

## REMODELING TURKEY-EU RELATIONS: THE ‘SWISS MODEL’ OF DIFFERENTIATED INTEGRATION AS AN ALTERNATIVE TO THE CUSTOMS UNION?’

**Dr. Öğr. Üyesi Serdar Altay**  
İstanbul Teknik Üniversitesi  
İşletme Fakültesi  
ORCID: 0000-0003-3603-6729



### Abstract

Alternative models of differentiated integration with the European Union (EU) discussed in the context of Brexit might be inspiring for European and Turkish stakeholders who are concerned with overcoming the deepest crisis in bilateral relations of recent history. The forthcoming customs union modernization negotiations are likely to create an opportunity to bring Turkey-EU relations to a stronger mode of external differentiated integration as an alternative to full membership as in cases of Norway or Switzerland and fix problems aroused by the current structure of the customs union. This paper examines Switzerland’s case as an alternative model of integration between Turkey and the EU which can be considered during the upgrade process as a model to replicate. It lays out the potential advantages and disadvantages of a Swiss model for an application to Turkish-EU relations in the coming future. It argues that Switzerland’s “free trade agreement plus” model theoretically provides a better alternative for Turkey’s national interests than the current form of the customs union and the EC’s two scenarios. Yet it is impractical to transpose the model as it is. Instead, the parties are suggested to work out an alternative inspired by the Swiss model that would adopt advantageous aspects of the model while avoiding its downsides.

**Keywords:** European integration, Turkey-EU relations, Customs union, Differentiated integration, Swiss model

*Türkiye-AB İlişkilerini Yeniden Biçimlendirmek: Gümrük Birliğine Alternatif Olarak Farklılaştırılmış Entegrasyon “İsviçre Modeli”?*

### Öz

Brexit süreci bağlamında tartışılan Avrupa Birliği (AB) ile alternatif farklılaştırılmış entegrasyon modelleri yakın tarihin en derin kriziyle karşı karşıya olan Avrupa ve Türkiye için ilham kaynağı olabilir. Gümrük birliği modernizasyonu müzakereleri Türkiye-AB ilişkilerini Norveç ve İsviçre vakalarındaki gibi tam üyeliğe alternatif daha güçlü bir dış farklılaştırılmış entegrasyon şekline dönüştürmek ve gümrük birliğinin şimdiki yapısından kaynaklı sorunların tamiri için bir fırsat yaratabilir. Bu makale İsviçre örneğini gümrük birliği güncelleme sürecinde değerlendirilebileceği düşüncesiyle Türkiye ve AB arasında alternatif bir entegrasyon modeli olarak incelemektedir. Makale, İsviçre modelinin yakın gelecekteki Türk-AB ilişkilerine uygulanması durumunda yaratacağı potansiyel avantaj ve dezavantajlarını ortaya koymaktadır. Bu bağlamda İsviçre’nin “serbest ticaret anlaşması artı” modelinin kuramsal olarak hem var olan gümrük birliği hem de AB tarafından önerilen iki senaryodan daha iyi bir alternatif teşkil ettiğini iddia etmektedir. Fakat modelin doğrudan alınması ve uygulanması pratik olmayacaktır. Bunun yerine iki tarafın İsviçre modelinden esinlenecek ve bu modelin avantajlı unsurlarını alıp olumsuz özelliklerinden kaçınacak bir alternatif geliştirilmesi önerilmektedir.

**Anahtar Sözcükler:** Avrupa entegrasyonu, Türk-AB ilişkileri, Gümrük birliği, Farklılaştırılmış entegrasyon, İsviçre modeli

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## **Remolding Turkey-EU Relations: The ‘Swiss Model’ of Differentiated Integration as an Alternative to the Customs Union?\***

### **Introduction**

In the last couple of years, Turkey-European Union (EU) relations have encountered the deepest crisis of recent history. Turkey’s EU accession negotiations have effectively been stalled. Even though Turkey continues its official bid for full membership, an accession scenario is no longer a realistic goal considering severe political disagreements in the last few years against diminishing public support for the EU in Turkey and rising populism all over Europe. Even though Turkey’s full EU membership is not a realistic goal for the foreseeable future, neither Brussels nor Ankara wants to officialize this fact as this might cause an entire break up of bilateral ties. As suggested by some observers, Turkey and the EU are not stuck with full membership as the only option to keep Turkey anchored with the Union in the future (Karakaş, 2013; Müftüler-Baç, 2017; Cianciara and Szymański, 2019). The UK’s decision to leave the EU might provide us with a new perspective for an alternative path for the future of Ankara-Brussels relations other than the full membership option. Alternative models of integration with the EU have been discussed in the context of Brexit in conjunction with “differentiated integration” (Fossum, 2016; Crespo, 2017; Bobowiec, 2017; Emerson, 2017). Those models might be inspiring for European and Turkish policy-makers and opinion leaders who are concerned with overcoming the current deadlock in bilateral relations. As it will be elaborated further below, external forms of differentiated integration define different modes of engagement with the EU of non-member states such as Switzerland, Norway, and Ukraine based upon differentiated levels of incorporation with the Union upon functional, spatial and/or temporal distinctions in the strength of links.

Although it is not an EU member state, Turkey has already a high degree of functional cooperation with the Union and it is firmly attached to the European

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economy. Having strong trade and investment ties developed over six decades, Turkey and the EU have been collaborating in various realms including energy, foreign and security, and justice and home affairs. The two parties have a “partial” Customs Union (CU) which is in operation since 1996.<sup>1</sup> Furthermore, in May 2015 the European Commission and the Turkish government have reached an understanding to upgrade and broaden the scope of the CU. The mutual understanding suggests expanding the market access reach of the partial bilateral commercial framework to agriculture, service sectors, and public procurement, and addressing certain institutional defects of the current structure. On the top of Ankara’s list of expectations comes removing outstanding trade barriers and addressing the asymmetry between Turkish and the EU’s Free Trade Agreements (FTAs) as well as the resolution of non-participation of Turkey to the EU’s decision-making as to CU-related *acquis*.

Whether the upgraded framework will address all of Turkey’s expectations will depend on the course of bilateral negotiations, especially the integration model to be adopted by the two parties for the future of the commercial ties. In this context, in December 2016 the European Commission issued its position paper containing an impact study and called for a negotiation mandate from the European Council (EC, 2016). The document elaborates on two alternative negotiation scenarios that would fit well with the EU’s interests and expectations. The EC’s first scenario (option B) proposes a hybrid model including keeping the existing partial CU on industrial goods and negotiating an FTA on services and agriculture. Alternatively, the Commission suggests displacing the existing CU with a “Deep and Comprehensive” FTA (i.e., option C). In both scenarios the EC wants the new deal to contain binding rules on a substantial portion of its *acquis* together with a legal dispute settlement mechanism (DSM). The Turkish side, on the other hand, has not released any official documents that would reveal Ankara’s negotiation position, its preferred integration model for the future or its wish-list for the rules’ content of the forthcoming agreement. This paper aims to contribute to the policy debate by analyzing Switzerland’s “FTA-plus” model for consideration by the academic community and the parties and to contribute to Ankara’s negotiation position for the forthcoming negotiations.

