



THE EUROPEAN UNION'S ALTERNATIVE MODELS FOR MAXIMIZING ITS INTEGRATION STRATEGY FOR CANDIDATES AND NEIGHBOUR STATES A PROCESS OF EXTERNAL DIFFERENTIATION

Meltem Müftüleri-Baç and Brooke Luetgert

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Abstract

This paper investigates the patterns of integration between the European Union (EU) and the current candidates (Turkey and Serbia in the Western Balkans are used as case studies), and neighbourhood countries, specifically Ukraine. It inquires whether the priorities negotiated between the EU and current candidates and neighbourhood countries in terms of harmonizing and implementing EU legislation provide a form of differentiated integration. The aim is to uncover the EU's integration strategies for its enlargement and neighbourhood policy. While the paper assesses the patterns of differentiated integration for Turkey, Serbia, and Ukraine, it identifies a path of integration with the non-members of the EU, enabling the EU to expand its functional rules prior to or in lieu of accession, maximizing the EU's integration capacity. The paper compares the differentiated integration pattern between the EU and Turkey on the one hand, and between the EU and Serbia (as an example from the Western Balkans) and Ukraine (as a European Neighbourhood country) on the other.

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1. Introduction¹

In 2016, the European Union (EU) is facing multiple crises with a continuing influx of refugees from Middle Eastern and North African countries, a proactive Russia that has become more aggressive over recent years, as well as instability to its Eastern and Southern borders. All of these developments and crises surrounding the EU necessitate the formulation of stronger European policies to deal with its external environment. The EU's enlargement policy and the European Neighbourhood Policy (ENP) are the two key instruments adopted partly for dealing with such challenges. However, the EU's ability to utilize these instruments to stabilize its neighbourhood remains rather limited. While the enlargement policy involves the preparation of the candidates for an eventual accession, a membership perspective lacks in the ENP. Nonetheless, all the current candidates - the Western Balkan countries and Turkey - for EU accession and the ENP partner countries are integrated into the EU's political and economic policies in varying degrees. That is largely because "the ENP is a cooperation format adopted for all the parties' interests and the EU has moved from a 'one-size-fits-all' approach and has now a differentiated policy for partners".² This also seems to be the case for the current candidates, where the Western Balkans and Turkey all enjoy varying degrees of integration with the EU, with or without the perspective of accession in the near future. The question that remains to be answered is the extent to which the process of differentiated integration holds the key for the EU in its dealing with its external environment. This paper looks at differentiated integration as a model of maximizing the EU's integration capacity, drawing upon the data compiled from the European Commission's Progress Reports on Turkey and Serbia, the European External Action Service (EEAS)'s Progress Reports on Ukraine, as well as from in-depth interviews³ with EU officials responsible for Turkey, the Western Balkans and the ENP from the DG Near⁴ and the EEAS conducted in Brussels in December 2013 and February 2016, and with the EU Delegation in Ankara in March 2015 and 2016.

The paper aims to assess the role that differentiated integration plays for the EU's external integration capacity across different institutional contexts - enlargement and neighbourhood policy - through the case selection of Turkey, Serbia, and Ukraine. For the ENP, differentiated integration as a model is useful in drawing non-EU European countries with membership aspirations but without a membership perspective, such as Ukraine, into the EU's orbit. For the enlargement countries, differentiated integration might be seen as a stepping stone on the route to accession with Serbia as a prime example here. For Turkey, also an enlargement country, differentiated integration might emerge as an alternative to accession but with multiple layers of integration that enables these countries to be anchored to EU institutions and policies.

While European solidarity has grown, the challenges of enlargement combined with the pursuit of deepening integration have resulted in a strikingly uneven and irregular playing field. With 28 current member states and six candidate countries, three of whom are negotiating for accession, differentiated integration

1 The authors would like to thank Aylin Ece Çiçek for her research support.

2 Interview with an EU official in the EEAS, ENP strategies and instruments division, Brussels, 16 February 2016.

3 The interviews were conducted by Damla Cihangir and Ipek Demirsu in Brussels, and Aylin Ece Çiçek in Ankara in December 2013, March 2015, February and March 2016.

4 Directorate General for European Neighbourhood Policy and Enlargement Negotiations.

is widely accepted as both a strategy and functional reality.⁵ However, the question that remains to be resolved is whether differentiated integration as a model is applicable for the EU's external relations (Gstöhl 2015; Jokela 2014). The next section looks at the differentiated model as a framework for maximizing the EU's integration capacity (Lavenex 2004, 2014; Schimmelfennig 2014b), and as an alternative model of integration for countries that are not yet ready for accession - Turkey and Serbia - or that do not currently have the membership perspective as in the Eastern Partnership countries, such as Ukraine. The paper looks into the patterns of economic and political cooperation between the EU and these three countries to assess whether extensive ties and significant patterns of cooperation could be seen as differentiated integration - a model that was initially used to assess internal compliance with EU policies among the member states themselves (Stubb 1996; Schimmelfennig et al. 2012). These three cases will be presented in the paper as examples of the EU's ability to extend its functional and normative rules to countries in its periphery - with or without an accession perspective. The paper also aims to reveal the implications of an accession perspective on these three countries and their levels of integration regarding EU policies.

2. Differentiated integration, the future of the EU and its neighbours

Whether studied as a process or a system, differentiated integration is a 'normal feature' of regional integration (Warleigh-Lack 2015). There are different formats of this form of integration, such as the non-member state Norway currently complying with over 95 percent of the EU legal framework⁶, yet not willing to commit to membership, while Britain (and candidate or neighbouring countries) pursues the potential to select country specific variants of adherence to the *acquis communautaire* on the other hand (Evans 1997). Beyond the physical borders of the EU, a group of countries without a membership perspective - the European neighbours - aims at establishing closer ties to the EU economically and politically (Börzel/Lebanidze 2015). This is why the former European Commission President Prodi suggested the ENP as a tool "in which we could ultimately share everything but institutions and a ring of friends"⁷, posing the question of whether differentiated integration can offer a feasible alternative to full membership. Taking the definition by Dyson and Sepos (2010: 4), we can understand differentiated integration as:

"the process by which states (or their substate units) move at different speeds and/or toward different goals with regard to common policies. This involves the adoption of different formal and informal arrangements both hard and soft law inside and outside the treaty framework. What makes this form of integration unique is the potential for both member state opt out as well as nonmember state opt in and a unique mix of bilateral and or multilateral agreements for enhanced cooperation in some areas while not in others."

Clearly the pursuit of core community building projects, such as the customs union, external trade, the

5 This was stressed by the DG Near officials interviewed in Brussels on 16 February 2016 as a key development in the EU enlargement process.

6 Excluding the monetary union.

7 Prodi, R. (2002) 'A Wider Europe - A Proximity Policy as the Key to Stability', Speech/02/619, Sixth ECSA-World Conference, Brussels, 5-6 December.

European single market and competition policy, emphasize the shared belief in mutual gains from a continent-wide, shared market (Majone 2009). Yet, successive waves of enlargement have met with ever higher entry hurdles of the growing *acquis communautaire* and potential vetoes of the members already integrated into the EU. The principle of full membership or nothing at all poses particularly high barriers on the future of enlargement. Dyson and Sepos (2010) view differentiated integration as a key instrument for overcoming collective action problems, as a tool for coping with uncertainty and risk while facing shared global problems of security and stability.

Differentiated integration was most notably institutionalized in the Amsterdam and Lisbon treaties. Legal differentiation means that (at least for a certain prudent time) EU member states may have different rights and obligations ranging from full participation to complete absence with regard to specific EU policies. The addition of flexibility clauses and the concept of enhanced cooperation is revealing of this trend toward varied integration patterns. While we acknowledge the European project to have been most ambitious in the establishment of a currency union and the abolition of border controls as well as the initiation of a shared labor market, this common integration trajectory has rarely been universally favored. Indeed, even the move toward the increased use of qualified majority voting indicates the *de facto* necessity for flexibility and movement away from uniform and universal decision-making. Yet, in the interest of state sovereignty, as soon as the potential for one state's interest to be overruled is given, legitimacy of the integration project can only be maintained through the flexibility of opt-outs and allowance of partial agreements. While these may undermine the uniformity of the legal order and contribute to the growing body of binding legislation, from the perspective of political will and popular legitimacy it appears that flexibility is a defining and lasting feature of the EU's constitutional system (de Burca/Scott 2000). Flexible governance is viewed in the Lisbon Treaty as a means to enhance further democratic and efficient functioning of the institutions. While differentiated integration as a concept is applicable to the EU member states' own varying degree of compliance, it is possible to see it as a model of maximizing the EU's integration capacity towards the non-EU European countries in the EU's external neighbourhood.

This is also emphasized by Gstöhl (2015: 854) as the EU's neighbourhood relations ranging from "narrow, bilateral, static models to broad, multilateral, dynamic models" and the trend towards broader and more dynamic relations are becoming more visible over time. She suggests that, as the neighbouring states have increasingly vested interests (or 'stakes'), the demand for closer policy integration increases. This closely follows the logic of Schimmelfennig et al.'s (2012) claim of interdependence driving integration. Based on the example of the expanding economic community, Gstöhl (2015) sets out to document the presence and patterns of deep economic integration. Specifically, the European Free Trade Area (EFTA) countries completed the Community regulations on the Internal Market and, through the European Economic Area (EEA), received the economic and trade benefits of market participation. Yet, these countries were precluded from any decision-making institutions. In terms of extending the EU's jurisprudence beyond its physical borders, the bilateral agreements, for example with Switzerland or the more institutionalized cooperation agreements with the EEA members Norway, Iceland, and Lichtenstein, provided unique manifestations of the EU's differentiated integration with non-EU European countries. The question of sustainable integration of non-member, neighbour and partner states re-emerged after Andorra, San Marino and Turkey

negotiated their own customs union and bilateral agreements in the 1990s, and when the new Eastern and Southern Mediterranean neighbouring countries began to seek more EU participation and institutional connection over the last decade. For these non-EU European countries engaged with economic integration with the EU or extensive trade agreements, the question becomes whether 'deep integration'⁸ or partial adoption of the *acquis* in the context of EU external relations can be sustainable without the extension of active participatory rights in EU institutional decision-making?

