

AVOIDING A DIVORCE

**A Virtual EU
Membership for Turkey**

Sinan Ülgen

DECEMBER 2012

CARNEGIE EUROPE

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

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Summary

Turkey's prospects of European Union (EU) membership are more uncertain than ever before. European leaders spent their residual political capital on combating the eurozone crisis and are reluctant to champion the unpopular EU-enlargement project. A framework elevating Turkey to the level of a "virtual EU member" could reinvigorate the relationship.

Key Themes

- Despite commencing EU membership negotiations in 2005, Turkey has opened only thirteen of the 33 chapters that make up the accession requirements.
- Brussels is losing its ability to engage Ankara constructively, and Turkey's interest in the EU is waning to the detriment of Turkey's democratic progress.
- The present environment constrains the scope of EU-Turkey cooperation in support of ongoing transitions in the Arab world.
- A virtual framework would complement the accession process and include policies to foster a common approach to international relations and the EU's internal market.

Policy Pillars of Turkey's Virtual Membership

Foreign Policy: Turkey is increasingly aware of the limits of its unilateralism, and the EU can benefit from Turkey's growing power in the Arab world. Acknowledging those trends, more comprehensive foreign policy cooperation should be undertaken.

Neighborhood Policy: Turkey should be associated with the EU's southern Neighborhood Policy. Turkish experts can participate in the meetings of individual regional task forces, and Ankara and Brussels can cooperate on regulatory capacity building, private- and financial-sector development, and banking- and housing-sector reform.

Security: The EU should give Turkey a more substantial role in the planning and implementation of EU-led missions. Ankara should be more flexible on

EU-NATO strategic cooperation. But the disagreement over Cyprus's status must be addressed before remaining difficulties in the EU-NATO relationship can be fully overcome.

Trade: The EU-Turkey customs union should be deepened. The European Commission can take steps to involve Turkey in its negotiations with third-country trading partners, include a Turkish observer in its Trade Policy Committee, and open a round of trade negotiations aimed at incorporating the services sector into the customs union.

Mobility: Visa liberalization is an irreplaceable core component of the virtual membership. The prospect of free travel to Europe is necessary to build popular support for the relationship among Turks.

Climate Change: Turkish participation in the EU's Emissions Trading System can benefit both parties. For Turkey, linking to the EU system would introduce a new and potentially rich source of carbon financing. Such a linkage would also lower the cost for EU industries of fulfilling their emissions targets and boost their international competitiveness.

A Stalled Engagement

Turkey's prospects of becoming a member of the European Union (EU) are now more uncertain than ever. Having been forced to spend their residual political capital on passing unpopular austerity packages to combat the euro-zone crisis, European leaders have little enthusiasm for championing an equally unpopular proposition like EU enlargement.

Despite commencing membership negotiations in October 2005—along with Croatia—Turkey has so far been able to open only thirteen of a grand total of 33 chapters. None has been opened since June 2010. In contrast, during the same period Croatia was able to finish its negotiations and is expected to join the EU in 2014—potentially the last state to join for the foreseeable future.

Ankara's problems are not limited to a loss of zeal for enlargement. The intractability of the Cyprus problem and additional political hurdles imposed by the former French president Nicolas Sarkozy have led to a loss of enthusiasm for reform in Turkey, further weakening its case for accession. And the longer the negotiations process remains stalled, the more acrimony is being injected into the Turkey-EU relationship, poisoning relations in many domains. For instance, Ankara is content to do no more than necessary to stem the flow of illegal immigrants entering EU territory across Turkish borders. Similarly, the EU is no longer a central topic of discussion in Turkish policy circles, nor is it at the top of the Turkish foreign policy agenda. In fact, there were almost no references to the EU in Turkish Prime Minister Recep Tayyip Erdoğan's two and a half hour speech at the ruling Justice and Development Party convention in October 2012. Conspicuous in their absence were EU leaders in a convention that saw the Egyptian President Mohamed Morsi, Hamas leader Khaled Mashal, and Kurdistan Regional Government President Massoud Barzani take the floor.

The union's vanishing act from Turkey's domestic discourse has proved detrimental to Ankara's democratic progress. The current situation is hardly satisfactory for Brussels either. As it loses credibility in membership negotiations, the EU is losing its ability to engage Ankara constructively and Turkey's interest in the union is waning. But above all, the present environment of stagnation and disinterest constrains the ability of both sides to better cooperate in their common bid to create a better future for the southern Mediterranean, a region of critical importance for the EU as well as for Turkey.

The longer the negotiations process remains stalled, the more acrimony is being injected into the Turkey-EU relationship, poisoning relations in many domains.

As deplorable as the consequences of a process of disengagement may be, it would be a mistake not to underline the inconvenient truth that Turkey-EU problems have no short-term solutions. EU member states are not likely to reach a consensus about Turkish accession in the foreseeable future. The challenge will be to sustain the engagement of both sides against this backdrop of shifting proclivities. Doing nothing is not an option. Such behavior would essentially allow negativity to fester and harm the bilateral relationship.

A new partnership structure could help overcome this possible drift. The European Commission already launched its “positive agenda”—a well-intentioned package of common interest areas—to address this concern. The proposal, offered up in May 2012, rests on a set of measures to enhance mobility, trade, and foreign policy cooperation, but it is limited by the Commission’s own sphere of competence. More is needed. In particular, a framework that will elevate Turkey to the level of a “virtual EU member” must be devised.

This framework would not take the place of but rather complement membership negotiations; it would help deepen cooperation in the realms of foreign and security policy, trade, mobility, and the environment. Only such a politically ambitious approach can build enough momentum to overturn the current dynamics and inject new life into the membership process.

Another inconvenient truth, especially for Ankara, is that such a framework can indeed be construed by Turkey-skeptics in Europe as an alternative to Turkey’s membership. But politics cannot forever remain sentimental.

Ankara cannot forever continue to champion its EU membership as the only possible future. Therefore, Turkish policymakers should begin evaluating their own options in case membership, for a host of different reasons, is not anymore in the offing. Establishing a virtual membership framework as a complement to potential membership may help the two sides reach an amicable separation and avoid an acrimonious divorce if membership is indeed ruled out.

A framework that will elevate Turkey to the level of a “virtual EU member” must be devised. This framework would not take the place of but rather complement membership negotiations.

Turkey’s Existing Relationship With the EU

Turkey has a long history of association with the EU and thus an established and relatively robust framework of cooperation. The 1963 Ankara Agreement was the second Association Agreement signed by the European Economic Community after the Athens Agreement with Greece in 1962. The wording of the provisions of the agreement and its Additional Protocol of 1973 are very

similar to the provisions of the Rome Treaty of 1957, which established the European Economic Community.

The Ankara Agreement envisages economic integration between Turkey and the EU as an interim step toward Turkey's EU membership. Unlike many other candidate countries' more recent Association Agreements with the EU that stipulate the establishment of a free trade area as the way forward for economic integration, the Turkey-EU agreement calls for a higher degree of integration embodied by a customs union.

Turkey and the EU thus established a customs union at the end of 1995, so today Turkey fully implements the EU's common trade policy. As a result, Turkey and the EU have the same commercial policy vis-à-vis the rest of the world. The customs union also liberalized bilateral trade in manufactured goods and processed agricultural products. Accordingly, the two parties have eliminated all tariffs for industrial goods and reduced tariffs for processed agricultural goods.

Further, while excluding services and agricultural trade, the customs union agreement also included provisions for the harmonization of Turkish legislation with some EU legislation, such as their customs regimes, competition policies (for example, state subsidies), intellectual property rights, and technical standards.

Deepening the Association

Despite the stalled momentum, Ankara is still technically negotiating its EU membership, which entails even deeper regulatory convergence in many areas as Turkey attempts to get itself into shape for accession. A member state is party to the treaties of the European Union and, hence, enjoys privileges and has obligations pursuant to the treaties. The main "obligation" incumbent upon the states is the application of the Community *acquis* within their respective sovereign territories. The *acquis* is the cumulative body of EU laws—all treaties, regulations, and directives passed by EU institutions as well as judgments by the European Court of Justice (ECJ). At the same time, by becoming a member state, a country gains full access to the EU institutions and other rights attached to the membership status.