The forthcoming CU modernization negotiations are likely to create an opportunity to bring Turkey-EU relations to a stronger mode of external differentiated integration as in cases of Norway or Switzerland than the partial CU existent between the two parties. This paper looks at Switzerland’s case as an alternative model of integration between Turkey and the EU to see if it could be replicated by the parties or if it could inspire the parties to build a mutually

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1 I borrow Hamilton’s description of the EU-Turkish CU as a partial one considering its limited sectoral scope (Hamilton, 2018: 22-25).

satisfying model. Clearly, the Swiss model deserves a thorough analysis outlining potential upsides and downsides against a consideration as to whether such a model would serve as a template to emulate in the context of the CU upgrade talks and beyond. The Swiss model will be compared and contrasted with the existing partial CU and the European Commission's two upgrade scenarios which were proposed in December 2016 (EC, 2016). The paper suggests that the Swiss model *theoretically* provides a better alternative for Turkey and the EU than the current form of CU. As it will be elaborated further in the paper the model has four aspects: (i) It is built upon an FTA rather than a CU; (ii) it is an "FTA-plus" model consisted of a patchwork of 120-plus thematic-specific agreements; (iii) the agreements are signed only in domains of interests to Switzerland enabling for the better Swiss access to the EU's single market rather than a substantial rules package superimposed by the EU to transpose substantial portions of the EU's *acquis* to the Swiss national laws; (iv) the model envisages the Swiss compliance to the EU rules mostly in a static and case-by-case manner with no overarching legal enforcement mechanism or a broader monitoring mechanism. Yet the two sides have been working on upgrading the Swiss model gradually and partially to a more dynamic model.

The Swiss model enables economic relations between the EU and Switzerland to be stronger compared to Turkey-EU commercial ties thanks to its advantages as regards the freedoms of the cross-border movement of goods, persons, and services. Specifically, the model entails tariff-free goods trade with the EU, better access to the EU's internal market not only for goods but also for some service sectors, and it allows for the free circulation of persons between the two parties in turn for the Alpine country's compliance with a shortlist of relevant EU rules. Since it is an FTA-based model it allows for greater independence for Switzerland to conduct its own commercial ties and FTAs with third parties. In this regard, such a model would address Turkey's FTA asymmetry problem. Even though the model does not allow for Swiss participation in decision-making as to relevant *acquis*, it provides for better decision-shaping opportunities than Turkey currently has. Nevertheless, a replication of the model to the EU-Turkish context in its current form seems to be impractical since the model has critical disadvantages as to the management of a complex set of legal obligations. The Swiss model has come into existence as a consequence of unique historical, financial and geographical contexts that have led to certain operational complexities stemming especially from a patchwork of several individual sectoral agreements and a complex institutional structure which might and should be avoided in the Turkish-EU context. The advantageous aspects of the model can be embraced and pushed for by the Turkish policy-makers in striking a more balanced deal with the EU and to counterbalance the EC's two options on the table. As in the Swiss model, the EU and Turkish negotiators may consider an

FTA-based model, with a focused market access and lighter rules package that would enable Turkey's better access to EU's single market among others. Such an alternative option might also be appealing for the EU interests as it would address several European concerns as to the existing partial CU which will be elaborated below.

The paper continues with an analytical section on external differential integration followed by a discussion of the Turkey-EU Customs Union and its upgrade scenarios. Next, it analyses the Swiss model in comparison with Turkey's CU as regards the model's market access and rules scopes as well as its institutional and enforcement mechanisms. The paper then discusses the Swiss model's applicability to the Turkish-EU framework for addressing Ankara's expectations including addressing major defects of the current structure.

## **1. External Differentiated Integration and the Upgrade of the Turkey-EU Customs Union**

The term "differentiated integration" has been used to conceptualize different forms of integration of member and non-member states with the European Union (EU) through institutional arrangements that define formal and non-formal compliance of those states with the EU's *acquis communautaire* and decision-making procedures. Since the idea was firstly introduced in the late 1960s, scholars have introduced distinctive modes for differentiation upon "functional", "spatial" and "temporal" aspects of European integration mostly with a focus on relations between EU member states, i.e. *internal* differentiated integration (Dyson and Sepos, 2010; Leuffen, Rittberger, and Schimmelfennig, 2013; Leruth and Lord, 2016). Karakaş and others lay out different paradigms so far brought up by different European policy-makers in different time spans with references to "time", "thematic freedom of choice" and "depth of integration" dimensions of differentiated integration. Major paradigms for integration between the EU member states include "multispeed Europe", "Europe à la carte" and "variable geometry Europe" (Karakas, 2013: 1063-4; Stubb, 1996). While keeping the political and legal integrity of the EU as its chief goal, the multispeed Europe idea was circulated in the mid-1970s and suggested a temporal subdivision of integration among EU member states on common EC treaties. On the other hand, the best example for the "Europe à la carte" idea, which was first surfaced in the late 1970s, is the Schengen area regime for the temporary movement of people. It envisages the EU through intergovernmental lenses as a functional unity in which member states are free to choose their attendance and integration visions on the EU level. Finally, for the paradigm of "variable geometry Europe," the European monetary union presents an excellent example. According to this paradigm, which entered the debate in the early 1980s, member

states are to be allowed to progress with integration even against the will of the members preferring lagging behind. The states lagging behind are to be able to take part in more recently integrated areas but with no right in decision-making.

All those paradigms show that differentiated integration has always been intrinsic to the process of European integration. Schimmelfennig et. al. (2015: 765) contend that differentiation constitutes “an essential and, most likely, enduring characteristic of the EU”. These scholars characterize the European Union “as one Europe with a single organizational and member state core and a territorial outreach that varies by function” (Ibid. 2015: 767). The EU’s system of differentiated integration has arguably been featured by both the variation in “levels of centralization” (vertical differentiation) and variation in “territorial extension” (horizontal differentiation) across different policy domains. Vertical differentiation is used to define the situation when policy domains have been integrated at a different pace and reached distinct centralization levels over time, whereas horizontal differentiation refers to the territorial reach of specific policy domains. Especially since the early 1990s, differential integration has become integral to the EU’s *widening* to new members and the *deepening* for members that wish to move forward, both processes featured by these two categories of variation in integration (i.e., horizontal and vertical). As we have observed in the cases of the Eurozone and the Schengen area EU policies have become more integrated thanks to deepening even though these policies have not been uniformly valid in all member states. As to widening, each accession agreement contained transitional arrangements with temporal derogations from the entire and immediate application of EU rules for the new-comers (Schimmelfennig, 2014).

While a sophisticated system of *opt-ins* and *opt-outs* have underscored the participation of increasingly diverse and non-uniform new-comers to the EU, differential integration has also recently become a means to integrate neighboring non-member states to the Union (Lavenex, 2015; Gstöhl, 2015). As observed since the early 1990s in different country cases, external differentiated integration has not only taken the form of narrow, bilateral, and static models but recently has more growingly taken multilateral and dynamic models with novel features. According to Gstöhl 2015, diverse forms of integration have been developed as a result of a growing interest from the EU’s neighbors in the EU’s growing internal market. In earlier models such as those of Turkey and Andorra, the customs union model or shallow FTAs were adopted as models for differentiated integration, while in more recent cases of Ukraine and Georgia a comprehensive FTA model (Deep and Comprehensive Free Trade Agreement) was developed for a deeper form of integration than that of Turkey’s. Similarly, in cases of the European Free Trade Association (EFTA) members like Iceland, Liechtenstein and Norway the European Economic Area (EEA) model allowed

for a much more substantial integration with the EU's single market. In the latter model non-EU members such as Norway or Iceland, and in its FTA-plus model Switzerland have all negotiated certain *opt-ins* to become a party to specific EU policies. All these different models enable the non-EU countries to benefit from the EU's single market thanks to better access to the EU's goods, services, capital, and labor markets and enhanced domestic competition.

