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The EU's "Crises" and Implications for Differentiated Integration between the EU and Turkey

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Introduction

Turkey's EU accession perspective has been plagued with much difficulty and uncertainty throughout the history of EU-Turkey relations. Problems originating from Turkey and individual member-states as well as the EU as a whole have traditionally strained the EU-Turkey relationship. For Turkey, the lack of a consistently displayed, credible EU commitment to its membership along with, at times, the presence of expanding and politicized accession criteria have reinforced perceptions of discriminatory treatment by the Union and lowered belief in the EU's sincerity concerning its membership. For the EU, Turkey's degrading democratic performance within the context of its much-needed compliance with the Copenhagen membership criteria has combined with potential difficulties associated with "absorbing" Turkey (economically as well as politically and culturally) to feed reservations about the country's accession.

Against the backdrop of these longstanding issues, recent years have seen a deterioration of the relationship. Consequently, some member-states (Austria) as well as Eurosceptic, populist political groups which have recently gained ground in many

European countries have called for ending Turkey's already stalled membership negotiations maintained since 2005. In July 2017, the European Parliament reflected these demands in a formal resolution, calling on member-states to end Turkey's effectively deadlocked accession process and shift the relations towards a new, cooperation-driven institutional framework. Simultaneously, academic literature has caught up with these developments, debating possible forms of EU-Turkey institutionalized cooperation which would be realistically designed outside of the accession process. Essentially, these debates sought to apply the theoretical concept of "differentiated integration" to the changing dynamics of EU-Turkey ties.

This paper investigates the emerging prospects for a differentiated integration between the EU and Turkey. In doing so, it evaluates EU-level developments that are increasingly pushing for cooperative, differentiated EU-Turkey interactions in lieu of Turkish accession. Two specific arguments are advanced. First, the paper argues that "discriminatory differentiation" (a form of differentiated integration vis-à-vis third countries) is not new, having historically affected the EU's policy concerning the contentious issue of Turkish membership. Second, it claims that the EU's recent "crises" challenging European integration itself have shifted its focus away from enlargement and led to a primarily strategic European approach regarding Turkey. Europe's 2015 Syrian "refugee crisis" has been particularly critical in this regard, effectively culminating in EU efforts for a "strategic partnership" with Turkey embedded in the notion of differentiated integration.

The paper begins with assessing the hypotheses on differentiated integration as theorized in the broader EU literature. It then briefly reviews EU-Turkey relations to historically trace the dynamics of discriminatory differentiation. Upon discussing the EU's crises as a game changer for enlargement and EU foreign policy at large, it

demonstrates Turkey's rising strategic value for Europe and resulting increased EU preference for a strategic partnership with it. It concludes by assessing the reverberations of the move towards differentiated integration in Ankara and offering reflections as to the possible institutional form the relationship may take in the years to come.

Assessing Differentiated Integration

Differentiated integration has long been a core feature of the EU, with member-states such as the UK exercising opt-outs in policy areas like the EMU, Schengen and/or EU defense policy. Over the years, the concept has become all the more relevant in parallel to the EU's unprecedented widening and deepening. As the EU grew in the 2000s, so did the heterogeneity of member-states' preferences with respect to the various policy sectors they would or could integrate in. New member-states' differentiated pace for fully implementing the *acquis* and catching up with the old members necessitated transitory arrangements upon accession. Yet, technical, capacity-related member-state divergences were not the only factors practically enhancing differentiated integration. Ideological contestation of the EU's constitutive democratic norms and values further widened the distance between certain Eastern member-states (i.e., Hungary and Poland) and the EU's core, which was openly justified by these states' leaders based on national identity and sovereignty concerns (EUObserver, 2017). With Brexit passed in referendum in June 2016 and rising Eurosceptic populism in even core member-states like France, Germany and the Netherlands, disintegrative trends reached their peak.

These developments undoubtedly challenged the historical European project and renewed debates about differentiated integration, previously also termed as "Europe a

la carte”, “multispeed Europe” or “variable geometry Europe”.¹ In a March 2017 White Paper, the European Commission included differentiated integration among the various scenarios for the EU’s future (projected for the year 2025) (European Commission, 2017), following a 2014 European Council decision which had acknowledged “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” (European Council, 2014, p. 11).

