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The Position of Small Member States

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Abstract

The paper examines the impact of the various forms of differentiated integration, such as multi-speed, variable geometry and *à la carte*, on the position of small Member States in the new Europe. The recent proposals to create a small, but non-exclusive, 'pioneering' core group of Member States that will lead the initiative to deepen the integration process in areas such as the CFSP and EMU have created serious concerns among small Member States regarding their future role in an enlarged EU. In light of these developments the paper will: a) address such concerns from small Member States and examine whether and how their position is compromised by such initiatives of differential integration; b) examine the prospects of success of their own counter-strategies for regional coalitions as well as the short and long-term impact of such actions on the functioning of the European Union; c) contribute to the understanding of the overall tension between small and large Member States in the European Union and the way in which the recent proposals of differentiated integration have contributed to that tension.

Keywords

differentiated integration; small states; coalitions; cores.

I. Introduction

Much has been written about the notion of ‘differentiated integration’—i.e. the general mode of integration strategies that try to reconcile heterogeneity within the EU—its various categories—‘multi-speed’, ‘variable geometry’ and ‘à la carte’ Europe and sub-categories—‘cores’, ‘*avant-gardes*’, ‘directorates’ and ‘inner circles’ (Philippart & Sien Dhian Ho, 2000; Elhermann, 1998; Edwards & Philippart, 1997; Schrauwen, 1999; Stubb, 1996; Wallace & Wallace, 1995). Recently, a few works have also focused on the general position of small Member States within the EU (Goetchel, 1998; Antola & Lehtimäki, 2001). Yet, there has been a lack of research, if any, on the complexities of differential integration from a small Member State perspective. This article aims to fill this void by examining the impact of the various forms of differential integration on small Member States as well as the strategies that small states employ in order to meet these challenges.

The article is of particular importance given the current developments in the European Union. Jacques Delors (January 2000), Joschka Fischer (June 2000), Lamberto Dini (September 2000) and Jacques Chirac (October 2000) have recently proposed to create a small, but non-exclusive, ‘pioneering’ core group of Member States that will lead the initiative to deepen the integration process and enhance further the Union’s Common Foreign and Security Policy as well as Economic and Monetary Cooperation. Although small Member States are not excluded from these less conventional proposals or practices of European cooperation, one can argue that their position in the EU is increasingly becoming a point of concern. More specifically, some of these small states are concerned that these proposals are an attempt by large Member States to create a ‘great power’ directorate that will lead, over time, to a two-tier Europe dividing Member States into classes. This article will address these concerns and examine whether the position of small states in the EU is compromised by such initiatives.

The research is also important given the upcoming waves of enlargement which will consist primarily of small states such as the Czech Republic, Hungary, Slovenia, Slovakia, Bulgaria, Romania, Estonia, Latvia, Lithuania, Cyprus and Malta, leading to a EU of twenty-seven, with six large and twenty-one small Member States. In order to counteract the ‘pioneering’ group initiatives of large Member States, small states will have the ability to create their own cores and coalitions, which may lead to a EU of regionally based coalitions such as the Benelux, the Visegrad countries, the Scandinavian and the Baltic States. The article will examine the prospects of success of such strategies as well as the short and long-term impact of such actions on the functioning of the European Union.

Finally, the article will contribute to the understanding of the overall tension between small and large Member States in the European Union. This tension has emerged as one of the main issues on the agenda of the last three Intergovernmental Conferences of the EU. The European Council meeting in Nice, and negotiations prior to it, finally brought the tension into the limelight as a major issue in European politics. The study will examine the way in which the recent proposals of differentiated integration have contributed to that tension.

II. Theorizing Differentiated Integration

From a (neo) federalist perspective, differentiated integration is seen as an *anomaly* in the integration process (Pinder, 1986: 51). From this perspective, multi-speed Europe is interpreted as a temporary situation in which the laggards would catch up eventually, whereas permanent exceptions, the lack of political will, or codified variable geometry have no place within the gradual federalizing process of Europe.

