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Integrating Diversity in the European Union (InDivEU)

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**External differentiation: Turkey's role in EU
agencies**

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European University Institute
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InDivEU comprises a consortium of 14 partner institutions coordinated by the Robert Schuman Centre at the European University Institute, where the project is hosted by the European Governance and Politics Programme (EGPP). The scientific coordinators of InDivEU are Brigid Laffan (Robert Schuman Centre) and Frank Schimmelfennig (ETH Zürich). For more information: <http://indiveu.eui.eu/>



**Integrating
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Abstract

Decentralised EU agencies stand for solutions to European problems assisting in designing and implementing Europe's future. An often neglected feature is the growing outreach of EU agencies towards third countries as a 'participatory form of external differentiation'. To showcase the dynamic and potential of EU agencies for accession countries this contribution focuses on Turkey's role across EU agencies assessing its working arrangements with EU agencies (1999- 2021). We find that Turkey engages with 18 EU agencies in different forms, covering various policy areas and driven by different logics of action.

Keywords

External differentiation; EU agencies; Turkey

Introduction

Differentiation is ‘an increasingly salient feature of European integration’¹ by being core to the constitutional architecture of the European Union (EU) and gained prominence in light of the ongoing manifestations of internal and external centrifugal forces². 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.³ The future of Europe therefore is also one of external differentiated integration⁴, in which non-member states of the EU participate in shaping future policies, also because EU agencies are ‘more autonomous from core EU bodies’ offering potentially ‘more leeway to craft flexible integration arrangements.’⁵ Agencies engagements therefore could in fact represent one of the pieces in the puzzle of differentiated integration for Turkey⁶ and Europe’s future.

To showcase the dynamic and potential nature of EU agencies for accession countries this paper focuses on Turkey’s role across EU agencies assessing its different types of engagement between 1999-2021. Starting with a brief overview of the current literature on the international dimension of EU agencies, we proceed with the analysis building upon a systematic study of information drawn from the relevant official documents provided by the EU agencies and the European Commission, founding acts and reports. Assessing all bilateral and ad hoc working arrangements between EU agencies and Turkey over time, we show that Turkey’s involvement spans over 18 EU agencies in 2021, in different ways, covering various policy areas and driven by different logics of action at different moments in time. To conclude we discuss to what extent EU decentralised agencies represent a valuable asset for Turkey and the EU alike as a form of external differentiation within the wider debate on EU’s future.

Literature on the international dimension of EU agencies

There is a growing body of scholarship dedicated to the study of the international dimension of EU agencies.⁷ However there are still significant gaps that need to be filled. Third country participation in EU agencies, for example, has attracted little⁸ academic interest⁹ despite the fact that participation of third countries in EU agencies figures potentially an important element of external differentiation in the EU.