It was against this background that differentiated integration gained popularity in the scholarly literature both as a general concept in need of theorization and an institutional framework calling for precision within the context of the EU’s varying relations with member-states as well as third countries. Principally, Schimmelfennig, Leuffen and Rittberger (2015) have explained the EU’s development as “a system of differentiated integration”, defined as “*one Europe with a single organizational and member state core and a territorial extension that varies by function* [emphasis in original]” (p. 767). In particular, differentiated integration was theorized as an “institutional response” to the rising diversity of member-state preferences following from the EU’s widening and deepening (Schimmelfennig and Winzen, 2017, p. 241; Schimmelfennig, 2014, p. 683). As illustrated by the EU’s relations with the new member-states in Central and Eastern Europe, the process correlates with these states’ capacity to integrate (Schimmelfennig and Winzen, 2017). Low levels of wealth have pushed these countries towards integration - albeit being differentiated - as they could not afford to stay out of the EU, which thus trumped willingness issues (identity- and sovereignty- related concerns) along the way (Ibid.). One major consequence of this

¹ For a review of these paradigms of differentiated integration, see, inter alia, Karakaş (2013, p. 1062-1064).

has been what Schimmelfennig and Winzen term “discriminatory differentiation” which excludes the poor, new member-states - lacking bargaining power vis-à-vis the EU - from certain rights and benefits of EU membership (e.g., free movement of labor, integration into the Eurozone or Schengen area, agricultural subsidies, structural funds etc.) during the initial phases of integration following their EU accession.

When hypothesized as the EU’s differential relations with both its existing member-states (old and new) and third countries, two factors have been found relevant for explaining the emergence of differential integration: interdependence and politicization (Schimmelfennig, Leuffen and Rittberger, 2015). Hence, external differentiation (differentiated integration between the EU and non-EU countries) is expected to occur when there is high policy interdependence between the EU and a third country, and yet, membership is not likely given integration’s high politicization in the home country (Ibid.).

Assessed against this backdrop, Turkey’s relations with the EU provide a perfect case for external differentiated integration but one which at best hinges towards discriminatory differentiation. Both broader EU-level trends highlighted above and the specific dynamics guiding Turkey-EU interactions (Turkey’s low wealth, interdependence, politicization of Turkey’s membership) render this a plausible outcome. In a differentiated yet discriminatory arrangement, Turkey would have close cooperation with the EU in those policy sectors of mutual interest while being excluded from visa liberalization, freedom of movement of labor, structural and regional funds, and agricultural subsidies, as formerly signaled by the 2005 Negotiating Framework. Indeed, discriminatory differentiation is not new to EU-Turkey relations as it was fundamental even when the country’s accession prospect seemed at its best (i.e., when the EU decided to open accession negotiations in 2004).

Taking Stock of “Discriminatory Differentiation” in EU-Turkey Relations

Discriminatory differentiation has affected the EU’s relations with Turkey from the outset. The seeds of this policy were sown with the EU-Turkey Association (Ankara) Agreement of 1963. Although the Agreement’s Article 28² acknowledged Turkey’s eligibility for full EU membership – contingent on its fulfillment of its obligations following from the agreement -, the European Community’s policy priority was Turkey’s economic integration which would be finalized by an EU-Turkey Customs Union as foreseen by the various stages of the association arrangement between the two sides. To this end, the Community sought to further economic cooperation with Turkey, a committed NATO ally which was already a valuable strategic partner within the context of the Cold War. This “functional” approach to Turkey defined the EU’s interactions with it during much of the 1980s and 1990s when Turkey continued to prove its strategic relevance with its young neoliberal economy and mostly pro-Western foreign policy.³

Officially, the EU’s prioritization of functional cooperation over Turkish accession was justified on the grounds that Turkey was far from meeting the Union’s democratic norms and later, the formal Copenhagen political criteria. This was, for example, one of the principal factors that the European Commission cited when rejecting Turkey’s membership application in a 1989 Avis. Instead, the Commission recommended measures geared towards “increased interdependence and integration” between Turkey and the Community, which included “completion of the customs

² The original Article 28 read: “As soon as the operation of this Agreement has advanced far enough to justify envisaging full acceptance by Turkey of the obligations arising out of the Treaty establishing the Community, the Contracting Parties shall examine the possibility of the accession of Turkey to the Community”.

³ For a detailed historical overview of Turkey-EU relations in the areas of the economy, security and foreign policy, see, Aydın-Düzgit and Tocci (2015).

union, the resumption and intensification of financial cooperation, the promotion of industrial and technological cooperation, and the strengthening of political and cultural links” (European Commission, 1989, p. 8).

This cooperation-driven rationale dominated subsequent EU policy and discourse vis-à-vis Turkey through the 1990s. The “European Strategy” that was launched by the December 1997 Luxembourg European Council in order to make up for denying Turkey official EU candidacy status explicitly demonstrated the EU’s penchant for a functional, differentiated integration to be accomplished between Turkey and the EU. In addition to the measures suggested in the Commission’s 1989 Avis, the Strategy included the “approximation of laws and adoption of the Union *acquis* [and Turkey’s] participation, to be decided case by case, in certain programmes and certain agencies” (European Council, 1997, paragraph 32).