On the other hand, it is a clear trend, as underlined by Müftüler-Baç that the European third countries have increasingly been encouraged and even forced to put the *acquis* in the integrated domains into their domestic law, whereas none of those third parties have ever been granted full decision-making powers in determining the *acquis* but perhaps possess rights to consultation and information (Meltem Müftüler-Baç, 2017: 5). In this regard, as it will be discussed later, a modernized CU will not allow Turkey to take part in the EU's decision-making processes as desired by Ankara. Even though these external differentiated integration models have been brought about in a rather "ad hoc" and "case-by-case" manner, Gstöhl (2015) rightly asserts that a standard EU strategy has been emerging towards streamlining external integration in recent years. Gstöhl puts forward

the EU increasingly attempts to ensure market homogeneity by concluding agreements which allow for a dynamic adaptation to the evolving *acquis*, its uniform interpretation and for independent surveillance and judicial enforcement (Gstöhl, 2015: 855).

Assessed against the background of different models and new trends in external differentiated integration Turkey's current partial model of integration presents significant opportunities for the country's stronger incorporation with the EU in the coming future. As a matter of fact, Turkey has already been functionally integrated into the EU in multiple ways (Meltem Müftüler-Baç, 2017: 18-9). In addition to the customs union (CU), Turkey takes part in the EU's funding programs for research and development, education culture, and environment. Ankara is taking an active part in the EU's foreign and security policy, including the EU's police and military missions in the Balkans. Müftüler-Baç and Luetgert contend that providing a venue for the future of Turkey and the EU *functional* models of differentiated integration have also the potential to solve the challenge of the effectiveness of EU enlargement policy and the EU's integration capacity (Müftüler-Baç and Luetgert, 2016). Müftüler-Baç's suggestion is that when the EU adopted the new "Positive Agenda" with Turkey on 17 May 2012, it was considering a model of external differentiated integration that would make possible Turkey's stronger integration in the EU in multiple new policy areas even in the absence of full membership. The Positive Agenda targets have arguably increased dialogue and rapprochement between Turkey and

the EU on the Schengen regime, increased cooperation between the two parties on energy, foreign policy, and terrorism issues, and enhanced participation of Turkey in the EU's social programs (Müftüler-Baç, 2013; 2017: 14-8). Meltem Müftüler-Baç underlines further potential development areas stating that:

a path of differentiated integration with Turkey would include increased harmonization with regards to the single market, extension of free trade arrangements on textiles and agriculture, and increased cooperation in the financial sector, in other words a deepening of the 1995 customs union agreement. Similarly, increased cooperation between Turkey and the EU on the Common Foreign and Security Policy (CFSP) – which is already substantial, with Turkish participation in almost all EU-led operations – would be necessary. This would involve Turkey's membership in the European Defence Agency and the participation of the Turkish Minister of Foreign Affairs in the relevant Council meetings (Müftüler-Baç, 2013: 2).

In this regard, Turkey's integration with the EU has the potential to evolve toward a stronger model of external differential integration which would deepen and diversify ties without Turkey's membership to the EU. The project to upgrade and broaden the CU would serve that goal.

### **1.1. The EU-Turkey Customs Union and Upgrade Scenarios**

The Turkey-EU CU has been established within the context of the association law developed following the signing of an Association Agreement (also known as the Ankara Agreement) between the European Economic Community (EEC) and Turkey in 1963. The Ankara Agreement envisioned a progressive model of integration between the Community and Turkey by the formation of a Customs Union in three phases; i.e., preparatory, transition, and the completion phases. As the preparatory phase was completed, the terms of the transition phase were set with an Additional Protocol signed in 1970. While the Additional Protocol detailed gradual materialization of free movement of goods, it also envisaged free movement of persons and services between the two sides. On achieving free movement of goods, the EEC would eliminate tariff and quantitative barriers to its imports from Turkey upon the entry into force of the Addition Protocol, whereas Turkey would eliminate those barriers according to timetables of 12 and 22 years. The CU was eventually established in 1995 with the Association Council Decision No: 1/95 on implementing the final phase. The CU has not only removed all tariffs and quantitative barriers on trade in industrial goods and processed parts of agricultural products, but it has also locked Turkey in the EU's Common Commercial Policy and Common Customs Code and



regulations. Turkey also committed to putting the *acquis* into national law in technical regulations for goods under free circulation, intellectual property rights (IPRs), competition and state aid policies (Togan, 1997, 2015).<sup>2</sup> In addition to the CU, in 1996 Turkey and the EU also signed a sectoral Free Trade Agreement on coal and steel products. The two parties negotiated bilateral preferential concessions in farm and fisheries products in 1998 (Association Council Decision No: 1/98; EC, 2016: 5).

Even though the parties initially envisaged free movement of persons and services the CU Decision has not materialized those goals. In 1963 when the parties had signed the Ankara Agreement they had a vision to eventually include Turkey into the European single market which was itself in early stages (e.g. Ankara Agreement Articles: 12, 13, 14, 20). The Additional Protocol signed in 1970 also envisaged the free movement of persons between the parties in the next 12 to 22 years (Articles: 36-40). Accordingly, the Association Council took important decisions with regard to the free movement of workers (e.g. Decisions No: 2/76, 1/80, 3/80). Even though Article 36 required free movement of workers to be materialized between the parties as of 1 January 1986, because of the disagreements between Turkey and EC member states the Association Council has never taken a decision to realize this goal (Tezcan, 2017: 95). On the other hand, despite the principles set out in Articles 13 and 14 of the Ankara Agreement, free movement of services and the right of establishment could also not be fully achieved between the parties. Even though Articles 41, 42 of the Additional Protocol set the terms for the right of establishment, services and transport, in practice the parties focused only on the implementation of the “standstill clause” that obligated the parties to refrain from introducing any new restrictions on the freedom of establishment and the freedom to provide services (Göçmen, 2017: 133-4). In this context, deriving from the Turkey-EU association law as interpreted in different rulings of the European Court of Justice well-developed case law has emerged as regards the rights of Turkish nationals working and residing in the EU countries. Even though in 1973, five EU countries had no visa requirements towards Turkish services suppliers, and no EU member country had a visa requirement for stays of less than sixty days, today Turkish citizens including service providers and recipients are subject to visa requirements to visit the EU states (World Bank 1994: 77). This is in contrast with the vision of the Turkish-EU association as well as the Swiss model which provides free movement of natural persons between the parties in consequence of the Agreement on the Free Movement of Persons of 1999 (AFMP) (Tobler, 2010: 16-7). As further discussed, in its December 2016 memo

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<sup>2</sup> The list of the legislation that has had to be embraced by Turkey was detailed in the Association Council Decisions No: 1/95, 2/95 and 2/97.

the European Commission suggested the expansion of the EU-Turkey CU to commercial services, business establishment, and capital movements but it did not lay out a roadmap toward a freer movement of persons.

Last but not the least important, it should be noted that until and following the initiation of the EU accession talks in 2005, Turkey has gradually aligned its national legislation with the EU's *acquis* in several chapters beyond the scope of the association and the CU (EC, 2018).

**Table 1:** Content of the Turkish-EU Customs Union

Issues and legal domains		Covered
Market access	Tariffs on manufacturing goods	√
	Technical barriers to trade	√
	Tariffs on agricultural goods	x
	Elimination of rules of origins	√
	Public procurement	x
	Services	x
	Establishment	x
	Movement of capital	x
	Free movement of labor	x
Trade rules	Common external tariffs and commercial policy	√
	Common customs code	√
	Common customs rules and legislation	√
	Technical regulations for goods under free circulation	√
	Sanitary and Phytosanitary Measures	x
	Competition policy	√
	State aid	√
	Anti-dumping	√
	Countervailing measures	√
	Trade-related intellectual property rights	√
	Intellectual Property Rights (WTO extra)	√
	State Trading Enterprises (STEs)	√
	Environment laws	x
	Labor market regulations	x
	Trade in energy and raw materials	x
Small- and medium-sized enterprises	x	

Source: Togan 1997, 2015, and EC, 2016.