European Community law only envisages a single type of membership that is obtained through formal accession negotiations. There are no legal definitions of the virtual membership concept, so there is a need to clarify the definition of virtual membership as it can be applied to a candidate country like Turkey.

Defining Virtual Membership

A virtual membership would allow for a less-than-complete adoption of the EU acquis and a less influential role in EU decisionmaking than afforded to member states. It is, however, more than no membership as it would also imply some policy convergence and some means for influencing EU policymaking.

When it comes to regulatory mechanisms, a virtual member state would apply the EU acquis domestically and selectively (in the policy areas covered by the virtual membership framework). This can be achieved, for instance, through the principle of homogeneity (that is, the relevant EU legislation has to be “simultaneously” applied in the state) or equivalence of legislation (which means that domestic legislation similar to the EU legislation has to be adopted). The state also ensures there is judicial or, at the minimum, political enforcement of the acquis.

The boundaries of regulatory association are determined in a number of ways:

Scope of application. Some member states have negotiated opt-outs from the EU legislation and treaties. For example, Denmark does not participate in the EU’s Common Security and Defense Policy and the UK remains outside of the Schengen Area. For a virtual member state, the material scope of acquis application can range as well.

Legal value or quality of commitment. For member states, EU law holds supremacy over national law.¹ For a virtual member state, the legal value or quality of commitment can range broadly, including adoption of the acquis into the national legal system (harmonization), approximation, or no commitment at all.

Enforcement. The enforcement mechanism is judicial for member states and is carried out by the European Court of Justice. For virtual member states, enforcement can be political by way of joint institutions or based on good faith or a similar applicable norm.

Institutionally, a virtual member state has extensive opportunities to shape the decisions of the EU, as it is included throughout the consultation and deliberation processes of the legislative and executive branches of the EU. A virtual member state also has access to the EU’s decisionmaking and decision-implementing institutions (comitology) and EU programs and agencies, though it does not have the right to vote. The institutional boundary is determined by the degree to which the state is included in EU structures/EU decisionmaking and whether parallel structures have been established in the state.

Inclusion in EU structures/decisionmaking. Member states are fully included in EU structures and have full voting rights. Below that level, states would have participation rights that are afforded at the level of the EU institution. For instance, a virtual member state could be granted membership or observer status in committees and agencies or sign agreements on its cooperation with agencies.

Current Models of Association

Association with the EU comes in many forms, but the main variable in all of the models is the degree of regulatory convergence—the more regulatory convergence, the deeper the institutional alignment. In other words, the states that have accepted the EU’s policy leadership are allowed to participate more fully in EU decisionmaking by way of comitology, formal and informal consultation mechanisms, and the like. The institutional aspect of this relationship is enriched through the participation of the partner states in various agencies and programs of the EU.

This is the template for three of the four European Free Trade Association (EFTA) countries of the European Economic Area (EEA)—Iceland, Liechtenstein, and Norway. The scope of application of the *acquis* in these states is nearly complete, that is, the EEA agreement covers all material policy areas except for Common Agricultural Policy, Common Tax Policy, Common Foreign and Security Policy, and Justice and Home Affairs. Those remaining areas are covered bilaterally.

Harmonization of the EU *acquis* in these states is governed by the principle of homogeneity and is a form of quasi-supranational application, with EU legislation simultaneously applied in all of these states according to a decision by the EEA’s Joint Committee to amend the EEA agreement. At times the legislation is slightly adapted.

EFTA bodies—the Surveillance Authority and the EFTA Court—monitor compliance with obligations under the EEA agreement and ensure judicial enforcement. The Surveillance Authority can investigate possible infringements by either the states or private actors, and when merited, it can take action against a state believed to be in violation of EEA norms in the EFTA Court, which operates under the case law of the European Court of Justice.² (See table 1 for an overview of these regulatory boundaries.)

Table 1. Regulatory Boundary, EEA EFTA States

Scope of Application	Legal Value/Quality of Commitment	Enforcement
Nearly comprehensive	Principle of homogeneity (other levels for specific policy areas)	Judicial review

Iceland, Liechtenstein, and Norway are included in EU structures to varying degrees in the different steps of the legislation process, from proposal to implementation (see table 2). Before the European Commission proposes legislation, it conducts extensive consultations, including convening expert groups that bring together independent experts from EEA EFTA states and elsewhere to offer insights into the views of their respective national governments. Additional public or stakeholder consultations directly involve individual EEA EFTA governments. Before and after the adoption of a legislative proposal relevant to the EEA agreement, the states are allowed to provide written comments on the proposal, either as a group or individually.

These states, as a group or bilaterally, largely use informal channels to influence the decisionmaking in the Council and the European Parliament, though they are sometimes invited to participate formally in other official bodies. They exert their influence by establishing and maintaining close working relationships with EU parliamentarians or representatives of member state governments. In addition, while they do not have the right to vote, representatives of the countries participate in various comitology committees as well as in the preparatory bodies. A further form of full participation foreseen in the EEA agreement is membership in EU programs and agencies, both executive and regulatory.

Table 2. Organizational Boundary, EEA EFTA States

Inclusion into EU structures	
<p>Proposal Stage</p> <ul style="list-style-type: none"> • Expert groups • Public and stakeholder consultations • Written comments • Informal channels 	<p>Decisionmaking Stage</p> <ul style="list-style-type: none"> • Formal JHA Council access • Informal Council access • Written comments • Informal channels
<p>Implementation/Derived Legislation</p> <ul style="list-style-type: none"> • Comitology 	<p>Programs and Agencies</p> <ul style="list-style-type: none"> • Programs • Regulatory agencies • Executive agencies

Switzerland's model is close to that of the EFTA, of which it is a member. Bilateral agreements made between the Swiss and EU states establish legislation equivalent to the *acquis* within Switzerland in a wide range of areas, from education and pensions to the free movement of people and agriculture to customs. Contrary to the EEA agreement, the multitude of bilateral sectoral agreements are static and, hence, have a more intergovernmental than supranational character. The bilateral agreements are governed by the principle of equivalence of legislation; however, the *acquis* is more or less implemented with no amendment, and joint committees as well as the *Nachvollzug* procedure—the voluntary adaption of Swiss legislation to changes in the *acquis*—essentially create a form of dynamic adaption.

There is no explicit, formalized political or judicial enforcement mechanism governing the Swiss; the implementation of and compliance with the agreements is the responsibility of the contracting parties; enforcement is guided by the principle of good faith. Nonetheless, joint committees dealing with the respective agreements provide conflict resolution if necessary (see table 3).

Table 3. Regulatory Boundary

	Scope of Application	Legal Value/Quality of Commitment	Enforcement
Switzerland	Very wide	Equivalence of legislation	<i>Pacta sunt servanda</i> / good faith (no formalized judicial review but institutional conflict resolution mechanism)

When preparing legislation, the European Commission consults with Swiss experts in areas that require equivalence of legislation. Many relevant changes in legislation are facilitated through an informal information exchange and consultation mechanism. Switzerland, like the other EFTA states, does not have decisionmaking power. However, it is an active observer—consultation, no voting rights—in EU committees on research, civil aviation, social security, and the recognition of diplomas. Decision-shaping possibilities through EU institutions and procedures is as limited for Switzerland as it is for other EFTA states.

Switzerland has fewer possibilities to influence legislation in comitology procedures because, unlike the EEA EFTA representatives, Swiss experts are not informally granted observer status in comitology committees. The country also does not participate as extensively in EU programs and agencies. The implementation and updating of the plethora of agreements that are governed by the principle of equivalence of legislation are administered jointly with the relevant directorate generals of the European Commission and the line ministries of the Swiss government handling the approximation of legislation and implementation of the agreements (see table 4).