In the period before Turkish EU candidacy (December 1999), this emphasis on cooperation (in lieu of Turkey’s full EU membership) was expected from the EU’s part since the official accession process had not yet started and Turkey had not yet embarked on political reforms. However, European preference for Turkey’s integration short of EU accession persisted even in the post-candidacy period and, increasingly, following EU-Turkey accession negotiations beginning in 2005. Indeed, Turkey’s accession has always been the most politically contested among all the other EU applicants. Such contestation consistently translated into Turkey being treated as a “special case” by the EU despite official EU rhetoric recognizing that Turkey is “destined to join the Union on the basis of the same criteria as applied to the other candidate States” (European Council, 1999, paragraph 12). Hence, Turkey was placed firmly behind the other Central and Eastern European countries (CEECs) in the accession queue (which was also debatable since some CEECs were not too far ahead of Turkey in their EU

compliance given their ongoing post-communist transition at the time). It also faced continuously expanding and politicized membership criteria (Saatçioğlu, 2009) that it often contested (e.g., the EU's Cyprus condition unilaterally imposed on Turkey as opposed to also being made a criterion for Greece or Cyprus; EU absorption capacity) even when it was on a reform track.

Politicization even infiltrated Turkey's eventual advancement in the accession process as the latter was not objectively or sufficiently driven by the country's own compliance record. Rather, decisions such as candidacy and the opening of accession negotiations were only made possible as a result of changing political circumstances in key member-states turning the tide in Turkey's favor and/or intra-EU political bargaining over Turkey's negotiation terms lowering the costs of a potential Turkish accession for the EU – however unlikely the latter seemed (Saatçioğlu, 2012).

Preference for an institutional arrangement in the form of discriminatory differentiation was nowhere more evident than in the Negotiating Framework setting the terms of EU-Turkey accession talks for the years to come. The Framework not only alluded to “privileged partnership” as a legitimized alternative possibly tying Turkey to the EU but also specified exceptionally harsh conditions under which Turkey would be integrated in the EU. As such, it was announced that Turkey could be “fully anchored in the European structures through the strongest possible bond” (European Council, 2005, p. 5) in the event of non-membership and “long transitional periods, derogations, specific arrangements or permanent safeguard clauses” could apply to key “areas such as freedom of movement of persons, structural policies or agriculture” in all likelihood (Ibid., p. 10).

The terms of the Negotiating Framework closely reflected the preferences of center-right, European politicians who openly opposed Turkey's accession on cultural

and political grounds. Among them, the position of Austria was pivotal since it agreed to the opening of accession talks with Turkey in return for the EU's acquiescence to launch parallel talks with Croatia and only after the Framework's harsh terms were established. More bluntly, representing the German Christian Democrats, Angela Merkel notably stated in 2004 that "a Europe with Turkey as a fully-fledged member would not be a Europe that is fully integrated" (Hürsoy, 2017, p. 4).

These exclusionary preferences later made their way to the accession negotiations as European leaders did not hesitate to veto the opening of individual chapters with Turkey. This was particularly the case with former French President Nicolas Sarkozy who vetoed the opening of five accession chapters in 2007 on the grounds that they were most directly related with Turkey's membership (Phinnemore and İçener, 2016, p. 453). In 2009, Cyprus vetoed another six chapters which critically included Chapters 23 ("Judiciary and Fundamental Rights") and 24 ("Justice, Freedom and Security"), thus partially blocking Turkey's chances of making progress on the democracy and rule of law fronts which are so critical for furthering its accession. When compared to the negotiations led by CEECs, the vetoes exercised by France and Cyprus clearly indicated that "Turkish negotiations are highly political" (Müftüler-Baç, 2017, p. 8).

The impact of these political hurdles was multiplied by other difficulties linked with Greek Cyprus' 2004 EU accession, which directly bore upon Turkey's negotiations. Relatedly, Turkey's refusal to extend the Ankara Agreement's Additional Protocol (i.e., the 1995 EU-Turkey customs union) to new member-state Cyprus effectively meant that Turkish ports and airports remained closed to Greek Cypriot access, prompting the European Council in December 2006 to veto the opening of eight related negotiation chapters while deciding that no other chapter would be provisionally closed unless Turkey complied.

The net effect of these developments was that during the course of its accession negotiations since 2005, Turkey was able to provisionally close only one chapter (“Science and Research”, June 2006) and open 16 out of the remaining 20 chapters which were not subject to a veto. Compared to the other EU candidates,⁴ Turkey’s negotiations so far moved at a snail’s pace, making the country “‘an anomaly’ in EU’s widening process” (Turhan, 2017, p. 2).