- 1 B. Leruth, S. Gänzle and J. Trondal, ‘Differentiated Integration and Disintegration in the EU after Brexit: Risks versus Opportunities’, (2019) 57 *JCMS: Journal of Common Market Studies* 1383-1394. See also F. Allemand, ‘The Impact of the EU Enlargement on Economic and Monetary Union: What Lessons Can Be Learnt From the Differentiated Integration Mechanisms in an Enlarged Europe?’, (2005) 11 *European Law Journal* 586-617; F. Schimmelfennig, D. Leuffen and B. Rittberger, ‘The European Union as a system of differentiated integration: interdependence, politicization and differentiation’, (2015) 22(6) *Journal of European Public Policy* 764-782; J. E. Fossum, ‘Democracy and differentiation in Europe’, (2015) 22(6) *Journal of European Public Policy* 799-815; C. Lord, ‘Utopia or dystopia? Towards a normative analysis of differentiated integration’, (2015) 22(6) *Journal of European Public Policy* 783-798.
- 2 F. Schimmelfennig, ‘Good governance and differentiated integration: Graded membership in the European Union’, (2016) 55(4) *European Journal of Political Research* 789-810; F. Schimmelfennig and T. Winzen, *Ever Looser Union?: Differentiated European Integration* (Oxford University Press, 2020).
- 3 M. Müftüler-Baç and B. Luetgert, ‘The European Union’s alternative models for maximizing its integration strategy for candidates and neighbouring states: a process of external differentiation’, (2016) Project Report. Free University Berlin, Berlin.
- 4 V. A. Schmidt, ‘The future of differentiated integration: a ‘soft-core,’ multi-clustered Europe of overlapping policy communities’, (2019) 17(2) *Comparative European politics* 294-315.
- 5 S. Lavenex, ‘The external face of differentiated integration: third country participation in EU sectoral bodies’, (2015) 22(6) *Journal of European Public Policy*, 850.
- 6 M. Müftüler-Baç, ‘Turkey’s future with the European Union: an alternative model of differentiated integration’, (2017) 18(3) *Turkish Studies* 416-438; A.K. Cianciara and A. Szymański, ‘Differentiated integration: towards a new model of European Union–Turkey relations?’, (2020) 21 *Turkish Studies* 253-273; D. Cihangir-Tetik, and M. Müftüler-Baç, ‘Turkey’s compliance with the European Union’s development policy: a pattern of external differentiated integration?’, (2018) 40 *Journal of European Integration* 939-959; E. Turhan ‘Thinking out of the Accession Box: The Potential and Limitations of Internal and External Differentiated Integration between Turkey and the EU’, In M. Waechter and H. Marhold (eds), *Europe – Against the Tide* (Nomos, 2018), at 43.
- 7 See H. Hoffmann, E. Vos and M. Chamon (eds), *The External Dimension of EU Bodies and Agencies: Law and Policy* (Edward Elgar Publishing, 2019).
- 8 S. Lavenex, ‘Third country participation in EU agencies: towards “condominio”?’, forthcoming in B. Leruth, S. Gänzle, J. Trondal (eds.) *Routledge Handbook of Differentiation in the European Union*
- 9 Exceptions to the rule are Lavenex, 2015, above, n. 5, 836-853 mapping third country participation in seven agencies (EASA, ECHA, EEA, EFSA, EMA, Europol, Frontex); M.-L. Öberg, ‘Third countries in EU agencies: participation and influence’, in H. Hoffmann, E. Vos and M. Chamon (eds), *The External Dimension of EU Agencies and Bodies* (Edward Elgar Publishing, 2019), at 204-221. focusing on the EEA and EFTA’s possibilities to influence the content of the EU acquis via their involvement in a selected number of EU agencies.

In recent years there have been studies looking into the participation and influence of third countries in the EU agencies focusing predominantly on the European Economic Area (EEA)/European Free Trade Agreement (EFTA) and European Neighbourhood Policy (ENP) countries¹⁰. For the Western Balkans region only a very preliminary mapping has been done so far.¹¹ This article will take up this regional challenge and start filling the gap by presenting new empirical data and understanding the underlying logics of actions behind the evolution of EU agencies' engagement with Turkey.

EU agencies and third countries: Different logics of action

To understand the key drivers of this 'external face of differentiation' and their underlying perceptions, a number of factors might be at play. Next to meso-level factors shaping these relationships, factors such as path-dependencies, organizational capacities (within agencies as well as within the core-executive) might play important roles.¹²

Lavenex¹³ identifies two main motivations explaining the different forms of cooperation between third countries and EU agencies: a foreign policy rationale and/or a sector specific interdependence logic.

According to the top-down foreign policy rational we expect EU agencies to act political, serving the general interest of the EU by supporting 'the European Commission in promoting its core foreign policy agenda to enhance regional stability, strengthen liberal democratic values, foster regional economic wellbeing through third countries' approximation to the EU acquis.'¹⁴ In this way, the country's integration status determines the level of cooperation between the EU agency and the third country, ie patterns of cooperation 'mimic' the level of integration.

According to the bottom-up sector specific interdependence logic we expect EU agencies to act functionalistic, serving functional needs of the EU stemming from sector specific interdependences and degrees of externalities of non-cooperation with third countries. In this way, EU agencies cooperate with third countries' regulators 'with whom they have strong sectoral interdependence.'¹⁵ EU agencies working in fields marked by higher interdependencies will be more involved in the external dimension of EU governance.¹⁶ As will be demonstrated in following analysis these are sectors in which engagement and cooperation between Turkey and the EU continued over previous years in spite of halting accession negotiations.