Table 4. **Organizational Boundary**

		Inclusion into EU structures	
Switzerland	Proposal Stage	<ul style="list-style-type: none"> Expert groups/consultations (when effects on equivalence of legislation) Informal information exchange 	Decisionmaking Stage <ul style="list-style-type: none"> Formal JHA Council access (includ. Schengen/Dublin opt out) Informal channels
	Implementation/Derived Legislation	<ul style="list-style-type: none"> No access to comitology committees Informal channels 	Programs and Agencies <ul style="list-style-type: none"> Programs Regulatory agencies Executive agencies (less extensive participation than EEA EFTA states)

Opposite the EEA EFTA states lie the EU’s strategic partners, which include the United States, Canada, Japan, Brazil, Russia, India, China, South Africa, and Mexico. A strategic partnership is merely a political declaration of intent that attempts to enrich existing bilateral relations with important international partners through a multilateral agenda addressing global problems and challenges. The model offers little room for joint policies. While there are no areas of direct EU acquis application in these states, the EU and its strategic partners have political dialogues in various policy areas, and there is some regulatory convergence. There is no legally binding quality to these commitments (see table 5).

Table 5. **Regulatory Boundary**

	Scope of Application	Legal Value/Quality of Commitment	Enforcement
Strategic Partnership	Varied but always punctual (rule transfer as such does not take place systematically)	Political (not including the legally binding bilateral agreements—good faith, <i>pacta sunt servanda</i>)	No enforcement (unless otherwise provided in agreements unconnected to the Strategic Partnership)

Some EU programs and agencies are open to strategic partners, but in general, these states do not have the same rights as EU members. Their rights are governed by the regulations and establishment agreements of the body in which they are participating. Cooperation also takes place outside of the strategic partnership framework, with some partners working with the EU on issues through other agreements. A number of cooperation agreements are individually negotiated by the EU and these states but are neither connected nor exclusive to the strategic partners. There are structured bilateral relations in the

form of summits and political and sectoral dialogues—the same structures that are in place for nonstrategic partners. The comprehensiveness, focus, and intensity of these structured partnerships vary across both sectors and strategic partners (see table 6).

Table 6. Organizational Boundary

	Inclusion into EU structures	
	Strategic Partnership	Proposal Stage Consultations with some partners stemming from agreements not connected to the Strategic Partnership (e.g., EU-NATO)
Implementation/Derived Legislation None		Programs and Agencies Cooperation with programs and working arrangements with EU agencies are individually negotiated

The Mechanics of Turkey's Virtual Membership

Today, Turkey already has a relatively close relationship with the EU based on the existing customs union and negotiations on an association agreement. In fact, it can potentially be argued that Turkey is already a virtual member state. But a deeper and more comprehensive association membership framework can be envisaged for Turkey.

It is difficult to contemplate a scenario in which, despite its institutional advantages, Turkish authorities would opt for the EEA model. Turkey is a big country with its own imperial heritage, jealously guarding its sovereignty and intent on playing a significant role in regional and global politics. The wholesale transfer of sovereignty implied by the EEA model will not be acceptable to the Turkish body politic in the absence of a clear date for accession to the EU. The “Turkish model” of virtual EU membership will lie somewhere between the Swiss arrangement and a strategic partnership. It will reflect a more integrationist approach than the strategic partners take but less so than the Swiss model and certainly much less than the EEA template. (See table 7 for an outline of Turkey's potential regulatory boundary, and table 8 for its organizational boundary.)

Table 7. Regulatory Boundary

	Scope of Application	Legal Value/Quality of Commitment	Enforcement
Turkey	Selective policy areas	a. Regulatory convergence b. Approximation of legislation	Intergovernmental/Association Council (political conflict resolution mechanism and judicial review)

Scope of Application

The full adoption of the EU acquis will underpin policy convergence in a select few areas such as trade, customs, technical barriers to trade, free movement of goods, intellectual property rights, and competition. In other policy areas—such as the environment, energy, climate change, transportation, financial services, state aid, and free movement of services—a gradual process of the approximation of legislation can be foreseen. In yet other areas such as foreign and security policy, justice and home affairs, neighborhood policy and energy, the mode of intergovernmental cooperation will prevail.

Legal Value/Quality of Commitment

Turkey’s virtual membership framework will have a more intergovernmental than supranational character. The exceptions will be the limited set of policy areas underpinned by regulatory convergence, which will operate according to dynamic adaption processes. Formally, the quality of commitment will remain lower than the standard of homogeneity.

Enforcement

The Association Agreement provides for formalized political and judicial enforcement with the Association Council and the option of arbitration or recourse to the ECJ, respectively. Joint committees—such as the Association Committee and Joint Customs Union Committee—can also provide for conflict resolution if necessary.

Though the political enforcement mechanism is already being used, at present, judicial enforcement is not mandatory and necessitates a political agreement for its initiation. Given the difficulty of reaching a political agreement on outstanding disputes, judicial review has so far rarely been used.

The judicial enforcement option can certainly be strengthened by lifting the requirement for political consensus for judicial enforcement in specific policy areas under the rule of mandatory regulatory convergence. This would require that Turkey accept a wider competence for the ECJ. Recent ECJ rulings in the area of mobility have benefited the Turkish position, so Turkish authorities may now be more disposed to widening the scope of ECJ jurisdiction.³ Doing

so would address the currently asymmetrical judicial situation in which Turkey can avail itself of European Community courts to protect its rights outlined in contractual agreements with the EU but the EU cannot do the same in Turkish courts. The EU therefore has to depend on the willingness of Turkish authorities to resolve outstanding disputes.

Inclusion in EU Structures

Proposal stage As legislation is being prepared, the European Commission should consult with Turkish experts in areas that require regulatory convergence. At the same time, changes in legislation for policy areas affected by regulatory convergence should be facilitated through informal information-exchange and consultation mechanisms.

Decisionmaking stage Turkey will not have decisionmaking power in the virtual framework, but it can be an active observer—that includes consultation but no voting rights—in various EU committees. Such Turkish participation is already under discussion for the Trade Policy Committee. The decision-shaping possibilities through access to EU institutions and procedures can be established on a case-by-case basis at the working-group level—for instance, in the task forces set up under the European Neighborhood Policy—or at the political level in various EU councils.

Programs and Agencies A number of EU programs and agencies can potentially be opened to Turkey's participation, as outlined in table 9.

Table 8. Organizational Boundary

Inclusion into EU structures		
Turkey	<p>Proposal Stage</p> <ul style="list-style-type: none"> • Expert groups/consultations • Informal information exchange 	<p>Decisionmaking Stage</p> <ul style="list-style-type: none"> • Formal but case by case Council access (Foreign Affairs, Transport, Telecoms and Energy, Competitiveness, JHA, etc.) • Informal channels
	<p>Implementation/Derived Legislation</p> <ul style="list-style-type: none"> • No access to comitology committees • Informal channels 	<p>Programs and Agencies</p> <ul style="list-style-type: none"> • Programs • Regulatory agencies • Executive agencies <p>(less extensive participation than EEA EFTA states)</p>

