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Alternatives between Full Membership and Non-Membership – Fata Morgana or Silver Bullet?

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The EU and its Neighbours: In Search for New Forms of Partnership

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Key Points

- The EU faces a double challenge: On the one hand, the Union needs to provide the neighbouring countries with a more attractive offer in order to make sure that EU conditionality continues to be effective. On the other, it needs to acknowledge the widespread doubts about further rounds of widening.
- The current level of association between the EU and its neighbours can be extended. However, any form of *Association Plus* will at some stage reach its limits and lose its attractiveness, if the affiliated country strongly aspires to join the club. In this situation the EU can either (i) deny the neighbouring countries' wish to go beyond the association paradigm, (ii) open up the classical path towards EU accession, or (iii) look for alternatives beyond an *Association Plus*.
- In the latter case the EU will have to offer the neighbouring countries a substantial dimension of EU membership by offering them a say in the Union's decision-making system. Moving beyond the association paradigm, one can distinguish between two alternatives: *Partial Membership* or *Limited Membership*.
- In the framework of *Partial Membership* affiliated countries are integrated in one or more specific EU policy areas without however becoming full EU members. "Partial" members become *de facto* members in the respective field and as such fulfil similar obligations and enjoy similar rights as any EU country. Over time, *Partial Membership* can be extended to other policy areas and does not exclude the possibility of an eventual full membership in the EU.
- *Limited Membership*: The acceding state becomes an EU member albeit subject to certain limitations. The new EU country does not enjoy all benefits of membership as it is excluded from certain (key) policy areas or is not obliged to apply certain legal norms.
- The introduction of *Limited Membership* would lead to new sub-forms of membership and citizenship. The notion of being a second-class member can lead to severe tensions between old and new EU countries. As a consequence, the concept of *Limited Membership* makes sense only, if it is conceived and construed as an intermediate step.
- Four things would increase the chances that alternative forms of association and integration beneath the level of full membership progress from theory into practice: (i) neighbouring European countries must be ready to accept something below a full and unlimited membership; (ii) the EU must acknowledge the need to go beyond the association paradigm in order to uphold conditionality; (iii) a membership denial at the end of the accession process might force the EU to offer something beyond an *Association Plus*; (iv) Increased differentiation among EU members will increase the likelihood that alternative forms of membership are implemented in practice.

Alternatives between Full Membership and Non-Membership – Fata Morgana or Silver Bullet?

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The European Union (EU) is coping with the consequences of its own attractiveness. Most countries neighbouring the EU in both the east and the south aspire to intensify cooperation with the Union. Most eastern European neighbours want even more – they seek to join the club, sooner or later. According to the EU Treaties “any European state which respects the values [of the EU] and is committed to promoting them may apply to become a member of the Union”.¹ Some neighbours are candidates (Croatia, Turkey and Former Yugoslav Republic of Macedonia (FYROM)) or potential candidate countries (Albania, Bosnia and Herzegovina, Montenegro and Serbia including Kosovo). The accession negotiations with Croatia are progressing and Zagreb aspires to join the EU in the next years. The negotiations with Turkey have slowed down and the European perspectives of Ankara are more than unclear. FYR Macedonia is awaiting the opening of accession negotiations. The remaining Western Balkan countries are on the enlargement track, but their EU accession is no foregone conclusion. Other neighbouring countries in Eastern Europe (Ukraine, Moldova, Georgia, Armenia, Azerbaijan) are eager to intensify relations and some have even voiced their wish to enter the path towards EU accession, even if the prospect of joining the Union in many cases is very distant or even indefinite.

In sum, the EU’s eastern European neighbours are putting pressure on the Union and its members to open the door to more newcomers. But following the last rounds of enlargement in 2004/07 from 15 to 27 member states, the sobering experience of the French and Dutch “No” to the Constitutional Treaty in May/June 2005, and the rejection of the Lisbon Treaty in the (first) Irish referendum in June 2008 and the effects this might have on further EU expansion, enlargement fatigue has become a widespread phenomenon in many EU countries – among both ordinary citizens and increasingly also among parts of the elites.² Following the Iris no vote prominent European politicians have even called for a stop to further enlargement.³ The debates about the Union’s (in-)ability to further expand have intensified and the discussions about the “borders of Europe” or the EU’s “absorption capacity” signify the increased relevance of the matter.

¹ See Article 49 Treaty on European Union (TEU), Nice and Lisbon version.

² According to Eurobarometer almost one in every two Europeans is in favour of further enlargement of the European Union (49%). However, in nine EU countries the percentage of citizens not supporting a further enlargement is below 50 per cent. Among them the four most populous EU member states: Italy (48%), the UK (41%), Germany (34%), and France (32%). It is also worth noting that support for further enlargement is far stronger in the 12 states that joined the European Union in the last enlargement round 2004/07 (68%) than in the old EU 15 countries (43%), i.e. 25 percentage points higher. See *Eurobarometer 67*, November 2007, here p. 188-190.

³ Among them Martin Schulz, Chairman of the PSE Socialist Group, Hans-Gert Pöttering, President of the European Parliament, European People’s Party, and French President Nicolas Sarkozy.

Under these circumstances it comes as no surprise that the pressure to explore innovative ways to affiliate EU neighbouring countries beneath the level of a full and unlimited EU membership has increased. Many ideas have been produced over the years. Some of them such as the proposal to offer Turkey a “Privileged Partnership” or the original initiative of French President Nicolas Sarkozy to establish a “Mediterranean Union”, which over time was watered down and has now become “Barcelona Process: Union for the Mediterranean” (see Box 1), have triggered heated debates. These controversies are an indication of the political relevance and sensitivity of the issue both within the EU and in the neighbouring countries.⁴

In this situation it is not easy for the European Union to provide its neighbours with attractive proposals beyond the current state of affairs. The EU has already developed a very dense and complex net of relations with its European and non-European neighbourhood. Among the most prominent are the *European Neighbourhood Policy (ENP)* including six eastern and ten southern EU neighbours, the *Euro-Mediterranean Partnership (Barcelona Process)* including neighbouring countries on the southern Mediterranean rim, the *European Economic Area (EEA)* including the non-EU countries Iceland, Liechtenstein and Norway, the *Black Sea Synergy* including three EU and six non-EU countries, the *Partnership and Cooperation Agreements* with nine countries in Eastern Europe and Central Asia, and the *Stabilization and Association Process* including the countries of the Western Balkans (Albania, Bosnia-Herzegovina, Croatia, FRY Macedonia, Montenegro and Serbia, including Kosovo) (for an overview see Box 1).

Despite the intensity of cooperation, many neighbouring countries are not satisfied with the current level of association or the pace of further EU enlargement. As a result, the EU faces a double challenge: On the one hand, the Union needs to provide the neighbouring countries with a more attractive offer in order to make sure that EU conditionality continues to be effective. On the other, it needs to acknowledge the widespread doubts about further rounds of widening. In this situation, two sets of questions need to be answered:

- (1) Can the current level of affiliation, association and integration be extended? Can the EU deepen its relationship with its neighbouring countries extensively without entering the path towards further enlargement? Are there attractive alternatives below the level of full membership but beyond non-membership?
- (2) What are the chances and under which conditions or circumstances can the EU extend its relationship with its neighbours? Are ideas between full membership and non-membership viable options, which can be translated into practice? Or is the discussion about them nothing more than a *fata morgana*?

⁴ For an overview of different concepts and ideas on how to associate partner countries beneath the level of full membership see: Canan Atilgan and Deborah Klein, *EU-Integrationsmodelle unterhalb der Mitgliedschaft*, Arbeitspapier der Konrad-Adenauer-Stiftung, Nr. 158/2006, May 2006; Andreas Maurer, Alternativen Denken! Die Mitgliedschaftspolitik der Europäischen Union vor dem Hintergrund der Beziehungen zur Türkei, SWP-Aktuell 36, July 2007; Johannes Varwick and Jana Windwehr, Norwegen und Schweiz als Modellfälle differenzierter Integration?, *Aus Politik und Zeitgeschichte (APuZ)*, 43/2007, pp. 15-20.