Taking into account a specific area of the customs union, there is a difference between the static, bilateral agreement of the EU and Switzerland versus the more dynamic, broad and multilateral model with the EEA, which grants EFTA representatives "policy-shaping" powers without the right of co-decision or formal voting and veto rights (Gstöhl 2015: 858). However, without binding decision-making participation in the Council of Ministers or European Parliament, it is questionable that this 'policy-shaping' influence amounts to anything more than increased informational provision regarding changes in the *acquis* for these partner states. While the static, bilateral agreement with Switzerland risks a lack of efficient arrangements for implementing the ever growing corpus of EU law and European Court of Justice (ECJ) case-law, and thereby threatens the homogeneity of EU policy application (Council of EU 2010: paragraph 42), the proposed 'two pillar' alternative of dynamic and multilateral negotiation (as found in the EFTA example), may, in reality, offer little more than a diplomatic nod to partner states that want to feel more involved in policy formulation. As the examples of Andorra, San Marino and Turkey illustrate, while domestic policy makers may welcome the opportunity of economic gains from increased market access and some (limited) policy formulation influence, particularly when these are viewed as transitional measures on a path toward accession, these arrangements may offer a problematic lasting alternative to membership. The model of bilateral negotiation may be static and not conducive to legal homogeneity over time, given the dynamic nature of the *acquis*; however, higher 'stakes' or growing interdependence leading to deeper regional agreements will necessitate shared sovereignty (Lawrence 1996: 108). At the very least, these deeper, multilateral and broader agreements will require a change in institutional representation at the European level. How strong this voice in future 'policy shaping' may become will ultimately depend on the salience of legal homogeneity in that issue area, the alignment of policy-specific preferences between the member states and the neighbouring partner and the policy-specific interest (i.e. utility) of EU member states from the ongoing partnership. This is also currently seen in the Turkish-EU customs union where a further economic integration might have some economic gains at least in the short term, but might become untenable due to the third parties' non-inclusion into the EU decision-making processes for policies that impact these third parties, such as free trade agreements that the EU signs or the ongoing Transatlantic Trade and Investment Partnership negotiations with the United States.

While the EEA, customs union or comprehensive free trade agreements may offer integration alternatives to full membership, other policy areas, such as security and defense, may become more contested when implementation with policy decision-making influence is expected. The adaptation to the EU's common foreign security and defense policies, participations in EU-led military operations or deepening security integration emerge as an additional layer of differentiated integration between the EU and its non-EU European neighbours.

8 This term was coined by Lawrence (1996: xxvii, 17) and referred to by Gstöhl (2015: 856).

Holzinger and Schimmelfennig (2012) remind us of the potential for functional federalism: When jurisdictions are “purely functional and independent of space and political borders”, we approach the idea of Functional Overlapping Competing Jurisdictions (FOCJ) (Frey/Eichenberger 1996). These units are defined by their jurisdictional function. They can formulate and implement shared policy decisions and build lasting yet flexible institutions. As suggested by Holzinger (2000), this multi-level approach to governance can include member states, non-member states and sub-national regions. Decision-making in this flexible co-operation scheme would be undertaken by the members of the flexible cooperation, implying that unitary state preferences and unitary EU policy could become elements of the past.

Considering these arguments, we must reframe the debate on possible models of external differentiated integration to include not only a classification of static vs. dynamic, narrow vs. broad, and bilateral vs. multilateral models, but also a consideration of the forces driving these integration outcomes. First, domestic policy preferences and political realities matter. As we will see by looking at the specific examples of Turkey, Serbia, and Ukraine, we cannot make sweeping claims about the quality or applicability of a model that was successful in one region (like the EEA in Switzerland and Norway) to other countries in other regions, such as Turkey or Ukraine (Schimmelfennig 2014b). Second, the policy area is also decisive in determining the potential for differentiated integration. While an area such as the internal market or energy agreements may be easier to regulate and monitor, other areas more central to national sovereignty, such as security, might prove more or less problematic for differentiated integration, depending on changes in those issue specific domestic preferences. Third, while issue area and policy preferences of the neighbouring and partner states are crucial for the advancement of deeper integration initiatives, so too are the preferences of the existing member states and their ability to veto models of integration beyond static, bilateral and narrowly defined agreements. No matter how high the ‘stakes’ of the neighbour state may be, the policy dependence of the existing member states will strongly influence the speed and depth of external differentiated integration. Finally, as the recent migratory crisis brilliantly exemplifies, preferences of both neighbour/partner states as well as existing member states (and their dependence on these partners) can shift dramatically over time given an external crisis. We see this clearly with regard to the current refugee crisis as well as with regard to energy policy after nuclear crises and banking regulations after the recent financial crisis.

Neighbourhood relations as understood in Article 8 TEU (after Lisbon) include a legal basis for the export of EU political and legal norms to neighbouring countries: Specifically, the EU is empowered to “develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union” (Hillion 2014: 13). Arguably, this allows for an institutionalized justification for the creation of a supportive neighbourly space around the borders of the Union. The Lisbon Treaty requires that the Union shall uphold and promote both its values and interests (Article 3(5) TEU), thus, by not pursuing continued legislative approximation between the EU and the ENP countries, the Commission would be in violation of the Lisbon Treaty (Gstöhl 2014). Still, this strategy to promote convergence (while similar to encouraging compliance to the Copenhagen Criteria for the candidate countries) is clearly distinct from a membership perspective - however slow-track (Gawrich et al. 2010). While the enlargement policy has the highest leverage in enhancing adaptation to the EU rules and norms, the ENP is also a similar tool with respect to creating a new network of partner countries for the EU (Börzel 2016).

Accordingly, the paper looks at specific examples of external differentiated integration. It engages in an analysis about the benefits and disadvantages of these examples of differentiated integration as an alternative to membership for the neighbouring and partner states, through the case studies of Turkey, a candidate country in the Western Balkans, Serbia and in the ENP, Ukraine. These three countries have different experiences in terms of differentiated integration with the EU. Turkey, an associate member since 1963, has a customs union for industrial products since 1996, is a candidate for accession (1999), and has been negotiating for its accession since 2005. Its membership in the Council of Europe (1949) and NATO (1952) already integrated it into the European economic, political, and security spheres. However, its accession process to the EU remained largely rocky. Serbia, a candidate since 2012, has been negotiating for accession since 2014. While it was not even an independent state on its own up until the 1990s, it is nonetheless one of the main players in the Western Balkans, and most definitely the largest Western Balkan state that is not yet an EU member. Both Turkey and Serbia have an EU accession perspective and legal eligibility for membership. Ukraine is an important partner for the EU. Even though it does not have a membership perspective, it is engaged in varying degrees of integration with the EU under the ENP umbrella. These three countries are all experiencing different cooperation patterns with the EU, and their roles in the EU's external environment matter significantly. The following table compares them in terms of their economic size, population and trade integration with the EU.

Table 1: Economic indicators for Turkey, Serbia and Ukraine⁹

	GDP (US\$)	Population	Total import value with the EU (million €)	Total export value with the EU (million €)	% of trade with the EU/ Total trade	GDP growth rate (annual %)
Serbia	43,866,423	7,129,428	7,106,315	10,357,488	62	-1.8
Turkey	799,534,963	75,932,348	54,395,425	74,724,822	40	2.9
Ukraine	131,805,126	45,362,900	13,723,857	16,895,636	35	-6.8

Source: Authors.

The external differentiated integration patterns between these three countries and the EU could be assessed with regards to their economic cooperation arrangements with the EU, their adjustment to the EU's common foreign and security policy (CFSP) in terms of their alignment to the CFSP, and finally, the institutional arrangements that have emerged over time that integrate them into the EU without participation or decision-making rights. The rest of the paper investigates precisely these patterns

⁹ GDP per capita (current US \$), World Bank, available at <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>, accessed 10 October 2015.

Population (total), World Bank, available at <http://data.worldbank.org/indicator/SP.POP.TOTL>, accessed 10 October 2015.

Data for import value and export value have been collected from http://exporthelp.europa.eu/thdapp/display.htm?page=st%2fst_Statistics.html&docType=main&languageId=en, accessed 10 October 2015.

GDP growth rate (annual %), World Bank, available at <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>, accessed 10 October 2015.

of differentiated integration with Turkey, Serbia and Ukraine and assesses whether alternative differentiated integration patterns with these countries enhance the EU's integration capacity.

3. Turkey and the EU: A pattern of differentiated integration

While negotiations with Turkey for EU accession began in 2005, Turkey already differed from other countries negotiating for accession in terms of its adoption of the EU *acquis*. To be specific, in certain areas of EU legislation, from economic integration to external relations and European foreign policy, Turkey complied with some of the EU *acquis*. Turkey's economic integration to the EU since the 1995 customs union for industrial products, its involvement in the Community programs since 1999, its alignment to the EU's foreign and defense policies, and its role in energy transport and more recently, the close cooperation between the EU and Turkey on dealing with the refugee flows all add up to demonstrate that there are indeed multiple avenues where Turkey is already integrated into the EU, providing empirical support to the model of differentiated integration for the EU with non-member European countries (Schimmelfennig 2014a). For example, when one looks at Turkish harmonization with the EU *acquis communautaire*, it is possible to see a high degree of compliance in Turkish legislation to EU rules (European Commission 2014). Since 2004, Turkey has adopted 326 primary and 1730 secondary legislations to ensure alignment with the EU *acquis* in the 35 chapters.

Turkey already has a high degree of integration to the EU with its alignment to EU policies, and partly due to the instruments and Union programs that were opened to Turkey after its candidacy. However, its economic integration with the EU already preceded its accession negotiations and is tied to the 1963 Association Agreement (AA) which foresaw a customs union for industrial products. The 1995 Customs Union Agreement (CUA) between the EU and Turkey differentiated Turkey from all other candidates at the time, as it became the first and only country to realize a customs union prior to accession. Turkey adopted the EU's common external tariff for industrial products - with few exceptions - and the industrial components for some agricultural products. As a result, Turkey and the EU eliminated customs duties, quotas and surcharges on the industrial products originating in each other's markets. The customs union led Turkey to adopt the EU's trade rules, its common external tariff for trade with third parties, and harmonize its own economic rules and regulations to the EU *acquis*. Yet, the CUA does not include agricultural products nor does it have any clauses for services: it is solely for industrial products. The CUA also stands as more or less the first attempt by the EU to share some of its legal norms on trade with a non-member country.¹⁰ As a result, Turkey's trade with the EU expanded from \$28 billion in 1996 to \$158 billion in 2014, and Turkey became the EU's fifth largest partner. In 2014, the World Bank (Raiser/Wes 2014) recognized that both parties benefitted from the trade creation effects of the customs union. Table 7 provides a detailed analysis of the Turkish alignment to the EU's customs and trade rules, tracing the expansion of integration in these policy areas based on the European Commission's Progress Reports from 1998 to 2015.

¹⁰ Interview with EU Officials, DG Trade, 5 December 2013, Brussels.

The Turkish integration into the EU framework is such that under the customs union rules, Turkey is required to adhere to the EU's common commercial policy and common external tariff. This is particularly important in terms of trade relations with other countries. Every time the EU signs a free trade deal with a third party, Turkey needs to conclude a similar agreement with that party, as it happened following the EU-South Korean free trade agreement. The CUA sets the conditions under which free flow of industrial goods benefits the third parties that sign trade agreements with the EU whose products enter Turkey freely, but the same degree of preferences are not granted to Turkish products, which creates problems for Turkey.¹¹ That is because under the current customs union rules, Turkey is required to align to the EU's trade, customs policies and adjust to its preferential agreements with third parties but it has no participatory rights in the formulation of these trade-related decisions. The CUA obliges Turkey to adopt the EU law in related areas into its national law, but it does not have participatory rights in the formulation of these laws and policies, only a right of consultation. As indicated in the previous section, the absence of decision-making powers restrains the applicability of differentiated integration for non-members. The asymmetry between Turkey and the EU due to the lack of Turkish voting rights in relevant Council creates significant problems for Turkey.