Table 9. EU Programs and Agencies in Which Turkey Could Participate

Programs	Agencies
<p>Seventh Framework Program (FP7)</p> <p>Lifelong Learning Program (LLP)</p> <p>The Competitiveness and Innovation Program (CIP)</p> <p>The Community Program for Employment and Social Solidarity—PROGRESS</p> <ul style="list-style-type: none"> • Daphne III - Combating violence, drug prevention and information, health 2008–2013 • The Consumer Program 2007–2013 <p>Youth in Action, Culture 2007</p> <ul style="list-style-type: none"> • MEDIA 2007 • Safer Internet Plus 2009–2013 • Interoperability Solutions for EU Public Administrations (ISA) • Interreg • Marco Polo II—Transport • EU Statistical Program • The Civil Protection Financial Mechanism 2007–2013 • Erasmus Mundus II • Galileo Satellite Navigation System Program 	<ul style="list-style-type: none"> • Education, Audiovisual and Culture Executive Agency (EACEA) • European Agency for the Management of Operational Cooperation at the External Borders • European Agency for Safety and Health at Work (EU-OSHA) • European Aviation Safety Agency (EASA) • European Centre for Disease Prevention and Control (ECDC) • European Centre for the Development of Vocational Training (CEDEFOP) • European Chemicals Agency (ECHA) • European Defence Agency (EDA) • European Environment Agency (EEA) • European Food Safety Authority (EFSA) • European Foundation for the Improvement of Living and Working Conditions (EUROFUND) • European GNSS Supervisory Authority • European Institute of Innovation and Technology (EIT) • European Maritime Safety Agency (EMSA) • European Medicines Agency (EMA) • European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) • European Network and Information Security Agency (ENISA) • European Police College • European Police Office (EUROPOL) • European Railway Agency (ERA) • European Research Council Executive Agency (ERC) • European Union Satellite Centre (EUSC) • European Union’s Judicial Cooperation Unit (EUROJUST) • Executive Agency for Competitiveness and Innovation (EACI) • Executive Agency for Health and Consumers (EAHC) • Research Executive Agency (REA)

Note: Potential participation of Turkey in EU programs and agencies. Programs and agencies with current Turkish participation are identified in bold.

The Policy Pillars of Turkey’s Virtual Membership

At a minimum, Turkey’s virtual membership would encompass the customs union with the EU that has existed for over fifteen years. But there are a number of areas for growth. The EU and Turkey can gradually begin to enrich their association by deepening the customs union and breaking new ground as well, forging close relationships in several other policy domains. Two broad categories of policies focusing on a common approach to international relations

(foreign policy, neighborhood policy, and security policy) and to the internal market (trade, mobility, and the environment) can be foreseen.

Foreign Policy

Foreign policy can certainly become one of the pillars of the virtual membership framework. The EU and Turkey both have much to gain by intensifying their foreign policy engagement. A closer association with Brussels would allow Ankara to leverage a much more significant set of economic resources for achieving the common objective of bringing peace and prosperity to the EU's southern neighborhood. Turkey's political and economic transformation over the past decade has helped Ankara become a more influential regional player. Its growing outreach in the Middle East and, to a lesser degree, in the Balkans, its emergence as a responsible aid provider and an active participant in multilateral diplomacy, and its place as a "model" for the democratizing states in the Arab world all indicate Turkey's potential for increased influence and recognition. A closer alignment with Ankara would undoubtedly allow the EU to take advantage of Turkey's growing soft power in this region to better engage with the constituencies in the Arab states of the Middle East and North Africa that are interested in a reform agenda.

Yet foreign policy cooperation between Ankara and Brussels remains hindered by the frustrations about Turkey's accession talks. Foreign policy cooperation and dialogue between Turkey and the EU is not living up to its potential despite a sound working relationship between the EU High Representative Catherine Ashton and Turkish Foreign Minister Ahmet Davutoğlu.

A number of fundamental changes are leading both sides to revisit the value of a stronger foreign policy partnership. The changes brought to the EU's external policy machinery by the Lisbon Treaty can underpin a renewed engagement with Turkey. The new European External Action Service in particular has the capacity and the willingness to engage on a more sustained basis external actors like Turkey. The agglomeration of competences within that institution is gradually helping the EU overcome criticisms of institutional ineffectiveness in the area of foreign policy.

Turkish authorities no longer see structured cooperation in foreign policy as inimical to Turkey's accession prospects since there is a realization that accession is not imminent and may not even happen. There is also less public support for EU accession. The latest opinion polls gauge support for EU membership at 40 percent, down from 74 percent at the start of membership negotiations. As a result, Turkish policymakers are less reticent about discussing frameworks of collaboration that can be set up in parallel to or even in support of the accession process.

Moreover, Turkish foreign policy faces severe regional challenges. The Arab Spring has upended Ankara's zero problems with neighbors approach, which was replaced by a policy of supporting the pro-democracy movements

in the region. Ankara's bilateral relationship with many of the regimes in its southern neighborhood became acrimonious as a result. The relationship with the Syrian leadership, the central government in Bagdad, and even with the Iranian leadership has vastly degraded. Turkey also has unresolved conflicts or hostile relationships with other neighbors, including Armenia, Cyprus, and even Greece.

These complications in the web of regional relationships are leading the Turkish leadership to a starker assessment of the country's true scope of influence. By the same token, they are encouraging Turkey to rethink the limits of unilateralism. They are accentuating the need for Turkey to solidify its political and security relationship with its traditional partners in the West. These transformations, which have brought about a more difficult foreign policy environment for both the EU and Turkey, may help them overcome the current political and institutional barriers to more comprehensive foreign policy cooperation.⁴

Neighborhood Policy

Cooperation between Ankara and Brussels should extend beyond the foreign policy sphere and encompass neighborhood policy as well. That, at least for the immediate future, is where a real value added will be found. Both the EU and Turkey have recalibrated their neighborhood policy in the wake of the Arab Spring. The EU announced a new "Partnership for Peace and Stability" with the southern Mediterranean countries that provides the states improved access to the EU market, more flexible rules for mobility, and more financial support. In return, Turkey invested heavily in nurturing the relationships with the emerging leaders of the Arab world. The reference value that Turkey's ruling Justice and Development Party is enjoying among the political Islamists in the region is a strong asset for a Turkish leadership that is intent on consolidating these relationships.

In this context, the ideal setup would be to directly associate Turkey with the European Neighborhood Policy. The EU's southern neighborhood policy is implemented through a series of bilateral agreements between the EU and the southern Mediterranean countries and overseen by an Association Council that has the overall responsibility of shaping the engagement with the beneficiary countries. For instance, it is at the EU-Tunisia Association Council meeting with representatives from the EU member states, the European Commission, and the Tunisian government that the details of the Action Plan for Tunisia, which lays out the objectives for cooperation between the EU and the country, are negotiated and their implementation monitored. This type of cooperation would be difficult, as the bilateral governance structure of the EU Neighborhood does not leave room for the direct participation of third countries—even virtual member states.

In addition to this political level, there is also an institutionalized platform at which technical assistance and other aspects of the EU's relationship with its southern neighbors are regularly discussed. The European External Action Service is the umbrella organization hosting these discussions under the auspices of individual task forces. Turkish experts can easily become a part of these discussions. They could participate in the meetings of individual task forces, possibly with Turkish participation dependent upon the agenda item under discussion. So, for instance, in cases in which Turkey has the potential and the willingness to contribute, Turkish experts from the pertinent state agencies and not exclusively from the Foreign Ministry would be invited to the discussions. A tentative list of potential cooperation areas includes private sector development, regulatory capacity building, banking sector reform, financial sector development, and housing sector reform.⁵

Keeping the Turkey-EU neighborhood policy association at the technical level will allow both Turkey and the EU to maintain their foreign policy independence. There have been clear differences in the foreign policy priorities between Ankara and Brussels in the past—as was apparent, for instance, when a rift opened between Turkey and its Western partners over the May 2010 tripartite deal with Iran to swap nuclear fuel—and there will certainly be more in the future. In particular, their approaches to democracy promotion and governance reforms in third countries share little common ground. While the EU is intent on imposing a more stringent conditionality that links its assistance to reforms in the beneficiary Arab countries, Turkey is known to shy away from conditionality.⁶

Keeping the Turkey-EU neighborhood policy association at the technical level will allow both Turkey and the EU to maintain their foreign policy independence.