'In reality elements of both approaches occur simultaneously and interact in many ways'¹⁷ as will be demonstrated on Turkish example in the following analysis. Furthermore, table 1 shows that there are no uniform rule concerning the systematic involvement of third countries beyond the EFTA countries, but instead different categories of third countries interested and benefiting from cooperation with the EU agencies following different logics of cooperation: 1. Members of the EEA/EFTA, 2. ENP countries¹⁸, and

10 Lavenex, 2015, above, n. 5, 836 – 853, and Öberg, above, n. 16, 204-221.

11 M. Milenković, 'The Western Balkans and Differentiated Integration – the Potential Role of the European Union Agencies' (TARN workshop, Brussels 12 April 2018). Milenković, M., 'Differentiated EU Integration for the Western Balkans and the (Potential) Role of the EU Agencies', in S. Lilić, S (ed.) Perspectives of Implementation of European Standards in the Serbian Legal System – volume 9,(University of Belgrade, Faculty of Law 2019), 235 – 245. (in Serbian)

12 See Copeland, P. & Minto, R. (2021). European networks, domestic governance and the second-order effects of Brexit. *British Politics* doi.org/10.1057/s41293-020-00156-2 for a recent illustration.

13 Lavenex, 2011, above, n. 5, Lavenex, 2015, above, n. 5, later tested systematically for ENP and EEA/EFTA country by D. Rimkutė and K. Shyrokykh, 'The Role of EU Agencies in the Acquis Transfer: The Case of the European Neighbourhood Policy Countries' (2017) TARN Working Paper Series 17/2017 and D. Rimkutė and K. Shyrokykh, 'Transferring the acquis through EU agencies: the case of the European Neighbourhood Policy countries', in H. Hoffmann, E. Vos and M. Chamon (eds), *The External Dimension of EU Agencies and Bodies* (Edward Elgar Publishing, 2019), at 183-203. EU Rules Beyond its Borders: The Policy-specific Effects of Transgovernmental Networks and EU Agencies in the European Neighbourhood', (2019) 57 *Journal of Common Market Studies* 749-767 and Öberg, above, n. 16, 204-221.

14 Rimkutė and Shyrokykh, 2017, above, n. 19, 5.

15 Rimkutė and Shyrokykh, 2017, above, n. 19, 6.

16 Rimkutė and Shyrokykh, 2017, above, n. 19, 7.

17 Lavenex, 2015, above, n. 5, 841.

18 S. Lavenex, D. Lehmkuhl and N. Wichmann 'Modes of external governance: a cross-national and cross-sectoral comparison' (2009) 16 *Journal of European Public Policy* 813-833 and Öberg, above, n. 16, 207.

3. Countries such as Turkey and the Western Balkans which are all potential candidates to join the EU or already have candidate status.

Table 1. EU agencies and third countries: Multiform rules, status and different logics of cooperation

	EEA/European Free Trade Association (EFTA) members	ENP countries	Candidate countries
Multiform status (member with/without voting rights/observer) and bilateral working and/or ad hoc arrangements	member with right to vote (Frontex); member without right to vote (EASA, ERA, EEA, EFSA, EMCD-DA, EMSA, EIOPA, GNSS); observer	punctual cooperation via special bilateral working and/or ad hoc arrangement (EFCA, EASA, ERA, EBA, ESMA, GNSS, Europol, Eurojust, Cepol, SatCen, EMA, EASO, EU-OSHA, ECDC, EEA, EFSA, EMCDDA, EDA, EIO-PA, Frontex)	member with no right to vote (Turkey: EEA, EMCDDA); observer (EASA, ENISA, EBA, Cedefop, EMA, Eurofound, EASO, EU-OSHA, ECDC, ECHA, FRA, EFS); punctual cooperation via special bilateral working and /or ad hoc arrangements
(Predominant) logic of cooperation	Top-down foreign policy rationale based on norm export and regulatory cooperation	Bottom-up sector-specific policy diffusion driven by interdependence and degrees of externalities of non-cooperation	Top-down foreign policy rationale preparing accession and promoting policy transfer based on regulatory approximation

Source: own compilation based on EU agencies' founding acts, Lavenex (2001¹⁹, 2014²⁰, 2015²¹), Mustert et al. (2019)²², Rimkutė and Shyrokykh (2019)²³, Öberg (2019)²⁴

The first group of third countries receives access to EU agencies in a systematic manner by concluding an international agreement between the third country and the EU. This is mostly common for the countries belonging to the EFTA/EEA.²⁵ In practice, they have the same privileges and rights as EU Member States, except the right to vote.²⁶ As non-EEA EFTA member, Switzerland has had to negotiate access to EU agencies on a case-by-case basis through bilateral sectoral agreements. Countries of the EEA – Liechtenstein, Iceland and Norway as well as Switzerland as part of EFTA engage with 17 decentralised agencies as members or observers, even though not all have the same status or engagement with particular agencies.²⁷ The legal basis is found in the EEA agreement and the EEA/EFTA States participation in the EU agencies is enabled through decisions of the EEA Joint Committee. Additionally, there are bilateral agreements with the EU in place to facilitate the participation of individual EFTA states in several other EU agencies. Under the Article 78 of the

19 S. Lavenex, 'The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies', (2001) 39 *Journal of Common Market Studies* 851-874.