The European Commission already suggested a modernization of the CUA with Turkey in its 2014 Enlargement Strategy, and envisaged to consider Turkey's participation in customs union related committees and establish consultative mechanisms to address this asymmetry and improve the functioning of the customs union. In 2015, both parties began the preparations for a High Economic Dialogue. It seems imperative to reform the CUA and perhaps establish a mechanism for Turkey's participation into the community programs on trade with third parties. A comprehensive arrangement including services sector and public procurement mechanisms would be a good step. If this is materialized, it would be an effective way of improving the customs union but also enhance Turkey's integration into the EU's internal market without or prior to full membership. Extending the customs union to services and agricultural products as well as enhancing Turkey's compliance with the EU's public procurement rules are all envisioned for the revamping of the customs union. This is also the reason why, on 12 May 2015, the European Commission and Turkey adopted a political agreement for the modernization and extension of the CUA. In short, the 1995 CUA shaped the Turkish adoption of the EU technical standards and enabled Turkish integration into the European networks and trade policies, in particular intra-industry trade. This is a good illustration of a pattern of differentiated integration where a non-member, Turkey, is integrated into the EU policies without necessarily jeopardizing the EU's functioning and could be seen as a pattern of gradual integration or an alternative mode of integration.

The second main area for Turkey's alternative mode of integration is the EU's foreign, security and defense policies. Turkey since the adoption of the European Security and Defence Policy (ESDP) in 1998 (since 2009: Common Foreign and Security Policy CFSP) has participated in EU-led military operations which began in 2003. It has the highest level of contribution to the EU-led operations as a non-EU member. Turkey adjusted to the CFSP positions as summarized in Table 2, and contributed to the EU's foreign policy but mostly through the NATO-EU cooperation scheme.

11 Interview with an EU Official, DG Trade, 5 December 2013, Brussels.

Table 2: Turkey's alignment with the EU's CFSP positions (2006-2015), compiled from the European Commission Progress Reports.

Year	Defined as broad	Broad
2006		
2007	45 out of 46	98%
2008	109 out of 124	88%
2009	99 out of 128	78%
2010	54 out of 74	74%
2011	32 out of 67	47%
2012	37 out of 70	52%
2013	17 out of 36	46%
2014	13 out of 45	29%
2015	16 out of 40	40%

Source: Authors.

The Turkish adoption of the EU's CFSP positions and its participation in the EU-led operations with the highest contribution that a non-EU European country has are indicators of another facet of its differentiated integration with the EU. While Turkey's alignment to the CFSP reached its peak in 2008-2010, and has declined since then parallel to the stalling of the EU accession process (Müftüler-Baç 2016), the Turkish role in the EU's CFSP is still critical. According to the EEAS official interviewed in 2016,

“Turkey and the EU have been cooperating in a broader sense in Foreign and Security Policy. We actually cover the whole world together in our external relations. There is a CSDP Dialogue Instrument between Turkey and the EU. Turkey contributed to the EU-led missions and since we cooperate on several policies, we constantly speak to each other”.¹²

It is for this reason that Turkey began to participate in the informal meetings of EU foreign ministers (Gymnich) from 2003 onwards. The Lisbon Treaty also advanced the Turkish inclusion into the EU's foreign policy by establishing a formal channel of communications through regular meetings between the EU's High Representative and the Turkish Foreign Affairs Minister. Turkish integration to the European Defence Agency - currently blocked by Cyprus - and the Turkish participation in the foreign and security related Council meetings would be essential in deepening the EU-Turkey integration. This seems imperative as the EU and Turkey have common security concerns, and the 2012 Positive Agenda stressed this as an area where further integration could be possible (Müftüler-Baç/Çiçek 2015). The pressing security matters related to the Arab Spring, the Syrian civil war and the Russian initiative in Ukraine necessitate such further cooperation.

Energy constitutes another area for deepening the integration process. The EU's dependence on the flow of energy resources from the Middle East and the Turkish role as a transit country emerge as areas of further

¹² Interview with the EU official, EEAS, Turkey, Western Balkans Enlargement negotiations division, 16 February 2016, Brussels.

integration. The European Commission and Turkey launched a High Energy Dialogue in March 2015 to do precisely that. Both of these developments - further consultation in foreign affairs and formal dialogue in energy - were foreseen in the 2012 Positive Agenda for Turkey in an attempt to deepen the Turkish integration to EU policies.¹³ Other forms of institutional arrangements for Turkey's involvement in the Union's institutions are already adopted. In 2009, Turkey joined the European Gendarmerie Force as an Observer. In addition, Turkey was included into the Civil Protection Committee of the Commission's DG ECHO¹⁴ in 2015 and is closely linked with the EU in the long-term policies of DG NEAR, DG DEVCO¹⁵ and DG ECHO.¹⁶

Finally, Turkey's role in justice and home affairs and in combating illegal immigration into the EU is critical. The 2015 refugee crisis demonstrated the vulnerability of the EU in that regard, and a deal was made with Turkey. The EU's plan to deal with the flow of people into the EU territories is to set up reception centers in the front line member states, such as Greece and Italy, process the asylum applications in these centers, relocate some of these people to EU member states according to redistribution plans and quotas, and send those who cannot be accepted back to Turkey. Turkey, traditionally, does not readmit the refugees back to its territory based on its own refugee laws, but it is a transit and a host country, with 2,5 million Syrian refugees residing in the country. In October 2015, Turkey and the EU agreed to a Joint Action Plan. According to this plan, Turkey would process the asylum applications to Europe and send a pre-set number of refugees to Europe, and keep the rest in its own camps. On 24 November 2015, the European Commission adopted a decision for a Turkey Refugee Facility to pool €3 billion - two of which will come from member states' own financial contributions for assisting Turkey and protecting the EU's external borders. Most importantly, Turkey would be obliged to take back and provide for those who are either unable to move to Europe or whose asylum applications are rejected in the reception centers as explained above. The refugees that could not stay in the EU, but could neither be sent back to their home countries, would be re-routed to Turkey instead. This is an important development indicating that even without membership the EU needs to act together with Turkey. It is for this reason that the EU began to develop a new mode of integration with Turkey and the adoption of new institutional tools. The EU's main concern was to keep the refugees out of the European territories and Turkey was the most likely choice for the protection of the EU's external borders. This, in turn, means that Turkey and the EU will need to cooperate more on data protection, intelligence sharing, and justice and home affairs. The refugee crisis demonstrated that the EU depends on Turkish cooperation in controlling illegal immigration.

The Turkish-EU deal in 2015 and 2016 indicated that in the field of justice and home affairs, Turkish participation is important for the EU to secure its borders.¹⁷ The Turkish participation in the Justice and Home Affairs Council and/or in the European Council as an observer when these matters are being decided or discussed could open the path for further differentiated integration. This is also why, for example, the German Chancellor, Angela Merkel,

13 The Turkish role in energy security for the EU and in advancing European security interests under the CFSP were emphasized in all the interviews held with the EU officials - EEAS, DG Near, DG Trade - in December 2013 and February 2016.

14 The European Commission's Humanitarian Aid and Civil Protection Department.

15 Directorate-General for International Cooperation and Development.

16 Interview with EU Official, DG ECHO, 17 February 2016, Brussels.

17 This point was raised in the interviews conducted with EEAS officials, 16 February 2016, Brussels.

“cautioned that there would be no solution without Turkey as ‘We will not solve the refugee problem completely; we need, among other things, further talks with Turkey for that. Only with Turkey we can switch illegality to legality. It is very important that the (European) Commission discusses further the migration agenda with Turkey’”.¹⁸

Another area that is connected to the refugee crisis and the revamping of the accession negotiations is related to the Schengen visa rules for Turkey. Turkish citizens face severe restrictions on their ability to travel to Schengen countries, a point often raised in the customs union talks, as the industrial products enter the EU market freely, but their manufacturers cannot. In order to deal with these concerns, Turkey and the EU signed the Readmission Treaty on 16 December 2013 which launched talks on visa liberalization. This was also a step foreseen in the 2012 Positive Agenda. However, the refugee deal gave a new momentum to these visa liberalization facilitation talks as well as the customs union revision plans. If Turkish citizens receive the right of visa-free travel to Schengen zone countries, this would constitute a positive step in furthering Turkish integration to the EU, as it happened with the other candidates in the Western Balkans.

Perhaps most importantly for Turkey’s differentiated integration to the EU is the decision to hold a bilateral summit between Turkey and the EU on 29 November 2015, a first in the EU history where a candidate country was invited to its own summit with EU leaders. An institutionalization of Turkey-EU summits might also mean that a new form of an ‘extended Council’ might emerge for Turkey-EU relations, where matters of common material interests would be discussed and decided upon, a novelty in the EU institutional set-up and the enlargement process. This would also bring a revision and reformulation of the current key institution of Turkey-EU relations, the Association Council, and also might bring some voting and decision-making powers to Turkey, instead of mere consultation rights as it currently has. However, the bilateral summit indicates that the EU’s relations with Turkey 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.

In the interviews conducted in Brussels at the EEAS, the European Commission and DG Enlargement in 2013 and the DG Near Turkey desk in 2016 it was firmly maintained that Turkey was a candidate country engaged in the accession process, and that this process was dictated through the accession negotiation framework. The consideration of an alternative strategy of differentiated integration was repeatedly and flatly rejected.¹⁹ According to the Negotiating Framework (signed in Luxembourg on 3 October 2005), the principles governing the pace of membership are dictated by the candidate countries’ merits and efforts in meeting the requirements for membership. The objective of negotiations is defined as accession and accession only.²⁰ The negotiations are viewed as an open ended process, where the outcome cannot be guaranteed beforehand. It is also for this reason that the EU officials interviewed pointed out that “no one knows what might be in 15 years”.²¹ At the same time the Negotiating Framework states that

18 Emmott, R. and Sekularac, I. (2015) ‘Slovenia sees end to EU’, Reuters, 25 October 2015, available at <http://www.reuters.com/article/us-europe-migrants-summit-idUSKCN0SJ0BQ20151025>, accessed 10 October 2015.

19 Interviews with EU officials in DG Near and EEAS, 16 and 17 February 2016, Brussels.

20 Interview at the EU Delegation, 15 March 2016, Ankara.

21 Interview with EU officials in DG Near, 16 February 2016, Brussels.

“every effort must be made to protect the cohesion and effectiveness of the Union. In accordance with the conclusions of the Copenhagen European Council in 1993, the Union’s capacity to absorb Turkey, while maintaining the momentum of European integration, is an important consideration in the general interest of both the Union and Turkey”.²²

It is thus the Commission that must monitor the capacity for absorption during negotiations and write reports on an annual basis about Turkey’s membership perspective. While the Union might agree to requests from Turkey for transitional measures, these are to be strictly limited in time and scope. They must be accompanied by a plan clearly defining stages of application for the *acquis*. In other words: wiggle-room will not be tolerated as a lasting solution. Yet, long transitional periods, derogations and specific arrangements or permanent safeguard clauses may be considered, while the Commission must offer these alternative proposals and monitor their impact on the functioning of the internal market.