Security Policy

The main bottleneck preventing closer EU-Turkey cooperation in the security realm is Cyprus, which joined the EU in 2004 as a divided island. With accession, it gained the right to be represented in EU institutions, and Cyprus decided to use that right to put pressure on Turkey and obtain a better negotiating position in the ongoing intercommunal talks between Greek and Turkish Cypriots. In return, Ankara viewed its NATO membership as its sole leverage on Greek Cypriots and insisted on the continuing exclusion of Cyprus from NATO-EU strategic cooperation. Ankara thus blocked the proposed security agreement between NATO and Cyprus while Nicosia blocked the proposed security agreement between the EU and NATO. Cyprus also vetoed Turkey's membership in the European Defense Agency, thus excluding Turkey from intra-European defense industry cooperation.

Yet, despite the intractability of the Cyprus problem, Turkey-EU collaboration on security and defense can certainly be improved. And the “virtual

membership” package can provide the impetus for a recalibration of the security relationship.

Ankara has already participated in several military and civilian European Security and Defense Policy (ESDP) missions and is the most active participant in those missions among all third countries. It even outperforms many EU member states in terms of the size and scope of its support to ESDP missions. But Turkey’s cooperation with the EU in this area is hindered by the EU’s reluctance to alter the institutional setup of its security and defense relationship with Turkey. Ankara argues that because of its geostrategic importance, proximity to regions of potential instability where EU-led missions are likely to be deployed, and willingness to contribute assets to EU operations, it deserves more influence over planning and implementation of EU security policy. This criticism is voiced all the more strongly in relation to EU missions where Turkey’s contribution is sought.

In particular, Ankara seeks to be fully associated with the planning and implementation of EU-led missions rather than being asked to contribute after the political and technical planning phases have already been completed, if and when it is needed. This is especially necessary, in Turkey’s opinion, when the planned action will take place in proximity to Turkey or in areas of strategic interest to Turkey. Ankara would like its bilateral contact with the EU to increase in the areas of crisis management and the convening of the Committee of Contributors at a higher level. In addition, Turkey seeks a presence in EU headquarters on operations to which Turkey contributes, to participate in the work of the European Defense Agency and to conclude the Security Agreement between Turkey and the EU.

There is also a stalemate in NATO-EU cooperation. The Agreed Framework, which established the rules of security cooperation between the two institutions, was concluded in 2002. Referencing the Berlin Plus agreement—a security arrangement agreed to in the same year—it specifies that the EU can have access to NATO’s assets and capabilities provided that the Alliance members unanimously support the initiative. It also stipulates that NATO and the EU can engage in strategic cooperation and jointly discuss present and emerging threats.

But at the time that the framework was signed, the EU had not yet carried out its enlargement of 2004. The agreement covered the then EU member states and also most of the EU candidate countries. It excluded Cyprus, a future EU member state that is not recognized by Turkey, a NATO member.

This is a clear case of an unaddressed legacy problem inherited by way of enlargement poisoning the EU’s own relations with external partners—NATO and Turkey. Realistically speaking, a lasting solution to this conundrum that can herald seamless EU-NATO cooperation is not to be expected as long as the Cyprus question remains unresolved. There is no clear incentive for Turkey to permanently lift its veto on the participation of Cyprus in the

EU-NATO Strategic Dialogue. For Turkish policymakers, the continuing difficulties associated with the EU-NATO relationship serve as a constant reminder to the EU and the United States that the Cyprus problem remains unaddressed and that the international community should not be satisfied with the current situation. In other words, unless Turkey's allies decide to invest more diplomatic capital to solve the Cyprus problem, it will always hold the possibility of acting as a contagion with the potential to affect the interests of many others.

But the EU would also have much to gain from finding a solution to this conflict. The development of the EU as a continental security organization is currently constrained. The economic crisis has dealt a severe blow to the ability of EU member states to develop military assets that are commensurate with the objective of transforming the EU into a more effective and influential security provider. In addition, the nature of the EU-NATO relationship remains problematic. The EU has no intention, under the circumstances, to duplicate the hard security assets that are at the disposal of the alliance and so remains reliant on NATO for some of its more critical missions. The EU's role as a security provider would be much enhanced if it could seamlessly cooperate with NATO.

Closer Turkey-EU cooperation in the area of security and defense can help the EU overcome these substantial difficulties and enhance the effectiveness of its security policies. But for that to work, the desire of Turkish policymakers to be more involved in the decisionmaking structures of European security policy and, of course, the Cyprus issue must first be addressed.

In addition, in order to meet Turkey's aspirations to be fully associated with European security, the EU should also reconsider a number of practical arrangements that would allow Turkey to have a more substantial role in the planning and implementation of EU-led missions. The guiding principle should be more transparency and more inclusiveness. In return, Turkey should be more flexible on EU-NATO strategic cooperation and allow for a more regular if still informal set of discussions between the two institutions on issues of real strategic importance, such as smart defense, which entails the pooling and sharing of resources, among other steps.

Trade Policy

The uniqueness of the customs union regime is also its handicap. The customs union, by definition, binds Turkey to the EU's trade policy, but Ankara has no proper means of influencing that policy. This dependence was initially accepted by Turkish policymakers as a transitional measure to be eliminated with Turkey's EU accession. But as the membership goal is proving more elusive than ever, the situation is becoming more unsustainable.

Unless Turkey's allies decide to invest more diplomatic capital to solve the Cyprus problem, it will always hold the possibility of acting as a contagion with the potential to affect the interests of many others.

As a result, demands that the customs union be transformed into a free trade area are being increasingly expressed in Turkey, in particular by trade associations. Such a transformation would allow Turkey to regain its independence in trade policy and put an end to its policy dependence on Brussels.

But the way forward may not necessarily be the downscaling of the economic integration between Turkey and the EU—something that a switch to a free trade zone would imply. Such a move would introduce other problems. Trade would become more costly as a result of the introduction of a complex set of rules of origin that have also proven to act as disincentives to foreign investment.

Policy makers should instead focus on preserving and deepening the customs union arrangement while alleviating the problems associated with Turkey's policy dependence. The sustainability of the customs union and Turkey's trade policy dependence on the EU are issues that could be addressed by a new virtual membership framework.

The customs union is worth preserving because it has a positive impact on the Turkish economy, which is now more integrated into the global economy thanks to the relationship with the EU. The customs union has been the main driver of Turkey's trade openness and introduced a new level of competition in the Turkish market. Moreover, the elimination of tariff protection combined with the adoption of a low level of external tariffs for third countries forced Turkish businesses to compete with their European and even global competitors, making them more efficient and internationally competitive.

When the customs union entered into force in 1995, bilateral trade increased. For the first five years of the agreement, Turkey's exports to the EU grew on an annual basis at 7 percent (compared to 5 percent for overall Turkish exports). For the same period, Turkey's imports from the EU grew at 6 percent annually, twice as fast as imports overall. After five years, this trend started to decelerate and the dynamics of bilateral trade started to normalize. In the last five years, Turkey's exports to the EU grew less than Turkey's average rate of export growth (see table 10). This trend reversal may be due to the diversification of Turkey's trade relations in combination with the deceleration of growth and the onset of recession in many EU countries.

Table 10. Compound Annual Growth Rates for Turkey–EU Trade

CAGR	1995–1999	2000–2004	2005–2010
Turkey exports	5%	23%	8%
Turkey exports to EU	7%	24%	5%
Turkey imports	3%	16%	10%
Turkey imports from EU	6%	14%	10%

Another reason for wanting to preserve the customs union is political. Any modification to the current trade regime would require amending the core agreements between Turkey and the EU. Such an attempt to rewrite some of the key provisions of the association treaty would risk triggering a more extensive debate on Turkey's eligibility to become an EU member at a time when the political climate in Europe is hardly conducive to EU enlargement.

Building a Better Customs Union The customs union is criticized for its failure to include mechanisms that enforce a common approach to trade agreements with third parties. The EU has traditionally concluded free trade agreements with third countries without consulting Turkey and without taking into consideration Turkey's trade interests. For instance, these trade agreements have eliminated tariff barriers for EU exports but not for Turkish exports going to third countries, and they enhanced the export competitiveness of EU industries to the detriment of Turkish firms. In addition, the Turkish market had to be opened up to the exports of the EU's trade partners, but these countries' markets remained closed to Turkey's exports.