Box 1: Existing Forms of Association

The **European Neighbourhood Policy (ENP)** was introduced in 2003/04. ENP aspires to avert the emergence of new dividing lines between the enlarged EU and its eastern and southern neighbours. The ENP includes six eastern European neighbours (Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine) and 10 southern neighbours (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria, Tunisia). The ENP aims to go beyond existing relationships by offering a deeper political relationship and economic integration. The ENP remains distinct from the process of enlargement, although it does not prejudge how the relationship between the EU and its European neighbours may develop. The ENP applies elements from both the accession and association toolbox. Inspired by the instrument of Accession Partnerships, the central element of the ENP are the tailor-made bilateral ENP Action Plans agreed between the EU and each partner setting out an agenda of political and economic reforms by means of short and medium-term priorities (3-5 years). These priorities cover political dialogue and reform, economic and social cooperation and development, trade-related issues and market and regulatory reform, cooperation in justice and home affairs, specific sectors (such as transport, energy, information society, environment, research and development) and a human dimension (people-to-people contacts, civil society, education, public health). The incentives on offer, in return for progress on relevant reforms, are greater integration into European programmes and networks, increased assistance and enhanced market access. The implementation of the mutual commitments and objectives contained in the Action Plans is regularly monitored through sub-committees with each country, dealing with the relevant sectors or issues. The implementation of the reforms is supported through various forms of EC-funded financial and technical assistance including instruments, which have proven successful in supporting reforms in Central, Eastern, and South-Eastern Europe.⁵

The **European Economic Area (EEA)**, which came into being on January 1, 1994, is the most developed framework for relations between the EU and non-EU countries. The non-EU EEA countries include three members of the European Free Trade Association (EFTA), Iceland, Liechtenstein and Norway, which have adopted the essential parts of the EC *acquis communautaire* related to the internal market. The EFTA-country Switzerland did not become member of the EEA after a respective referendum in December 1992 had failed. The EEA Agreement obliges the three EFTA countries to implement the EU's *acquis* into national legislation. The EEA allows the three EFTA countries to participate in the internal market without becoming EU members as it is based on the same "four freedoms" as the EC/EU: the free movement of goods, persons, services, and capital. The EFTA countries participating in the EEA enjoy free trade with the European Union, contribute to the EU budget and participate in the Union's cohesion policy. However, cooperation in the EEA is not limited to issues related to the "four freedoms" of the internal market, but covers also issues related to research and technological development, information services, the environment, education, social policy, consumer protection, small and medium-sized enterprises, tourism, the audio-visual sector and civil protection. Noteworthy, the three non-EU-EFTA countries do not take part in the Common Agricultural Policy, tax harmonisation or in the EU's external trade relations.

The **Euro-Mediterranean Partnership (EMP)**, also known as the **Barcelona Process**, was launched in 1995 and constitutes the policy of the European Union towards the southern Mediterranean countries. Its purpose is to strengthen the links between the Union and the partner countries, whilst encouraging closer ties among the Mediterranean countries themselves. The objective of the Partnership is to promote peace and stability in the region by establishing a political dialogue that respects the partners' shared values, such as democracy and the rule of law. The Barcelona Process aims to promote the prevention and resolution of conflicts, to increase prosperity, particularly through the creation of a free-trade area, and to develop cooperation. In this context, the Euro-Mediterranean Partnership brings together the EU member states and the Mediterranean countries under a large-scale programme with three strands:

⁵ For more on the European Neighbourhood Policy see: Marise Cremona and Christophe Hillion, *L'Union fait la force? Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy*, EUI Working Paper LAW, No. 2006/39; Michael Emerson, Gergana Noutcheva and Nicu Popescu, *European Neighbourhood Policy Two Years on: Time indeed for an 'ENP plus'*, CEPS Policy Brief No 126, March 2007; Barbara Lippert, *Die EU-Nachbarschaftspolitik in der Diskussion – Konzepte, Reformvorschläge und nationale Positionen*, Friedrich Ebert Stiftung, Internationale Politikanalyse, July 2007; Barbara Lippert, *Die Europäische Nachbarschaftspolitik: viele Vorbehalte – einige Fortschritte – unsichere Perspektiven*, Internationale Politikfeldanalyse, März 2008; Johannes Varwick and Kai-Olaf Lang (eds.), *European Neighbourhood Policy: Challenges for the EU-Policy Towards the New Neighbours*, Opladen & Farmington Hills, 2007.

a political and security strand, an economic and financial strand and a social and cultural strand. Strengthening cooperation in the fields of justice, migration and social inclusion is also an important element of the Barcelona Process. The Partnership is put into effect both bilaterally and regionally. The bilateral arrangements are tailored to the individual partner country, an important aspect being the Euro-Mediterranean Association Agreements (see below). The Barcelona Process might be enhanced through the establishment of the **Union for the Mediterranean (UMed)**, which was originally proposed by the French President Nicolas Sarkozy. The “Barcelona Process: Union for the Mediterranean” will encompass all EU member states and the European Commission together with the remaining members and observers of the Barcelona Process (Albania, Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Mauritania, Morocco, Palestinian Authority, Syria, Tunisia and Turkey), and the other Mediterranean coastal states (Croatia, Bosnia and Herzegovina, Montenegro and Monaco). Following its launch in July 2008 the “Barcelona Process: Union for the Mediterranean” is planned to concentrate on more concrete and visible regional and sub-regional projects.⁶ It will be co-chaired by the EU and by the Mediterranean partner countries. The Heads of State and Government will hold biennial summits. Foreign affairs ministerial meeting will take place between summits to review progress in the implementation of the summit conclusions and prepare the next summit meetings.⁷

Euro-Mediterranean Association Agreements: The EU and nine Mediterranean partners (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria and Tunisia) have concluded bilateral Association Agreements. The provisions of the Euro-Mediterranean Association Agreements vary from one Mediterranean partner to the other. However, they have certain aspects in common: political dialogue; respect for human rights and democracy; establishment of WTO-compatible free trade; provisions relating to intellectual property, services, public procurement, competition rules, state aids and monopolies; economic cooperation in a wide range of sectors; cooperation relating to social affairs and migration (including re-admission of illegal immigrants); cultural cooperation. For the implementation of Association Agreements two common institutions are in place: the Association Council (ministerial) and the Association Committee (senior official level).

The **Stabilisation and Association Process (SAP)** launched at the Zagreb Summit in November 2000 is the EU's policy towards the countries of the Western Balkans. The countries concerned are Albania, Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia (FYROM), Montenegro, Serbia, Kosovo. These countries are recognised as (potential) candidates for Union membership. The SAP is intended to ensure peace and stability in the region by providing support for the strengthening of democracy and the rule of law and the development of a market economy. It places great stress on developing regional cooperation, e.g. by a free trade area and political dialogue. The purpose of the SAP is to establish special relations between the countries concerned and the EU in exchange for reforms with a view to EU accession, which will involve aligning their legislation more closely with that of the Union. The SAP is based on a progressive partnership, in which the EU offers a mixture of trade concessions (Autonomous Trade Measures), economic and financial assistance (CARDS Programme) and contractual relationships (Stabilisation and Association Agreements). Each country moves forward on the basis of the fulfilment of its commitments in the framework of the SAP. Annual Progress Reports assess the readiness of the Western Balkan countries to move closer to the EU. The SAP was strengthened at the Thessaloniki Summit in 2003 by taking over elements of the accession process. The most far-reaching of these new instruments are the European Partnerships, inspired by the Accession Partnerships. The first set of European Partnerships was approved in 2004. By identifying short and medium-term priorities, which the countries need to address, the European Partnerships aspire to help the Western Balkans countries with their reforms and preparations for future membership. The Western Balkans countries that acquire candidate country status (currently Croatia and FYROM) continue to benefit from certain aspects of the Stabilisation and Association process although they are engaged in the process of accession.

The **Partnership and Co-operation Agreements (PCAs)** formalise the bilateral relations between the EU and individual partner countries in Eastern Europe and Central Asia. PCAs are now in force with nine partner countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Russian Federation, Ukraine, and Uzbekistan. The PCAs with Belarus, Tajikistan and Turkmenistan have been signed but have not entered into force. PCAs are legal frameworks, based on the respect of democratic

⁶ For a list of concrete projects see Barcelona Process: Union for the Mediterranean, Communication from the Commission to the European Parliament and the Council, COM(2008) 319 (Final), 20.5.2008.