From a neo-functionalist perspective, differentiated integration is seen as a *failure* of integration, an indicator of incomplete *engrenage* and insufficient consensus-formation among the national elites (Haas, 1975: 83). Although Haas saw that different policy areas seemed to display different ‘instrumentalities’—that is, institutional arrangements—he held this to reveal not just the problems of

integration but also the impossibility of integration theory (Haas, 1975: 76-77). Haas prophetically envisaged Europe of 'fragmented issue linkage', which defeated neo-functional theoretical endeavour. From a similar perspective, but more recently, Curtis (1995) sees differentiated integration as an attack on the developing European constitutional order, in light of the fact that the recent opt-outs that were granted as a result of deliberate political choice rather than inability to meet the socio-economic criteria (e.g. UK and Danish opt-outs from the single currency). Curtin grants that a kind of two-speed Europe might be permissible if a hard core of policy areas were determined and formed a non-negotiable obligations of EU membership (Curtin, 1995: 250-251). Yet, he clearly warns that differentiated integration is incompatible with constitutionalization and thus state/polity building in Europe. Other scholars of this perspective are similarly cautious of differentiated integration. Ehlermann (1984) argues that the way in which the EC law is constructed—the use of directives (which grant Member States room regarding implementation) as well as entirely binding regulations, in addition to the important role of national courts in the EU legal system—obviates the need for political flexibility, whose existence is therefore puzzling. Several other scholars maintain that the use of differentiated integration to date reveals the lack of a guiding normative basis; the Treaty reflects different kinds of flexibility (Chaltiel, 1998), an insufficient set of organizing principles and an uneasy mixture of managerialism and implicit, only partially formed, ideological choices (Shaw, 1998).

From a transactionalist perspective, the attainment of a 'we-feeling' in a (pluralistic) security community does not require much institutionalization. Transactionalists *might* anticipate some differentiation where inter-dependence in terms of transaction flows is very low (Deutsch, 1957). Thus, in today's amalgamated Europe, transactionalists would argue, no demand for exceptions should arise and the high and increasing transaction flows in the internal market should not produce any differentiation in social or monetary policy.

From a liberal intergovernmentalist perspective, explaining differentiated integration is relatively straightforward as it can be considered a means to pursue the 'national interest' in keeping with any other decision to commit to, or continue, European integration (Moravcsik, 1993; 1999). Differentiated integration is thus really about the establishment of a core Europe, a *directoire* in which the heavyweight Member States develop a hegemony. Likewise, it is easy to explain why a Member State might, oppose differentiated integration from this perspective: it would not wish to allow other Member States to take the integration process towards goals which it does not support, and would thus use its veto power to prevent such an outcome. The central problem in this perspective, however, is how to explain the decision of all Member States to allow a vanguard group of their fellows to establish itself within the confines of the Treaty, even on a case-by-case basis. This is because it signals the deliberate eradication of the culture of consensus which has been such a feature of the workings of the Council to date (Sherrington, 2000: 164-165). However, intergovernmentalist theory holds as its baseline that states are jealous of their power, and will not agree to the de facto stripping of their sovereignty without the very kind of gain or major side-payment which differentiated integration does not give: non-participant states merely avoid whatever costs are involved with the given initiative and fail to reap the greater part of the gains.

Consociation theory has similar problems analysing differentiated integration. By explaining integration outcomes as the result of a search for consensus between Member States of ostensible equality, scholars like Taylor (1996) and Chrysoschoou (1994) place considerable emphasis on the drive for unanimity which they perceive Member States to privilege. The EU makes decisions because, through package deals and side-payments, all Member States reach an agreement, at least on first-order issues such as Treaty change where unanimity voting remains. Qualified majority voting is a red herring; it exists more as a threat than a reality, and its provisions are rarely used. Consequently, differentiated integration is more illusion than reality: by menacing recalcitrant partners with the prospect of being left behind, those with a strong line on an issue can perhaps 'persuade' others to fall into line (Taylor, 1996).