Clearly, Turkey has been a special, *sui generis* case for the EU throughout its relations with it. Although steps such as candidacy and the opening of membership negotiations technically – albeit slowly - moved the accession process forward, in reality, discriminatory impulses have proven decisive. On the one hand, unlike the CEECs “returning to Europe”, Turkey was never seen as belonging to the “European family”; it was primarily treated by the EU with a strategic rationale (Yenel, 2017, p. 32). On the other, and largely relatedly, it traditionally drew high and rising opposition to its membership from European publics, especially in member-states with large numbers of Turkish immigrants (e.g., Germany, Austria, the Netherlands). Not surprisingly, such low levels of support translated into many European governments (e.g., Austria, Germany, France)’ “sceptical if not hostile positions towards Turkish accession” (Phinnemore and İçener, 2016, p. 455). Consequently, although official EU rhetoric continued to honor Turkey’s EU accession perspective based on the principle of *pacta sunt servanda*, alternative differentiated integration arrangements such as privileged partnership during 2002-2005 (Karakas, 2013, p. 1067) or, more recently, “special partnership”, figured prominently in Europe. This contradiction, which some have rightly labeled as the EU’s “Janus-faced” policy towards Turkey (Hürsoy, 2017),

⁴ Notably, Croatia began accession negotiations on the same date as Turkey, closed them in 2011 and acceded to the EU in 2013.

has grown in recent years in parallel to Turkey's rising strategic significance for the EU (i.e., within the context of the refugee crisis) notwithstanding its mounting illiberalism. When it comes to the pressing question of "what to do with Turkey", many European capitals now seem to be guided by a "politics of pretending", where the process [of membership negotiations] is kept alive only because nobody wants to take responsibility for finally bringing it to an end" (Alaranta, 2016, p. 7).

The EU's Crises and Turkey's Rising Strategic Value

In recent years, the multiple "crises" that the EU had to deal with – "the [2010] Eurozone crisis, [the refugee crisis], the rise of populist Euroscepticism, the implosion of the Middle East, Russia's assertiveness in the east, escalating jihadi terrorism and Brexit" (Tocci, 2017a, p. 496) - have reasonably shifted its policy priorities. As the EU went through "its most sustained and testing period of crisis" during the last decade, even the sustainability of European integration became the subject of scholarly debate (Phinnemore, 2015).

The EU itself recognized these challenges and came forward with a new Global Strategy (EUGS) which was announced in June 2016, in parallel to the Brexit referendum. As the Strategy put it bluntly:

We live in times of existential crisis, within and beyond the European Union. Our Union is under threat. Our European project, which has brought unprecedented peace, prosperity and democracy, is being questioned (EU HR/VP, 2016, p. 7).

Consequently, the new EUGS prioritized "protecting Europe itself" as opposed to pursuing goals such as Europeanization vis-à-vis third countries (Tocci, 2017a, p. 498). As such, it was a realistic readjustment of the EU's former, 2003 Security Strategy (European Security Strategy) which had optimistically geared EU foreign policy towards the promotion of democratic values in enlargement and neighboring countries

in a global order where transition towards democracy and neoliberalism proved relatively unchallenged (Ibid., p. 497).

These inward-looking evaluations not only refocused the EU's policy priorities for the future but also practically mirrored and reinforced some already existing trends in EU foreign policy. Turkey's evolving ties with the EU cannot to be assessed in isolation from this broader European approach which increasingly plays itself out in the Union's foreign relations. First, enlargement is no longer a priority of the EU, which, from a technical standpoint (and in the best possible likelihood), brings to the fore institutional alternatives like differentiated integration. With Croatia's accession, it "has reached its limits in 2013" and accession negotiations have been pursued at a slow pace not only with Turkey but also the other EU candidates in the Western Balkans (Müftüler-Baç, 2017, p. 3). In a sense, notwithstanding these countries' difficulties in meeting the EU accession criteria, the pause in enlargement echoes the then incoming Commission President Juncker's famous 2014 announcement delaying enlargement until 2019 in view of the Union's need to "digest the addition of 13 member states in the past 10 years".⁵ In addition and more ideologically, the absence of an "enlargement narrative" similar to the once popular frame of "uniting Europe" which provided the Union's "raison d'être" during the 1990s when post-communist EU candidates were "returning to Europe" (Phinnemore and İçener, 2016, p. 457-458), has also weakened the Union's enlargement zeal.