The CU has had a series of design problems that prevented the deal to operate efficiently. First of all, as seen in Table 1 the pact's market access reach has been limited to industrial goods while primary agricultural products, services and free movement of capital and persons remained outside its scope. Even though the CU has envisioned a free circulation of goods between Turkish and EU markets, several nontariff barriers stood out as the deal did not fully abolish all *technical barriers to trade* in goods such as conformity assessment requirements; transport restrictions such as road quotas; and visa restrictions for Turkish citizens which hamper free circulation of services and goods to date (World Bank, 2014: 31-39, 47-9, 50-55, 77-81; MoE, 2015: 13-16; Hakura, 2018: 3-5). Agricultural exports, which have been excluded from the purview of the CU, do also encounter similar non-tariff barriers (NTBs) pertinent to products' compliance with the EU's food safety and other *Sanitary and Phytosanitary* measures not covered by the CU (World Bank, 2014: 61; MoE, 2015: 16).

The second set of design problems for Turkey relates to the "FTA asymmetry" problem and trade policy independence mentioned in the introduction. The CU has required Ankara to embrace the EU's Common Commercial Policy (CCP), which encompasses the EU's Common External Tariff (CET) for industrial goods and the EU's preferential trade regimes vis-à-vis third countries. This requirement suggests Turkey's simultaneous negotiation of FTAs with the third parties that the EU negotiates an agreement with. Yet in practice, some third parties such as Algeria and Mexico, which inked an FTA with the EU and gained a *de facto* access to Turkey's market, hesitated to negotiate a parallel FTA with Ankara that would have required the reciprocal opening of their markets to Turkish products (Altay, 2018b: 188). This has led to the notorious "FTAs asymmetry" problem that Turkish stakeholders often raised in bilateral meetings with EU authorities (World Bank, 2014: 24-30; EC, 2016: 15). Besides, decisions pertinent to CCP including CU-related *acquis* and the choosing of FTA partners are made entirely by the EU institutions with no inputs from Turkey (EC, 2016: 15; SOWG, 2015: 2). The asymmetry problems have become the cause of greater frustration for Ankara, especially from the mid-2000s thanks to Brussels' strategic move to engage in negotiating mega FTAs with bigger economies such as Canada and the United States (Altay, 2018a).

For the EU, the CU has been equally problematic for different reasons. As per Brussels, the design problems of the CU are at the center of Turkey's "non-compliance" challenge. According to the European Commission (EC), Turkey has failed to fulfill its CU commitments on the use of tariffs, trade defense measures including anti-dumping and safeguard measures, and other non-tariff barriers (NTBs) and trade rules (EC, 2016: 12-3). Even though Turkey was obliged to transpose the pertinent parts of the EU's *acquis* into national law "as far as

possible” (Decision 1/95: Art. 54), Ankara has allegedly dragged feet to embrace relevant EU legislation. For instance, it failed to realize full harmonization of its competition regime especially with regard to the state aids, and to enforce IPRs domestically and at its borders (EC, 2016: 13; Hakura, 2018: 5). Because of the Turkish government’s policies that contradict the CU and *acquis* in multiple domains the Turkish market has increasingly suffered a predictability problem, according to the Commission, which has been affecting European exporters and investors (EC, 2016: 20, 24, 54). In addition, the non-compliance problem arguably rests also in the ineffective notification and enforcement provisions of the CU. Bilateral trade disputes have grown partly because of the lack of an effective legal Dispute Settlement Mechanism (DSM) under the CU or the Ankara Agreement (EC, 2016: 6; World Bank, 2014: iii, 86; Tezcan, 2017: 96). In addition to the need to address those defects, the EC suggests that there is an “unfulfilled economic potential” in agriculture, services, and government procurement since these areas have not been included in the CU (EC, 2016: 9-11).

As noted before, bilateral deliberations to address design issues of the CU have resulted in a mutual understanding between the EC and the Turkish government in May 2015 to launch negotiations to upgrade and expand the outdated CU. In its December 2016 document, the EC tabled three scenarios for the future of the CU and upgrade negotiations: Option A, B, and C. Option A refers to the “baseline scenario” which refers to maintaining the status quo. For the European Commission, this is the worst-case scenario since doing nothing is likely to pave the way for bigger issues regarding Turkey’s breaches of its commitments especially considering the lack of a working enforcement device. Option B refers to an “upgraded CU” achieved by negotiating additional chapters on new generation rules and drafting sectoral FTAs on services, farm products, and public procurement. Finally, in its Option C, the EC suggests displacing the CU with a Deep and Comprehensive FTA (DCFTA) that would cover all goods, services and public procurement as well as a large set of trade rules. Both Options B and C extend the commercial framework to enable free movement of all goods as well as services and capital but not natural persons. The options also entail creating a legally binding Dispute Settlement Mechanism (DSM) that would guarantee enforcement of the provisions of the new mega-deal toward a resolution of Turkey’s non-compliance challenge. It is clear that the two upgrade scenarios (options B and C) have the potential to remold Turkey’s integration according to the EU’s strategy to enable a dynamic imposition and uniform interpretation of its *acquis* with novel judicial enforcement instruments. Yet, the debate to upgrade and expand the CU between Turkey and the EU also creates an opportunity to consider alternative models of differentiated integration such as the Swiss model

that might better suit Turkey's expectations and interests than the two scenarios which were tabled by the Commission the EU interests in mind.

## 2. The Swiss Model of Differentiated Integration

Switzerland's relations with the EU are as multifaceted and strong as are ties of Turkey with the European Union. The EU is Switzerland's top trading partner, whereas Switzerland is the EU's third partner after the United States and China. Around 55% of Swiss goods exports head to the EU (6% of EU exports are destined to Switzerland). Swiss exports to the EU are concentrated in a few sector groups, in particular chemicals, machinery, instruments, pharmaceuticals, and watches. Also, in trade in services Switzerland and the EU are significant partners particularly in commercial services. Besides, in foreign direct investment, the EU and Switzerland are top destinations of each other's firms.<sup>3</sup>

Switzerland is not a member of the EU. It is a member of the European Free Trade Association (EFTA) but not the European Economic Area (EEA) as other EFTA states. In this regard, the Swiss model of differentiated integration is completely different from the EEA model. The EEA integrates other EFTA members with the EU under special institutional structures that allow for substantial access to the single market thanks to a streamlined and dynamic adoption of the EU rules (Crespo, 2017: 100-1; Fossum, 2016). Whereas Switzerland conducts its relations with the EU on the basis of a complex framework of 120 plus bilateral thematic-specific agreements that are mostly in static nature (Tobler, 2010: 15; Crespo, 2017: 108-11). Since signing a Free Trade Agreement with the European Community in 1972, an increasingly complex network of bilateral agreements between Switzerland and the EU has been developed in three stages (see Table 2). The FTA was followed by individual bilateral agreements on insurance (1989) and customs facilitation and security (1990). In a referendum on 6 December, 1992 Switzerland rejected EEA membership and did not pursue the EU membership goal afterward. The Swiss have thus been granted a *sui generis* economic status from 1994 onwards. In this context, Switzerland and the EU negotiated more than a hundred bilateral agreements in two packages (i.e., Bilaterals I and II) that have secured the Swiss access to European markets and vice versa. The bilateral "FTA-plus" approach has allowed Switzerland to design a tailor-made relationship with the EU in accordance with its preferences (Vahl and Grolimund, 2006; Tobler, 2010: 15-29; Schwok 2013; Crespo, 2017: 108-119).