⁷ On the Union for the Mediterranean see Rosa Balfour and Dorothee Schmid, A Union for the Mediterranean, disunity for the EU?, EPC Policy Brief, February 2008; Michael Emerson, Making sense of Sarkozy's Union for the Mediterranean, CEPS Policy Brief No. 155, March 2008; Daniela Schwarzer and Isabelle Werenfels, Formelkompromiss ums Mittelmeer, SWP-Aktuell 24, April 2008.

principles and human rights, setting out the political, economic and trade relationship between the EU and its partner countries. Each PCA is a ten-year bilateral treaty signed and ratified by the EU and the individual state.

The **Black Sea Synergy** is a cross-border cooperation programme initiated in early 2007 that involves local authorities in the countries around the Black Sea and supports the activities of civil society organisations. The countries participating in the initiative include the three EU countries Greece, Bulgaria and Romania, and seven non-EU countries Armenia, Azerbaijan, Georgia, Moldova, Russia, Turkey and Ukraine. The primary task of Black Sea Synergy is the development of cooperation within the Black Sea region and also between the region as a whole and the EU. The Black Sea Synergy specifically aims to stimulate democratic and economic reforms, to support stability and promote development, to focus on practical projects in areas of common concern, to respond to opportunities and challenges through coordinated action in a regional framework, and to develop a climate more conducive to the solution of conflicts in the region. Black Sea Synergy includes concrete initiatives in areas such as transport, energy, the environment, maritime management, fisheries, migration, and the fight against organised crime, the information society and cultural cooperation.

The **Northern Dimension** policy is a common project of its Partners, the EU, Iceland, Norway and Russia. The USA and Canada are observers to the Northern Dimension. The Northern Dimension covers a broad geographic area from the European Arctic and Sub-Arctic areas to the southern shores of the Baltic Sea, including the countries in its vicinity and from North-West Russia in the east to Iceland and Greenland in the west. The Northern Dimension supports the existing multilateral co-operation within the Northern regional councils (Council of the Baltic Sea States (CBSS), Barents Euro Arctic Council (BEAC), Arctic Council (AC), Nordic Council of Ministers (NCM)) and aims to maximize their synergies as well as those of all other Northern Dimension participants and actors. The Northern Dimension focuses on the following key areas of cooperation: economic cooperation; freedom, security and justice; research, education and culture; environment, nuclear safety and natural resources; social welfare and health. Northern Dimension ministerial meetings are held every two years and provide guidance and monitoring to Northern Dimension implementation. Senior officials meetings are held whenever necessary and at least every alternate year between ministerial meetings. Partners, observers and participants are invited to both ministerial and senior officials meetings. A steering group at expert level, which is composed of representatives of the EU, Iceland, Norway and Russia, normally meets three times a year to provide continuity between the high level meetings.

In May 2008 the Polish and Swedish governments proposed the initiation of an **Eastern Partnership**, which is to complement the Barcelona Process: Union for the Mediterranean, Northern Dimension and Black Sea Synergy.⁸ The European Council has asked the Commission to present to the Council in Spring 2009 a proposal for modalities of the Eastern Partnership. The new initiative, which is to be embedded into the ENP, aims to improve ties with Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The original Polish-Swedish proposal stresses multilateral cooperation in fields like migration, visa-free travel and the environment. Projects could also extend to Russia.⁹

⁸ See Polish-Swedish proposal: Eastern Partnership, 23 May 2008.

⁹ For an analysis of the "Eastern Partnership" see Agnieszka K. Cianciara, 'Eastern Partnership' – opening a new chapter of Polish Eastern policy and the European Neighbourhood Policy?, *Analyses and Opinions* No. 4, The Institute of Public Affairs, Warsaw, June 2008.

Three Strategic Alternatives

Going beyond the current levels of association but remaining beneath full and unlimited membership, one can in abstract terms differ between three alternative concepts involving very diverse levels of association and integration. (1) *Association Plus*, (2) *Partial Membership*, and (3) *Limited Membership*.

(1) *Association Plus*

The EU extends the level of cooperation with its neighbouring countries but clearly remains within the association paradigm. Third countries do not join the Union but are associated to the EU as closely as possible beneath the level of *de jure* or *de facto* membership.

Cooperation between the EU and many of its neighbours is already today very intense. However, the current level of association can be further extended. And the continuous efforts to further enhance *European Neighbourhood Policy* are ample proof of the EU's readiness to associate its neighbours more closely.¹⁰ In practice, there are numerous ways how to intensify the neighbouring countries' affiliation to the EU without extending beyond the association paradigm. Closer association can

- be organized in the framework of **multilateral** (e.g., extension of membership in EEA or EEA+, UMed, EU-Black Sea Union, European Commonwealth or Pan-European Confederation) **and/or bilateral formats** (Deep Free Trade Agreement, Privileged Partnership, Extended Associated Membership, Most Favoured Neighbourhood status);
- include an **explicit membership perspective** (e.g., Stabilization and Association Process, pre-accession process), be **membership neutral** (e.g., ENP/ENP plus, EEA/EEA+, UMed, European Commonwealth, Pan-European Confederation) or explicitly **exclude the membership option** (e.g., Privileged Partnership; Extended Associated Membership);
- be achieved through an **upgrade of the associated country's status vis-à-vis** the EU based on individual merit by introducing a **new special status** in-between the current level of association and the status of a (potential) candidate (e.g., Most Favoured Neighbour status; advanced association model in ENP plus);
- be accomplished through positive conditionality via a **higher level of differentiation vis-à-vis individual neighbouring countries** based on the partner's political situation, its level of ambition with regard to the EU, its reform agenda and achievements, and its level of socio-economic development. The negotiations with Ukraine concerning a tailor-made enhanced agreement, the ongoing discussion about an "advanced status" with Morocco, or the instrument of "Governance Facility", which provides additional support to the partner country or countries that have made most progress in implementing the governance priorities agreed in their Action Plans, exemplify such a country-specific approach.

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See: Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, Communication from the Commission to the Council and the Commission, COM(2003) 104 final, 11.3.2003; European Neighbourhood Policy: Strategy Paper, Communication from the Commission, COM(2004) 373 final, 12.5.2004; Strengthening the European Neighbourhood Policy – Communication from the Commission to the Council and the Commission, COM(2006)726 final, 4.12.2006; Strengthening the European Neighbourhood Policy – Presidency Progress Report, 10874/07, 15.6. 2007; Strengthening the European Neighbourhood Policy – Council Conclusions, 11016/07, 19.6.2007; A Strong European Neighbourhood Policy, Communication from the Commission, COM(2007) 774 final, 5.12.2007.

- be accomplished through the **enhancement of the relationship with an entire region** (Black Sea Synergy, Eastern Partnership, EU-Black Sea Union, UMed). Such forms of decoupling can for example recognise in one way or another the Easterners “aspiration to become EU members at an undefined future moment and thereby link their fortunes more closely with the Copenhagen criteria.”¹¹
- involve a **stronger inclusion in the EU’s decision-shaping process** by creating for example joint mechanisms of decision-making like in the case of the EEA (see Box 3) or by involving the right to observe and be informed about all stages in the EU’s legislative process.
- be achieved through the **participation of neighbouring countries in certain EU policy areas** albeit excluding an involvement in the Union’s internal decision-making process. Examples include (i) the participation of Iceland, Norway, and Switzerland (November 2008) in the Schengen zone, (ii) the opportunity of alignment with CFSP declarations on a case-by-case basis or the ability to join ESDP/CSDP operations¹², (iii) the inclusion into EU-supported networks in fields such as energy or education (inclusion in Bologna Process or in the European Research Area (e.g., FP7)), (iv) participation in EU agencies (e.g. European Environment Agency, FRONTEX, European Defence Agency), (v) participation in EU briefing and coordination meetings at the UN or other global institutions, or (vi) even the introduction of the euro in non-EU countries;
- be organized in a framework **developed unilaterally by the EU** (e.g., ENP, ENP plus, UMed) or **setup jointly by the Union and its neighbours**. The latter might include the establishment of a new institutional framework bringing together the EU and its neighbouring countries in a separate multilateral organization (e.g. European Commonwealth, Pan-European Confederation, European Area). The establishment of a joint institution can result in more symmetry in the relationship between the EU and its partners and create a sense of joint ownership on both sides.
- involve either **all EU countries** (e.g., ENP, UMed) or **merely a group of member states** particularly interested in a certain form of cooperation and coordination with neighbouring countries/regions (e.g., Black Sea Synergy, original French proposal of a “Mediterranean Union”)

¹¹ See Dimitar Benchev and Kalypso Nicolaidis, *Integration without Accession: The EU’s Special Relationship with the Countries in its Neighbourhood*, Report to the European Parliament, October 2007, p. 31.