20 S. Lavenex, 'The power of functionalist extension: How EU rules travel' (2014) 21 *Journal of European Public Policy* 885–903.

21 Lavenex, 2015, above, n. 5, 836-853.

22 L. Mustert, B. Strauss, M. Scholten and M. Wood, 'Brexit and the ways forward for the UK and EU agencies' (*Renforce Blog*, 2019) <http://blog.renforce.eu/index.php/nl/2019/03/05/brexit-and-the-ways-forward-for-the-uk-and-eu-agencies/> (accessed 9 February 2021).

23 Rimkutė and Shyrokykh, 2017, above, n. 19, 749-767.

24 Öberg, above, n. 16, 204-221.

25 Lavenex, 2015, above, n. 5, 836-853. See also Öberg, above, n. 16, 204-221.

26 But see Mustert, Strauss, Scholten and Wood, above, n. 34, stating that 'Frontex is the only agency where the EFTA states have some voting rights, so it might be seen as the most intense participation of third countries in any of the agencies. The reason the EFTA states have this special position in the Frontex management board is that participation in Frontex was negotiated in special separate agreements.'

27 See further 'EU Agencies' (EFTA) <https://www.efta.int/eea/eu-agencies> (accessed 9 February 2021)

EEA agreement it is envisaged for the contracting parties shall strengthen and broaden cooperation in the framework of the Community's activities in number of fields.²⁸ In so far as these matters are not regulated under the provisions of other parts of EEA Agreement.²⁹ Participation of EFTA/EEA countries in EU agencies is regulated by Protocol 31 to the EEA Agreement³⁰ and Decisions of EEA Joint Committee.³¹ It is further provided by the Protocol that EFTA states shall participate in implementation of those networks required for the functioning of the agencies and bodies and in support of the legal framework arising from the creation of the agencies.³² According to Öberg³³ EU agencies follow a top-down foreign policy rational vis-à-vis EEA/EFTA countries predominantly: *It is the country's integration status determines the level of cooperation between the EU agency and the third country, ie patterns of cooperation 'mimic' the level of integration.*

The second category consists of ENP countries which have had an opportunity to collaborate with a number of EU agencies in a variety of forms serving as a valuable tool for the *acquis* transfer. This is especially important given the fact that no membership perspective was given to ENP countries so far. The launch of the ENP in 2004 has emulated many elements of the enlargement strategy, including the idea that 'the participation of neighbouring countries [in EU agencies] may be in the interests of the enlarged EU and of the neighbouring countries.'³⁴ Rimkutė and Shyrokykh³⁵ find that EU agencies follow a bottom-up sector specific interdependence logic vis-à-vis ENP countries: *EU agencies serve functional needs of the EU stemming from sector specific interdependences and degrees of externalities of non-cooperation with ENP countries.*

The third category, which has attracted hardly any scholarly attention, includes Turkey and the Western Balkan countries. Involvement with the EU agencies is based on the 1997 Luxembourg Council presidency conclusions³⁶ stipulating that agencies in which applicant countries will be able to participate will be determined on a case-by-case basis. This has resulted in all (potential) candidates' engagement with a range of EU agencies. Since the year 2000, EU agencies have been tasked with familiarising EU candidate countries with the *acquis* by offering participation opportunities. This has been recognised with a European Commission Communication from 2008 on EU agencies³⁷, one in a line of documents leading to the 2012 Joint Statement: *For this region we expect EU agencies to act political predominantly, serving the general interest of the EU and to cooperate with the countries following their respective integration status.*

Systematic mapping and assessment of cooperation between EU agencies and Turkey over time (1999-2021)

Participation in EU agencies can take different forms. Building on Rimkutė and Shyrokhkh³⁸ work on EU agencies' role in the *acquis* transfer in ENP countries, we distinguish between special

28 These are: 1. research and technological development, 2. information services, 3. environment, 4. education, training and youth, 5. social policy, 6. consumer protection, 7 small and medium-sized enterprises, 8 tourism, 9. the audiovisual sector, and 10. civil protection.