Notwithstanding the important contribution of these integration theories in understanding differentiated integration, neither of them have so far developed a solid theory on the long run

consequences of differentiation on integration and unity, as well as on small and large Member States alike. Perhaps one of the few attempts to formulate a framework of differentiated integration has been that of Sieglinde Gstöhl (1996) and Alkuin Kölliker (2001). Gstöhl essentially brought insights from institutionalized international governance and examined EU decision-making from a perspective that encompasses both ‘history-making’ and ‘everyday’ politics in a multi-step approach. It specifically related the ‘grand bargains’ over differentiated integration with the actual and potential growth of variable geometry through ‘everyday’ practices of integration within the EU (Gstöhl, 1996: 43). From a different perspective, Kölliker utilized the public goods theory and explained the progress of integration across different issue areas and Member States by relying on the combination of three factors: a) the initial willingness of actors; b) the flexibility of institutions; and c) the character of the issue-area in terms of public goods theory. According to Kölliker, while the first two factors—original political preferences of the Member States and the legal possibilities for differentiation—explain why some members may move ahead of others, public goods theory helps to understand (and maybe anticipate) why initially reluctant outsiders end up joining some flexible arrangements, but not others (Kölliker, 2001: 126).

III. The Need for Differentiated Integration

Differentiated integration emerged as one of the key issues in the run-up to the 1996-1997 intergovernmental conference (IGC). Yet, for various reasons, it has been present as a mode of integration much earlier than that. Firstly, it is the realization that there are and always have been objective differences among the EU Member States and indeed between regions or groups within the Member States. It is for this reason that, from the outset, the treaties admitted that objectively defensible differences should under certain circumstances be reflected in differentiation in the rules that were to be applied. Hence, special protocols were attached to the treaties, special clauses were added to some legislative acts, or under the formula for directives variation of implementation was accepted, usually time delays.¹ While this experience of ‘differentiation’ is not uncommon in political systems, in the EU context it created a stir when governments began to plead the case of differentiation on the basis of subjective preference rather than objective circumstance or when a differential application of policy by one Member State case caused negative externalities for others.

Secondly, also from the outset, the EC was only one of many European frameworks for policy cooperation. It coexisted with a variety of other forums, some formal and some informal, that had quite different memberships: the Benelux, comprising three founder EC countries; or Western European Union (WEU), containing the EC six but also Britain; and many informal or functional groupings, for example, in science and technology. For some time, this experience of ‘variable geometry’ was not much of a problem in so far as there were occasional contradictions of policy between groupings that touched the same policy areas. With increased membership, however, some argued that the EU should be the dominant forum for European cooperation and absorb the other groupings such as that of the WEU. Some subgroups, however, have insisted on retaining a distinct identity for certain purposes, whether, for example, on a ‘regional’ basis as in the Nordic Council or by the creation of new restricted groupings such as that of the Schengen Agreement.

Thirdly, another debate arose in regards to the achievement of an Economic and Monetary Union (EMU), the assumption being that all Member States would strive to attain convergence of performance and of policy. When it became clear that not all Member States were able or willing to converge, alternative measures were taken in order to sustain the project. Hence, the Exchange Rate Mechanism (ERM) of the European Monetary System (EMS) was launched with the full participation of only the stronger economies (with the exception of Britain), and the Treaty on European Union (TEU) explicitly specifies the conditions for an EMU with fewer members than the EU. The calls for a ‘two speed’

1 See C. D. Elhermann, 1984. ‘How Flexible is Community Law? An Unusual Approach to the Concept of ‘Two Speeds’’, *Michigan Law Review*, 82, pp. 1274-1293.

Europe in the economic sphere became even greater with the preparations for eastern enlargement and the need to absorb transition countries with much poorer and less-developed economies.