¹² See e.g., Ukraine’s participation in police missions in Bosnia and FYR Macedonia or Morocco’s participation in EUFOR peacekeeping force in Bosnia.

Box 2: Variants of Association Plus

European Economic Area plus (EEA+): The European Parliament and here especially Elmar Brok, Member of the European Parliament (EPP/CDU), have proposed the creation of an *European Economic Area plus (EEA+)*.¹³ Within the *EEA+* the partner countries could – similar to the EEA – gradually adopt 40-60 per cent of the EU's *acquis*. Fields of close cooperation could – according to Brok – include the internal market, environmental protection or border control. The *EEA+* is conceived as an intermediate step not excluding an eventual full membership in the EU.

ENP plus: Michael Emerson, Gergana Noutcheva and Nicu Popescu have spelled out details of an *ENP plus* – a term originally introduced by the German EU presidency.¹⁴ *ENP plus* should include the basic provisions of the European Neighbourhood Policy (ENP) plus (i) an advanced association model for the able and willing partner states, (ii) a strengthening of regional-multilateral schemes, (iii) an upgrading of some of the standard measures being deployed, and (iv) an “ENP light” package for states/entities with difficult political regimes.

Privileged Partnership: Probably the most prominent idea is the proposal to engage Turkey in a *Privileged Partnership* as an alternative to EU membership. This idea was originally proposed and developed by political circles surrounding the German CDU/CSU.¹⁵ *Privileged Partnership* would be phased in and eventually surpass the status of special relations. In more concrete terms, a *Privileged Partnership* could include membership in the European Economic Area (EEA), provide particular forms of intensive political dialogue, and extend the non-EU country's involvement in CFSP/ESDP and/or in Justice and Home Affairs (JHA).

European Commonwealth: The idea to establish a European Commonwealth aims to close the gap between EU enlargement and neighbourhood policy by tying the EU and its eastern and southern neighbouring countries (ENP countries and possibly also Russia) closer together in a multilateral forum. Cooperation should be based on shared values and include the area of freedom, security and justice, foreign and security policy, and cooperation in the fields of education, science and culture. Cooperation in the European Commonwealth would however exclude a participation in EMU, not allow any participation in EU decision-making organs, and exclude the free movement of persons.¹⁶

Pan-European Confederation (gesamteuropäische Aufgabenkonföderation):¹⁷ Taking up a proposal advocated by the former President of the European Parliament Klaus Hänsch in the early 1990s, Barbara Lippert advocates the creation of a Pan-European Confederation (gesamteuropäische Aufgabenkonföderation) including the EU – represented collectively – and a number of countries of the former Soviet Union¹⁸; at a later stage possibly also Russia and the EFTA countries. The participating eastern neighbours should have concluded and successfully implemented a new type of “modernization and stabilization partnership” with the EU. The Confederation should provide a multilateral forum for functional cooperation allowing both sides to adopt joint decisions on the basis of joint decision-making mechanisms and “light” institutions. However, the neighbouring countries participating in the Confederation would not participate in the EU's decision-making

¹³ See Elmar Brok, Glaubwürdigkeit statt “Alles oder Nichts” – bei der Erweiterung stößt die EU an ihre Grenzen, in *Union in Europa*, 5/2006, pp. 4-5; European Parliament, European Parliament resolution of 15 November 2007 on strengthening the European Neighbourhood Policy, A6-TA(2007)0538, 15 November 2007, here especially point 31.

¹⁴ See Emerson, Noutcheva and Popescu, *European Neighbourhood Policy Two Years on*.

¹⁵ For the most detailed description of the idea see Johann zu Gutenberg, *Die Beziehungen zwischen der Türkei und der EU – eine “Privilegierte Partnerschaft”*, Aktuelle Analysen Nr. 33, Hanns-Seidel-Stiftung, Munich, 2004; see also *Privilegierte Partnerschaft: Die europäische Perspektive für die Türkei*, Beschluss der Präsidien der CDU und der CSU, 7.3.2004.

¹⁶ See Andreas-Renatus Hartmann, Für ein europäisches Commonwealth, *Frankfurter Allgemeine Zeitung*, 7.5.2008, S. 10; Ognyan Minchev, Towards a European Commonwealth of Nations – A Strategic Response to the EU ‘Enlargement Fatigue’, Institute for Regional and International Studies (IRIS), 2005; John Palmer, Toward a European Commonwealth – Beyond Enlargement, *International Herald Tribune*, 23.6.2006; Ioannins Varvitsiotis, Let's build on neighbourhood policy with an EU-backed “Commonwealth”, *Europe's World*, Summer 2006.

¹⁷ See Barbara Lippert, *Assoziierung plus gesamteuropäische Aufgabenkonföderation: Plädoyer für eine selbstbewusste EU-Nachbarschaftspolitik*, *integration* 2/2006, pp. 149-157.

¹⁸ The group of former Soviet countries would include the following six countries: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

process. The establishment of a Confederation does not aim to create a new, third status in between EU membership and neighbourhood and is not primarily thought of as a transit arrangement on the way to EU membership. The Confederation should rather be a functional community on its own right. Similar to the CSCE process in the 1970s, the Confederation's institutional structure, tasks, procedures, rules and norms of cooperation should not be predetermined but rather developed jointly in the course of the process. Cooperation within the Confederation should encompass three dimensions: (i) political and humanitarian dimension (rule of law, democracy and human rights; education, culture and science); (ii) economic dimension (economic area; monetary and macro-economic area; economic infrastructure/trans-European networks); (iii) security dimension (justice and home affairs; external and security policies; bundling of regional processes).

European Area (alternative labels: *European Partnership Area* or *Euro-Sphere*): Dimitar Bechev and Kalypso Nicolaidis propose the creation of a separate political and economic entity including all countries addressed by the European Neighbourhood Policy. The *European Area* would be a multilateral body resembling the *Euro-Mediterranean Partnership* but with a broader geographical scope. The *European Area* would entail a radical decentring of special relationships away from the EU-oriented notion of neighbourhood and institutional management carried out in Brussels. As such it would be partially freed from the logic of convergence, although economic functional integration within the *European Area* would likely reflect the EU's *acquis*. As a polity in its own right, the *European Area* would have its own council of ministers (with a secretariat), sectoral minister's fora, expert bodies, parliamentary assembly.¹⁹

EU-Black Sea Union: In response to the French proposal to establish a "Union for the Mediterranean" the Socialist Group in the European Parliament proposed a similar initiative in the east of the EU. In more concrete terms, Hannes Swoboda, Austrian MEP and Vice-President of the EP and the Socialist Group, claimed that, "the Union for the Mediterranean must be accompanied by an EU-Black Sea Union" comprising the EU and Moldova, Turkey, Ukraine, the southern Caucasus (Georgia and Azerbaijan) and Central Asian countries.²⁰

Most Favoured Neighbour (MFN): The MFN status – developed and proposed by Emel G. Oktay – distinguishes more explicitly between the EU's eastern European neighbours and southern partners as neighbours such as Ukraine, Moldova, and Belarus are granted a special status. The MFN status suggests that the EU treats its eastern European neighbours "normally" as a European state in the geographical sense and thus recognizes their legitimate right to apply for membership.²¹

In sum, there are many and diverse potentials to further deepen the level of cooperation between the EU and its neighbours without moving beyond the association paradigm. However, the room for manoeuvre is not endless. Whatever the intensity and however diverse the relationship, association has a limit as one key feature restricts and characterizes all variants of an *Association Plus*: The partner countries do not participate in the internal process of EU decision-making, which remains the sole privilege of the Union and its members. In other words, the EU's core institutions – European Commission, (European) Council, European Parliament – remain closed for associated countries. The formulation of the Union's *acquis politique* and the adoption of legal acts are exclusively reserved to EU institutions and member states.