29 This cooperation provided for in Article 78 'shall normally take one of the following forms': 1. participation by EFTA States in EC framework programmes, specific programmes, projects or other actions; 2. establishment of joint activities in specific areas, which may include concentration or coordination of activities, fusion of existing activities and establishment of ad hoc joint activities; 3. the formal and informal exchange or provision of information; 4. common efforts to encourage certain activities throughout the territory of the Contracting Parties; 5. parallel legislation, where appropriate, of identical or similar content; 6. coordination, where this is of mutual interest, of efforts and activities via, or in the context of, international organizations, and of cooperation with third countries.

30 Protocol specifies participation only in: European GNSS Agency, European Environment Agency, European Agency for Safety and Health at Work.

31 Full list of Joint Committee Decisions regarding participation in agencies is available at 'EU Agencies', above, n. 39.

32 Para 302, Protocol 31 of EEA agreement.

33 Öberg, above, n. 16, 204-221.

34 See European Commission (2006) 'Communication from the Commission to the Council and to the European Parliament on the general approach to enable ENP partner countries to participate in Community agencies and Community programmes', COM (2006) 724 final, Brussels: European Commission

35 Rimkutė and Shyrokykh, above, n. 19.

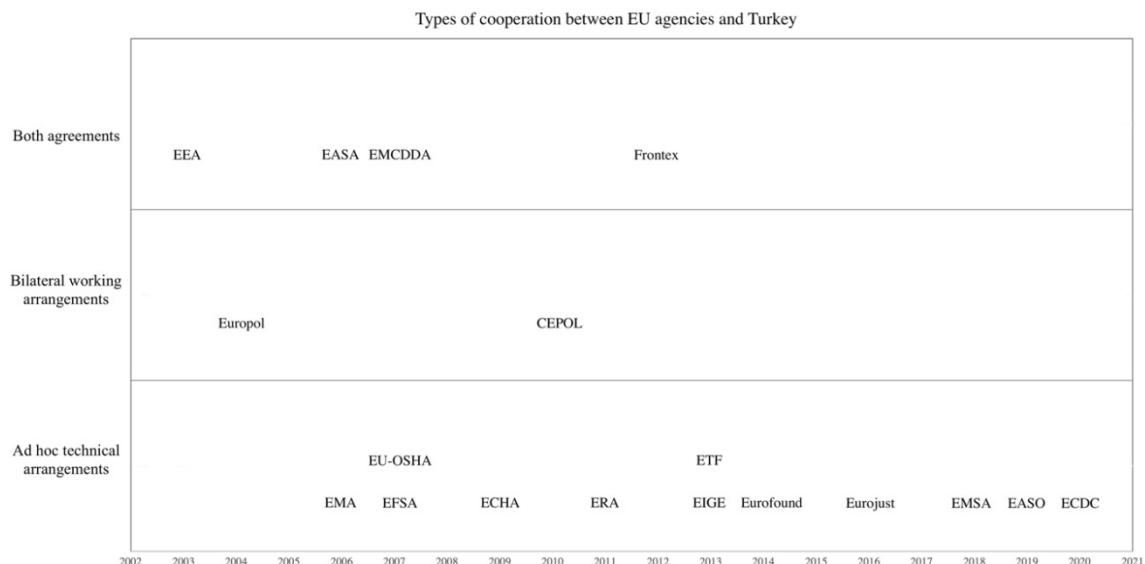
36 See further: https://www.europarl.europa.eu/summits/lux1_en.htm#enlarge (accessed 9 February 2021)

37 European Commission (2008) 'Communication on European agencies – the way forward', COM(2008)135 final, Brussels: European Commission.

38 Rimkutė and Shyrokykh, 2017, above, n. 19.

bilateral agreements and ad hoc arrangements. Special bilateral agreements establish sustained institutionalised links between an EU agency and Turkey focusing on technical collaboration. Technical ad hoc arrangements are temporal Instrument for Pre-Accession Assistance (IPA) project based technical and/or scientific activities aimed at institution and technical capacity building in Turkey. Eventually, collaboration between EU agencies and Turkey can take three forms: bilateral working agreements, ad hoc arrangements or the combination of both.

Figure 1. Types of cooperation between EU agencies and Turkey (1999- 2021)



Source: Kaeding, 2021³⁹

Figure 1 illustrates that EU agencies have opened for Turkey's participation to different extent and different points in time, covering different policy areas, proposing different forms and combinations of cooperation. In 2021 a total of 18 EU agencies engage with Turkey overall.