Second, in dealing with the above challenges and crises, the EU has noticeably turned inward and "retreated from its democracy support role over the course of 2016" in its neighborhood (Pomorska and Noutcheva, 2017, p. 8). "Acting strategically and securing its own interests [as opposed to] playing it normatively and standing up for its

⁵ See Juncker's policy priorities envisaged for his term, discussed at: <http://juncker.epp.eu/my-priorities>.

values” guided EU foreign policy as the Union struggled to resolve crises occurring in the European periphery, notably, the refugee crisis (Ibid., p. 5) Consequently, the Union often turned a blind eye to democracy problems in the Western Balkans and Turkey for the sake of securing these regimes’ cooperation in stopping the refugee flows to Europe (Ibid., p. 5).

These ongoing developments in EU external action as assessed and embedded by the latest EU Strategy, inevitably fed into EU-Turkey relations and reinforced the historical trend toward differentiated integration. On the one hand, the EU seems to have retreated from its democratic anchor role vis-à-vis Turkey, as most explicitly demonstrated by its refugee deals with Ankara where conditionality has been applied rather softly in order to secure the latter’s cooperation. At the time of this writing, apart from the European Parliament’s July 2017 resolution recommending the suspension of accession negotiations with Turkey and the German Foreign Minister Sigmar Gabriel’s more recent calls to take concrete action against Turkey - i.e., in the form of ending Commission-led preparations for the modernization of the EU-Turkey customs union as well as halting EU aid to Turkey and increasing financial pressure on Ankara on a bilateral basis (Euractiv, 2017) - , the Union’s attitude regarding Ankara has remained at the level of mere verbal criticism. Moreover, the criticism has been rather muted or postponed when the EU needs Turkey for strategic reasons, such as was the case during the making of the refugee deals. This soft European approach does not bode well for restoring Turkey’s democratic commitment and by extension, chances of EU membership as it emboldens the Turkish government to maintain its authoritarian stance. As a result, so long as the EU benefits from functional cooperation with Ankara and prioritizes strategic interests over democratic values, a differentiated integration arrangement with Brussels seems to be Turkey’s best bet.

On the other hand, there is an increasing political tendency within European circles to treat Turkey as a “strategic partner” rather than engage with it as a serious EU candidate. Although Turkey’s ongoing authoritarian drift has no doubt contributed to this perception, it was the refugee crisis which provided the opportunity for a re-shaping of ties with Turkey by bringing to the fore the EU’s strategic dependence on Turkey. This dependence, along with the long-standing politicization of Turkey’s membership both in Turkey and Europe, created the conditions for resetting the EU-Turkey relationship (as hypothesized by Schimmelfennig et al., discussed above). Hence, the EU-Turkey agreements of 2015 and 2016 effectively downgraded Turkey’s status from accession country to strategic partner and cleared the way for a new, differentiated cooperative relationship where the two sides can closely cooperate over mutually beneficial areas.

The EU’s Refugee Crisis: A Moment of Opportunity for a Strategic Partnership between the EU and Turkey

The unprecedented flow of Syrian refugees to Europe in 2015 led to a strategic rapprochement between the EU and Turkey (Saatçioğlu, 2016). As the EU was unable to apply a “European solution” (i.e., a solution built around relevant EU principles such as “solidarity” and “fair sharing of responsibility” among the member-states)⁶ to this growing challenge in the fall of 2015, it felt constrained to seek Turkey’s cooperation for externalizing the crisis on the basis of its strategic interests. Consequently, largely under the initiative of the German government, the EU-Turkey Joint Action Plan was adopted in October 2015, forming the basis of two subsequent cooperative agreements reached on 29 November 2015 and 18 March 2016, respectively. With these arrangements, in exchange for agreeing to stop the flow of refugees to Europe via

⁶ As explicitly stated in the EU’s Lisbon Treaty: “The [asylum and immigration] policies of the Union ... and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States” (Lisbon Treaty, Art. 80).

Turkish soil and hosting them in Turkey, Ankara was promised EU financial aid (geared towards covering hosted refugees' needs), "re-energized" EU-Turkey accession talks, and more notably, the conditional prospect of visa liberalization for Turkish citizens in the Schengen area.