Nonetheless, beyond the difficulties in incorporating a large Turkey as a member of the EU, the above analysis indicated that there is already a high degree of integration without necessarily accession between the EU and Turkey with potential to diffuse into other areas or deepening in the policy areas that have already been integrated such as trade, foreign policy and justice and home affairs. While Turkey constitutes one particular example where the EU has adopted significant tools and engages in a process of differentiated integration, the Western Balkan countries have different modes of integration with the EU, which is addressed in the next section.

4. Western Balkans: Serbia as a case study

The Western Balkans are an important region for the EU’s enlargement policy (Börzel 2015; Fagan/Sircar 2015). With regard to this region, the analysis of differentiated integration becomes more complicated. While some authors contend that differentiated integration is a result of interests and policy preferences of existing EU members (Economides 2010), the perspective that all Balkan states, if given the option, would have chosen an immediate and full membership may have changed. All Western Balkan countries have signed Stabilization and Association Agreements (SAAs), and even though their accession processes have been stagnating, it is still very much on track.²³ In the European Council’s Thessaloniki summit of 2003, all the Western Balkan countries received the European membership perspective, giving them eligibility for EU accession, and ever since then they have all signed their SAAs. The following table summarizes the key turning points for the Western Balkans.

²² European Commission (2005) ‘Negotiating Framework’, Luxembourg, 3 October, available at http://ec.europa.eu/enlargement/pdf/turkey/st20002_05_tr_framedoc_en.pdf, accessed 14 September 2016.

²³ Interview with the EEAS Official responsible for the Western Balkans, Brussels, 16 February 2016.

Table 3: Western Balkans: Summary of the key turning points for the Western Balkans

	Stabilization and Association Agreements	Application for full membership	Candidacy granted	Accession negotiations begin	Visa free travel	Volume of trade with the EU (million €)	Volume of trade with the EU (% of total trade)
Montenegro	15.10.2007	15.12.2008		29.6.2012	19.12.2009	1,224	53
Serbia	29.4.2008	22.12.2009	1.3.2012	21.01.2014 (Council decision June 2013)	19.12.2009	17,470	62
Macedonia	9.4.2001	22.3.2004		Greek veto on Commission recommendation 2009-2014	19.12.2009	6,844	69
Albania	12.6.2006	28.4.2009	27.6.2014	No Commission recommendation yet	15.12.2010	3,716	59
Bosnia and Herzegovina	16.6.2008	15.2.2016	Potential candidate	No Commission recommendation yet	15.12.2010	8,355	61
Kosovo	27.10.2015	N/A	Potential candidate	No Commission recommendation yet	N/A	824	N/A

Source: Authors.

As seen in the above analysis, the Western Balkans observe significant trade integration with the EU and varying degrees of overall integration with the EU, with most of them enjoying visa-free travel. Among the Western Balkan countries, Serbia is the largest country, with the highest volume of external trade with the EU. Serbia, like Turkey, is a candidate for EU accession, albeit joining the line for membership later on. While the Western Balkans went through highly turbulent times in the 1990s with the civil war, as a result of which Serbia was basically isolated from European structures, by the early 2000s Serbia began to send signals that it wanted to join the European ranks (Fagan/Sircar 2015). The path for Serbian accession began with its identification as a potential candidate in 2003 in the course of the Thessaloniki Council along with

the rest of the Western Balkan countries. In 2003, an Enhanced Permanent Dialogue was set up between the EU and Serbia. There have been substantial differences regarding the Western Balkans in the EU's enlargement round. For previous enlargement rounds, the opening stage of the accession negotiations was followed by screening of the legislation and an assessment of candidate country alignment with the EU *acquis*. However, there was a significant change in this policy as the screening process began before the formal opening of negotiations: Montenegro declared independence from Serbia in 2006, and began its application for EU membership in 2008. After four years of transition the Council launched an accession process with the opening of negotiations with Montenegro in June 2012.

On 29 April 2008, Serbia signed its SAA with the EU, setting the stage for its future EU accession under the same criteria with the rest of the Western Balkan countries. It also signed the Interim Agreement for Trade, a compatible development with regards to Turkish economic integration with the EU. The SAA set out the priorities for the country's EU accession. In 2009, Serbian nationals were granted visa-free travel to the EU. Serbia applied for EU membership on 22 December 2009 and was granted EU candidate status in March 2012. Similar to Turkey's problems with Cyprus, Serbia faced ongoing historical tensions and a critical need to normalize relations with Kosovo. While Kosovo is not an EU member, Serbia nonetheless faced significant opposition among some EU member states due to its stance towards Kosovo. The Netherlands, for example, froze the trade component of the SAA until 2012 when it finally decided to ratify it in response to the Serbian government's compliance with the International War Tribunals Court in The Hague. Nonetheless, Serbia unilaterally implemented the Interim Trade Agreement from 1 January 2009 onwards. The Interim Trade agreement led to a substantial increase in Serbia's external trade with the EU to more than 60 percent of all of Serbia's trade, indicating a high level of economic integration. The ratification of Serbia's SAA was a rocky process as even after the Netherlands ratified in 2012, Lithuania did not until June 2013. Finally, the SAA finally became operational on 1 September 2013.

The normalization of relations between Kosovo and Serbia, coming into force with the Brussels Treaty on 19 April 2013, opened the route for EU accessions for Serbia. In June 2013, Serbia's accession negotiations with the EU began with the European Council endorsement. In January 2014, the Council adopted a Negotiated Framework at the first intergovernmental conference with Serbia. What was particularly unique for the Serbian negotiations was the handling of Chapter 35. While in all other candidates, this chapter is generally the last one to be opened as it deals with other country specific issues, in Serbia's case, it was opened relatively early in the process in December 2015, as it was redesigned to focus specifically on the normalization of relations with Kosovo, signaling a change in the EU's strategy towards Serbia. Here we observe that it is possible to have different procedures in the course of negotiations on each individual chapter. This emphasizes the complexity, scope and duration of the EU membership negotiating process; however, the end goal of full compliance with the EU *acquis* cannot be circumvented.²⁴

In terms of Serbia's economic and political integration with the EU, our analysis of the Commission's Progress Reports from 2005 to 2015 demonstrates a strengthening and deepening of economic and political cooperation. Table 8 shows the Serbian trade and customs related alignment, similar to Turkey's

24 Interview with EU Official, DG Near, Western Balkans, 16 February 2016, Brussels.

alignment. Of course, the Serbian adaptation remains relatively less extensive. In terms of security integration, several steps have already been taken. Serbia participated in four EU led operations under the ESDP, and it signed a Security Cooperation Agreement with the EU in December 2013 for the ultimate purpose of enhancing cooperation between Serbia and the European Defense Agency (EDA). Turkey, for example, is not included in the EDA despite its security integration with the EU, due to Cyprus's veto. Serbia is also harmonizing its legislation with the EU on arms as it adopted multiple harmonization packages on arms and military equipment in 2013 and 2014. Serbia also began to participate in the EU's Gymnich meetings from 2008 onwards, similar to Turkey's inclusion into this set up. Table 4 demonstrates the Serbian alignment to the EU's CFSP positions to which it was invited.

Table 4: Serbia's alignment with the EU's CFSP positions (2010-2015), compiled from the European Commission Progress Reports

2010	51 out of 74	69%
2012	69 out of 70	99%
2013	31 out of 35	89%
2014	28 out of 45	62%
2015	26 out of 40	65%

Source: Authors.

The visa-free regime, the trade agreement, the Enhanced Permanent Dialogue and its security cooperation agreement facilitated the Serbian integration to the EU prior to accession, similar to the tools the EU used in the Turkish case. It needs to be noted here that Serbia negotiated a visa liberalization regime prior to its candidacy, unlike Turkey. The Enhanced Permanent Dialogue between Serbia and the EU is also important as a tool of differentiated integration. While there are some similarities with the Turkish integration, the EU officials already indicated that they expect the Western Balkans countries to accede to the EU much before Turkey.²⁵

In terms of assisting Turkey and Serbia in their adjustment to the EU, the Instruments for Pre-Accession Assistance (IPAs) turned out to be important tools; the following table compares the Turkish and Serbian experience with IPA funds.

In short, both Turkey and Serbia have achieved a considerable degree of integration with the EU, but Turkish integration to the EU policies is more extensive and encompasses a wider range of policies. However, Serbia also seems to be integrating with the EU as well. While Western Balkan countries and Turkey have the membership perspective and eligibility, the ENP countries do not. This creates a marked difference with regards to their paths of integration into the EU, addressed in the next section with specific emphasis on Ukraine.

²⁵ Interview with an EU official, DG Near, 17 February 2016, Brussels.

Table 5: EU financial assistance to Turkey and Serbia under IPAs²⁶

Funding mechanism	Turkey total (billion €)	Serbia total (billion €)
IPA I 2007-2013	4,819	1,386
2007	497.2	189.7
2008	538.7	190.9
2009	566.4	194.8
2010	653.7	197.9
2011	799.9	201.8
2012	860.2	202.2
2013	902.9	208.3
IPA II 2014-2020	4,453.9	1.503
2014	620.4	195.1
2015	626.4	201.4
2016	630.8	207.9
2017	636.4	215.4
2018-2020	1,940	688.2

Source: Authors.

5. The European Neighbourhood Policy: An alternative form of differentiated integration?

The emergence of a new ENP in 2004 covered three regions of the Mediterranean, Eastern Europe, and the Southern Caucasus (Börzel 2015; Börzel/Lebanidze 2015). The European Council stated its goal “to create the necessary conditions to accelerate political association and further economic integration by bringing about political and socioeconomic reforms”.²⁷ In a report to the European Parliament in 2007, the ENP was aptly titled “integration without accession”, claiming that as such, this special relationship would not be seen as “accession minus” but as organizing the fluidity of the European sphere in a preventative strategy against extremism and terrorism. The former President of the Commission, José Barroso, claimed in 2007 that “the ENP is not and never has been a one size fits all policy. There are as many variations of the ENP as there are partners. We cannot and do not wish to ignore the differences between our partners”.²⁸ Again, this brings us back to Commissioner Prodi’s description of a ‘ring of friends’ sharing policy but not institutionalized decision making - clearly a model of differentiated integration. Each action plan in the ENP fits within the overall framework to encourage political dialogue and reform with the aim of strengthening the rule of law, democracy and protection of human rights as well as the promotion of economic and social

²⁶ European Commission (2011a) and European Commission (2014).

²⁷ This is confirmed in the Joint Declaration of the Prague Eastern Partnership Summit, Prague, 7 May 2009, press release 8435/09 (Presse 78).