There are no simple solutions to this dilemma, which stems from the asymmetries inherent in the customs union arrangement. Turkey cannot automatically be made a party to the free trade agreements that the European Commission has negotiated or will negotiate. Yet there are steps the EU can take to make the situation more equitable, and those steps could form part of the virtual membership. Creative solutions to this problem that avoid creating unnecessary friction between customs union partners would cement the sustainability of the customs union arrangement even as uncertainty surrounding Turkey's accession prospects increases.

The European Commission can, for instance, encourage its third-country trading partners to open and conduct trade negotiations in good faith with Turkey as well. Indeed, the EU has introduced a "Turkish clause" in some of its bilateral trade agreements that asks its trading partner to negotiate a similar agreement with Turkey. A further suggestion in that regard may be to invoke a new sort of conditionality, whereby the ratification of a free trade agreement between the EU and a third country could be tied to the conclusion of a free trade agreement with Turkey. A more procedural option may be to arrange the negotiations so that any round of negotiations between the third country and the EU should be followed by a round of negotiations between Turkey and that third country.

This deepened relationship would also entail two institutional novelties: the EU would hold regular consultations with Turkey in advance of and in the wake of each round of its trade talks with third countries and include a Turkish representative in its Trade Policy Committee as an observer. These steps would address Turkish grievances and would force Turkish authorities to become more responsive to tackling the residual impediments to trade raised

by the EU—such as the lack of intellectual property rights enforcement or remaining nontariff barriers to imports of goods—in relation to the functioning of the customs union.

The economies of Turkey and the EU are only partially integrated. While the Association Agreement and the Additional Protocol foresee the establishment of a common market between Turkey and the EU, both the services sector and the agricultural sector currently remain outside of the scope of the customs union. Deepening the customs union would entail incorporating the EU and Turkish service industries, which represent 65 percent of Turkey's and 74 percent of the EU's economy. Services were included in the first version of the customs union, but as the negotiations were drawing to a close in 1995, Germany objected to the liberalization of services trade between Turkey and the EU. The fear among German policymakers was that the door to Turkish migration would be opened if Turkish service providers were given a right to establish operations in the EU. A few years later, the two sides started to negotiate separate trade agreements for services, but these negotiations were called off when accession talks began in 2004.

Given that accession talks have now stalled, there is ample reason to restart a separate round of trade negotiations for bringing the services sector into the realm of the customs union. Moreover, recent ECJ jurisprudence has overturned the political objection to an agreement for liberalizing trade in services with Turkey based on the fear that it would create a back door for migration. These developments create an opportune moment for launching a new and ambitious round of talks for the liberalization of trade in services that would substantially enhance Turkey's economic integration with Europe.

In previous negotiations on the liberalization of services trade, Turkey was asked to adopt the relevant EU acquis, which meant Ankara would bear a heavy burden of regulatory convergence. Today, a lighter approach is needed. The World Trade Organization's General Agreement on Trade in Services framework can be adapted for this purpose. The two sides would reciprocally eliminate market access restrictions and commit themselves to grant national treatment to each other's economic operators—that is, eliminate all discriminatory practices vis-à-vis each others' companies, without necessarily conditioning the liberalization of services trade to regulatory convergence.

Climate Change

Climate change policy is an underexplored area for Turkey-EU cooperation, but it is a natural pillar for the virtual membership. The EU is in the vanguard of international efforts to curb greenhouse gas emissions and has implemented an ambitious agenda for mitigating carbon emissions. Its Emissions Trading System (ETS) is the world's most comprehensive system for trading carbon emissions, accounting for almost 97 percent of all carbon-related trade. If

Turkey joined the EU's climate change policy, and the ETS in particular, both sides would benefit.

Every installation covered by the ETS is issued a cap that denotes the limit on the greenhouse gases that it can emit. Emitters can exceed their allowance only by purchasing additional emission permits from the carbon market created by ETS. Similarly, if they emit less carbon than the amount provided for in their allowance, emitters can sell their residual allowance back to the carbon market. But the ETS has been marred with a design problem stemming from a too widespread distribution of free emission permits that has led to severe price deflation in tradable carbon emissions. After fluctuating in the past few years, carbon prices crashed in 2011 because of a glut of emission permits and low levels of growth in the eurozone. In August 2012, the EU ETS carbon price was 6.9 euros a metric ton.

For Turkey, linking to the EU ETS—albeit at a higher carbon price—would introduce a new and potentially rich source of carbon financing that could change the terms of the domestic debate concerning the affordability of climate change policies.

According to data collected by the United Nations Framework Convention on Climate Change for the period 1990–2009, Turkey has registered the largest increase in greenhouse gas emissions among all the parties to the Kyoto Protocol's Annex I. During these twenty years, Turkey's aggregate GHG emissions increased by 102 percent. The corresponding figures for the EU and the United States are 20 percent and 5.6 percent, respectively.

The Turkish government has been timid in its approach to launch policies to curb carbon emissions. Turkey has no commitments under Kyoto to reduce its carbon emissions, and its Annex I status means that it cannot take advantage of the flexibility mechanisms widely used by other emerging countries like China and India to channel international funding to green investments. So far, Turkey has had to rely solely on its own resources to fund carbon mitigation efforts and to adapt to climate change. Turkish policymakers are also keenly aware of the failure of the international community to extricate clear commitments from some of the more developed emerging economies, like China, India, and the United States, to reduce their own carbon emissions.

Ambitious climate change policies were viewed as being costly, liable to harm Turkey's growing economy, and ultimately unnecessary. Ankara eventually adopted a National Climate Change Strategy to reduce its carbon footprint, but implementation is hampered by a lack of financing.⁷

Short of an international climate change deal with binding commitments from most of the major emitting nations, the ETS is Turkey's best climate policy option. A recent study by an expert at Turkey's Ministry of Development quantified the potential benefits for Turkey of joining the EU's ETS.⁸ If Turkey were participating in an emission trading system for projects related to energy efficiency, renewables, and solid waste, for the period of 2010–2020, it

would have received between \$40 billion and \$166 billion through the sale of emission permits.⁹ Turkey could use that money to fund its investments. The estimated revenue amounts to 12 to 49 percent of the capital expenditures related to green investments in these sectors.

Such a relationship would also significantly boost EU investments in Turkey, in the areas of clean energy and energy efficiency in particular, and further increase the two partners' economic interdependence. It would lower the cost for EU industries to fulfill their emission targets and boost their international competitiveness because they could then acquire emission permits at lower cost from Turkey given that the marginal cost of abatement is likely to be lower in Turkey than in many EU countries.

Mobility

Visa liberalization is an irreplaceable and core component of the virtual membership framework. It is perhaps the only area of this framework with a clear and direct impact on the everyday life of many Turks. As such, it has the potential to dispel the negativity prevalent in the Turkish public opinion about the EU and Turkey's relationship with the EU. Only a virtual membership augmented with the prospect of free travel to Europe can garner enough popular support to underpin the relationship between Ankara and Brussels in the absence of an unambiguous commitment to Turkey's EU membership.

Still, mobility remains a sore point in Turkey-EU relations. Turkish citizens are the subject of onerous visa requirements that severely limit their opportunities to travel, study, or work in EU countries. This situation was more acceptable at a time when the EU had visa restrictions in place for many other European countries, but in the past decade, with successive enlargements and as a result of a sustained process of selective visa liberalization, the EU decided to lift visa requirements for a host of European countries. Today, while Serbs, Albanians, and Bosnians can travel freely to Europe, Turks cannot. This state of affairs is at odds with Turkey's status as the oldest associate of the EU and as a country negotiating EU membership.

Mobility remains a sore point in Turkey-EU relations.

Under a virtual membership, the EU's relationship with Turkey in the area of mobility should be fundamentally reassessed. Two trends are already pointing in that direction: the developing jurisprudence of the European Court of Justice and the changing political backdrop of relations between Brussels and Ankara.