As far as the broader EU-Turkey relationship is concerned, the deals suggested that a new format of relations, which would be crafted outside of the framework of accession negotiations, is in the making (Turhan, 2017, p. 4). On the one hand, substantively speaking, the EU-Turkey Statement of 29 November 2015 heralded the primacy of strategic interdependence and cooperation in multiple areas ranging from migration to the economy (via the modernization of the EU-Turkey customs union), energy and counter-terrorism.⁷ On the other, it was decided that "a structured and more frequent high-level dialogue" consisting of regular EU-Turkey summits (to be held twice a year) would provide a "platform to assess the development of Turkey-EU relations" and discuss issues of mutual concern (European Council, 2015a). This institutionalization of bilateral summits between the EU and a candidate country (Turkey) proved significant not only because it constituted the first of its kind in the EU's enlargement history but also because it established an alternative, preferred avenue for EU-Turkey interactions in comparison to longstanding yet ineffective mechanisms such as the EU-Turkey Association Council (Müftüler-Baç, 2017, p. 17-18). As Müftüler-Baç rightly points out: "... The bilateral summit indicates that Turkey's relations with the EU stepped out of the traditional EU negotiations strategy in its enlargement policy, and indicate a new pattern of a differentiated integration between the EU and Turkey" (Ibid., p. 18).

⁷ For a detailed analysis of these individual areas of EU-Turkey cooperation, see, Müftüler-Baç (2017).

At a broader level, a closer look at the EU's decisions and statements on Turkey in the aftermath of the refugee crisis reveals EU officials' and member-states' (represented by the Council) growing prioritization of strategic, differentiated ties with Ankara over the official aim of Turkish accession. Although a full discourse analysis is beyond the scope of this paper, it should nonetheless be noted that a generally strategic tone emanates from the EU's signals in this period. In a way, the tone was set at the outset by European Council President Donald Tusk when launching the November 2015 EU-Turkey deal: "Turkey remains a strategic partner for Europe, but also a candidate country of the EU" (European Council, 2015b). By the end of 2016, the Commission's Progress Report on Turkey opened with the sentence: "Turkey remains a key partner for the European Union", and underlined enhanced EU-Turkey "cooperation in the areas of joint interest, which support and complement the accession negotiations" (European Commission, 2016, p. 4). While former Commission reports had also evaluated functional relations between Ankara and Brussels in addition to the former's progress towards accession, the 2016 report became the first to put this much emphasis on EU-Turkey "partnership". In the same vein, the December 2016 EU General Affairs Council labeled Turkey "a candidate country and a key partner for the Union" and underscored the EU's commitment to working together with it "for the mutual benefits of our longstanding cooperation in many important fields" (European Council, 2016, p. 9). Significantly, even the openly critical European Parliament – in its July 2017 recommendation to suspend accession negotiations with Turkey in view of Ankara's anti-democratic constitutional reform package passed in April 2017 – "[s]tressed the strategic importance of good Turkey-EU relations" (European Parliament, 2017, point 3) and called "for the deepening of ... relations in key areas of joint interest, such as counter-terrorism, migration, energy, the economy and trade",

emphasizing that it would be “an investment in the stability and prosperity of both Turkey and the EU” (Ibid., point 20).

The EU’s “strategic-ness” vis-à-vis Turkey also revealed itself in its soft application of democratic membership conditionality in the period leading up to the refugee deals, as mentioned above. The making of the deals necessitated frequent, high-level visits between Turkey and Brussels as well as individual member-state leaders (notably, German Chancellor Angela Merkel). During their contacts and negotiations with Ankara, European representatives toned down their democratic criticisms of Turkey, at a time when the country’s democratic backsliding was proceeding in full speed, which was documented – ironically so - by increasingly critical Commission progress reports. As bluntly admitted by Commission President Jean Claude Juncker on the eve of the November 2015 deal:

We can say that EU and the European institutions have outstanding issues with Turkey on human rights, press freedoms and so on. We can harp on about that but where is that going to take us in our discussions with Turkey?... We want to ensure that no more refugees come from Turkey into the European Union (The Telegraph, 2015).

Similarly, when Merkel visited Turkey in October 2015 to negotiate the details of the refugee deal with Ankara (thus giving the illiberal Turkish government important political ground to capitalize on before Turkey’s November 1 parliamentary elections), she de-emphasized Turkey’s democracy problems and expressed support for re-energized EU-Turkey talks. As the representative of the lead EU member-state during the management of the refugee crisis, her change of tone proved significant not only because it contrasted with her more opposing, pre-crisis stance concerning Ankara’s democratic violations, but also because it signaled that the EU is willing to put democratic values on the back burner if doing so is strategically indispensable.

More concretely, to secure Turkey's cooperation with the crisis, the EU did not shy away from offering Ankara certain political concessions, all pointing to a softer application of conditionality. For example, the Commission postponed the publication of its 2015 progress report (one of its most critical reports to date) until after Turkey's November elections, eventually issuing it on 10 November 2015. The European Parliament was the only EU institution which criticized the move, arguing that it "was a wrong decision, as it gave the impression that the EU is willing to go silent on violations of fundamental rights in return for the Turkish Government's cooperation on refugees" (European Parliament, 2016). Similar criticisms were raised by observers of EU-Turkey relations in relation to the EU's opening of Chapter 17 (Economic and Monetary Policy) to negotiations in December 2015: "[O]pening a chapter now - and a chapter that is not directly related to human rights issues - signals to a radiant [Turkish Prime Minister] Davutoğlu that EU norms are up for grabs" (Bechev and Tocci, 2015).

