership between Turkey and the EU with the aim of managing the flow of irregular migration into the EU. They also reshaped the institutional architecture of the relations between Turkey and the EU by launching additional dialogue mechanisms along-side the existing structures and outside the framework of accession negotiations, and thus expanding the scope of external differentiated integration between Turkey and the EU.⁴²

The conclusions of the November 2015 summit endorsed, above all, a) the establishment of a more structured and regular high-level dialogue to

further the potential of bilateral relations; b) the realisation of bi-annual bilateral summits; c) the initiation of a High Level Political Dialogue Mechanism at Ministerial/High Representative/Commissioner level and a High Level Economic Dialogue Mechanism; d) the deepening of cooperation on energy with the previously established High Level Energy Dialogue; e) the launch of negotiations on upgrading the CU towards the end of 2016; and f) the opening of accession talks on Chapter 17 related economic and monetary policy.⁴³

These decisions nurtured the progression of the bilateral relations between Turkey and the EU outside the framework of accession negotiations on the basis of extended external differentiated integration as a result of two developments. Firstly, the opening of Chapter 17 (and later Chapter 33 on financial and budgetary provisions with the conclusions of the 18 March 2016 bilateral summit) did not contribute to the acceleration of the Turkish accession process in real and sustainable terms, as the decisive Chapters 23 and 24 remained closed.⁴⁴ The launch of accession talks on chapters with a focus on economic integration, on the one hand, and the continuing blockage on chapters dealing with universal norms, on the other, led to the asymmetrical evolution of the economic and political reform oriented dialogue between Turkey and the EU. Secondly, the initiation of regular bilateral summits and high level dialogue mechanisms on economic, energy, security and foreign policy matters resembles, to a great extent, the dialogue instruments established by the EU for the management of relations with its “official strategic partners” which do not pursue membership in the EU.⁴⁵ The suitability of such an arrangement for EU-Turkey relations will be discussed in the next part of this paper, along with other potential arrangements.

Wide Spectrum of Options for External Differentiated Integration: Assessment of Potential Arrangements for EU-Turkey Dialogue

As already discussed in the previous parts, owing to the fairly broad and implicit legal description of the EU’s relationship arrangements with third countries in the TEU, the concept of external differentiated integration incorporates a very wide spectrum of options for models of cooperation between the EU and third countries. In order to discuss the most suitable arrangements for EU-Turkey dialogue outside the framework of a full mem-

bership option, it might be useful to illustrate the two extreme ends of the spectrum incorporating models of external differentiated integration.

At the one end of the spectrum the “European Economic Area” (EEA) model could be taken as an example. Since entering into force in 1994, the EEA Agreement has been granting EFTA countries Norway, Iceland and Liechtenstein access to the four freedoms of the single market and promoting closer dialogue in other fields, including environment, education and social policy.⁴⁶ EEA countries can be defined as non-EU countries which have been eligible for full membership in the EU but have chosen not to become full members, while opting instead for anchorage to EU structures as closely as possible outside the accession framework. Norway, for example, aligned itself with about three-quarters of the EU’s *acquis*⁴⁷ and consequently became “a de facto EU member.”⁴⁸ EEA is described as “the most prominent case of *acquis* export outside the enlargement paradigm”,⁴⁹ supporting the argument that the EEA model can be positioned at the one extreme end of the spectrum that incorporates the various options for external differentiated integration. Indeed, while the EEA agreement brings with it each year on average 300 new secondary EU legislations related to the single market⁵⁰, additional bilateral agreements the EEA countries have concluded with the EU in further policy areas including JHA and foreign and security policy expand the scope of EU *acquis* alignment.

Could the EEA option serve as a model for the reformulation of EU-Turkey dialogue on the basis of extended external differentiated integration? Three significant challenges seem likely to be posed by potential efforts to apply the EEA model to Turkey: Firstly, the free movement of Turkish workers in the EU appears to be highly unrealistic, given that even the lifting of Schengen visa obligations imposed on Turkish citizens has been a highly politicised issue for many decades. Secondly, perhaps the most fundamental shortcoming of the EEA Agreement has been the EEA countries’ non-participation in the EU’s legislative process, despite showing legal commitment to the adoption of the *acquis*. According to the 2012 Report of the Norwegian EEA Review Committee, “democratic deficit is a well-known aspect of the EEA Agreement that has been there from the start.”⁵¹ While non-participation in law-making processes might be tolerable for some small states, big states such as Turkey would be more sceptical concerning sovereignty losses, particularly in view of the asymmetrical relationship it experienced with the formation of the CU.⁵² Lastly, and perhaps most importantly, the EEA countries are, in fact, eligi-

ble for full membership of the EU, and fully comply with the norms and values of the Union. Thus, political conditionality does not serve as a component for the EEA Agreement. However, in EU-Turkey dialogue, issue linkages between “specific steps in bilateral cooperation and domestic reform”⁵³ should be established, as both Turkey and the EU did in fact, greatly benefit from the positive implications of effective political conditionality, especially during 2002-2007.