In the late 1950s and 1960s, Turkish migrant workers were invited by governments in Western Europe to be additional manpower in the continent's postwar recovery. But with the economic slowdown in Europe in the following decade, EU governments started to gradually impose visa restrictions on Turkish workers and then on Turkish tourists. The restrictions imposed in the early 1980s continue to exist, but the past few years witnessed an important reversal.

In successive rulings the ECJ confirmed the visa-free-travel-related rights of Turkish citizens stemming from the contractual agreements between Turkey and the EU. The ruling in the landmark 2009 Mehmet Soysal case provides a partial opening for visa liberalization. The requirement that Turks crossing EU borders hold a visa was found to be unlawful only for the countries that had no visa requirements at the time of their EU accession or those that were members of the European Economic Community in 1973—Germany, France, Netherlands, Belgium, Luxemburg, Italy, Denmark, UK, Ireland, Spain, and Portugal. The ruling is not relevant to the other EU members, and the court decision only concerns potential service providers and not tourists.

But according to the ECJ, the freedom to provide services also embodies the freedom to purchase services. More importantly, “tourism” is also considered a full-fledged service in the EU. As a result of the Soysal case, then, the tourist visa requirements of some EU governments should also be found unlawful—a ruling that is believed to be imminent.

The case of Leyla Demirkan, presently before the ECJ, is likely to further clarify the status of Turkish tourists. A Turkish citizen residing in the United States, Demirkan missed a connecting flight in Munich, but German border authorities denied her request to leave the airport while she waited for her next flight, which was scheduled for the next day. The Administrative Court in Munich ruled that Demirkan was entitled to enter the German territory without a visa because of the rights granted to Turkish citizens by the Additional Protocol, which includes the right to receive tourism services. The ruling has been appealed by the German government and is not yet final.

In addition to this series of court decisions, the political environment within Europe that has so far not been conducive to even a gradual process of visa liberalization with Turkey is changing because of growing fears about illegal immigration to Europe from more distant lands. The EU needs Turkey’s help managing the flow of illegal migrants across the Turkish-Greek border, which is considered to be “the favored gateway to the Schengen area for both people smugglers selling passages to Europe, and those pushed to migrate by floods in Pakistan, political instability in Iraq and Somalia, or conflict in Afghanistan.” The creation of such a “land bridge” that runs from Turkey to Greece and on to the rest of the Schengen area is set to “exacerbate political tensions throughout the Schengen area as governments realize their heightened exposure to Greece’s border problems.”¹⁰

The problems associated with the “weak link” of the EU’s external border cannot credibly be addressed without engaging Turkey. Ankara has displayed a certain willingness to tackle these issues, but there are limits to how eager to solve an EU problem Turkey will continue to be. As very perceptively highlighted by an European Stability Initiative interview, “countries rarely invest resources in exit controls, except the former Soviet Union and communist Albania.”¹¹

And key to engaging Turkey on the issues of better border management and cooperation with the EU on illegal migration is visa liberalization. A consensus within the EU that Turkey is a critical partner in the fight against illegal migration has helped to overcome the political obstacles to and the uncertainties of Turkey-skeptic countries about initiating a gradual process of visa liberalization with Turkey.

In June 2012, the EU Council gave the mandate to the European Commission to commence a visa dialogue with Turkey that entails the prospect of visa liberalization. The mandate also envisions enhanced cooperation between Ankara and Brussels on justice and home affairs matters including organized crime and terrorism. In return, Turkey has signed a Readmission Agreement that when ratified and implemented will allow the EU to send illegal migrants that have entered the EU from Turkey back to Turkey.

Of course, there are still EU governments for which genuine visa liberalization is considered to be too politically sensitive. For instance, the visa dialogue mandate seems to require the full cooperation of the Turkish government and all the EU member states, including Cyprus—a condition that is not very likely to be met under current circumstances. But the area remains key to deepening the relationship between the EU and Turkey.

Striking the Right Balance

The virtual membership framework is not designed to be a substitute for Turkey's full membership in the EU. Rather, it is a framework for policy convergence that can supplement the accession process. But if present-day hurdles—such as the division of Cyprus, the willingness of EU leaders to win over a lukewarm public opinion and further the enlargement process, or even the loss of Turkish enthusiasm for accession—cannot be overcome, the virtual membership certainly has the potential to become a permanent fixture of the relationship.

Though the virtual membership may be the only possibility given current circumstances, it is not the ideal. It has one very important drawback compared to the full membership: the absence of a truly transformative dynamic, which the drive to enlargement provided in the past.

Enlargement is generally seen as the EU's most successful policy. It has been at the core of the EU's efforts to extend peace, prosperity, and stability across Europe. The EU's untainted political commitment to the idea of enlargement provided some of that spark. Governments in individual EU countries could change, economic downturns could be experienced, but the EU's attachment to the political objective of enlargement would nonetheless remain, by and large, undaunted.

The magic of enlargement also stemmed from the candidate countries' political acceptance of the conditionality inherent in the process. Candidate

countries had to fulfill the criteria for membership and so were given an unalterable menu of reforms that they had to implement, which in most cases required the countries to build internal consensus on the end goal of EU membership. Bipartisan platforms involving different political parties, civil society organizations, and social stakeholders were forged in the pursuit of that goal. These pro-EU platforms were critical to the success of the country's reform agenda and its short-term pain but long-term gain. The anti-reform proclivity of electoral cycles in candidate countries was thus overcome with the support of these large and crucial coalitions.

A virtuous cycle existed between these two components of enlargement. The EU's unambiguous commitment strengthened the pro-reform, pro-EU coalitions in the candidate countries and enabled them to deliver the necessary reforms. The more these coalitions were able to deliver, the stronger and the more warranted the EU's backing of enlargement became. This virtuous interplay of democratic incentives was at the core of the successful transformation of past EU candidate countries.

For Turkey, these positive dynamics are now a thing of the past. The internal dynamics that were so instrumental in driving forward the reform agenda in other candidate countries were significantly undermined by the ambiguity of the message Ankara received from Brussels. The carrot of membership that was to underpin the pro-reform, pro-EU domestic coalitions is now elusive.

Moreover, the remoteness of the full membership objective has visibly undermined Turkey's democratic progress. The country is backsliding in terms of its democratic practices. It has the undignified designation of having put more journalists in prison than either China or Iran. In its latest Press Freedom Index, Reporters Without Borders ranked Turkey 148 out of 178 countries.¹² Similarly in his evaluation of press freedoms in Turkey, Marc Pierini, a Carnegie expert and the EU's former ambassador in Turkey states that "the overall diagnosis emerging" from various official and civil society reports on press freedoms in Turkey as well as interviews "is rather bleak when contrasted with the successes of Turkey in other fields. Virtually all reports point to a deteriorating trend in press freedom and identify specific causes."¹³ And in its regular assessment of democracies, the Economist Intelligence Unit categorizes Turkey among hybrid regimes, which falls below the category of "flawed democracies."¹⁴

In a similar vein, the EU membership process is vital for the management and resolution of Turkey's domestic conflicts, from the treatment of minorities to the constitutional limits on executive power. The creation of a society-wide consensus, which tackling these deep-seated problems will eventually require, is easier if an overarching consensus already exists on EU membership. After all, that political instrument has proven to be most effective for building a consensual platform in a society defined by a nonconsensual, polarized political culture.

The virtual membership option cannot alter this dynamic. It cannot regenerate the positive conditionality inherent in full membership. It will fall short of reestablishing the EU as an influential anchor for Turkey's democratic progress. Though it can help to create a partnership between Turkey and the EU based on interests, it cannot build a partnership based on values.