In short, the EU's strategic approach to Turkey as it handled the refugee crisis revealed a progressive trend toward a new type of functional relationship between Ankara and Brussels. Indeed, the deals with Turkey were finalized in the spirit of the Union's strategic partnerships and/or dealings with other countries in its neighborhood (e.g., Libya), which have similarly been achieved and maintained in disregard for these regimes' democratic commitment. More interestingly, it could be argued that the period surrounding the making of these agreements bears striking resemblance to the 1990s when the EU maintained (and favored) a relationship of association with Turkey while not using formal accession conditionality which had not yet come to fruition in relation to either Ankara or more generally, the CEECs. With Turkey's April 2017 adoption of a constitutional reform package establishing a fully empowered, executive presidency via abolishing separation of powers and the rule of law, European political tendency

towards functional, differentiated integration has grown in parallel with European debates on whether the EU should cut accession negotiations with Ankara.

Quo Vadis EU-Turkey? Towards a new Institutional Framework for a Strategic Partnership

Recent EU-level political developments discussed above have combined with Turkey's authoritarian drift to solidify European perceptions that Turkey's EU membership perspective is no longer tenable and therefore, designing an alternative form of EU-Turkey relationship (which is already in the making following the refugee crisis) is a more realistic target for the future. Although member-states are so far unwilling to formally end accession negotiations with Turkey (to the exception of Austria, and recently, critical voices from the German government represented by Sigmar Gabriel, suggesting to cut EU pre-accession funds to Turkey, a move which would be tantamount to halting Turkey's accession process⁸), there is little disagreement regarding Turkey's new positioning vis-à-vis the EU as a strategic partner rather than a serious EU candidate.

Against this backdrop, the need to formulate a new institutional format for EU-Turkey relations has recently been acknowledged at the highest political level within the EU. In the aftermath of Turkey's controversial constitutional referendum, EU Commissioner for European Neighborhood Policy and Enlargement Negotiations Johannes Hahn noted that "the current situation [between the EU and Turkey] is not sustainable" and called on the member-states to consider a new format for relations with Turkey which would be geared towards enhancing mutual cooperation (Reuters, 2017). The latest EU-Turkey High Level Political Dialogue held in Brussels on 25 July 2017 fell short of debating such an institutional alternative, yet underscored - in the

⁸ For a comprehensive analysis of bilateral tensions between Germany and Turkey which have contributed to this outcome, see, Eppel (2017), and Hauge (2017).

spirit of former EU statements mentioned above - that “Turkey is at the same time a candidate country and a strategic partner for the European Union”.⁹ Specifically, as Mogherini reported, the meeting “discussed [EU-Turkey] cooperation in the fields of energy, security, countering terrorism, migration management, ... economic and trade relations, but also transport and agriculture” while stressing that such cooperation needs to be “sustained by [Turkey’s] concrete, positive steps in the areas of rule of law and fundamental freedoms” (Ibid.).

Turkey’s reaction to these developments has been ambivalent at best, as it has been shaped by the Turkish government’s politicized stance on the question of EU membership. Although the government maintains its official commitment to EU accession, its representatives’ tone regarding relations has politically alternated between indifference concerning membership – fed by an occasionally expressed sense of Turkish moral superiority vis-à-vis the EU and/or resentment and mistrust caused by the EU’s longstanding double standards towards Ankara - and animosity expressed via hostile remarks directed at individual member-states.¹⁰ Which reaction gains the upper hand has been driven by domestic political developments and the government’s political calculations in a country where EU membership is no longer as popular as it once was.¹¹ As admitted in a July 2017 interview by Erdoğan: “If the EU, bluntly says, ‘We will not be able to accept Turkey into the EU’ this will be comforting for us ... The

⁹ “Remarks by High Representative/Vice-President Federica Mogherini at the press conference following the EU-Turkey High Level Political Dialogue”, available at: https://eeas.europa.eu/headquarters/headquarters-Homepage/30391/eu-turkey-high-level-political-dialogue_en.

¹⁰ This was the case, most notably, when Turkish President Tayyip Erdoğan boldly accused the Netherlands and Germany of being “Nazi remnants” and displaying “fascist actions” when these governments banned Turkish political campaign rallies (planned in support for Turkey’s anti-democratic April 2017 constitutional package) from taking place in their countries (The Independent, 2017).