The institutional arrangements associating the partner countries to the EU are limited to bilateral and multilateral meetings between the Union and its neighbouring countries (e.g., Partnership/Association Council, Partnership/Association Committee, Joint Parliamentary Committee, EMP summits). However, the associated countries can get indirectly or directly affiliated to the EU's decision-shaping process. The degree of cooperation can be as close as to involve joint mechanisms of decision-making as for example in the case of the European Economic Area (EEA), where the EU and the three non-EU members of the EEA jointly decide

¹⁹ See Benchev and Nicolaidis, *Integration without Accession*, pp. 35-36.

²⁰ See PSE News, *The Union for the Mediterranean must be accompanied by a EU-Black Sea Union*, 27.3.2008 (<http://www.socialistgroup.eu/gpes/newsdetail.do?id=77270&lg=en>).

²¹ See Emel G. Oktay, "Today's Neighbours, Tomorrow's Partners: Managing the Neighbourhood on Post-Enlargement Europe," *Clingendael European Papers* No. 3, The Hague, December 2007, here pp. 33-37.

on how EC legislation is integrated into the EEA Agreement (see Box 3). However, even in this case the actual *acquis* is not subject to joint decision-making as decisions are adopted autonomously within the EU and without the involvement of non-EU EEA countries. The fact that non-EU countries are excluded from EU institutions and not able to really influence the Union's policies and legislative output was one reason why several EFTA members such as Austria, Finland and Sweden in the early 1990s rather preferred to seek full membership in the EU instead of joining the more limited EEA agreement.²²

Box 3: EEA Institutional Set-up

The European Economic Area (EEA) provides the most developed institutional framework for relations between the EU and non-EU countries. The decision-making process in the EEA Agreement is characterised by a two-pillar structure. Substantive decisions relating to the EEA Agreement and its operation are a joint venture with the EU and in the hands of common bodies. The *EEA Council* is responsible for giving political impetus and guidance for the implementation and development of the EEA Agreement (similarly to the European Council). It meets twice a year and is attended by the Ministers for Foreign Affairs from the EEA EFTA States, the current and forthcoming EU presidencies, as well as the Commissioner for External Relations and the High Representative for the EU's Common Foreign and Security Policy. The *EEA Joint Committee* is responsible for the ongoing management of the EEA Agreement. It is the forum in which views are exchanged and decisions are taken by consensus to incorporate Community legislation in areas covered by the EEA into the EEA Agreement. The incorporated legislation subsequently is implemented and becomes part of the national legislation of the EEA EFTA states. The *Joint Committee* generally meets once a month and is made up of ambassadors of the EEA EFTA States, representatives from the European Commission and EU member states. Four subcommittees assist the *Joint Committee* (on the free movement of goods; free movement of capital and services including company law; free movement of persons; and horizontal and flanking policies). Numerous expert and working groups report to these subcommittees. Other joint institutions include the *Joint Parliamentary Committee* and *Consultative Committee*, which have a consultative character. On the side of the EFTA countries (not including Switzerland!) the following institutions regulate the activities of the EFTA members in respect to their obligations in the European Economic Area: the *EFTA Standing Committee* is the forum in which the EEA EFTA States consult one another and arrive at a common position before meeting with the EU side in the *EEA Joint Committee*; the *EFTA Surveillance Authority* performs the European Commission's role as "guardian of the treaties" for the EEA EFTA countries; the *EFTA Court* performs the European Court of Justice's role for the EEA EFTA countries.

Viewed from the perspective of neighbouring states wishing to join the EU, any form of *Association Plus* will sooner or later run out of steam. For European countries aspiring and eligible to join the EU no form of association can be an alternative to full membership. Whatever the EU is able and willing to offer in terms of financial and technical assistance or in terms of political and/or economic exclusivity, no type of affiliation can substitute the ultimate membership perspective. The remoteness of the membership perspective puts association under strain and limits its effectiveness and conditionality leverage. For countries wishing to join the club an *Association Plus* can only be attractive if it is conceived and perceived as an intermediate step towards (full) EU membership. For this reason, concepts like that of *Privileged Partnership* or *Extended Associated Membership*, which explicitly exclude the EU membership perspective,²³ are unattractive and politically unacceptable from the perspective of a (potential) candidate country.

The concept of an *Association Plus* can be an attractive long-term alternative for countries aspiring to establish strong links with the EU but not willing (i.a. Norway, Switzerland, Russia)

²² See Benchev and Nikolaidis, *Integration without Accession*, p. 21.

²³ See: Guttenberg, *Die Beziehungen zwischen der Türkei und der EU*, pp. 5-6; Quaisser and Wood, *EU Member Turkey?*, here especially p. 51.

or ineligible (non-European neighbours) to join the club. For such countries an *Association Plus* can be an interesting alternative to EU accession, as it provides key benefits of EU membership without the necessity to join the Union. The case of countries like Iceland, Liechtenstein and Norway in the framework of the EEA or of Iceland, Norway and Switzerland concerning the Schengen area exemplify that third countries are ready to closely associate themselves with the Union, even if this means that they are mere recipients of EC/EU legislation.²⁴ In other words, third countries might be ready to implement the EU's standards and norms even if they are excluded from the Union's internal decision-making process, if this is the price they have to pay in order to have access to a space and market of more than 500 million people. However, neighbouring countries are ready to accept the limits of association only if they consider this to be in their own interest.

On the other hand, neighbouring European countries, which aspire to join the EU, will over time become increasingly dissatisfied and will eventually seek more than mere association. In this situation the Union will sooner or later face three alternatives:

- (1) The Union can either deny the neighbouring countries' wish to go beyond the association paradigm and thus risk that the partner country distances itself from the EU.
- (2) The European Union can follow the traditional enlargement paradigm and open up the classical path towards EU accession.
- (3) The Union can look for alternatives beyond an *Association Plus* and beneath the level of full and unlimited EU membership.

In the latter case the European Union will have to offer the neighbouring countries a substantial dimension of EU membership by offering them a say in the Union's decision-making system. The partner country will be ready to accept EU conditionality and to further increase the degree of convergence with the Union's political and legal *acquis* if it is granted the corresponding level of access to EU institutions. The Union and its members must be ready to go beyond what Commission President Romano Prodi in 2002 called "everything but institutions". In this case one can distinguish between two alternatives: *Partial Membership* or *Limited Membership*.

(2) *Partial Membership*

Partial Membership transcends both the association and the classical enlargement paradigm. In the framework of *Partial Membership* affiliated countries are not merely associated but rather integrated in one or more specific EU policy areas without however becoming full members of the European Union. Sectoral integration can relate to political (e.g., CFSP/CSDP, Schengen²⁵, visa regime) and/or economic aspects (e.g., internal market, energy and climate

²⁴ The Norwegian Prime Minister Jens Stoltenberg described the fact that non-EU members of the EEA have no representation in EU institutions as a "fax democracy", with Norway waiting for the latest legislation to be faxed from the Commission. See Ivar Ekman, In Norway, EU pros and cons (the cons still win), *International Herald Tribune*, 27 October 2005.

²⁵ It is important to note, that the case of Iceland, Norway and Switzerland in the framework of the Schengen zone does not qualify as an example of a *Partial Membership*. This has to do with the fact, that the Schengen states, which are not EU members, have few options to participate in shaping the evolution of the Schengen rules. Their role is effectively reduced to agreeing with whatever is presented before them or withdrawing from the Schengen agreement.

policy, euro). It can involve policy areas, which include all EU countries, or areas, which are subject to a high level of differentiation among member states. “Partial” members become *de facto* members in the respective field and as such fulfil similar obligations and enjoy similar rights as any other EU country. Accordingly, “partial” members would be obliged to contribute to the policy-relevant budget and at the same time enjoy partial access to the Union’s core institutions. Over time, *Partial Membership* can be extended to other policy areas and would not exclude the possibility of an eventual full membership in the EU.