Still, forward motion in specific policy areas under the framework of a virtual membership is better than stagnation in the accession process that if left unchecked has the potential to drive the two partners permanently apart. The virtual membership may perhaps not lead the two partners down the path of a happy union, but at the very least it will prevent a nasty divorce. By keeping a degree of momentum in the relationship, the virtual membership framework will also allow Ankara and Brussels to postpone the issue of Turkish accession to a time when a post euro crisis EU will be better equipped to deal with the sensitive issue of enlargement. That in itself may be the strongest argument for thinking more constructively about the proposed virtual membership.

ANNEX I: Dialogues in Strategic Partnerships

	Summit (per year)	Political and Strategic Dialogue	Agriculture and Fisheries	Culture, Education, and Media	Development and Human Rights	Environment, Energy, and Nuclear Affairs	Health, Social Policies, and Migration	Science, Technology, and Space	Security and Defense	Trade, Economy, and Finance	Transportation and Tourism	Other Sectoral Dialogues	Total Sectoral Dialogues	Total
Brazil	1	1		3	2	3	2	2		4	2	2	20	22
Canada	1	5	3(1)	1	1	4(2)	1	2	15(1)	4	2	2	35	41
China	1	6	1	3	3(2)	5	5	3	2(2)	14	6	7(1)	49	56
India	1	4	2	2	2	3	3	2	2	11(1)		2	29	34
Japan	1			1	1	2(1)	2(1)	1		8(3)	3	2	19	20
Mexico	0.5			2	1	1		1					5	5.5
Russia	2	3	2	2	1	2	2	2		8	1	1	21	26
South Africa	1			1	2	2	3	3		1	1	2	15	16
South Korea	1		1			1	2	3		13			20	21
United States	1	6	2(1)	2	4(1)	7(3)	9(1)	2	19(2)	7(2)	3	1	56	63
Total	11.5	25	11(2)	17(1)	17(3)	30(6)	29(2)	21	38(5)	70(6)	18	19(1)	269(20)	305

Number in parentheses is the number of high-level sectoral dialogues (#) in 2011.

ANNEX II: Comparisons of Strategic Partnerships

	Delegation Staff (tens)	Political and Strategic Dialogues	Sectoral Dialogues
United States	8.5	6	56
South Korea	1.7	0	20
South Africa	6.5	0	15
Russia	13	3	21
Mexico	3.8	0	5
Japan	5	0	19
India	9.5	4	29
China	11	6	49
Canada	1.8	5	35
Brazil	5	1	20

ANNEX III: Cooperation of Strategic and European Partners With EU Agencies

EU Agency	Strategic Partner	European Partner (selected)	Type of Relationship	Legal Basis
European Aviation Safety Agency (EASA)	Brazil Canada China Japan Russia United States	Albania Azerbaijan Bosnia and Herzegovina Iceland Moldova Norway Switzerland Turkey	Inspection standardization Technical training of national agencies Aviation safety assessment	EC Regulation No. 216/2008, OJ 2008 L 79/1
European Environmental Agency (EEA)	Canada United States Russia	Iceland Norway Switzerland Turkey Ukraine	Global and regional cooperation (including European Neighborhood Policy) Focal Points	EC Regulation No. 401/2009, OJ 2009 L 126/13
European Food Safety Agency (EFSA)	Japan United States	Turkey Albania	Networks supporting units Focal points	EC Regulation No. 178/2002, OJ 2002 L 31/1
European Union Judicial Cooperation Unit (EUROJUST)	United States	Macedonia Croatia Iceland Norway	Specific arrangement with each country	Council Decision 2002/187/JHA, OJ 2002 L 63/1 Council Decision 2009/426/JHA on the strengthening of EUROJUST
European Monitoring Center for Drugs and Drug Addiction (EMCDDA)	None	All candidates Norway	International coordination unit Focal points	EC Regulation No. 1920/2006, OJ 2006 L 376/1
European Union Law Enforcement Agency (European Police Office, EUROPOL)	Canada Russia United States	Iceland Norway Switzerland Turkey Ukraine	Cooperation agreements	Council Decision 2009/371/JHA, OJ 2009 L 121/37

<p>European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)</p>	<p>Brazil Canada Russia United States</p>	<p>Belarus Bosnia and Herzegovina Croatia Switzerland Turkey Moldova Ukraine</p>	<p>Bilateral cooperation Coordinated joint operations Training for third countries Facilitating operational coordination between EU member states and third countries FRONTEX involvement in EU-led activities</p>	<p>EC Regulation 2007/204, OJ 2004 L 349/25</p>
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Notes

- 1 See European Court of Justice, *Flamino Costa v. ENEL*, 1964.
- 2 See, for case law on enforcement, ECJ, *Ospelt* (2003): ECJ is responsible for homogeneity; EFTA Court, *ESA v. Iceland* (2003): Reference to ECJ *Ospelt*; ECJ, *Bellio Fratelli* (2004): Both courts are responsible; EFTA Court. *Fokus Bank* (2004): Reference to ECJ *Bellio Fratelli*.
- 3 It should also be recalled that the Association Council Decision 1/95 introducing the Customs Union already stipulates that the provisions of the Decision should be interpreted in line with the jurisprudence of the ECJ.
- 4 Ülgen and Grabbe have outlined the mechanics of such a strengthened cooperation in “The Way Forward for Turkey and the EU: A Strategic Dialogue on Foreign Policy,” Policy Outlook, Carnegie Endowment for International Peace, December 2010, http://carnegieendowment.org/files/turkey_eu_policy1.pdf.
- 5 A longer list of policy areas where Turkish assistance could be valuable was provided by Ülgen in “From Inspiration to Aspiration: Turkey in the New Middle East,” Carnegie Paper, Carnegie Endowment for International Peace, December 2011, http://carnegieendowment.org/files/turkey_mid_east.pdf. It is also worth underlining a recent Commission initiative carried out in cooperation with the Turkish think tank TEPAV that aims to uncover areas of trilateral business cooperation between Turkey, the EU, and the Arab states. The feasibility study is to be made available by the end of the year.
- 6 Thomas Carothers and Diane de Gramont, “Aiding Governance in Developing Countries: Progress Amid Uncertainties,” Carnegie Paper, Carnegie Endowment for International Peace, November 2011, http://carnegieendowment.org/files/aiding_governance.pdf.
- 7 Republic of Turkey, National Climate Strategy 2010–2020, www.dsi.gov.tr/docs/iklim-degisikligi/national_climate_change_strategy.pdf?sfvrsn=2.
- 8 “Emissions Trading and the Turkish Practice in Fighting Climate Change,” SPO report no. 2817, Ankara, 2010, <http://ekutup.dpt.gov.tr/ticaret/tez-iari.pdf>.
- 9 Depending on a low (7.5 euros/tonne in 2020) or a high (35 euros/tonne in 2020) carbon price scenario.
- 10 Hugo Brady, “Saving Schengen: How to Protect Passport Free Travel in Europe,” Center for European Reform, London, January 2012, www.cer.org.uk/sites/default/files/publications/attachments/pdf/2012/rp_041-4484.pdf.
- 11 *Ibid.*

- 12 Reporters Without Borders, “Press Freedom Index, 2011/2012,” <http://en.rsf.org/press-freedom-index-2011-2012,1043.html>.
- 13 Marc Pierini, “Press Freedom in Turkey: An Interim Assessment and Avenues for Action,” Carnegie Europe and Open Society Foundation, Brussels, October 5, 2012, www.carnegieendowment.org/2012/10/05/press-freedom-in-turkey-interim-assessment-and-avenues-for-action/dz9z#.
- 14 Economist Intelligence Unit, “The Democracy Index 2011: Democracy Under Stress,” www.eiu.com/public/topical_report.aspx?campaignid=DemocracyIndex2011. Turkey is ranked 88 between Albania and Ecuador.

About the Author

Sinan Ülgen is a visiting scholar at Carnegie Europe in Brussels. His research focuses on the implications of Turkish foreign policy for Europe and the United States, particularly Turkey's regional stance and its role in nuclear, energy, and climate issues. He held multiple positions in the Turkish Foreign Service, including at the United Nations desk and the Turkish Permanent Delegation to the European Union.

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