Most agencies (12 out of 18) collaborate on a technical ad hoc basis exclusively, while four EU agencies engage via both forms of arrangements; bilateral working and ad hoc technical arrangements: European Environment Agency (EEA), European Aviation Safety Agency (EASA), European Monitoring Centre for Drug Abuse and Addiction (EMCDDA), and European Boarder Control Agency (Frontex).

Aiming at explaining the variance across agencies' openness to participate with Turkey over time, figure 1 also shows that the EU agencies' engagement with Turkey seems to have been driven by two different logicsof actions at different moments in time. While sector-specific interdependencies seem to explain the set of EU agencies and evolution of types of cooperation between EU agencies and Turkey, on the one hand, the timing of those bilateral arrangements seem to be driven by foreign policy objectives set by the bilateral EU-Turkey political enlargement agenda, on the other hand.⁴⁰

First, cooperation between EU agencies and Turkey started before the official opening of accession negotiations in 2005, with the EEA in 2003⁴¹ and Europol in 2004, but then really picked up speed shortly afterwards.

39 Kaeding, 2021, EU Agencies' Potential for the Future of EU-Turkey Relations (2):A Systematic Mapping of Cooperation between EU Agencies and Turkey (1999–2021), IPC Policy Brief October.

40 Lavenex states 'of course, the foreign policy and functionalist approaches are ideal types, heuristic concepts to enhance our theoretical understanding of the drivers of EU external differentiation. [...] in reality elements of both approaches occur simultaneously and interact in many ways.' (2015: 841)

41 More information on Turkey's role in the EEA and the EMCDDA can be found here: Kaeding and Krull, 2021, Assessing the Potential of EU Agencies for the Future of EU-Turkey Relations (1): Turkey's Full Membership without Voting Rights in the EEA and EMCDDA, IPC Policy Brief September.

Between 1999 and 2004 Turkey had to and took important steps in order to meet the Copenhagen criteria, and, the European Council adopted the EU-Turkey Accession Partnership (2001) consequently, providing a road map for Turkey's EU accession process and the Turkish Government adopting the National Programme for the Adoption of the Acquis, reflecting the Accession Partnership. Both, the EEA and Europol work in interconnected issues areas characterised by higher interdependencies with Turkey. While Europol is a 'law enforcement agency supporting in preventing and combating all forms of serious international and organised crime, cybercrime and terrorism'⁴², the EEA provides 'sound, independent information on the environment for those involved in developing, adopting, implementing and evaluating environmental policy.'⁴³

Second, it was only in June 2006, with the practical negotiations on the 35 chapters of the acquis, that a series of bilateral working arrangements and ad hoc arrangements started emerging. This time, however, it is EU agencies working in both policy areas characterised by higher or low sector specific/functional interdependencies, which show immediate interest vis-à-vis Turkey.

As for sectors with higher sector specific/functional interdependencies these included agencies like: EASA (2006) which is 'responsible for setting the rules, guidelines and standards for all safety and environmental aspects of civil aviation'⁴⁴ and EMCDDA (2007) which offers a 'factual overview of European drug problems and a solid evidence base to support the drugs debate. Today it offers policymakers the data they need for drawing up informed drug laws and strategies. It also helps professionals and practitioners working in the field, pinpoint best practice and new areas of research'. Both EU agencies, EASA and EMCDDA, cover transportation and drug and human trafficking, i.e. interconnected issue areas with higher interdependencies.

On the other hand, there is the European Medicine Agency (EMA, 2006) which is 'responsible for the scientific evaluation, supervision and safety monitoring of medicines in the EU'⁴⁵; EFSA (2007), which is a 'source of scientific advice and communication on risks associated with the food chain'⁴⁶; EU-OSHA (2007) raising 'awareness of occupational safety and health (OSH) topics across Europe and providing, amongst others, online risk assessment tools for small and medium-sized enterprises to assess and manage risks in the workplace'⁴⁷; ECHA (2009) implementing the EU's chemicals legislation 'to protect people and the environment from the hazards of chemicals. It also contributes to a well-functioning internal market and the innovation and competitiveness of the European chemicals industry. ECHA develops independent scientific and technical opinions and takes binding decisions to ensure that chemicals companies comply with European law.'⁴⁸ Most of the above represent EU agencies in policy areas such as pharmaceuticals, food safety, social regulation issues, and chemicals characterised by lower sector specific interdependencies.