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<sup>3</sup> For details see <http://ec.europa.eu/trade/policy/countries-and-regions/countries/switzerland/>.

**Table 2.** The network of Swiss-EU bilateral agreements

<b>The first bilateral agreements</b>	
<b>1972</b>	Free trade of industrial products
<b>1989</b>	Insurance
<b>1990</b> (revised in <b>2009</b> )	Customs facilitation and security
<b>Bilaterals I (1999)</b>	<b>Bilaterals II (2004)</b>
1. Free movement of persons (AFMP) 2. Technical barriers to trade 3. Public procurement market 4. Agriculture 5. Research 6. Civil aviation 7. Overland transport	1. Schengen/Dublin 2. Automatic exchange of information 3. Fight against fraud 4. Processed agricultural products 5. MEDIA (Creative Europe) 6. Environment 7. Statistics 8. Pensions 9. Education, vocational training, youth
<b>Bilateral agreements from 2004 onwards</b>	
1. Europol 2. Eurojust 3. Cooperation with the European Defence Agency (EDA) 4. Cooperation of competition authorities 5. Satellite navigation (Galileo, EGNOS) 6. European Asylum Support Office (EASO)	

**Source:** Author's compilation.

### **2.1. Access to the EU Single Market**

Compared to Turkey's CU, the Swiss model of FTA-plus bilateral framework provides Switzerland with greater access to the EU's single market for goods, persons, and services. Compared to the European Economic Area (EEA) the Swiss access has been enabled through a more flexible and less institutionalized structure. As seen in Table 2, the commercial contractual relations have largely been shaped with two further sets of bilateral agreements called Bilaterals I and Bilaterals II.<sup>4</sup>

A summary of the comparison of the Swiss and Turkish models with regard to their market access coverages is given in Table 3. Free circulation of goods between the EU and Switzerland has been ensured by the 1972 FTA exclusively for industrial products and the packages of subsequent agreements. In addition to agreements pertaining to *industrial goods*, the two parties have

<sup>4</sup> For a detailed overview of the bilateral framework see <https://www.eda.admin.ch/dea/en/home/europapolitik/ueberblick.html>.

negotiated deals for the liberalization of barriers in *agricultural* and *processed food products*. Since there is no customs union between Switzerland and the EU as in the case of Turkey, customs clearance is required with a series of formalities that oblige the parties to declare the origins of products by the exporters (i.e., the rules of origin) (Piris, 2016: 7; EC, 2016: 8). As noted before, the rules of origins have been abolished for industrial products in the Turkish-EU CU which is an advantage for traders as it lessens the costs of trade. Still, the EU and Switzerland signed a bilateral accord for security and facilitation of customs procedures in 1990 which was updated in 2009 and helped regulatory convergence and reduced trade frictions. In contrast to the Turkish-EU CU, there is a greater penetration of the two respective markets because government procurement has also been incorporated into the bilateral framework in the Bilaterals I package. The public procurement agreement which entered into force in 2002 basically extends the concessions that the EU and Switzerland granted to each other under the Government Procurement Agreement of the World Trade Organization (WTO). The bilateral deal allows parties for further access to sub-central markets of each other as it covers the tenders carried out in regions and municipalities for a broader list of sectors including rail transport, gas, and heating supply (Vahl and Grolimund, 2006: 28-9). In turn for accepting the Swiss demands to open its markets to only sectors of interest to Switzerland in its Bilateral I package the EU asked for a “Guillotine Clause” that would stipulate the termination of all contracts within this package in case the Swiss fails to honor its commitments in any one of those agreements (Vahl and Grolimund, 2006: 54, 72-3; Tobler, 2010: 11; Crespo, 2017: 110, 113).

On the other hand, compared to the Turkish case, the Swiss-EU ties are also stronger in the domains of *services* and *freedom of movement of people* which are not included in Turkish-EU CU despite the commitments in the Ankara Agreement and the Additional Protocol. The Agreement on Free Movement of Persons (AFMP) under the Bilaterals I envisages mutual, controlled and gradual liberalization of labor markets of the parties to each other with some transitional arrangements (Vahl and Grolimund, 2006: 26; Tobler, 2010: 16; Crespo, 2017: 112). It also grants natural services suppliers for the right to provide their services in the partner’s territory for a maximum of 90 days per year (Crespo, 2017: 111; Kawka, 2014). In addition, Switzerland also takes part in the EU’s Schengen regime which entails a common visa regime for short stays of no more than 3 months in respective territories (Vahl and Grolimund, 2006: 32-3; Crespo, 2017: 110). Access to services markets is carried out along the most favored nation-based concessions granted to each other under the WTO’s General Agreement on Trade in Services (GATS). In addition, restrictions to services markets were further liberated on a preferential and partial basis through separate arrangements on insurance, overland transport and aviation (Crespo, 2017: 111, Kawka 2014).

Yet, the Swiss access to the EU's services market is clearly not as substantial as in the case of the EEA (Piris, 2016: 8). For instance, the EU and Switzerland do not have an agreement on financial services that would enable Switzerland to have full access to the single market for its banking sector through the use of so-called passporting rights (Crespo, 2017: 111; Booth et. al. 2015: 58). In other words, the bilateral framework does not allow the Swiss institutions to offer financial services across the EU without a need to relocate their operations to Europe. Nevertheless, recent negotiations for the third package of bilateral agreements did encompass provisions for better Swiss access to the EU's service markets (FDFA, 2018). The last round of negotiations that started in 2014 was concluded in November 2018 with a list of agreements that allow for further access in areas including air carriage and rail and road transport of goods and passengers. Ratification of this third package will also enable the Swiss to access to the EU's electricity market (FDFA, 2018: 1). In order to become effective, the package has firstly been put to a public consultation process by the Swiss Federal Council on 7 December 2018.<sup>5</sup>

To reiterate, the bilateral model provides Switzerland with greater access to the EU's single market when compared to *de facto* access of Turkey, in particular, thanks to additional arrangements on services and public procurement as well as on free movement of persons. Yet, overall the Swiss model is argued to offer a "very moderate" or "medium" level of market access when contrasted to the more ambitious EEA model which assures substantial access to the EU's single market thanks to a high level of harmonization with the *acquis* (Crespo, 2017: 111; Booth et. al. 2015: 57). Perhaps the most notable advantage of the Turkey-EU CU to the Swiss model is because it removes the rules of origin between Turkey and Europe and lessens costs for traders. If Turkey and the EU negotiate the upgraded CU on the EC's option B (i.e., CU plus sectoral FTAs) Turkey will maintain this advantage for manufactured goods. Yet, if Turkey and the EU move forward with the EU's option C that will displace the CU with a comprehensive FTA (a structure similar to the Swiss model) this advantage will go away. Nonetheless, despite the advantage of the CU model about the rules of origin one can hardly claim that Turkish products enter the EU without frictions considering ongoing obstacles and NTBs to Turkish goods outlined before. The ability of the upgraded CU to open up more of the EU services markets to Turkish exporters than to the Swiss will also depend on bilateral negotiations and exchange of concessions between Ankara and Brussels. Finally, the two scenarios for the new CU proposed by the European Commission do not envisage

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5 The latest state of the play can be seen at <https://www.eda.admin.ch/dea/en/home/europapolitik/ueberblick/stand-dinge.html>.



free movement of persons between Turkey and the EU as the Swiss enjoy in their arrangement with the EU (i.e., AFMP).

