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**The Original Idea and a New European Partnership for  
Southeast Europe**

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## **The Original Idea and a New European Partnership for Southeast Europe**

European Union is based on idea of solidarity, dismantlement of national borders and spillover of economic integration to other areas of social and political reality. Yet, Europe of today is much different than Europe of the Founding Fathers. It evolved from an elite club to the Continental public order. Benefits of integration have spread to the remote corners of Europe. With all its imperfections, Europe has become a better place than it used to be in the middle of the 20th century.

Yet, the Original Idea seems to be fading and national egoisms retake the ground. At the time of Global economic crisis the time has come to increase efforts, in order to realize new “concrete achievements which first create a de facto solidarity. “

Franco-German cooperation and the institutional structure it created was opened to other European states from the very outset. In other words, enlargement is a part of genetic code of Europe. So is solidarity, which is constitutionalized as a part of fundamental values of the Union.

European Union and its continental public order are incomplete without Southeast Europe. Yet, the process of enlargement has been stalled and ideas how to push it forward are in short supply. The conditionality policy, invented by the Commission and the Council in 1996 was an initial success and possibly one of the most effective instruments of the common foreign and security policy. However, fourteen years later it has exhausted its potential. From this point on, I will suggest three propositions. Starting from the proposition that solidarity is a pan-European concept, I will suggest that the Union's conditionality policy has reached its limits, and finally suggest that it should be replaced by the New European Partnership.

First, having evolved from an elite club to the Continental public order, European Union has acquired an obligation to integrate Europe. Enlargement is not merely a political decision, but a process of existential nature for the European Union. Failure to enlarge to Southeast Europe will not be only a failure of accession-seeking States, but failure of European idea too. Solidarity cannot be understood as an internal concept. It is a pan-European concept from the very beginning.

Second, the conditionality policy should be replaced with the New European Partnership, at first, as a model for Southeast Europe. There are three principal reasons why conditionality should be substituted. Countries of Southeast Europe have reached the point of saturation where conditionality is not as effective any more as it used to be. Also, civil societies in those countries have significantly developed and conditionality is increasingly understood not as a vehicle of change targeting public authorities, but as an irrational punishment of the emerging civil society. For that reason conditionality has damaging effects on public image of European union even among individuals who are critical about their national governments.

Conditionality also creates what Iris Marion Young would call a double identity.<sup>1</sup> On the one hand, States have their identity which the European Union has committed to respect. On the other hand, an extended period of guided exchange<sup>2</sup> and application of conditionality policy creates the second identity which is imposed on accession-seeking states by the EU. That identity is often starkly different than the original one and denigrates the States of Southeast Europe as primitive, brutish, uncompromising and indocile. In other words, unworthy of EU membership.

Conditionality is highly dependable on coherence. Incoherent actions of the EU and her Member States are damaging for its success. For that reason, it has to be strictly tied to membership criteria, not to unilateral claims. However, it is quite possible that unilateral claims are structurally integrated into the logic of supranational decision-making. Building on the well known Hirschman/Weiler's model,<sup>3</sup> the lower institutional voice a Member State can exercise, the higher will be her incentive for exit. With the more extensive use of qualified majority voting, Member States are likely to be tempted to raise the stakes in the supranational bargain by exercising their veto power (voice) in the remaining areas where it is still available, such as enlargement. As we have seen from at least two outstanding examples, a national blocking voice can be motivated by purely national reasons, in disregard of common policies, norms and values of the EU. Such unilateral claims have a potential of creating an

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<sup>1</sup> Iris Marion Young, *JUSTICE AND POLITICS OF DIFFERENCE*, Princeton University Press, 1990

<sup>2</sup> Paul Feyerabend, *SCIENCE IN A FREE SOCIETY* (1978) NLB London, at p. 29.

<sup>3</sup> A. O. Hirschman, *EXIT, VOICE AND LOYALTY - RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS AND STATES*, Cambridge MA, 1970; J. H. H. Weiler, *The Transformation of Europe*, 1991 Yale L. J. 2403

existential crisis of the EU, since they erode the very idea of solidarity as foreseen by the Founding Fathers.

My third and final proposition is that the three perils of conditionality - saturation, denigration and unilateralism can be overcome by devising a New European Partnership for Southeast Europe.

At first, the NEP should entail recognition, by the EU and its Member States, of responsibility for integration of the remaining European States into the Continental public order. In other words, pre-accession process should no longer be understood as a pressure exercise, but as a joint effort of the EU and a candidate country. It is clear, that some States of Southeast Europe are in need of serious institution building exercise. However, lack of functional institutional framework and weakness of public authorities should not be taken as an obstacle to integration but as a challenge that needs to be addressed by both sides. Joint exercise of public authority by local and European administration could become a model for development of administrative capacity and institution-building.

Integration of candidate countries into individual policy areas is another option. Higher education provides for a good example that can be followed in other areas. Candidate countries should be able to take full benefit of those EU programs which they are capable of absorbing and participating in, regardless of the actual day of accession.

This could entail gradual adherence to secondary EU law by candidate countries even before the accession. Candidate countries could be invited to adhere to secondary law relevant for policy areas that they participate to. The mechanism could build on the already existing one according to which candidate countries can adhere to EU's Common Foreign and Security Policy decisions after being invited to do so.<sup>4</sup>

The present system of Stabilization and Association Agreements allows candidate countries to autonomously determine the method of its implementation and makes integration of the *acquis communautaire* precarious and subject to national interpretation. This could be changed if relevant parts of secondary EU law are integrated into national legal orders even before accession, on the same terms as in circumstances of

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<sup>4</sup> See The Thessaloniki Agenda for the Western Balkans, Council Conclusions of 16 June 2003: "EU will invite, as appropriate, the SAP countries to align themselves with EU demarches, declarations and common positions on CFSP issues. Participation of SAP countries in co-ordination and briefing meetings organised by the EU for candidate and associated countries in capitals and headquarters of international organisations could also be considered, as appropriate."

membership. For example, it is not impossible to imagine candidate countries implementing the European Arrest Warrant in pre-accession period.

Not all policy areas have to be integrated in this way. However, in areas which eventually become applicable before accession, preliminary rulings jurisdiction of the European Court of Justice should not be excluded. It would be highly beneficial for national judges to have recourse to preliminary rulings procedure even before accession and would contribute to strengthening of national judiciary.

Centralized administration of EU programs seems to be a good idea. States of Southeast Europe, regardless of their weak institutions, have islands of excellence that cannot develop their full potential due to weak local administration. Civil society organizations and creative individuals should be in position to apply for centralized European funding administered by the Commission. Centralized LLP can serve as a model. The New European Partnership would be based on mutual respect and shared responsibility for integration. It would consist on a set of incentives for those who pledge loyalty to European integration. Cooperation on achievement of common goals would eliminate the perils of conditionality that I have described above. Partial integration into European policies, application of EU law in pre-accession period and extension of preliminary rulings jurisdiction of the ECJ to such areas would eventually create a membership-like situation in some segments of societies and in some institutions of candidate countries.

It can be hoped that positive effects of such development would spread across other segments too and finally enable membership. In that way, Southeast European states could become members as soon as they meet the membership criteria, while some of the benefits of EU membership could be felt even before the full membership. To that effect a protocol to Stabilization and Association agreements could be drafted and offered for signature. However, gradual integration should serve as an excuse to delay the membership itself. Accession should follow on individual country basis as soon as accession criteria are met.

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