Third, another set of EU agencies followed between 2009 and 2016 when, eleven years after the official start of accession negotiations, the EU started closing its 'accession door' slowly vis-à-vis Turkey, covering both, policy areas of low or high interdependencies: CEPOL (law enforcement training), ERA (railway), Frontex (border control), ETF (reform of education, training, and labour market systems), EIGE (gender), Eurofound (improvement of living and working conditions), Eurojust (criminal justice cooperation).

Fourth, by 2016, when the European Parliament voted to suspend accession negotiations with Turkey over human rights and rule of law concerns, 15 EU agencies had established forms of cooperation. The EU's General Affairs Council stated that 'Turkey has been moving further away from the European Union. Turkey's accession negotiations have therefore effectively come to a standstill and no further chapters can be considered for opening or closing and no further work towards the

42 <https://www.eea.europa.eu/about-us> (accessed 20 February 2021)

43 <https://www.europol.europa.eu/about-europol> (accessed 20 February 2021)

44 <https://www.easa.europa.eu/light/easa> (accessed 20 February 2021)

45 <https://www.ema.europa.eu/en/about-us/what-we-do> (accessed 20 February 2021)

46 <https://www.efsa.europa.eu/en/aboutefsa> (accessed 20 February 2021)

47 <https://osha.europa.eu/en/about-eu-osh> (accessed 20 February 2021)

48 <https://echa.europa.eu/about-us> (accessed 20 February 2021)

modernisation of the EU-Turkey Customs Union is foreseen.⁴⁹ Even with this kind of approach to Turkey's accession negotiations in 2018, technical ad hoc arrangements between EU agencies and Turkey continued mainly in sectors of high sector specific interdependence covering the fields of transportation (EMSA in 2018), migration (EASO in 2019) and the Covid pandemic (ECDC in 2020).

Summary and discussion of findings

To sum up, Turkey has been successfully drawn into EU transgovernmental networks⁵⁰ over the last 21 years – starting before the official candidate status and continuing after the formal freeze of the accession talks in 2019. In 2021 a total of 18 EU agencies engage with Turkey.

Turkey stands for a distinct category of third countries with varying accession status, where the range of cooperation and timing with EU agencies has been driven by both, the foreign policy logic of action (predominantly), but also the functionalist independence logic of action. In line with Lavenex⁵¹ we show in fact for Turkey that both logics have occurred simultaneously and interacted in many ways over time. Lately, we see that EU agencies continue and extend their engagement with Turkey despite the 'freeze of accession talks', which might hint at the potential of the outreach of EU agencies to accession countries representation a so far fairly neglected form of 'external face of differentiation' beneath central EU decision-making institutions.

Consequently, Turkey is specific and different compared to other third countries. In comparison to the cooperation between EU agencies and ENP countries, it is noteworthy that key policy areas characterised by high interdependencies in the field of border control (Frontex and EASO), organised crime (CEPOL), human trafficking (Eurojust), transportation (ESMA) and pandemics (ECDC) materialised only years after the respective EU agencies had already established cooperation with ENP countries, many of which do not even have a longer term enlargement perspective: EMSA (11 years later), Eurojust (nine years later), ECDC (eight years later), EASO and Frontex (five years later) and CEPOL (three years later). This indicates that cooperation between EU agencies and Turkey does not only follow a sector-specific interdependence logic, but that EU agencies also act as an extended arm of the European Commission, and that Turkey's integration status plays an important role.

On the other hand, the foreign policy logic seems to be far less dominant than, for example, vis-à-vis the UK⁵². The EU-UK Trade and Cooperation Agreement (TCA) addresses only seven EU agencies explicitly covering policy areas of shared interest: energy (ACER), transport (EASA and EMSA), the areas of freedom, security and justice (eu-Lisa, Eurojust, Europol) and intellectual property (EUIPO). However, the TCA does not cover cooperation on foreign policy, external security and defence, even though this was initially foreseen in the Political Declaration. Furthermore, it does not cover any decisions relating to equivalences for financial services, nor possible decisions pertaining to the adequacy of the UK's data protection regime, or the assessment of its sanitary and phytosanitary regime for the purpose of listing it as a third country allowed to export food products to the EU. This lack of engagement with EU agencies covering policy areas defined by high interdependencies implies that the driving force behind the TCA followed predominantly a foreign policy rationale.