¹¹ A 2017 national survey has found that only 48.4% of the Turkish public supports Turkey’s EU membership (in comparison to the relatively high support which remained over 70% in 2005) while an increasing percentage, - by 14.6% compared to 2016 -, 81.3% thinks that Turkey will never join the EU (Akgül Açıkmeşe, 2017).

European Union is not indispensable for us... We are relaxed” (BBC, 2017). Noting that the majority of Turks did not “want the EU anymore” and considered its approach to Turkey “insincere”, he added: “Despite all this we will continue being sincere with the EU for a little more time” (Ibid.).

Clearly, at the present political juncture, the Turkish government officially remains intent on paying lip service to the goal of EU accession as it does not want to be the side that abandons the deadlocked EU accession process. This was firmly stated by Turkey’s EU Affairs Minister Ömer Çelik: “We reject with the back of our hand any proposals that there should be strong cooperation between Turkey and the EU in other areas instead of accession talks” (Middle East Observer, 2017). In reality, however, there is an increasing preference among the Turkish leadership for “reshaping the relationship away from the political conditionality inherent in accession, toward a more ‘transactional’ framework focused on trade, economic and security collaboration” (FEUTURE, 2017). This is evident in the government’s intransigence not to restore Turkish democracy and rule of law framework despite the EU’s ongoing criticisms. It is also apparent in Ankara’s overwhelming interests (i.e., in comparison to the EU’s gains from upgrading relations with Turkey) in boosting and institutionalizing cooperation with the EU via, most concretely, modernizing the 1995 customs union arrangement (Ülgen, 2017, p. 2-6).

What form the new EU-Turkey relationship will take is an open question which is beyond the scope of this paper and has been extensively discussed elsewhere (Karakaş, 2013; Hürsoy, 2017; Turhan, 2017; Müftüler-Baç, 2017). Suffice it to say that the emerging “strategic partnership” will need to be institutionally structured and customized to capture the specific dynamics of EU-Turkey relations, both in the present time and against the historical backdrop. Alternative models of differentiated

integration such as privileged partnership, extended associated membership (EAM), the European Economic Area (EEA) or the European Free Trade Area (EFTA) would be of limited guidance in this endeavor. Indeed, the first two have already been rejected by the Turkish government (Karakas, 2013) while the latter two would not be feasible for Turkey as they include existing member-states or non-member European countries (i.e., Norway, Iceland, Switzerland, Lichtenstein) with an already well-functioning rule of law framework which is indispensable for maintaining reliable economic relations. Hence, it appears that a new institutional framework will need to be invented, and as Hahn admitted, “[the EU] probably [has] to be creative on this” (RFE/RL, 2017).

Conclusion

This paper has analyzed the evolving nature of the EU-Turkey relationship against the backdrop of EU-level developments which have come to bear on it in recent years. Focusing on the concept of differentiated integration, and more specifically, discriminatory differentiation, it has argued that this relational framework has historically been influential in the case of EU-Turkey relations. Although both the EU and Turkey kept their official commitment to accession throughout the years, the signs for an alternative form of relationship were always there, given the difficulties involving Turkish membership for both sides and European contestation vis-à-vis Turkey’s EU candidacy.

Yet, the trend toward differentiated integration has never been more pronounced. The EU’s multiple crises since 2010, and principally, its management of the refugee crisis since 2015, have placed EU strategy at the center of EU-Turkey relations. Effectively, Turkey has been perceived and treated as a strategic partner in European circles while its formal candidate status has not been officially dropped from the agenda.

Given these developments, a new institutional format capturing the relations' changing dynamics is in order. In realizing this daunting task, both the EU and Turkey would benefit from remembering their relations' historically *sui generis* nature. Turkey is the one EU candidate with the longest accession history, and if negotiations are eventually ended, it will be the only country failing to complete its accession talks despite having been subject to rigorous membership and *acquis* conditionality. Hence, at least from a normative standpoint, such a historical legacy demands the formulation of a relationship which, while being moved outside the accession framework, would still be norm-based. Such an institutional alternative would not only help Turkey's dire democratic prospects (Tocci, 2017b; Aydın-Düzgit, 2017) but would also be legitimate considering its fit with "normative power Europe" as well as the EU's express need to respect "principles" while pursuing "pragmatic" foreign policy (i.e., "principled pragmatism") as announced by the latest EU Global Strategy (Tocci, 2017a). Last but not least, it may also be indispensable from a purely practical perspective, i.e., when it comes to ensuring the smooth functioning of a potentially upgraded Customs Union between the EU and Turkey (European Parliament, 2017, point 22).

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