²⁸ Speech by Commission President José Barroso titled ‘Shared challenges, shared futures: Taking the neighbourhood policy forward’, Brussels, 3 September 2007, SPEECH/07/502.

cooperation and cooperation on foreign-policy objectives. For some neighbours, the plan includes positive conditionality of the accession process, but without the formal prospect of accession. Institutional constraints on domestic political realities emphasized the difficulty states such as Moldova and Ukraine have had in rising or committing to future membership. The official Commission position (visible in our interviews) is perfectly clear - the ENP is an EU policy directed at neighbouring states and not at the creation of a new pre-member club. Georgia, Moldova and Ukraine are the ENP partners with the closest cooperation formats under their AAs²⁹, and are thus priority partners.

The Eastern Partnership within the ENP, a joint policy initiative launched at the Prague summit in May 2009, provides a new framework for the acceleration of political association and enhancement of economic integration between the EU and the six participating countries (Ukraine, Moldova, Belarus, Georgia, Armenia and Azerbaijan). These bilateral AAs include the explicit goal of establishing a Deep and Comprehensive Free Trade Agreements (DCFTA) for all trade in goods and services plus “strong legally-binding provisions on trade and economic regulatory issues” (European Commission 2006: 4). Yet, the EU is clear about the prospects for this integrated trade area as being distinct from any pre-accession agreement. Unlike the 1995 White Paper that clarified the needed reforms in the Central and Eastern European countries (CEECs) for integration into the internal market of the EU, the Eastern Partnership states the ultimate aim as supporting socio-economic and political reforms in partner countries leading to the creation of a long-term integrated economic area (Van Elsuwege/Petrov 2014: 6). That is because for the EU the path of membership is seen as distinctly different from partnership.

The ENP is meant to extend shared values of liberty, democracy, rule of law, and respect for human rights. Built on two tracks, bilateral and multilateral, the Eastern Partnership is designed to support political and socio-economic reform in partner countries. Under bilateral cooperation, the Eastern partners may benefit from assistance as a reward for progress in expanding and deepening democracy. The multilateral dimension refers to regional cooperation programs in areas such as energy, environment, responses to disaster and border management. The EU supports these programs with financial assistance, as an estimated €2.5 billion was provided for cooperation programs and assistance in Eastern European partners between 2010 and 2013. These loose, bilateral agreements reject the goal of eventual membership attainment. The partnerships with the Eastern neighbours and AAs with Southern neighbours integrate neighbouring countries into some clearly delineated areas of the EU framework, such as Energy or Aviation, but while political and trade relations with these sympathetic and supportive neighbours are prioritized, they are not viewed as a second-class membership alternative from the EU perspective.

Among the ENP partner countries, Ukraine is a particularly important example for assessing the differentiated integration model. It is a priority partner for the EU. As early as 1994, Ukraine signed a Partnership and Cooperation Agreement with the EU which went into force in 1998. Ukraine-EU bilateral summits are held since 1997, where issues of common interest are being discussed. Since 2005, Ukraine has repeatedly emphasized a desire to move from bilateral EU partnership to political association and economic integration (Van Elsuwege/Petrov 2014). The Ukrainian ambassador to the EU, Mr. Roman Shpek declared in 2007

29 Interview with EEAS official, Section on ENP Strategy and Instruments, 17 February 2016, Brussels.

that he would not recognize the ENP as an adequate basis for Ukraine-EU relations.³⁰ The 2007 negotiations between Ukraine and the EU culminated in a previously unprecedented AA including the establishment of a DCFTA. Based on the continuing dialogue with the EU regarding visa-free travel, bilateral negotiations with Ukraine in 2008 and 2009 clearly paved the way for the Eastern Partnership initiative. Yet, in August 2013, Kostiantyn Yeliseiev, the Representative of Ukraine to the EU, (quoted in Van Elsuwege/Petrov 2014: xviii) viewed full EU membership as a “unilaterally proclaimed goal” from the Ukrainian perspective, marking a path quite distinct from EU negotiations and accession agreements in the Western Balkans. In this AA, the EU provided Ukraine with a unique commitment to free movement of goods, capital, services and (although more restricted) people. Still, the language of the AA with Ukraine does not include the level of commitment to the *acquis* that the 1993 Copenhagen European Council indicated toward prospective members in Central and Eastern Europe. That is because the EU stipulates a “best endeavor” to make domestic legislation “gradually compatible with that of the Community [now Union]”, engaging East European neighbour states in a process of “voluntary harmonization”.³¹ This needs to be seen for example in contrast to the Western Balkans where the EU stipulated a genuine obligation to incorporate the entire *acquis* “to the fullest extent possible” in the pre-accession period.³²

The negotiations between Ukraine and the EU began in 2012 for a more ambitious economic integration scheme. On 21 March 2014, the EU and Ukraine signed the political part of the AA and on 27 June 2014, the economic part, the DCFTA, was signed. The DCFTA for Ukraine provisionally went into force on 1 January 2016. While a more ambitious model emerged in Ukraine with the DCFTA comparable to the EEA and Turkey’s CUA, with regard to the potential for later membership, the DCFTA did not prove to be a successful carrot in the EU battle to encourage rule of law and establishment of an independent judiciary in Ukraine. This means, that in contrast to the EEA, the DCFTA remains consistent with the ENP’s rejection of any membership aspiration through the backdoor. While the DCFTA is still subject to EU member states’ final approval - particularly important here is the Dutch Referendum in Spring 2016 - it nonetheless demonstrates the level of economic integration between the EU and Ukraine and the future potential of further economic integration. However, the role of the domestic preferences in the member states is visible in the EU-Ukrainian relations.

The DCFTA involves a freedom of establishment in services sector and access for Ukraine into the internal market. The Ukrainian access to the EU’s internal market is particularly important as around 35 percent of Ukraine’s external trade worth around \$32 billion is with the EU countries, as seen in Table 1, with Germany in the leading role similar to both the Turkish and Serbian experiences with the EU. The DCFTA aims to increase the trade volume between the EU and Ukraine - by decreasing the customs duties on products originating in Ukraine to 0 percent, by providing Ukraine with the technical and financial assistance to adjust to the EU’s regulations on its products. In addition, the DCFTA aims to deepen the freedom of capital

30 Shpek, R. (2007) ‘EU Neighbourhood Policy through the Eyes of a Neighbour’, *EUObserver*, 27 February, available at <https://euobserver.com/opinion/23576>, accessed 14 September 2016.

31 Evans, A. (1997) ‘Voluntary Harmonisation in Integration between the European Community and Eastern Europe’, *European Law Review* 22: 207.

32 Andre de Munter (2016) ‘Western Balkans’, EU Parliament, June 2016, available at http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuid=FTU_6.5.2.html, accessed 16 September 2016.

between the EU and Ukraine, by adjusting the public procurement market and enabling the Ukrainian companies to acquire the capacity to compete in the EU public procurement market. It needs to be noted here that the DCFTA resembles in certain aspects the Turkish 1995 CUA with the EU. The agreements both involve the removal of customs duties and tariffs, and harmonization of the laws in trade related sectors. However, the DCFTA gives internal market access to Ukraine's agricultural products - for example, wheat - making it different from Turkey's 1995 CUA. The stipulations with regards to public procurement - which Turkey is resisting - and alignment to sanitary and phytosanitary measures of the EU are also different as Turkey's alignment to these measures are open to negotiations under its accession negotiations whereas Ukraine has them included in the DCFTA.

In terms of integration to the EU's foreign and security policies, Ukraine has a different experience. As a non-bloc country - it is not a member of NATO, and has a unique status under the 1994 Budapest Memorandum -, it has had over the years an ambivalent relationship with the EU in its foreign policy. In 2005, Ukraine acquired a privileged status under the EU's CFSP along with Moldova, and signed a Permanent Security Agreement for the exchange of classified information. In March 2008, the Ukrainian Parliament, Verkhovna Rada, adopted a framework for Ukraine's participation in the EU-led operations, as a result of which it participated in the EU police mission in Bosnia and operation Atalanta in Somalia. Ukraine's participation in the EU-led operations as a non-EU member comes third after Turkey (first) and Norway (second). It also made an effort to align with the EU's CFSP positions it was invited to, as shown in the following table.

Table 6: Ukraine's alignment with the EU's CFSP positions (2009-2014), compiled from the EEAS's Progress Reports (2011-2015)³³

2009	44 out of 89	49%
2010	26 out of 44	59%
2011	36 out of 82	44%
2012	23 out of 62	37%
2013	15 out of 32	47%
2014	35 out of 49	71%

Source: Authors.

While Ukraine's alignment fluctuated over time, it nonetheless increased its alignment to the EU's foreign policy, with a high degree of alignment in 2014. Visa free travel poses another obstacle for Ukraine's integration into the EU, reminiscent of the Turkish visa free travel. However, a visa facilitation talks under the Visa Liberalization Dialogue was launched with Ukraine in 2008, whereas for Turkey this was possible only in December 2013. A major complication factor for Ukraine, of course, is its relations with Russia, and the ongoing conflict in Crimea. The EU's policies towards Ukraine have to take into consideration that particular problem. The EEAS official we interviewed in February 2016 summarized the EU's position as:

³³ Joint Staff Working Document, 'Implementation of the European Neighbourhood Policy in Ukraine', 25 March 2015, Brussels, available at http://eeas.europa.eu/enp/documents/progress-reports/index_en.htm, accessed 14 September 2016.

“Ukraine along with Georgia and Moldova are priorities. We have the closest cooperation format with them, the Association Agreements which do not lead to membership but show commitments of both sides. These Agreements cover the maximum areas to cooperate. In Ukraine and Georgia, we also help their reform process.”³⁴

In short, under the ENP, Ukraine has evolved from a country which has a bilateral relationship with the EU into a priority partnership country. The key difference here in comparison to Turkey or the Western Balkan countries is that it does not have a European membership perspective, at least for now. However, even in its absence, there is a great degree of integration - ranging from economic to security - that Ukraine has with the EU, enhancing a pattern of differentiated integration. While all these three countries have varying degrees of integration with the EU, the main factors shaping this variation - domestic preferences in the partner countries, degrees of interdependence, member states' material interests - need further empirical investigation.

6. Differentiated integration as a model for maximization of the EU's integration capacity

The discussion above demonstrated how and to what extent the EU's multiple patterns of differentiated integration with Turkey, the Western Balkans and the ENP countries differed. Differentiated integration in the candidate countries and neighbouring states is a result of the policy preferences of existing EU member states (as claimed by Economides 2010: 112), but also a direct result of domestic policy preferences and institutional constraints within these non-member states.³⁵ While EU members may impose limits on integration, they are no longer the sole determinants of the integration pace or direction.

Differentiated integration, or flexible integration, can be viewed as a demand for preserving national sovereignty as well as an integral part of the European integration process (Cianciara 2014: 2). Legally, this term implies that the formal body of legislation and rules governing the EU (*acquis communautaire*) differ in validity and application across the EU member states. In other words, one uniform legal framework is not universally applicable over time, territory or scope (Stubb 1996). A given regulatory framework or policy may be only partially applicable during a transition period like the freedom of movement on workers in the Western Balkans (temporal). Another policy such as the Schengen Agreement might provide opt-outs or opt-ins for member and neighbouring states (territorial). Or, the Euro may be the official currency in Kosovo, Montenegro, Andorra, Monaco, San Marino and the Vatican City without these states formally being part of the monetary union or having representation at the European Central Bank (scope). While opt-outs may have driven initial concern for a Europe à la carte, the procedures of 'enhanced cooperation' and 'constructive abstention' as introduced in the Nice and Amsterdam Treaties were clearly conceived as a means to circumvent unanimity voting and extend the potential for positive integration.³⁶ While these

³⁴ Interview with EEAS Official, ENP Strategy and Instruments Division, 16 February 2016, Brussels.