Fourth, the notion of differentiated integration has also been associated with the position of Germany as a European power and its special relationship with France, forming the so-called ‘axis’ or ‘motor’ of integration. It has long been recognized that the two countries have been informally coordinating their policies in order to push the integration agenda (Pedersen, 1998; Calleo & Staal, 1998; Hendriks, 2001) yet there was clear denial to any notion of creating a formal governing directorate. With increased membership, however, the issue has re-emerged with suggestions of a ‘multi-tier’ construction, some Member States in the first league and others left to follow, or of a pattern of ‘concentric circles’ around the more integration-minded governments. This discussion has become even more intense in light of an EU of 27 Member States and the fears of creating a wider, but weaker Europe, with institutions unable to function under the weight of numbers. Thus, the proposals for ‘inner’, ‘core’ or ‘pioneering’ group initiatives have recently taken on a greater legitimacy and appeal (there are signs that the UK is also joining the Franco-German group) the argument being that such moves would make possible both the widening and deepening of the integration process.

Fifth, the need for differentiated integration has also been linked with the debate of how pervasive the policy scope of integration should be and how invasive the political authority of the EU should be vis-à-vis the Member States. Since the Treaty of Maastricht, the increasing scope and authority of the EU has found some governments unwilling to deal with the consequences and has provoked in some Member States vocal public dissent. As a result of that, the TEU included certain ‘opt-out’, or ‘opt-in’ clauses, special protocols and declarations in order to allow certain countries, notably the UK and Denmark, to practice singularity. This, however, dispelled the notion of a uniformity in the application of policies and raised the notion of an ‘à la carte’ Europe, i.e. that countries would ‘pick-and choose’ the policies in which to participate (Wallace, 2000: 137-139).

IV. Definition of the Concept of Differentiated Integration

The debate on differentiated integration has been clouded by the huge number of terms to describe forms of European integration other than the ideal type in which all participating countries in principle operate the same rules and policies in virtually identical ways. ‘Two-speed’, ‘multi-speed’, ‘hard core’, ‘concentric circles’, ‘two tier’, ‘multi-tier’, ‘two track’, ‘multi-track’, ‘variable speed’, ‘pick and choose’, ‘opt in’, ‘opt out’, ‘flying geese’ and ‘hub and spoke’ are just a few of the examples in English (there is also the French and German vocabulary which adds to the debate). For the purposes of this article, there will be an adoption of Stubb’s (1996) categorization of three main forms of differentiated integration: multi-speed, variable geometry and *à la carte*. The three forms differ in substance, i.e. they illustrate integration differentiated by time, space and matter.²

A *multi-speed (time)* is defined as the mode of differentiated integration according to which the pursuit of common objectives is driven by a core group of Member States which are both able and willing to pursue some policy areas further, the underlying assumption being that others will follow later. In other words, the multi-speed approach signifies integration in which member countries decide to pursue the same policies and actions, not simultaneously, but at different times. The concept applies to new policy areas only. That is to say, the *acquis communautaire* is to be preserved and developed. Transition periods and temporary derogations, often related to accession agreements are the most evident examples of such mode of differentiated integration. Some of these periods are quite long, up to ten years, but they are never unlimited. Other examples can be found in both the Rome Treaties and the

2 For more on the definition and categorization of the concept see H. Wallace, & W. Wallace, 1995. *Flying Together in a Larger and More Diverse European Union*, W87 Working Documents, The Hague: Netherlands Scientific Council for Government Policy; and C. D. Elhermann, 1995. *Increased Differentiation or Stronger Uniformity*, EUI Working Paper, RSC, No. 95/21, Florence: European University Institute.