Positioned at the other end of the spectrum are the EU’s official “strategic partnership” (SP) arrangements with third countries. The Lisbon Treaty and other key EU documents do not make any clear reference to the legal foundation of the SP. Nevertheless, the 2003 European Security Strategy (ESS) and its 2008 Review put emphasis on the necessity to form partnerships with international organisations and key countries.⁵⁴ In a more comprehensive manner, the 2016 Global Strategy for Foreign and Security Policy (EUGS) highlights the EU’s intention to work together with strategic partners in Asia, Africa and the Americas on key issues related to global governance on the basis of multilateralism.⁵⁵ In view of its increasingly globalised security and foreign policy strategies, the EU has established, during 1995-2016, official SPs with 9 countries by means of bilateral agreements or summits.⁵⁶ SPs are comparatively loose arrangements between the EU and the strategic partners, aimed at coping with joint global challenges by means of effective multilateralism. So far the EU has formed SPs only with countries located outside the European periphery. The lack of clearly described goals, partners’ diverging views on multilateralism and clear differences with regards to the scope of cooperation between the EU and its different strategic partners, make the concept of SP a very imprecise one.⁵⁷

It is interesting to note that the dialogue mechanisms between Turkey and the EU, introduced or fostered by the conclusions of the November 2015 EU-Turkey Summit, greatly resemble the dialogue instruments established with the EU’s official strategic partners. Bilateral summits, regular high level dialogues at the level of ministers and High Representative and high level economic and trade dialogues are included in the SP arrangements of the EU.⁵⁸ Recent statements and official documents of the EU are also hinting at the possibility of EU-Turkey relations moving towards an SP. While the 2013 EP Resolution on the 2012 Progress Report on Turkey referred to Turkey as a “trading partner” or “important partner in the Black Sea Region”⁵⁹, the 2016 EP Resolution described Turkey as a “key strategic partner.”⁶⁰ In a similar vein, Donald Tusk, President of the

European Council, called Turkey a “key strategic partner for Europe”⁶¹ in the aftermath of the November 2015 bilateral summit.

However, the SP model is not optimally applicable to EU-Turkey dialogue under its current terms. On the basis of loose agreements, it addresses countries outside the EU’s periphery, does not anchor them strongly to European structures and norms and aims towards the countries’ familiarisation with the *acquis* rather than its adoption by them. Turkey has already aligned itself with a considerably big portion of the *acquis* on the basis of the Association Agreement and the EU accession process. Its well-structured cooperation with the EU on fundamental issues, including the recent refugee crisis goes well beyond the more conventional and limited cooperation models the EU has established with most of its strategic partners, with the exception of the USA and Canada. Finally, the SP arrangements do not include any strict and well-defined political conditionality.

Conclusions and Future Outlook

Turkey’s chances of joining the EU on the basis of extended internal differentiated integration seem to be fairly weak. The recent statements of both European and Turkish political circles point to the gradual emergence of thinking out of the “accession box”. Turkey’s anchorage to European structures by means of extended external differentiated integration is likely to arise as a new approach to reformulate the scope, content and limits of the bilateral dialogue between Turkey and the EU. While external dimension of differentiated integration displays a wide spectrum of models of cooperation between the EU and third countries, the two options positioned at the two extreme ends of the spectrum, namely, the EEA model and the SP, are not optimally applicable to the EU-Turkey relationship. The future format of partnership between Turkey and the EU is likely to lie between these two extreme ends of the spectrum. The degree of external differentiated integration between Turkey and the EU will also depend on the degree of harmony between the two parties in terms of the perception of universal norms and values, given that Article 8 of the TEU puts special emphasis on the establishment of partnerships on the basis of the Union’s values. An alternative partnership model between Turkey and the EU should also revitalise what for some time has been an ineffective EU political conditionality *vis-à-vis* Turkey as a result of the *de facto* suspended status of accession talks. The upcoming negotiations on the deepening

of the CU may serve as a test case for the formation of extended external differentiated integration between Turkey and the EU on the basis of effective political conditionality.

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