³⁵ Particularly in light of the recent currency crisis in 2009 and the ongoing migrant crisis, we may no longer assume that all applicant countries would prefer full and immediate membership as suggested for the Balkans by Economides (2010).

³⁶ Constructive abstention was included under the Treaty of Amsterdam to allow single member states abstain from voting on CFSP issues without blocking the entire decision (Article 23(1) TEU). Enhanced Cooperation was

procedures are rarely applied, the framework is in place for the enlarged Union. As the EU has expanded in membership, it seems reasonable that members will not and cannot always have similar policy goals, and that some degree of 'variable geometry', as it was termed by Jacques Delors, is unavoidable. While differentiation is complicating the face of the more traditional EU governance model, it may not be reducing the internal political cohesion of the Union. Further, as observed throughout the financial crisis of 2008-2009 and the current migratory influx crisis in 2015 and 2016, we can expect differentiated application of EU law to remain a permanent feature of European governance, and a crucial driving force behind the EU's external relations.

While differentiated integration most frequently refers to varieties of application and participation in institutional policy making within the EU, the circles of integration clearly extend beyond member states. With regard to extended governance beyond EU territorial borders, we observe the EEA providing integration for countries with close EU ties, such as Norway and Switzerland, but lacking the domestic support for membership. Also, we find AAs that have been negotiated with neighbouring countries aspiring to membership, but not yet meeting the accession criteria (or not even being acknowledged as potential members) (Raik/Tamminen 2014: 47). While enlargement (that is full accession to membership in the EU) has always been based on the commitment of the candidate country to adopt the entire *acquis communautaire* without exception, the ENP seeks to extend EU norms and practices into associated partner countries and offer models of partial integration.

Differentiated integration seems to depend on the shared policy and the importance of considering that integration preferences of both EU members and non-members will depend both on the 'stake' that the partner state has invested as well as the dependence that the member states have on the continued pursuit of the policy agreement (Schimmelfennig 2014b).

The Commission has never recommended an EEA type agreement to Turkey, Ukraine or other neighbouring associated partners. Perhaps this is because, as Raik and Tamminen (2014) suggest, the remaining EEA members are very small, rich states with no prospect of receiving agricultural or structural funds, nor do they have immediate border or security concerns. At the same time, while these states may benefit from this privileged partnership, there is no domestic will to pursue full membership. The EEA model is also not viewed by the Commission as a stepping stone to membership, but as a permanent, legally binding arrangement.

The areas of Schengen and Freedom, Security and Justice are the most complex in terms of differentiated integration. The number of opt-outs, opt-ins, enhanced cooperation possibilities, AAs, candidate countries bordering the EU, ENP countries and countries with border management-related bilateral agreements has since been further complicated by the suspension of Schengen and re-evaluation of border protection in light of recent terror threats and the growing humanitarian crisis in the Middle East resulting in a record influx of migrants and refugees (Luetgert/Vezbergaite 2016). Yet, we see that differentiated integration has led to categories of countries targeted to improve human rights and the commitment to democratic transition in exchange for the promise of an eased visa regime.

extended to include all three pillars under the Treaty of Nice, but excluding military decisions, and now applies to the CFSP and Common Security and Defence Policy (CSDP) (Article 31(1) TOL).

While it appears that any vision of a borderless Europe has been put on ice while dealing with the international fight against terrorism and the resulting migrant crisis, it seems there is a consistent need for enhanced border controls. This is also raised by the EU officials in the interviews as a key reason for bringing in a new form of institutional arrangement with Turkey, but also Serbia.³⁷ Further, it seems that the EU will greatly benefit from having a supportive border shield of neighbouring states willing to absorb the severest shock from the immigrant flows. As domestic politics continues to limit the willingness of member states to delegate complete authority to a common integrated border and as the threat of this growing humanitarian and security crisis continues to escalate, the tension between 'going it alone' and needing coordinated policies is likely to result in what Sinkkonen (2014: 84) referred to as a "multi-tier", rather than a "multi-speed" European integration process.

It seems that two facts surface when considering how current candidates and neighbouring countries may benefit from and/or be burdened with the realities of differentiated integration: First, broad generalizations at a country level provide less insight than careful policy area-specific or even agreement-specific consideration. Second, because the Commission and Council prepare and adapt the negotiating frameworks, even in cases where the negotiating state sees benefit in any and all policy convergence, the path of accession is distinct from bilateral AAs. This second point also suggests that candidates and neighbouring countries do not set the agenda, nor do they have unilateral determination or choice in the policy integration pursued. We observe states such as Switzerland, Iceland and Norway, that are closely integrated in the internal market and pay regular contributions, but these states do not have domestic political will or support to become full members. It is not the EU members or institutions who are delaying further convergence and membership, but the countries themselves. Here, it appears that EEA membership (even when many aspects regulating the internal market are imposed without their country's influence in the decision-making process) is mutually beneficial for the EU and these associated partners. Given their geographic location and similar economic interests as other small, rich EU members, it appears that market integration without the sacrifice of political neutrality or commitment to any future extension of a common foreign and security or defense policy is most advantageous. Their economic interests are more or less conforming EU policies and, therefore, largely undisputed.

When we turn to the candidate countries of Turkey, Serbia and Ukraine as an ENP partner, a more complex picture emerges. While the political reality of the Eurozone and Schengen may suggest that differentiated integration offers the advantages of cherry-picking among less desirable policies from a national sovereignty perspective, the treaties suggest and the Commission confirms that full membership for the candidate countries is only possible after complete compliance and implementation of the entire *acquis communautaire*. Legally speaking, the reality of opt-outs observed among current members across multiple policy areas is not indicative of a convergence variant for the candidate states. While the Copenhagen Criteria may not be obtainable for all candidates, there is no guarantee of a membership offer sans Eurozone. Just because the Western Balkan states were granted membership with restrictions on freedom of movement of workers, this is officially only an example of temporal differentiation. The goal remains full membership with only exceptional negotiated opt-outs.

37 Interview with the EU officials in DG Near and EEAS, 16-17 February 2016, Brussels.

The advantages and disadvantages of the AAs with the neighbouring states for the respective signatory countries cannot be quickly summarized. Generally speaking, the EU perceives the export of European political and socio-economic norms as highly advantageous for the neighbouring countries. Conditionality is championed as a means of achieving democratic transition and liberal market establishment. Clearly, the economic gains associated with improved trade conditions with the EU have helped protect and enrich growth and industrial development across both Eastern and Southern Europe. Christopher Lord (2015: 783) asks whether differentiated integration is a “poison or panacea” for the future of Europe. On one hand, it poses a challenge to the legal authority and unity of the Union, its policies, laws and institutions; as well as to any prospect of it developing into a community based on universal and uniform shared rights and obligations of membership (Adler-Nissen 2011). On the other hand, differentiated integration has been shown to be a welcome and lasting reality, even for the EU’s external relations, giving the EU a higher degree of flexibility in its relations with its European neighbours.

7. Concluding remarks

This paper looked into the patterns of differentiated integration the EU has in its external environment with candidate countries - Turkey and Serbia - and the ENP partners, in particular Ukraine. Turning more toward a conscious model of a core group of member states and outer layers, or circles, of more or less integrated partners and neighbours may offer a unique opportunity for policy integration and the advancement or support of EU norms. However, the Commission must continue to clearly communicate membership prospects with these associated partner countries. As confirmed in our recent interviews, the EU institutions currently view membership as a path distinct from neighbourhood partnership or the AAs. The path of Austria, Finland and Sweden in the EEA occurred under a much different context than the current Eastern Partnership states face relative to their membership prospects. While considerable variation remains among and between the ENP Eastern and Southern countries, both in terms of state building (i.e. application of EU norms) as well as in the domestic and political will to pursue future EU membership, bilateral AAs remain distinct from a country’s candidate status. While bilateral agreements and the resulting external differentiated integration may appeal to current EU member states, these arrangements will not make the path to accession easier. The leverage of EU conditionality has waned in light of the economic crisis and increasing domestic political turmoil in many of the neighbouring partner states. A particular example here is Turkey, which has increasingly moved away from EU accession as its own adaptation to the EU norms and political criteria stalled, but has expanded its ties with the EU and negotiated alternative institutional mechanisms. Whether Turkey’s differentiated integration model with the EU is an alternative to its accession remains an open question.

While differentiated integration may offer a way to address some current challenges, including the most recent migrant crisis and rise of global terror, it may also become a more permanent feature than early Union architects would have envisaged. What does seem clear is that ‘widening’ immediately implies a certain necessity for ‘deepening’. Enhancing bilateral agreements with neighbouring states may not be viewed as a legitimate alternative to membership, but the political realities of global threats and global opportunities, mitigated by the fact of accession being dependent on the unanimous approval of all 28 current member

states suggest that whether we wish to view differentiated integration as a strategy or simply as a rational political outcome, it is a lasting reality across both multiple policy areas and neighbouring territories. In the end, we are left with the Commission President Barroso's expectation of "as many different types of relationships developing as we have partners, but always within the common framework of the ENP" (Barroso 2007). The multilateral framework of partnership was designed to "support progress in partners' bilateral relations with the EU, which will continue to be governed by the principle of differentiation, developing according to the ambitions and capacities of each" (European Commission 2008).

The varying degrees of integration that Turkey, Serbia and Ukraine currently have with the EU attest to the increased reliance on differentiated integration in the EU's external environment. A possible pattern of deepening that mechanism might be the establishment of institutional tools - such as the Turkey-EU bilateral summits, or 'extended Council' - in relevant policy areas where, even in the absence of accession, these countries might deepen their already existing ties with the EU. It is clear from our analysis in this paper that the process of differentiated integration has assisted the EU's external integration capacity by enabling multiple forms of integration to and adaptation of the EU policies and rules. While different countries - neighbouring, enlargement, neighbouring but with membership aspirations or already economically integrated but not aspiring to accession (EEA) - have multiple forms of economic and political ties with the EU, these ties enable them to be part of a larger European system. These types of alternative forms of integration might also constitute a model for the EU's relations with other countries in its Eastern partnership or Mediterranean neighbours. This is why we argue here that the different patterns of differentiated integration in the EU's external environment would enhance and maximize the integration capacity of the Union in its external relations.