Treaty on European Union. For example, Article 7c of the EC Treaty allows for temporary derogations for lesser developed economies. The aim is to allow all Member States to achieve the objectives set out in Article 7a. In addition Article 115 allows Member States to take temporary protective measures against products imported from third countries. Another prime example of multi-speed was evident in the development of Economic and Monetary Union (EMU). Under the terms of the Treaty on European Union, the European Council was obliged to decide whether a majority of Member States had fulfilled the convergence criteria and were ready to go forward to Stage III of the EMU and to adapt the single currency. With the exceptions of the UK and Denmark, the Member States set out common objectives which were to be reached at due time. At first sight the EMU arrangements correspond to the notions of desire and capability which are related to variable geometry, but, according to Stubb, since the countries have tied themselves to a timetable and a set of final objectives within the framework of the *acquis communautaire*, the EMU arrangements have a closer connection to multi-speed.

Variable geometry (space) is defined as the mode of differentiated integration which admits to unattainable differences within the main integrative structure by allowing permanent or irreversible separation between a core of countries and lesser developed integrative units. In defence, peace-keeping and crisis management, variable geometry is illustrated by the WEU, EUROCORPS, EUROMARFOR and EUROFOR, where a number of Member States have opted-up by participating in deeper integration outside the *acquis communautaire*. In the sphere of the third pillar, the Schengen Agreements is also an example of a conglomeration of states which pursue deeper integration within a separate integrative unit.³

The third form of differentiated integration is a *pick-and-choose* or *à la carte Europe (matter)*. By definition, *à la carte* allows each Member State to pick and choose, as from a menu, in which policy area it would like to participate, while at the same time maintaining a minimum number of common objectives. This approach is focused on matter, i.e. specific policy areas. All countries are in the first circle in which they can choose their own suitable matter of participation—be it social policy, monetary policy, or defence policy. This stands in stark contrast to both a multi-speed Europe, which defines common objectives towards which Member States strive (in due time) according to ability; and variable geometry, which institutionalizes differentiation of the Member States so as to create space between the various integrative units or forms of integration. Examples of *à la carte* can be found in the various opt out clauses in the framework of the Maastricht Treaty. Both Denmark and the UK acquired concessions from their partners in the policies of Economic and Monetary Union (Protocols 11 and 12). These so-called opt-out clauses were not temporary derogations; instead they gave both countries a permanent right to remain outside the EMU. Another derogation was added by the Danes to include the common defence policy. And finally, another substantial opt-out is the British Social Protocol (Protocol 14). Given Britain's position on national sovereignty in social policy, 11 Member States took all seven of the new social policy articles and agreed a separate Protocol among themselves. This was the first time that the Community sought a fragmented *à la carte* solution to an entire policy area (Stubb, 1996: 291-292).

V. Differentiated Integration in the Treaties

The Treaty on European Union (1993) allowed for the first time, the non-participation of some Member States in policies that form part of the European Community, most notably in the fields of monetary union (EMU), defence, and social policy. Subsequent treaty revisions introduced clauses into European law that were designed to allow for a more systematic differentiation of the European integration process.

In particular, the Treaty of Amsterdam (1999) incorporated the provision of 'closer cooperation' which allowed a sub-group of Member States to integrate or 'deepen' a number of policies in the first

3 Note, however, that since the Treaty of Amsterdam (1999), Title IV of the Schengen *acquis* (i.e. visas, asylum, immigration and other policies related to the free movement of persons) was moved to the first pillar, with Title VI of the Schengen *acquis* (i.e. provisions on policy and judicial cooperation in criminal matters) remaining in the third pillar.

(EC) and third (justice and home affairs) pillars without involving all 15 Member States. Any enhanced cooperation had to be approved by a unanimous decision of the European Council. This allowed single countries to veto. The provision was therefore difficult to obtain and was never used.