**Table 3.** A comparison of the Turkish and Swiss models and the EC proposals for Turkey and EU

		Customs Union	EC's CU Upgrade Options		Swiss Model
			CU+ Sectoral FTAs	Comprehensive FTA	
Market access	Industrial Goods	Yes	Yes		Yes
		No rules of origin	No rules of origin	Rules of origin	Rules of origin
	Agricultural Goods	No	Yes		Yes
	Public procurement	No	Yes		Yes
	Services	No	Yes *Cross-border services, + *Sector-based partial coverage		Partly *Sector-based agreements
Free movement of persons	No	No	No	Yes	
Alignment with acquis	Rules coverage/acquis	Limited coverage: Customs, technical regulations, competition and state aid, IPRs	Extensive coverage: Customs, technical regulations, competition and state aid, IPRs, SPS measures, environment, labor, energy and raw materials, geographical indications, public procurement, SMEs, transparency.		Limited coverage along with bilateral agreements on customs, technical regulations, public procurement, etc.
	Legal Enforcement	No legal enforcement: consultations-based dispute settlement	Legal enforcement: Dispute Settlement Mechanism		No legal enforcement: consultations-based dispute settlement (System might include a binding legal enforcement for Bilaterals I)
Other issues	FTA asymmetry resolved?	No	No clear commitments	Yes	Yes
	Financial contribution to EU	No	No	No	Yes
	Independence in foreign trade	No	No	Yes	Yes
	Ability to influence policies	No	Decision-shaping	No	Decision-shaping

Sources: Author's compilation.

## 2.2. The Rules' Coverage

Similar to the CU through which Turkey has adopted the EU's *acquis* in covered domains Switzerland has embraced the EU rules on a number of areas pertinent to its access to the EU's single market. As seen in Table 2, in 1999 Switzerland and the EU agreed on the first package of seven sectoral agreements under Bilaterals I. The second set of sectoral agreements known as Bilaterals II was signed in 2004. The package has strengthened the Swiss integration with the EU economy for the mobility of people and agricultural products whereas the cooperation was extended to the domains of environment, taxation and fraud issues. From 2004 onwards, the regional integration has further been deepened in the realms of justice and home affairs. Switzerland and the EU negotiated the third package of agreements between 2014 and November 2018 which are currently pending approval by the parties. Essentially the package will update the Bilateral I agreements signed in 1999.

Overall, the areas of cooperation in the Swiss model provide a light coverage of rules and reflect the needs and preferences of Switzerland as to better access to the EU's single market. The Swiss did not commit to adopting the EU *acquis* on competition and IPRs as in the case of the CU between Turkey and the EU. The bilateral framework requires Switzerland to abide by 20 regulations pertinent to the free movement of goods including technical standards (World Bank, 2014: 34). The "Swiss way" of integration is a flexible option, also when compared to the EEA model which requires non-EU governments to adopt a broader range of EU rules and regulations almost automatically. This is why the model has been criticized for allowing for a "cherry-picking" that avoids costs while offering benefits of the EU's internal market (Vahl and Grolimund, 2006: 2, 53). In contrast to the light content of rules of the Swiss model, the options proposed by the EC for the future of the Turkish-EU relations will require Turkey to harmonize its domestic laws with the EU's *acquis* on a much wider range of issues. In addition to the rules already covered by the CU (i.e., competition, IPRs, customs, technical regulations, etc.), the European Commission has proposed the new deal to extend the bilateral contractual relations to the following areas:

- Government procurement,
- Establishment,
- Capital movements,
- Sanitary and phytosanitary (SPS) standards,
- Energy and raw materials,
- Trade and sustainable development (i.e., environment and labor standards),
- Geographical indicators,

- Transparency,
- Small and medium-sized enterprises (EC, 2016: 11-12).

The proposed mega-regional deal (for both versions of B and C) will clearly oblige Ankara's accordance with an expansive set of EU rules which will be costly for Turkey (Altay, 2018b). Potentially the most costly domains are where there is a larger gap between Turkish and EU standards such as sanitary and phytosanitary measures, localization requirements (as part of government procurement commitments), environmental and labor standards (Ibid.). In contrast to the flexible Swiss model, the EC proposes these rules be encapsulated within one single package of commitments. Finally, in contrast to the Swiss model those rules will be enforced by novel enforcement mechanisms including a legal dispute settlement mechanism (DSM).

### **2.3. Institutional Features and Legal Enforcement**

The current version of the CU and the Swiss model resemble institutional structures in regard to the enforcement of rules. As neither model has a legally binding enforcement mechanism, potential disputes between the parties in cases of non-compliance are envisaged to be settled through bilateral consultations in joint bodies. As an alternative to a legal DSM, the EC injected the "Guillotine Clause" to the Bilaterals I, which makes all agreements null if the Swiss fail to apply any of seven agreements in the package. According to Tobler (2010: 11), the clause aims to exercise pressure on Switzerland "to continuously implement and take over relevant Community legislation in the areas agreed upon." In the Turkish case, Turkey and the EU are supposed to share information and consult with each other through a Customs Union Joint Committee in addition to broader consultation mechanisms such as the Association Council and Association Committee.<sup>6</sup> Nevertheless, these bodies have largely proven ineffective in the Turkish case. Similarly, the Swiss model lacks a central enforcement mechanism or supranational surveillance system as in the EEA model. It entails joint committees for sharing information and consultation. Joint committees are more effective in the Swiss case as they scrutinize the implementation of bilateral agreements and ensure that relevant EU rules are transposed into Swiss law and complied so the integrity of the single market is protected. Currently, there are around 20 joint committees effectively operating.<sup>7</sup> These committees function as fora for dialogue as well as for the settlement of potential disputes between Switzerland and the EU. The committees ensure proper implementation and

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6 For details see [https://www.ab.gov.tr/institutional-structure\\_270\\_en.html](https://www.ab.gov.tr/institutional-structure_270_en.html).

7 See <http://ec.europa.eu/trade/policy/countries-and-regions/countries/switzerland/>

updating of national laws with new legal obligations caused by the agreements. Each committee makes decisions by consensus on the Swiss compatibility with the EU *acquis* and whether there is a need for adaptation (Vahl and Grolimund 2006: 34-7; Crespo, 2017: 114-5). Nonetheless, given the existence of several committees, communication between them has become challenging. In addition, the lack of a central surveillance institution and monitoring mechanism as in the case of the EEA model makes enforcement and regular upgrades to bilateral agreements in line with the evolution of the EU *acquis* quite difficult (Tobler, 2010: 32-6).

A central characteristic of the Swiss model that is different from the EEA model is the fact that Switzerland embraces the EU *acquis* on a static, voluntary and autonomous basis. This is called “autonomer Nachvollzug” or “autonomous adaptation” (Vahl and Grolimund 2006: 2, 93; Crespo, 2017: 116). Crespo notes that only Air Transport Agreement (ATA), the Customs Security Agreements and Schengen and Dublin Association Agreements require a dynamic adaptation to the *acquis* which is evolving (Crespo, 2017: 116). In conjunction with the emerging EU preference to ensure market homogeneity beyond its borders, the EU has been demanding the Swiss model to transform to a more streamlined structure that would ensure a uniform interpretation of the EU rules and a dynamic adaptation of the Swiss laws to the *acquis* (Piris, 2016: 8). The latest round of negotiations between Switzerland and the EU concluded in November 2018 aims to gradually formalize the framework of bilateral accords and gradually turn the model to a more dynamic one. Under the negotiated Institutional Agreement (InstA) between Switzerland and the EU, Swiss rules are supposed to be automatically aligned with the EU law in relevant domains (FDFA, 2018). Notably, the InstA would facilitate the adaption to the EU law in the areas covered only by Bilaterals I. The InstA also creates a joint arbitration tribunal where the European Court of Justice would become the final and binding arbiter on disputes in the fields of free movement of persons, mutual recognition of industrial standards, agricultural goods, air and land transportation (FDFA, 2018: 3).