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9. Annex

Table 7: Turkish alignment to the EU's internal market: Customs Union alignment based on Turkey's Progress Reports 1998-2015³⁸

	Evaluation	Conclusions	Alignment
<p>1998 Progress Report (pp. 32-35)</p>	<p>Turkey has made serious efforts to apply legislation in line with Community legislation in the customs field. However, it must actively pursue the modernisation of its customs administration, especially as regards computerisation.</p>	<p>Practically three years after the entry into force of the Customs Union, Turkey has demonstrated its ability to implement most of the legislation required by the Customs Union Decision. By virtue of the considerable endeavours of its administration and Parliament, Turkey has managed to comply with most of the obligations ensuing from the Customs Union Decision within the time limit specified. In those sectors where the deadline has not been respected, Turkey will have to show proof of the same political will.</p>	

38 European Commission (1998) 'Regular Report from the Commission on Turkey's Progress towards Accession 1998', available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/turkey_en.pdf, accessed 14 September 2016; European Commission (1999) 'Regular Report from the Commission on Turkey's Progress towards Accession 1999', available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/turkey_en.pdf, accessed 14 September 2016; European Commission (2000) 'Regular Report from the Commission on Turkey's Progress towards Accession 2000', available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/tu_en.pdf, accessed 14 September 2016; European Commission (2001) 'Regular Report from the Commission on Turkey's Progress towards Accession 2001', available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/tu_en.pdf, accessed 14 September 2016; European Commission (2002) 'Regular Report from the Commission on Turkey's Progress towards Accession 2002', available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/tu_en.pdf, accessed 14 September 2016; European Commission (2003) 'Regular Report from the Commission on Turkey's Progress towards Accession 2003', available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_tk_final_en.pdf, accessed 14 September 2016; European Commission (2004) 'Regular Report from the Commission on Turkey's Progress towards Accession 2004', available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf, accessed 14 September 2016; European Commission (2014) 'Turkey Progress Report 2014', available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf, accessed 14 September 2016; European Commission (2015) '2015 Turkey Report', available at http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_turkey.pdf, accessed 14 September 2016.

<p>1999 Progress Report (pp. 27-30)</p>	<p>Some progress has been achieved but further efforts are needed to reach full harmonisation.</p>	<p>While Turkey continues to comply with most of its obligations under the Customs Union, additional legislative efforts should be made in order to reach full compliance in the competition and customs fields.</p>	<p>As stated in the last regular report, Turkey's customs regime is similar in substance to the Community Customs Code rules. The differences between the two regimes have nevertheless not yet been totally eliminated, in particular concerning free zones, suspensive arrangements and customs procedures with economic impact. The new Turkish Customs Code, pending in the parliament since 1995, has still not been adopted.</p>
<p>2000 Progress Report (p. 64)</p>	<p>The new Turkish Customs Code entered into force on 5 February 2000. The provisions were almost fully aligned but the application of the provisions in practical terms is still slightly different in respect of free zones and customs procedures with economic impact.</p>	<p>As for customs, the last Regular Report highlighted the fact that the Turkish customs system basically complies with the Community Customs Code. Differences remain in regard to free zones, on which information exchanges have taken place between the Commission, Turkey and the other candidate countries.</p>	<p>The Customs Undersecretariat which consists of almost 8000 people reports to the Prime Minister. There are 250 customs offices. The reorganisation of customs administration was launched in 1993 and is taking place through the "Modernisation and Automatization Project", which foresees in particular the full computerisation of the administration. In some sectors, there is a lack of co-operation with Member States' customs administrations, for example in respect to the verification of proofs of origin. Moreover, there is a need for thorough training of officials in respect of customs legislation.</p>

<p>2001 Progress Report (pp. 86-87)</p>	<p>The Decision establishing the Customs Union (Decision 1/95 of the Association Council) requires that Turkey align its commercial and customs policies with those of the Community. With the alignment of Turkish duty rates on “sensitive products” with the CCT, Turkey has almost completed the alignment with the Common Custom Tariff. Moreover, its customs legislation is also largely aligned with the Community customs legislation.</p>	<p>Further efforts are needed to ensure full alignment and implementation of legislation in particular in areas where competence is shared between the customs, trade and external relations departments. Efforts are therefore needed in respect of customs legislation outside the Customs Code, for example counterfeit goods, drug precursors and cultural goods. As regards administrative and operational capacity to implement the <i>acquis</i>, Turkey should continue its efforts, notably for the improvement of border management, and the fight against irregularities and corruption within the administration. Turkey should also continue its efforts regarding waiting time at the borders, and continue to act in the field of the fight against customs fraud and economic crime and improve its co-operation with other enforcement bodies.</p>	<p>Some progress has been achieved by Turkey in the field of customs since the last Regular Report. Turkey has applied the Common Custom Tariff (CCT) since January 2001 on what are considered “sensitive products”, as defined by Decision 2/95 of the EC-Turkey Association Council. The new Turkish Customs Code is almost fully aligned with the <i>acquis</i>. However, its practical application remains slightly divergent, especially in relation to free zones and customs procedures with economic impact. Other relevant national legislation outside the Customs Code has not been aligned. Therefore, no progress has been achieved in respect of counterfeit goods, cultural goods, precursors or provisions laid down in WCO/ECE Customs Conventions. Concerning administrative capacity, some progress has taken place. The Turkish authorities have recognised that there is a need for thorough training of officials in customs legislation and 2500 customs officials and 12000 economic operators received training over the last year.</p>
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<p>2002 Progress Report (p. 123)</p>	<p>The Decision establishing the Customs Union requires Turkey to align its commercial and customs policies with those of the Community. Turkey has almost completed the alignment with the Common Custom Tariff and the customs legislation is largely aligned with the Community customs legislation.</p>	<p>Further work remains to be done with respect to free zones and customs procedures with economic impact. Furthermore, tariff preferences are not fully aligned as free trade agreements have not yet been concluded with all the same partner countries as the Community. The Report of 1998 concluded that Turkey had made serious efforts to apply legislation in line with Community legislation in the customs field. However, various other problems were identified such as the treatment of free zones and procedures having an economic impact. The lack of alignment for provisions outside the customs code was also highlighted, implying lack of progress for counterfeited goods, cultural goods, precursors, and provisions of the WCO/ECE Conventions.</p>	<p>Some progress has been achieved in the field of customs since the last Regular Report. As regards alignment of Turkey's legislation with the customs acquis, the Government has adopted in December 2001 a Decree introducing Community-aligned rules on the origin of goods under the Generalised System of Preferences. Another decree was adopted in February 2002 concerning certification including provisions on cumulation applicable in this context. Concerning administrative capacity, the project on the modernisation of the Turkish Customs is progressing. Certain Customs offices are being modernised. Since 1998 substantial progress has taken place in several areas. A new Customs Code, largely in line with the acquis, has been adopted. However, the effective application of provisions in line with the acquis continues to be hampered by the non-customs legislation, which is often conflicting with the former.</p>
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<p>2003 Progress Report (pp. 119-121)</p>	<p>While Turkey has almost fully aligned its legislation in this area with the 1999 and some later <i>acquis</i>, several outstanding issues should be addressed. This concerns further alignment of legislation on the customs aspects of control of counterfeit and pirated goods and cultural goods as well as the alignment of non-customs legislation relevant to the application of customs provisions on free zones and customs procedures with economic impact. Turkey should continue to strengthen inter-institutional co-operation, post clearance audits and border control in order to achieve satisfactory implementation and enforcement of the aligned legislation.</p>	<p>Since the last Regular Report, very limited progress has been made in bringing Turkish customs legislation closer to the <i>acquis</i>. Turkey continued to strengthen administrative capacities, including computerisation.</p>	<p>As regards the <i>alignment of Turkey's legislation with the customs acquis further alignment has taken place concerning proof of origin for certain textile products released for free circulation in the Community, and on the conditions for the acceptance of proof of origin (April 2003)</i>. Furthermore, Turkey adapted its customs legislation concerning outward processing of goods due to an amendment of the Community's Customs Code. A national regulation on customs transit was adopted in July 2003 which is described as intended to prepare Turkey's eventual accession to the EC-EFTA Convention on a Common Transit system. <i>No progress has been made since the last Regular Report with respect to free zones and customs procedures with economic impact</i>, as regards non customs legislation which conflicts with aligned customs procedures and with regard to the alignment of tariff preferences to those of the Community</p>
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<p>2004 Progress Report (pp. 147-148)</p>	<p>The overall level of alignment in the customs area is high. The improvements in the field of origin and origin controls are an important step forward.</p>	<p>As regards free trade zones, the lack of alignment of provisions outside the customs code remains. Although the tax law adopted in January 2004 is an improvement as regards tax auditing of companies established in free trade zones, more efforts are needed to solve problems in the application of non-customs legislation relevant to the application of customs provisions. Although the number of suspension decisions by the Customs Administration concerning counterfeit/pirated goods has been increasing considerably since 2000, substantial efforts are still needed to align the customs control rules on the protection of intellectual property rights.</p>	<p>As regards the alignment of Turkey's legislation with the customs acquis some progress can be recorded during the reporting period. Turkey ratified the amendment to the UN-ECE Conventions on Temporary Admission of Private Road Vehicles and Border Controls on Goods in February 2004. The WCO Istanbul Convention was ratified by Parliament in March 2004. Furthermore, in April 2004 Parliament ratified the agreement between the EU and Turkey on Precursors and Chemicals Frequently Used in Illegal Production of Narcotics and Psychotropic Substances, which was signed in February 2003. In May 2004, the Turkish Council of Ministers adopted a decree extending the Customs Union provisions to the new Member States except the Republic of Cyprus. Turkey made substantial progress in the field of origin and origin controls. There was no progress to report on ethics, anti-corruption measures and training. Alignment is advanced with some exceptions in certain specific areas. Turkey continued to strengthen administrative capacity, including computerisation. While Turkey has almost fully aligned its legislation in this area with the 1999 and some later acquis, several outstanding issues still need to be addressed. The alignment with the Community Customs Code, and Implementing Provisions adopted in 2001 and 2002, and with non-customs legislation applied in free-trade zones is still a matter of concern.</p>
<p>2014 Progress Report (pp. 72-73)</p>	<p>With regard to customs legislation, some customs rules still need to be aligned with the acquis. Local clearance and relevant simplifications have been extended to import transactions, in line with the authorised economic operator concept introduced last year. Turkey has started preparations for harmonisation with the Union customs code.</p>	<p>Little progress was made in the field of customs legislation. Shortcomings remain in the area of duty relief, free zones, surveillance measures, tariff quotas and the requirement to present proof of origin for some goods in free circulation. Although capacity-building efforts have increased, further progress is required on intellectual property rights enforcement at customs. Overall, the level of alignment in the area of customs union remains high.</p>	<p>The rules on free zones and duty relief legislation are not aligned with the acquis. Duty free shops at entry points are neither aligned with the acquis nor compliant with the Customs Union (CU). Implementation of surveillance measures based on minimum CIF (cost, insurance and freight) or customs value is not in line with the acquis and contrary to CU provisions. In the area of administrative and operational capacity, Turkey continued to increase its customs enforcement capacity, in particular regarding anti-smuggling operations. The level of coordination and cooperation with the right holders remained satisfactory. Further work is required to increase the customs enforcement capacity, in particular ex officio customs inspections and destructions under the simplified procedure, and to align with the acquis in the area of IPR customs legislation.</p>

<p>2015 Progress Report (pp. 79)</p>	<p>Positive developments were Turkey's alignment of its rules of origin in the context of the Generalised Scheme of Preferences (GSP) to the EU's GSP rules of origin and the abolition of the special charge on numerous imported products with term payment. On the other hand, rules on surveillance and management of tariff quotas are not fully in line with the acquis.</p>	<p>In the coming year, Turkey should in particular:</p> <ul style="list-style-type: none"> - make additional efforts to improve risk-based controls and simplified procedures to facilitate legitimate trade, while ensuring security and safety. - remove import and export restrictions preventing the effective free movement of goods. 	<p><i>Turkey has reached a good level of preparation in the area of the Customs Union (CU), though no further progress was made in the reporting period.</i> Duty relief, free zones, surveillance measures and management of tariff quotas are not fully in line with the acquis and/or with Turkey's obligations under the CU. Additional duties and designation of specialised customs offices for goods in free circulation in the EU violate the CU. <i>There was uneven progress in the area of customs legislation. The customs law has yet to be harmonised with the Union customs code.</i></p>
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Source: Authors.