The provision was modified in the Treaty of Nice (2003) which, among other things, extended the scope of the instrument to the second pillar, that is, to foreign policy matters while modifying some of the conditions for its use. More specifically, it provided that ‘enhanced cooperation’ can occur between eight countries if approved by qualified majority,⁴ except for areas that fall under exclusive EU competence and for defence and military issues.⁵

The Draft Constitutional Treaty (2003) eased even further the restrictions on enhanced cooperation in an enlarged Union by stipulating a minimum threshold of one-third of Member States for countries to participate compared with eight out of 15 Member States under the Treaty of Nice. The Presidium’s view was that enhanced cooperation was a ‘last resort’ mechanism which would promote integration by encouraging groups of states to cooperate inside rather than outside the Union (Norman, 2003: 243).⁶

VI. The Concept of Small States

There is no absolute criterion as to how small states should be defined. Factors, such as population size, geographical area and GDP or GNP, are usually seen as key dimensions. For example, Joze Damijan classifies small states as countries whose absolute value of GDP is between USD 10 and 20 billion, population between 8 and 13 million, and whose area does not exceed 500,000 sq. kilometres (Damijan, 1997: 47). Otmar Holl, on the other hand, argues that a country with a population less than 15 million should be seen as a small state. A state of this size is too small to generate a critical mass of economic, cultural and military power to impose on the international system (Holl, 2000). Also, the British Commonwealth study on small states describes them as countries small in population or size, or sharing the physical or economic characteristics of small states in their region. The study explicitly links smallness with vulnerability. The main criterion for smallness is linked to the size of the population (under 1.5 million).⁷ Based on this definition, however, only Luxembourg, Malta and Cyprus would fall into this category—the study, therefore, is not convenient in describing the current situation of small states in the EU.

A more realistic approach in defining small states is perhaps the combination of Damijan’s and Holl’s definitions, an approach which is also evident in the works of other scholars of small states in the EU (Antola & Lehtimäki, 2001; Breuss, 1997). Thus, a European Union of 15 Member States consists of ten small countries: Austria, Belgium, Finland, Denmark, Greece, Ireland, Luxembourg, Portugal, the Netherlands and Sweden. A Union of 27 will include an additional eleven small countries: Czech Republic, Hungary, Slovenia, Slovakia, Estonia, Latvia, Lithuania, Bulgaria, Romania, Cyprus and Malta, raising the total number of small states to twenty-one.⁸

4 EU-15 (62/87 votes), EU-25 (232/321), EU-27 (258/345).

5 The Treaty of Nice provides that the figure of eight does not change when the EU is enlarged to 27 countries.

6 For more on differentiated integration in the Draft Constitutional Treaty see M. A. A. Gallego, 2004. *Differentiated Integration in the Draft European Constitution: A Challenge for the IGC*, EUI Working Paper, Florence: European University Institute.

7 The Commonwealth Secretariat and World Bank, 1999. *Small States: Meeting Challenges in the Global Economy*. Interim Report of the Commonwealth Secretariat/World Bank Joint Task force on Small States.

8 Note that eight out of a total of up to 27 EU Member States would have populations below 5.5 million and six below 2.5 million.

VII. The Positions of Small Member States on Differentiated Integration

Small Member States have expressed their fears regarding the notion of differentiated integration since the IGC of 1996-97. Their concerns were documented in the White Paper of the IGC when they stated their position on the proposed clause of ‘closer cooperation’. Belgium, for example, was ‘in favour of flexibility in the approach to European integration, but against any solutions involving the organization of a ‘Europe à la carte’. It also opposed the notions of a ‘single core’ or ‘multi-core’ Europe, arguing that differentiated integration should only be used as a ‘last resort’ and should be used to create a ‘traction effect’, allowing all the Member States to catch up with the ‘leading bunch’. It also argued that institutional derogations ‘should be confined to the minimum’, and that ‘the efficient operation of the internal market should not be compromised’. Other small Member States also positioned themselves along the same lines. Denmark, for example, argued that a multi-speed Europe could give rise to the emergence of first, second and third class Member States; Ireland and Finland stressed the avoidance of a group of ‘hard core’ Member States, and Sweden pointed out that Europe à la carte might in fact damage the opportunities for bringing about the advantages of the single market. The position of Luxembourg and the Netherlands echoed that of Belgium whereas Austria pointed out that differentiated integration should be the ‘exception to the rule’ and under specific conditions. Finally, Greece opposed to any form of differentiated integration that would destabilize ‘the situation of unity and equality between Member States’; and Portugal rejected any strategy that would ‘permanently institutionalize a differentiation between a group of Member States, with their own objectives and methods’. Both countries, however, recognized the possibility for transitional arrangements in certain cases.⁹