Moreover, this brings forth multiple questions: is it possible to perceive third parties' voluntary participation in EU agencies in lieu of membership? What is the main mechanism that makes one to classify such participation as external differentiation, but not functional cooperation? Also, what about the constitutional implications for third countries? Egeberg and Trondal⁵³ address the constitutional questions for the EEA countries in the sense that EU agencies intervene directly in affiliated states also.

49 <https://www.consilium.europa.eu/media/35863/st10555-en18.pdf> (accessed 20 February 2021)

50 See also Baird, 2015: 853.

51 Lavenex, 2015, above, n. 5, 841.

52 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3963990 (accessed 22 November 2021)

53 Egeberg, M. & Trondal, J. (2018). An Organizational Approach to Public Governance Understanding and Design, Oxford: Oxford University Press.

Conclusion

Currently there are seven candidates and potential candidates for EU membership, Turkey and countries of the Western Balkans. Having in mind its size and extended EU integration process Turkey is by far the most complex case. Since June 2019 negotiations between Turkey and the EU have come to a standstill, with no further possibility of opening or closing chapters at this point.⁵⁴ However, Turkey is important for Europe's future remaining a 'key partner for the European Union in essential areas of joint interest, such as migration, counter-terrorism, economy, trade, energy and transport'.⁵⁵ Even though the enlargement processes is in crisis, multiplicity of current engagements with candidates, most notably Turkey, demonstrates already a high degree of external differentiation.

This paper addressed an often neglected feature of the differentiation literature: the growing involvement of third countries in EU agencies as a form of 'participatory external differentiation'. To showcase the dynamic and potential nature of EU agencies for accession countries we mapped and assessed Turkey's role across all EU agencies between 1999-2021 and found that Turkey's involvement in EU agencies is manifold. It covers various policy areas and indeed, follows different logics of action simultaneously. In the end, this mapping of third party agency participation through an assessment of the Turkish case is a solid contribution of this paper to the external differentiated integration literature.

While the future Trade and Cooperation Agreement (TCA) between the EU and the UK only covers seven EU agencies, EU-Turkey relations involve 18 EU agencies with various cooperating forms. In spite of halted accession negotiations, technical ad hoc arrangements between EU agencies and Turkey are continuing in areas of high sector specific interdependence covering the fields of transportation (EMSA in 2018), migration (EASO in 2019) and the Covid pandemic (ECDC in 2020).

In times where EU - Turkey relationship has become extremely complex and dynamic, 'a new institutional framework, termed a "dynamic association", that would be complementary to Turkey's albeit stalled accession process'⁵⁶ would therefore need to reflect on the continued potential of EU agencies, as a form of external differentiation⁵⁷. Further enlargement of the Union and its multiple links with non-member European countries indicate that expansion of the scope of differentiated integration is, indeed, inevitable.⁵⁸

For future EU-Turkey relations, therefore, EU agencies seem to offer a valuable asset for Turkey and the EU alike in times of uncertain road to EU membership. As demonstrated in the paper, decentralised EU agencies already present a flexible mechanism for multi-fold cooperation trajectories. In light of the enlargement fatigue and shrinking membership prospects, this feature of transgovernmental outreach towards Turkey leads to continued sector-specific policy diffusion, policy transfer and regulatory approximation. This way EU agencies continue to be an important piece in Europe's differentiated future, with non-member states/ candidate countries engaging in important EU integration project.

54 In the latest assessment on the progress of enlargement process for seven candidates it was concluded that "Turkey has continued to move further away from the European Union with serious backsliding in the areas of democracy, rule of law, fundamental rights and the independence of the judiciary". European Commission, 2020 Communication on EU enlargement policy, COM(2020) 660 final, 4. (Hereinafter: European Commission, 2020 Communication on EU enlargement policy)

55 European Commission, 2020 Communication on EU enlargement policy 20.

56 https://feuture.uni-koeln.de/sites/monteus/user_upload/FEUTURE_Synthesis_Paper.pdf (accessed 27 February 2021)

57 Müftüler-Baç, Meltem. "External Differentiated Integration: the Modalities of Turkey's Opting into the European Union", Working Paper, EUI RSC 2021/19, Integrating Diversity in the European Union.

58 M. Müftüler-Baç. 'Turkey's future with the European Union: an alternative model of differentiated integration', (2013) 2, *Turkish Studies*, 419-420.

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