Along with the same strategy of the EU, the lack of an automatic and binding system to enforce the EU rules on Turkey has led the European Commission to propose the creation of a Dispute Settlement Mechanism (DSM) during the process to upgrade the CU. This system is proposed in both upgrade options particularly to address Turkey’s “non-compliance” challenge:

Under both options [B and C], the Agreement should include a binding and effective state-to-state dispute settlement mechanism [...] It will ensure that the parties observe their obligations under the provisions of the Agreement, as regards the whole bilateral trade relationship. It will include the use of

an arbitration panel with binding rulings, proportionate sanctions in case of non-compliance, and a mediation mechanism for finding quick solutions to market access problems – all of these being more effective than the existing framework of consultations (EC, 2016: 49-50).

In both the Swiss and the Turkish cases, the EC seems adamant to formalize and judicialize relations in order to ensure accordance with the EU laws through a more homogenous interpretation. Nevertheless, in the Swiss case, this is going to be done in a gradual manner with limited initial coverage. In the Turkish case, the European Commission proposes the creation of a DSM for a larger set of rules to be covered by a single substantial package to be negotiated and adopted by the parties. Instead of accepting a legal DSM for the whole package of rules the parties may consider a step-by-step approach as in the Swiss case, by assigning a limited coverage to the legal DSM in the new deal as detailed in the next session.

### **3. Advantages, Disadvantages and Potential Adaptation of the Swiss Model to Turkey**

Thanks to its flexible “a la carte” nature the Swiss model has several advantages that outweigh disadvantages when compared to the partial CU between Turkey and the EU. First of all, compared to conditions faced by Turkey, Switzerland enjoys better access to the EU’s single market for Swiss goods, services, and public procurement as well as for Swiss natural persons. This has been guaranteed by the Swiss adoption of the EU rules in a carefully selected set of issues. Secondly, the Swiss way suggests a gradual, step-by-step integration with the EU in domains of mutual interest. Consequently, the Swiss have had a large control over the rules’ coverage of the bilateral framework. The lack of any central surveillance and enforcement mechanism, a legal dispute settlement system and a streamlined process of adaptation to the EU’s *acquis* as in the case of the EEA has provided Switzerland with greater autonomy and flexibility to shape relations with the EU along with its own priorities and preferences. The proximity of standards of the EU and Switzerland might also have contributed to this flexible setting that would require the Swiss to align only to the *acquis* in few selected areas pertinent to the Swiss access to the EU markets.

A direct application of the Swiss model to the future commercial framework between Turkey and the EU might not be a practical option because of its static nature, lack of an overarching enforcement system and dispute settlement mechanism, complexities, and management difficulties of the patchwork structure of agreements (see especially Tobler, 2010: 32-36). In fact, the EU does not perceive the complex and tailor-made Swiss model as an ideal model of external differentiated integration with a non-member state.

Nevertheless, the EU stakeholders may come to terms with a Swiss-inspired FTA-based model if they are convinced that such a model would ensure several benefits for the EU, especially when contrasted to the *status quo* (option A of the EC). Several aspects of the Swiss model can be replicated in a mutually satisfactory manner yet as part of one single legal package as it would be preferred by the EU instead of a complex system of numerous deals. In order to reach a mutually beneficial outcome for both parties, the Turkish policy-makers may produce a counter-proposal as an alternative to the two options of the European Commission that would contain several positive aspects of the Swiss model while avoiding the model's impractical and disadvantageous aspects. Considering that the EC has already proposed an option to displace the CU with a comprehensive FTA, Turkey may also propose a similar FTA-based model as in the Swiss and EEA cases. On the top of the Turkish proposal should come demanding the materialization of the free movement of persons between the parties as envisioned by the Ankara Agreement, and the association law outlined before. It would be imbalanced to expand the CU to the mobility of services and capital as proposed by the options of the EC but not to the free movement of persons. Even if this cannot be accomplished during the actual negotiations because of potential resistance from certain EU member states, Turkey may secure gains in other chapters of the negotiations in turn for giving up on the free movement of persons. Secondly, Turkey should push for market opening in domains of priority while pursuing exemptions for some sensitive sectors or product groups from a radical liberalization. Put bluntly, agriculture is a sensitive sector for Turkey currently protected by high tariffs while Turkish sanitary and phytosanitary (SPS) standards are much lower than the EU's (Altay, 2018a: 326). Simulations show that bilateral liberalization of agricultural barriers between Turkey and the EU would asymmetrically help further export benefits for the EU than for Turkey while it may cause high trade deficits for Turkey and threaten economic stability (World Bank, 2014: 118-9; EC, 2016: 78-81). Furthermore, Turkey's reaching the EU standards in SPS standards will require time and significant amounts of financial investment to production facilities (e.g. World Bank, 2014: 66).

Thirdly, as a middle-income country, Turkey should avoid committing to a quick adaptation to higher EU standards in multiple domains of the *acquis* as currently proposed by the EC. A full embracement of the EU's *acquis* as offered in the two options of the EC especially in state aids, government procurement, and localization requirements, higher environmental and labor standards are expected to cause serious adjustment costs for the Turkish government and domestic industries as in the case of sanitary and phytosanitary standards for food products (Altay, 2018a, 2018b; World Bank, 2014: 66). In fact, in contrast to the Swiss model which has light rules coverage considering the Swiss development

level, the EC proposes Turkey to adopt almost the same set of standards it offers to high-income trade partners such as Canada (EC, 2016: 37). In this regard, the Swiss model might be inspiring for Turkey to push for a lighter and least costly rule coverage to be agreed on in the actual talks.

Finally, instead of accepting a legal DSM for a whole package of rules the parties may consider a step-by-step approach as in the Swiss case, by assigning a limited coverage to the legal DSM in the new deal. A legal overview of EU's preferential trade agreements by Horn et al (2010) suggest that the EU's trade agreements cover a longer list of issues than the U.S. FTAs whereas in most of the cases a large number of those rules are not covered by the EU agreements' legal enforcement provisions.<sup>8</sup> In other words, Turkey and EU can agree to establishing a legal DSM that would be binding on market access and rules' commitments of the agreement which are relatively easy for Turkey to adhere to, whereas it would not be binding on the provisions which might be hard for Turkey to meet in the short run, i.e., standards for environment, labor, and Sanitary and Phytosanitary measures, in case both sides agreed that the new deal would contain commitments in these domains. Another option could be to adopt a phase-out period or temporary derogation that would make the legal DSM effective immediately for some domains whereas the system would become effective for sensitive domains in a longer period of time, i.e. within ten years. A staged approach to DSM would deserve consideration by the EU as it would create a more effective system than the existing CU and address the non-compliance concerns.

Furthermore, since the Swiss model is an FTA-plus model it does not create an "FTA asymmetry" problem with the third parties. It fully recognizes the trade policy independence of Switzerland in the conduct of preferential trade agreements with other countries. For Ankara, if it wants to stick with the CU model as in the Option B of the EC, the resolution of the FTA asymmetry problem created by the CU will depend on Turkey's ability to get engaged in the EU's decision-making and negotiation processes with regard to FTAs with the third parties in the future. Yet this is impossible in practice since the EU treaties allow decision-making authority as to *acquis* and CCP only to the member states. Indeed, the EC does not offer any clear-cut solutions in its negotiation position and is not even certain that problems regarding the operation of the CU are

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8 The authors found that nearly 75 percent (230 out of 310) of the provisions included in the EC agreements covered by their study were non-enforceable. The EC agreements encapsulate enforceable obligations in only five WTO-extra areas (i.e., areas not covered by the WTO agreements) in most of the cases: competition, IPRs, movement of capital, and investment (Horn et al, 2010: 1579).

resolvable if Turkey and the EU keep maintaining the CU model in the future. Option B proposed by the EC (i.e., a modernized CU plus sectoral FTAs) does not offer a practical solution to the problem. Instead, the EC suggests that in order to meet Turkey's demands "the EU" will have to *consider* "its procedures about its decision to engage in FTAs negotiations, as well as its conduct and monitoring of FTAs negotiations, and its FTA implementation" (EC, 2016: 23). The Commission also notes that the EU "would have to consider procedures to ensure harmonized entry into force/implementation of the EU's and Turkey trade agreements" (Ibid.). The EC clearly does not commit to a feasible solution to Turkey's FTA asymmetry problem.