Table 8: Serbia's alignment to the EU's customs rules - Progress Reports 2005-2014³⁹

	Evaluation	Alignment
<p>2005 Serbia and Montenegro Progress Report (p. 39-40)</p>	<p>Serbia adopted amendments to the Customs Law and the Customs Tariffs Law in July 2005. <i>The tariff structures have been harmonised with the EU structures, called combined nomenclature.</i> Serbia started electronic lodging of declarations in June 2005.</p>	<p><i>Further alignment of the legislation with the EU acquis will need to be carried out. There is also a need to carry out a legislative gap analysis with the EU acquis.</i> Both Republics should also commit to the principles of the Code of Conduct on business taxation. As a first step they need to carry out a gap analysis aimed at identifying the existing measures which could contradict those principles.</p>
<p>2006 Serbia Progress Report (p. 26)</p>	<p>Good progress has been achieved in the area of customs. Following the amendments of the customs tariff law and customs law, Serbia passed a number of implementing legislative acts.</p>	<p><i>Overall, progress has been made and Serbia has reached a relatively good level of alignment with the EU customs acquis (except in areas such as transit or newly adopted acquis) and there is substantial progress regarding origin.</i></p> <p>In particular, significant improvements have been noted in the field of control and management of the preferential trade measures (origin).</p> <p><i>Serbia's preparations in the area of customs are well advanced while it would need to continue to make sustained efforts to meet set targets and the requirements under the SAA in the area of taxation.</i> Consultation of business with regard to preparation of new legislation in the area of customs and taxation also needs to be improved. The fight against corruption requires continued attention in both administrations.</p>

39 European Commission (2005) 'Serbia Progress Report 2005', available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1428_final_progress_report_cs_en.pdf, accessed 14 September 2016; European Commission (2006) 'Serbia Progress Report 2006', available at http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/sr_sec_1389_en.pdf, accessed 14 September 2016; European Commission (2007) 'Serbia Progress Report 2007', available at http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/serbia_progress_reports_en.pdf, accessed 14 September 2016; European Commission (2008) 'Serbia Progress Report 2008', available at http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/serbia_progress_report_en.pdf, accessed 14 September 2016; European Commission (2009) 'Serbia Progress Report 2009', available at http://ec.europa.eu/enlargement/pdf/key_documents/2009/sr_rapport_2009_en.pdf, accessed 14 September 2016; European Commission (2010) 'Serbia Progress Report 2010', available at http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf, accessed 14 September 2016; European Commission (2012) 'Serbia Progress Report 2012', available at http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf, accessed 14 September 2016; European Commission (2013) 'Serbia Progress Report 2013', available at http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf, accessed 14 September 2016; European Commission (2014) 'Serbia Progress Report 2014', available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf, accessed 14 September 2016; European Commission (2015) 'Serbia Progress Report 2015', available at http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf, accessed 14 September 2016.

<p>2007 Serbia Progress Report (p. 28)</p>	<p>Serbia continued to make good progress in the area of customs. Legislation is largely in line with European standards. A new Customs Tariff Law was adopted which enables the government to fully harmonise the customs tariff nomenclature with the EU Combined Nomenclature and the Harmonised System classification.</p>	<p>Further alignment is required, most notably in areas such as transit and security.</p> <p>Overall, Serbia is well advanced to meet the SAA requirements and remains committed to reforms in the area of customs and meeting the requirements of the SAA. However, Serbia's enforcement capacities remain limited.</p>
<p>2008 Serbia Progress Report (p. 34)</p>	<p>Serbia has made good progress in the area of customs. In terms of legislative activities, an implementing regulation was adopted which allows full alignment of the customs tariff nomenclature with the EU 2008 Combined Nomenclature and the Harmonised System classification. However, further alignment with the EU Customs Code is still required, in particular with regard to transit and security provisions. Moreover, in order to fully comply with the provisions of the SAA, Serbia needs to abolish fees related to the normal application of customs procedures.</p>	<p>Overall, Serbia is already well advanced in terms of meeting the SAA requirements and remains committed to reforms in the area of customs.</p> <p>There has been improved IT support for audit and risk analysis. The enforcement capacity of the Serbian customs administration has improved. However, Serbia's customs infrastructure, customs procedures and human capital need to be further strengthened. Audits, post clearance controls and general management need to be based more on mid-term strategies and annual plans, in order to enhance performance and to ensure consistency in their application.</p>
<p>2009 Serbia Progress Report (p. 33)</p>	<p>Serbia has made good progress in the area of customs. A set of legal acts were adopted in order to allow voluntary implementation of the Interim Agreement with the EU. The amended customs tariff nomenclature was published in February 2009 and is fully in line with the 2007 World Customs Organisation Harmonised System and the 2009 EU Combined Nomenclature. Simplified procedures for imports and exports, based on accounting documents, have been introduced. However, further alignment with the EU Customs Code is still required, in particular with regard to transit and risk analysis.</p>	<p>Serbia has made good progress in the area of customs. A set of legal acts were adopted in order to allow voluntary implementation of the Interim Agreement with the EU. The amended customs tariff nomenclature was published in February 2009 and is fully in line with the 2007 World Customs Organisation Harmonised System and the 2009 EU Combined Nomenclature. Simplified procedures for imports and exports, based on accounting documents, have been introduced. However, further alignment with the EU Customs Code is still required, in particular with regard to transit and risk analysis.</p>
<p>2010 Serbia Progress Report (pp. 32-33)</p>	<p>Serbia has made good progress in the area of customs. The new Customs Law has been adopted and is largely harmonised with the acquis. The amended customs tariff nomenclature is fully in line with the 2010 EU Combined Nomenclature. The Government adopted in September 2010 the Amendments to the Decree on Harmonized Custom Tariff Nomenclature for 2010.</p>	<p>Serbia is already well on the way to meeting the EU acquis and remains committed to reforms in the area of customs. The obligations stemming from the Interim Agreement were well respected. Further efforts are needed as regards legislative alignment, and administrative capacity, including preparing for IT interconnectivity and interoperability with EU IT systems.</p>

<p>2012 Serbia Progress Report (p. 61)</p>	<p>There has been good progress on customs legislation. <i>The Serbian government amended the decree on customs tariff nomenclature in November 2011 with the aim of aligning it with the 2012 EU Combined Nomenclature and with the liberalisation schedule of the Interim Agreement.</i> Serbia increased duty relief for postal packages in October 2011. <i>However, the rules are still not fully in line with the acquis. The Law on the Customs Service remains to be established and the classification practice is to be upgraded to EU standards.</i></p>	<p><i>Serbia made good progress in the area of the Customs Union with the adoption of new laws and sustained efforts to enhance its administrative capacity, in particular in the audit and post clearance sector.</i> Coordination between the customs administration and the Ministry of the Economy and Finance in charge of customs policy needs to be further improved. Serbia also needs to ensure the proper application of the acquis at the ABL with Kosovo. <i>Customs related security legislation should be implemented and the CDPS system renewed or upgraded.</i> Overall, preparations in the area of the Customs Union are well on track.</p>
<p>2013 Serbia Progress Report (p. 57)</p>	<p><i>As regards customs legislation, the Customs Law was amended in November and was further aligned with the acquis and with national legislation, particularly with some provisions of the Budget System Law.</i> The Serbian government amended the decree on customs tariff nomenclature in November with the aim of aligning it with the 2013 EU Combined Nomenclature and with the liberalisation schedule under the Interim Agreement.</p>	<p><i>Further harmonisation is needed in the field of customs legislation. The Law on the Customs Service remains to be adopted. An adequate legislative framework on cultural goods is missing. The provisions on cash control have yet to be aligned with the acquis. The same goes for duty relief on imports of new production equipment. Legislation on customs-related security initiatives and authorised economic operators has yet to be implemented. The Serbian parliament ratified the Pan-Euro-Med Convention on Rules of Origin. There has been some progress in the area of the customs union. The Customs Law and legislation on the tariff nomenclature were further aligned with the acquis. The CDPS system needs to be renewed or upgraded. Overall, preparations in the area of the customs union are well on track.</i></p>
<p>2014 Serbia Progress Report (p. 61)</p>	<p><i>As regards customs legislation, the customs tariff nomenclature was aligned with the 2014 EU Combined Nomenclature and the liberalisation schedule under the Stabilisation and Association Agreement implemented in November 2013.</i> However, the Law on the Customs Service remains to be adopted.</p> <p>Legislation on customs-related security initiatives and authorised economic operators remains to be implemented.</p>	<p><i>There has been some progress in the area of the customs union. However, further efforts are needed to complete alignment in a number of key areas.</i> The customs administration is steadily strengthening its administrative capacity, but further efforts are needed. The customs declaration processing system remains to be upgraded. Overall, preparations in the area of the customs union are on track.</p>
<p>2015 Serbia Progress Report (p. 68)</p>	<p>As regards customs legislation, an amended customs law was adopted in March, introducing a legal basis for use of the EU's new computerised transit system (NCTS). The customs tariff 69 has been aligned with the 2015 EU Combined Nomenclature.</p>	<p>Serbia is moderately prepared for the customs union. Good progress was made on transit, with the adoption of the amended customs law. However, the law on the customs administration has not yet been adopted and legislation on cash controls, cultural goods and duty relief on imports of new production equipment still needs to be aligned with the acquis. Risk management systems needs to be strengthened and harmonised.</p>



“Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond”

The ‘big bang enlargement’ of the European Union (EU) has nurtured vivid debates among both academics and practitioners about the consequences of ‘an ever larger Union’ for the EU’s integration capacity. The research project MAXCAP will start with a critical analysis of the effects of the 2004-2007 enlargement on stability, democracy and prosperity of candidate countries, on the one hand, and the EU’s institutions, on the other. We will then investigate how the EU can maximize its integration capacity for current and future enlargements. Featuring a nine-partner consortium of academic, policy, dissemination and management excellence, MAXCAP will create new and strengthen existing links within and between the academic and the policy world on matters relating to the current and future enlargement of the EU.