Box 4: Partial Membership Proposals²⁶

Gradual Integration: The concept of *Gradual Integration (Abgestufte Integration)* developed by Cemal Karakas advocates a gradual and sectoral integration of Turkey into various EU policy areas, which can eventually lead to a full-fledged EU membership. The advancement to higher levels of integration is linked to progressive reforms and would be accompanied by a right of co-decision (albeit without voting rights) in the relevant policy fields. Karakas mentions three successive levels of integration: (i) education, culture, research, infrastructure and environment; (ii) progressive extension of the customs union towards a common market; (iii) participation in EMU, closer cooperation in the fields of JHA and ESDP.²⁷

Security Partnership: Charles Grant proposes the establishment of *Security Partnerships* in the area of CFSP. According to this proposal, the EU and the *security partner* agree that, on certain foreign policy subjects, they have shared common interests. On the basis of this agreement, the *security partner* helps to shape EU policies. Institutionally, the *security partner* should (i) send a small team of diplomats to be based in the Council, (ii) be asked to join in when relevant subjects are discussed within the EU, (iii) send a senior diplomat to the Political and Security Committee (PSC) and its foreign minister to the meetings of the General Affairs and External Relations Council (GAERC), when the agenda includes a topic covered by the *Security Partnership*, (iv) attend relevant working groups and committees, and (v) participate in ESDP operations not only through sending troops or other personnel but also by taking part in the management of operations. However, not being member of the EU, the *security partner* would – according to Grant – have to leave the room when the Union takes a decision. After the EU has decided on a common policy, the *security partner* would have the right to sign up to it – or not.²⁸

Junior Membership: The idea of a *Junior Membership* proposed by Franz-Lothar Altmann advocates a status in between the Stabilization and Association Agreements and full membership. *Junior members* (i) should have the right to co-determine EU policies, but should not be attributed co-decision rights, (ii) should have no right to appoint a Commissioner, (iii) should participate in the EU's structural and regional development programmes, (iv) should in order to become a *junior member* not be obliged to immediately fulfil all accession conditions e.g., in the fields of environment, regional development or competition. The concept of *Junior Membership* does not exclude an eventual full membership in the EU, but stipulates a phasing-in process at the end of which *junior members* can but must not become full members.²⁹

From the perspective of a country aspiring to join the EU, the concept of *Partial Membership* offers one great advantage: Contrary to an *Association Plus*, “partial” members take part in or at least have the ability to (strongly) influence the Union’s decision-making process from the inside. Countries participating in a certain policy field take part in deliberations and have a strong involvement and say regarding issues related to the respective (sub-)policy field.

²⁶ The concept of an **European Associated Membership (EAM)** developed by Wolfgang Quaisser and Steve Wood does not qualify as a variant of *Partial Membership* as the *EAM* explicitly excludes an eventual EU membership. The concept of a *Partial Membership* – as defined in this paper – does not exclude the eventual full EU accession of the “partial” member. At the same time, the *EAM* goes beyond an *Association Plus* as it opens up the EU’s core institutions for “associated members”. The basic element of the *EAM*, which builds on the concept of a Privileged Partnership, is the complete participation of the “associated members” in the European Economic Area (EEA) (including a customs union). However, the *EAM* extends the scope and the institutional setting of the EEA (see Box 3). In concrete terms, the *EAM* (i) includes participation of *EAM* countries in EU council meetings albeit excluding voting rights, (ii) adds a special council for the area of ESDP, and (iii) foresees the creation of a special senate of the European Court of Justice to decide on treaty transgressions and other legal matters. See Wolfgang Quaisser and Steve Wood, *EU Member Turkey? Preconditions, Consequences and Integration Alternatives*, forst Arbeitspapier Nr. 25, October 2004, here pp. 50-55.

²⁷ See Cemal Karakas, *Für eine Abgestufte Integration – Zur Debatte um den EU-Beitritt der Türkei*, HSFK Standpunkte, Nr. 4/2005; Cemal Karakas, *A Compromise Solution for Turkey’s EU Ambitions*, *Europe’s World*, Summer 2007, download under www.europesworld.org

²⁸ See Charles Grant, *Europe’s blurred boundaries: Rethinking enlargement and neighbourhood policy*, Centre for European Reform (CER), October 2006; here especially pp. 66-72.

²⁹ See Franz-Lothar Altmann, *EU und westlicher Balkan – Von Dayton nach Brüssel: ein allzu langer Weg?*, SWP-Studie S 1, January 2005, here p. 25.

“Partial” members are not degraded to mere recipients of the EU’s *acquis*, but are able to actively and directly co-determine the EU’s political and legal decisions from within the Union’s institutional architecture. Sectoral members are thus attributed a substantive dimension of EU membership, which was hitherto reserved to full EU members.

Representatives of “partial” members would take part in the ordinary meetings of the relevant EU institutions and bodies. In more concrete terms, the participation of “partial” members in the three main EU organs – (European) Council, European Parliament, European Commission – could be organized as follows:

- *(European) Council*: Representatives of the “partial” members take part in European Council summits and in the meetings of the various formations of the Council and its substructures (working groups and committees, COREPER, PSC etc.) – when decisions relevant to the respective policy area(s) are deliberated. The representatives of “partial” members would have at least the right to express their point of views. Beyond this undeniable right to put forward a national position, one would have to clarify, whether the “partial” members have no voting right, some sort of veto or suspensive veto, or even equal voting rights when decisions in the respective (sub-)policy field are taken. The participation rights of the “partial” members must not be uniform, but could rather vary from policy area to policy area.
- *European Parliament*: Parliamentarians of the “partial” members participate in the deliberations of the European Parliament when issues related to the specific (sub-)policy area are debated and relevant decisions are taken. Commensurate to full EU members, the number of parliamentarians would be determined in a degressively proportional relation to the population size of the “partial” member. The representatives of the “partial” members could either be seconded national parliamentarians or “European parliamentarians” elected in a separate election. Again, one would have to resolve whether the representatives of the “partial” members would be limited to an active observer status, which would assign them the right to express an opinion but exclude the right to participate in a vote, or whether they would enjoy similar or even equal rights as the “ordinary members” of the European Parliament.³⁰
- *European Commission*: Based on the institutional logic of the European Union, one could argue that it is not obligatory that the “partial” members are represented in the Commission. Two arguments justify this position: (i) The Commission is a supranational organ called to be “completely independent” and to “promote the general interest of the Union” and not the interest of any particular member state(s). Commissioners should not first and foremost be national representatives, but rather members of a supranational college, who “shall neither seek nor take instructions from any Government”. (ii) Following the coming into force of the Lisbon Treaty and as from November 1, 2014, the number of Commissioners will be smaller than the number of member states. As a consequence,

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The European Parliament, the Council and the Commission have experience with the observer status in the framework of the EU enlargement process. Once an Accession Treaty is signed, the acceding country sends observers to the Committee of Permanent Representatives (COREPER), the working groups of the Council, the Ministerial Councils, the European Council, the working groups of the European Commission, the European Parliament, the Committee of the Regions and the European Economic and Social Committee. An active observer has no right to vote but the opportunity to express its point of view in the EU decision-making process.

even full EU members will not always have the right to nominate one of their nationals to become member of the European Commission. The “partial” members will thus not be the only ones, who are not “represented” in the Brussels college.

Concerning participation in the EU’s bureaucratic structures, “partial” members could be represented in the relevant administrative services of the Commission (i.e. the relevant Directorates-General), the General Secretariat of the Council, the administration of the European Parliament, the new “European External Action Service”, or in all relevant EU agencies.

The institutional details of a *Partial Membership* would have to be codified in writing. Two options seem feasible: (1) The EU and the “partial” member conclude, sign and ratify a bilateral agreement/treaty laying down the specific institutional details of their partnership. (2) The terms of *Partial Membership* – including the overall institutional set-up – are generally defined and legally codified in the EU Treaties. The latter would require a revision of the Union’s primary law on the grounds of the ordinary revision procedure.³¹

(3) Limited Membership

The concept of *Limited Membership* follows the logic of the enlargement paradigm. But the acceding state becomes an EU member subject to certain limitations. The new EU country does not enjoy all benefits of membership as it is excluded from certain (key) policy areas (e.g., Schengen, ESDP/CSDP, “four freedoms”, euro) or is not obliged to apply certain legal norms (e.g., differentiated *acquis via enhanced cooperation*, opt-out). In the past, the EU and the acceding countries agreed that new members must from day one of their accession respect the Union’s *acquis* and fulfil all obligations deriving from EU membership. In other words, European law was valid right from the beginning although its application was in certain cases temporarily delayed, due to either derogations laid down in the accession treaty (e.g., transition period concerning the free access of labour markets), or due to the fact that the new EU countries were not (yet) able to fulfil certain pre-defined participation criteria or obligations (e.g., late introduction of the euro, no immediate abolition of border controls).