On the other hand, if Turkey pushes for an FTA-based model for the future of its commercial framework with the EU as in the Swiss and EEA models and as in the option C (Comprehensive FTA) proposed by the European Commission, such a choice would resolve Turkey's FTA asymmetry challenges. The Commission is ready to consider such an alternative since its Option C envisages displacing CU with a comprehensive FTA that would lift Turkey's responsibility to be bound by the EU's Common Commercial Policy. Such a model would provide Turkey with the flexibility to conduct its own trade policies while autonomously adopting Brussels-made rules. It grants full trade policy independence in the conduct of FTA negotiations with third parties. As discussed above, when compared with the EC's comprehensive FTA option, the Swiss model or a similar FTA-based solution would provide additional market access advantages such as the free movement of persons between the parties.

On the flipside, policy-makers should be aware of the fact that the Swiss model or an FTA-based option may present a few disadvantages for Turkey when contrasted to Turkey-EU CU. Its primary downside is that a bilateral FTA-plus framework would not eliminate the rules of origin requirements in bilateral trade in goods. This may result in extra costs for traders when contrasted to the CU model. Secondly, similar to Turkey's CU the Swiss model does not allow Switzerland to take part in decision-making regarding the EU's trade policies and *acquis* relevant to the Swiss access to the EU's single market. Switzerland is not represented in EU bodies and it has no influence in the EU's legislative procedures. The Swiss are permitted only to participate in the "decision-shaping" procedure regarding legislation germane to a few agreements, particularly Schengen, Dublin, and, partly, Air Transport Agreement (Vahl and Grolimund, 2006: 46-7; Crespo, 2017: 117). Nonetheless, when compared with Turkey-EU CU, the Swiss model's joint committees are more functional as they allow Switzerland to channel its positions regarding EU rules and policies despite the fact that such a complex system presents administrative challenges mentioned above. The EC suggests that Turkey might be granted decision-shaping abilities during the CU upgrade whose details are to be clarified in the actual negotiations



(EC, 2016: 23-5). In this regard, Turkey and the EU should work on a better institutional mechanism than the CU and the Swiss model in order to provide Turkey with better decision-shaping capabilities. Last but not least, the Swiss model also entails a financial contribution to the EU budget. In return for better access to the single market, the Swiss contribute to the EU's cohesion funds (Piris, 2016: 8). Since Turkey is a developing country and itself receives pre-accession aids from the EU, such an obligation should not apply in case of the adoption of the Swiss model or a Swiss-inspired FTA-plus model by Turkey and the EU.

### Conclusion

Turkey's integration with the EU has the potential to evolve toward a stronger model of external differentiated integration that would deepen and diversify ties without requiring Turkey's full membership to the EU. In this context, the upgrade of the CU process presents an opportunity to materialize a mutually beneficial model of differentiated integration between Turkey and the EU. Both for Ankara and Brussels, the *status quo* (option A) that is a partial CU with serious design defects is not sustainable. Turkey has been frustrated by trade frictions, non-tariff barriers and serious troubles caused by the asymmetry problems. The major concern of the EU as to the *status quo* is the non-compliance of Ankara with the *acquis* on CU-linked issues. On the other hand, both sides want to explore the unfulfilled trade potential in sectors excluded from the CU's scope. The EC has proposed two alternative scenarios for the future of the CU one involving an upgrade of the institutional structure of the CU and signing additional sectoral FTAs (option B), and the other suggesting replacing the CU with a comprehensive FTA together with a modernized institutional structure (option C). Turkey has not offered any specific scenarios to be sought during forthcoming negotiations. This paper has analyzed the Swiss model with a view to highlighting its advantageous and disadvantageous aspects toward building a more balanced outcome in the forthcoming talks between Turkey and the EU than the two options developed by the EC reflective of the EU's interests and expectations.

The Swiss model envisages an "FTA-plus" framework that resembles the EC's option C, i.e., a comprehensive FTA (instead of a CU). The model is composed of multiple packages of bilateral agreements that offer Switzerland a tailor-made menu to the satisfaction of the Swiss needs. The Swiss model is not as good as the EEA model in terms of offering substantial access to the EU's single market which is contingent upon higher harmonization with the EU's *acquis*. Still, it enables a medium level of access mostly to the EU's goods but also some service markets as well as allowing for a free movement of persons.

With an institutional structure of operating joint committees, the Swiss model also offers a complex but more functional institutional organization than that of the CU. In this regard, despite its major disadvantage that it does not eliminate the rules of origin requirements in bilateral trade in goods, the Swiss model *theoretically* presents a better option in terms of its market access and rules' coverage when contrasted to the current CU arrangement between Turkey and the EU.

Nonetheless, the complex and tailor-made structure of the model also makes a direct adaptation of it to the EU-Turkey context impractical. Still, Turkey and the EU can work on a mutually satisfying alternative by transposing positive aspects of the Swiss case while avoiding its disadvantages. Instead of a complex mix of several agreements, the two parties may work on an FTA-based option as a single package yet with market access and rules' content that would better fit mutual interests than the partial CU and the two options of the EC. The alternative might have a lighter and less costly rules content and more appropriate market access scope considering Turkey's level of development and needs. The parties should consider furthering mutual commitments on the free movement of persons while prioritizing market liberalization on sub-sectors of mutual interest. Recent negotiations between the EU and Switzerland envisions the Swiss model to encapsulate legal enforcement and dynamic compliance with the EU law through the creation of an InstA on a gradual, step-by-step basis starting with agreements under the Bilaterals I package. Such a step-by-step adoption of legal enforcement and dynamic compliance with the EU *acquis* might also be considered in building the rules of the new deal between Turkey and the EU instead of embracing a one-size-fits-all DSM for a long list of issue areas. Such an alternative option would not only address Turkey's asymmetry challenges but also responds to the EU's concerns about Turkey's "non-compliance" challenge.

It should be kept in mind that the Swiss model has come into existence over a couple of decades through a series of negotiations and bargaining processes. Building the future of the EU and Turkey upon a similar model or an FTA-based structure may likewise require a series of deliberations and negotiations between the parties. For some EU members, a problematic aspect might be to extend the freedom of movement of persons to all Turkish citizens. Depending on reactions from EU members and the course of negotiations Turkey may need to come to terms with a permanent or temporary derogation from full mobility of persons. Nevertheless, it would not be unwise for Ankara to keep asking for the freedom of movement of Turkish persons on the negotiation table at least as a bargaining chip to secure a better deal in other areas considering earlier commitments of the parties as part of the larger Turkish-EU association framework. Secondly, the adoption of an FTA-based option that would replace the current CU would require necessary amendments to the Ankara Agreement

which sets the terms of the association between Turkey and the EU. In case of any kind of amendments to the Agreement, the achievements of Turkish nationals deriving from the Turkey-EU association law such as the secured rights in relation to the workers, self-employed or services as interpreted by the case-law of the European Court of Justice should have to be forfeited.

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