The notion of *Limited Membership* deviates from this rule as new member states are more permanently excluded from one or more (sub-)policy areas or parts of the EU’s *acquis*, if both parties – the Union and the acceding country – agree to the respective exemption in the course of membership negotiations. Beyond such selective exceptions, the new member states would enjoy all legal rights and obligations deriving from EU membership. Institutionally, the new EU country would be fully and equally represented in every EU institution. However, in the affected (sub-)policy fields “limited” members might not enjoy the same institutional rights as EU countries not subject to any membership limitations (e.g., no participation in the Eurogroup; no voting rights in certain forms of *enhanced cooperation*).

The exclusion of new member states from certain parts of the *acquis* can alleviate and speed up the accession of new member states. Such exemptions can

³¹ The revision of the EU Treaties could specify the new neighbourhood article inserted into the Lisbon Treaty. According to this article the Union “shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation” (Article 8 TEU-L).

- make it politically easier for certain countries to join the EU by removing national obstacles on the road to EU membership (e.g., potential opt-out of Switzerland concerning ESDP/CSDP or tax harmonisation);
- allow a more rapid integration of states which otherwise would not (yet) fulfil all prerequisites for joining the Union;
- reduce certain reservations in the “old” member states towards the accession of a certain country to the EU by e.g., restricting the acceding country’s access to the EU labour market or to structural or agricultural funds. The current Turkish case leads in this direction: The EU’s Negotiating Framework for Turkey includes the possibility to negotiate long-term derogations. It explicitly mentions “permanent safeguard clauses i.e. clauses which are permanently available as a basis for safeguard measures” in areas such as the free movement of persons, structural policies or agriculture.³²

The introduction of *Limited Membership* would lead to new sub-forms of membership and citizenship. The “limited” members would not enjoy the same rights and privileges as older EU countries and their citizens. One could argue that such forms of “second-class” membership or citizenship are nothing new. Some of the older EU members such as Denmark and the UK concerning the euro, Denmark, Ireland and the UK concerning Schengen, Denmark in the defence field of ESDP/CSDP or the UK and Poland concerning the Charter of Fundamental Rights are also not (fully) applying all parts of the EU’s *acquis*. However, there are two important differences between both cases: First, Denmark, Ireland, Poland or the UK had themselves decided to restrict their membership status. Second, they had been able to co-determine the specific conditions of their partial exemption as they were already in the strong position of a full-fledged member of the EC/EU. In contrast, the acceding countries would in most cases become “limited” members not on their own will, but rather due to the pressure from older member states. Most “limited” members would have to accept the limitations to their membership, if they want to gain accession to the club.

The notion of being a second-class member can lead to severe tensions between old and new EU countries, if over time the latter feel discriminated by the former. The notion of being discriminated can fuel anti-EU sentiments in the new member states and put pressure on the ruling political class to improve their countries’ membership status in the Union. As a result, “limited” members could compel fellow EU members to remove the remaining membership restrictions. The ability of the “discriminated” new EU countries to exert pressure on the older member states will depend on their power position within the Union. As “limited” members would be fully integrated into the EU’s institutional framework, they would be able to exert strong pressure on their partners. In case both sides clash, the resulting rupture between old and new EU members could negatively affect the Union’s internal and external ability to act and even impede the EU’s structural development.

As a consequence, the concept of *Limited Membership* makes sense only, if it is conceived and construed as an intermediate step towards a full-fledged unlimited membership. Exemptions from certain (sub-)policy areas or from parts of the *acquis* should not be eternal.

³² See Negotiating Framework, 3 October 2005, here paragraph 12, 4th indent. For a detailed analysis of the legal consequences of the negotiating framework see Christophe Hillion, *Negotiating Turkey’s Membership to the European Union: Can the Member States Do As They Please?*, *European Constitutional Law Review*, 3 2007, pp. 269-284.

The accession treaty should include predefined mechanisms and procedures allowing for the abatement of certain membership limitations. The eradication of restrictions should be subject to a decision of the Council taken by qualified majority and not by consensus. No single EU member or small number of states should be able to veto the gradual inclusion of a new member state in all policy areas.

Beyond Association, Beneath Full Membership: Silver Bullet or Fata Morgana?

The above analysis shows two things: First, the current level of association between the EU and its neighbours can be extended. However, any form of *Association Plus* will at some stage reach its limits and lose its attractiveness, if the affiliated country strongly aspires to join the club. Second, one can think of alternatives transcending the traditional association and enlargement paradigm. But the fact that such options exist in theory does not answer the key question: Are these alternatives a chimera or are they applicable in practice?

The discussion about alternative forms of association and integration beneath the level of full membership is not new. The debate is with us at least since the early 1990s, when the countries of Eastern Europe started to knock on the EC/EU's door and many inside the Union had their doubts whether the EC/EU would be ready to respond to their neighbours' requests. But alternatives beyond mere association and beneath full membership were never put into practice due to strong arguments on both sides:

- *Counter-arguments from EU perspective:* Extending the partnership beyond the association paradigm would (i) put a strain on the Union's already very complex institutional balance by increasing the number of players involved, (ii) increase the danger of free-riding as partner countries enjoy the benefits but do not bear the costs of EU policies, (iii) lead to legal uncertainties as the distinction between members and non-members is blurred, (iv) make it harder to negotiate package deals as it becomes more difficult to link across issue areas if countries participate in some policies but not in others, and (v) complicate the EU's relationship with its neighbourhood and thus make it more difficult for the Union to elaborate and pursue a coherent strategy towards its neighbours.
- *Counter arguments from the perspective of neighbouring European countries:* Accepting anything below the level of full membership (i) would *de facto* or *de jure* lead to forms of second or even third class membership and citizenship, (ii) would on the side of the Union be used as an excuse for not offering the perspective of a full EU membership, and (iii) could ultimately even deny the legitimate right of European countries to (fully) join the European Union.

The above critical arguments are still valid. One thus needs to ask under which conditions and under which circumstances are we likely to witness new forms of integration beneath the level of full membership applied in practice? Here some answers and thoughts:

(1) Neighbouring European countries must be ready to accept something below a full and unlimited membership.

Neighbouring European countries eligible for membership will be ready to accept something less than full membership only if three preconditions are fulfilled. First, they must be certain that the EU will or is not able to offer them a full and unlimited membership – at least not for the time being. They must be convinced that they would risk not getting anything at all beyond an *Association Plus*, if they are not ready to agree to less than full membership. Faced with that choice, some European neighbours may prefer the latter. Second, the offer made to them must include a substantive dimension of EU membership,

which was hitherto reserved to full EU members. Partner countries will be ready to accept something below full membership only, if they are attributed a more influential role in European politics, i.e. if they are granted access to the EU's decision-making process. Third, the offer made to them must not preclude the possibility of a potential full and unlimited EU membership at a later stage. In more concrete terms, they must be sure that if they accept some sort of *Partial* or *Limited Membership* they will still be able to gain a full and unlimited access to the EU and to all its policy areas at some later stage – provided that they are able to fulfil the necessary obligations.

(2) The EU must acknowledge the need to go beyond the association paradigm in order to uphold conditionality.

The EU will move beyond an *Association Plus* if the key players are convinced that this is the only way, how the Union will be able to continue to shape and effectively influence developments in its European neighbourhood. The key institutions and member states must be convinced that if the EU wants to impose conditionality in its relationship with its neighbours it will have to offer more than mere association – if it cannot offer the membership option (yet). The EU will be more inclined to go beyond an *Association Plus*, if the respective neighbouring country is politically and/or economically strong, if the neighbour is able to opt for attractive alternatives in case the Union does not answer its calls, if the affiliated country has a specific leverage which enables it to put pressure on the Union, or if some EU members want to avoid the accession of a certain country and are thus ready to offer something more than mere association in return.

Many of the above points apply to the case of Turkey. It is thus no surprise that the French government is for various reasons exploring ways how to extend Turkey's involvement in the framework of European Security and Defence Policy (ESDP) during its EU presidency in the second half of 2008. Ankara has some leverage *vis-à-vis* the EU as the *Berlin Plus* agreement between NATO and the EU allows Turkey to block cooperation between the Union and the Alliance. Moreover, the extension of Turkey's role in ESDP would add some substance to the idea of a *Privileged Partnership* between the EU and Turkey. A concept favoured by the current French President and government as an alternative to Turkish EU accession.

(3) A membership denial at the end of the accession process might force the EU to offer something beyond an *Association Plus*.

The EU and its member states might be obliged to introduce alternative forms of membership, if some candidate country is denied EU entry even though it clearly fulfilled the accession criteria and was able to successfully conclude EU accession negotiations. This would for example be the case if an accession treaty was negotiated, but could not enter into force due to a negative referendum in one or more EU countries (e.g., French or Austrian “no” to Turkish accession treaty). In this situation, the Union might be “forced” to offer something well beyond an *Association Plus*, if it does not want to risk the partner country turning its back on the EU.

(4) Increased differentiation among EU members will increase the likelihood that alternative forms of membership might be implemented in practice.

If the degree of differentiation within the EU increases one will witness more flexible forms of membership. The Union has already entered that path as some EU countries are excluded from core policy areas such as Schengen, the third stage of EMU, or the military aspects of ESDP/CSDP. In case differentiation among EU members becomes more intense, the boundaries between full membership, *Limited Membership*, *Partial Membership* or *Association Plus* will become increasingly diffuse. And the more differentiated the EU becomes, the higher the chances that neighbouring countries might be affiliated beneath the level of full membership. Here some reasons or scenarios which support this argument:

- *Increased acceptance of membership minus*: Increased differentiation among EU countries will make it less problematic for affiliated countries to accept a status below full membership. New EU members will be more ready to accept limitations to their membership status, as old EU members do also not participate in all policy areas on an equal basis.
- *Introduction of Partial Membership following voluntary withdrawal*.³³ Following a voluntary withdrawal of an EU country, *Partial Membership* might offer both sides a way how to re-organize the relationship between the former EU member and the Union. As a matter of fact, the perspective of *Partial Membership* might even make it easier for a country to exit the Union as it offers the possibility to remain closely affiliated with the Union. If *Partial Membership* is introduced into EU practice, it might offer a viable way for affiliating neighbouring countries beyond a mere association.
- *Limited Membership as differentiated acquis not binding for new members*: The perspectives for *Limited Membership* would increase if a group of EU members deepens its level of cooperation and acceding states are not obliged to implement this “differentiated *acquis*”. The differentiation instrument of *enhanced cooperation* provides a concrete example: In case a group of EU members decides to apply the instrument of *enhanced cooperation*, the level of differentiation between new and old EU members might increase substantially. This has to do with the fact that acts and decisions adopted in the framework of an *enhanced cooperation* do not form part of the EU’s overall *acquis* which “has to be accepted by candidate states for accession to the

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The current Nice Treaties do not include provisions providing for a withdrawal from the EU. However, from a legal perspective a retreat from the EU could be administered on the basis of the general rules governing international law and in particular the “Vienna Convention on the Law of Treaties” (Art. 54, 62). In contrast to the current EC/EU Treaties, the Lisbon Reform Treaty (Art. 50 TEU-L; Art. 49 A LT) includes a withdrawal clause, which for the first time opens up the way towards such a form of “negative differentiation” by explicitly stipulating the possibility of a voluntary withdrawal. According to the new provisions, which were taken over from the Constitutional Treaty (Art. I-60), every member state can withdraw from the Union “in accordance with its own constitutional requirements.” After the country in question has notified its intention to withdraw to the European Council, the two sides – the withdrawing state and the EU – would have to negotiate and conclude an agreement “setting out the arrangements of its withdrawal, taking into account of the framework for its future relationship with the Union.” In this situation it might be in the interest of both sides, if the withdrawing state remains closely affiliated to the EU by becoming a “partial” member in one or more specific EU policy areas (e.g., CFSP/CSDP, Eurozone). This might be the case particularly, if the country exiting the EU has played and should continue to play a significant role in a certain policy field (e.g., UK in ESDP/CSDP). One should however note, that no EU country can be forced to exit the Union. Irrespective of whether a withdrawal is organized on the basis of the Vienna Convention or the new withdrawal clause, a withdrawal from the EU can only be negotiated on a voluntary basis. Demanding from a state to exit the Union is thus pointless if the country concerned does not deem withdrawal from the EU to be a sensible thing to do.

Union” (Art. 44.1. TEU-N; Art. 20.4 Treaty on the Functioning of the European Union (TFEU)). New members would thus join the Union without implementing the “differentiated *acquis*” adopted in the framework of enhanced cooperation. Past experience has shown that differentiation within the EU increases the chances that new member states do not participate in certain policies (e.g., introduction of euro, abolition of border controls within Schengen) – at least not immediately after EU accession.

- *Two-speed Europe following creation of new Union:*³⁴ A group of countries jumps into the deep and decides to establish a new Union on a higher level of integration. In case the “old EU” remains in place, the establishment of a new supranational Union would lead to a genuine *two-speed Europe*. In this case, neighbouring countries not eligible, ready or willing to enter the new Union could join the “old EU”, which is closely linked to the new Union. If such a scenario materializes, the “old EU” would function as some sort of a “stability community” (Stabilitätsgemeinschaft) bringing together the more integration-friendly European states and those less willing or able to further integrate.

However, the creation of a new Union seems rather unrealistic – at least from today’s perspective – for two main reasons: (i) The EU is not and has not been in a crisis big enough to generate the political energy required for the creation of a new Union. The EU has not reached the point at which diverging national positions concerning the future of Europe can only be resolved through the establishment of a new Union. Even in the most recent crises following the double “No” in France and in the Netherlands to the Constitutional Treaty in 2005 and the “No” in Ireland to the Lisbon Treaty the member states seek to find a solution within and not beyond the framework of the EU. (ii) Even in the most integration-friendly countries there is hardly any readiness to give up or rather to further pool substantial national competences on the grounds of a common vision of Europe’s *finalité*. On the contrary, it seems more likely that one would also in a new Union witness a clash of diverging interests and diverging perspectives concerning the future of integration. One cannot assume that the potential members of a new Union would be willing or able to agree on a common grand vision of Europe – especially as one can presume that the number of potential members will be rather high as most members of the “old Union” will be keen to join the exclusive club of a new Union.

³⁴ For a detailed discussion of the characteristics and consequences of the creation of a new supranational Union see Janis A. Emmanouilidis, *Conceptualizing a Differentiated Europe*, ELIAMEP Policy Paper No. 10, Athens, June 2008.

Table: Key Characteristics and Consequences of an Affiliation Beneath Full Membership

Form	Affiliation Beneath Full Membership		
	Association Plus	Partial Membership	Limited Membership
Key characteristics	<ul style="list-style-type: none"> • closest possible affiliation beneath membership • divergent forms and levels of affiliation • no participation in EU decision-taking process • core EU institutions remain closed 	<ul style="list-style-type: none"> • <i>de facto</i> membership in certain policy areas (sectoral integration) • full-fledged political, legal and institutional participation in respective policy area • fulfilment of obligations deriving from partial membership (e.g., contribution to EU budget) • “partial” members participate in EU summits and in the meetings of sectoral Councils when relevant issues are deliberated • parliamentarians of “partial” members participate in EP deliberations when relevant issues are debated • “partial” member has no “own Commissioner” • extension to other policy areas possible • no exclusion of membership perspective 	<ul style="list-style-type: none"> • membership subject to certain limitations • more permanent exclusion from certain policy areas or no application of certain parts of <i>acquis</i> • “Limited” members enjoy all rights and obligations • alleviation of accession of new members
Form	Association Plus	Partial Membership	Limited Membership
Key consequences	<ul style="list-style-type: none"> • less conditionality than full-fledged unlimited EU membership 		
	<ul style="list-style-type: none"> • recipients of EC/EU legislation • no long-term alternative for countries aspiring to join the club • attractive long-term alternative for countries not willing or ineligible to join the EU 	<ul style="list-style-type: none"> • imposed second-class membership/citizenship • potential rupture between “partial”/“limited” members and full members 	
			<ul style="list-style-type: none"> • intermediate step towards unlimited membership • accession treaty includes mechanisms for the abatement of membership limitations on the basis of a qualified majority