Concerns were also voiced during the IGC of 2000, leading up to the negotiations of the Treaty of Nice. They focused primarily on the Commission’s proposal to lower the critical-mass forming pioneering group from the current majority to one third of Member States (Commission (2000) 34). The Commission’s point was that, in an enlarged Union, the principle of ‘half’ would make closer cooperation unworkable.

In that regard, the greater part of the Member States supported lowering the critical mass in principle, including small states such as the Netherlands, Belgium and Luxembourg.¹⁰ Finland, Ireland and Greece, however, wanted the current situation to remain, with at least half of the Member States, in order to prevent too few Member States from forming the core group.¹¹ Small candidate states such as Cyprus and the Czech Republic also expressed their concerns regarding proposals to change the existing provisions on closer cooperation of the Amsterdam Treaty.¹² Given that Germany, Italy¹³ and

9 *White Paper on the 1996 Intergovernmental Conference, Vol II : Summary of Positions of the Member States of the European Union with a view to the 1996 Intergovernmental Conference*, European Parliament, Intergovernmental Conference Task Force, 29 March 1996.

10 Conference of the Representatives of the Governments of the Member States (CONFER 4765/00), ‘IGC 2000—Contribution of the Belgian Government on Closer Cooperation’, Brussels, 28 August 2000.

Conference of the Representatives of the Governments of the Member States (CONFER 47200/00), ‘IGC 2000—Contribution from the Dutch Government’, Brussels, 6 March 2000.

‘Aide-Memoire of the Luxembourg Government on the IGC 2000’, Luxembourg, 19 October 2000.

11 Conference of the Representatives of the Governments of the Member States (CONFER 4723/00), ‘IGC 2000—Contribution from the Finish Government’, Brussels, 7 March 2000.

Conference of the Representatives of the Governments of the Member States (CONFER 4719/00), ‘IGC 2000—Memorandum from the Greek Government’, Brussels, 3 March 2003.

12 Conference of the Representatives of the Governments of the Member States (CONFER/VAR 3951/00), ‘IGC 2000—Contribution from the Government of Cyprus’, Brussels, 24 February 2000.

Conference of the Representatives of the Governments of the Member States (CONFER/VAR 3958/00), ‘IGC 2000—Contribution from the Government of the Czech Republic’, Brussels, 24 February 2000.

13 Conference of the Representatives of the Governments of the Member States (CONFER 4783/00), ‘IGC 2000—Enhanced Cooperation: Position Paper from Germany and Italy’, Brussels, 4 October 2000.

Spain¹⁴ supported the Commission's stand of one third, the compromise was that enhanced cooperation must involve a minimum of eight Member States.¹⁵

Similar concerns were also voiced during the negotiations of the Draft Constitutional Treaty of 2003. The Presidium raised again the issue of lowering the number of participating states to one third of Member States for an enlarged Union. Small Member States such as the Benelux were once again supportive of such change, and Portugal also joined this group. Other small states, however, such as Finland, Ireland, Sweden and Greece were in favour of maintaining the 'majority' provision set out in the Nice Treaty. They supported their position by arguing that if the level was set at 1/3, it would be possible to have two groups engaging in enhanced cooperation within the same area.¹⁶ That argument was countered by the Italian National Parliament Representative (Lamberto Dini) who stated that enhanced cooperation would always require a majority in the Council and that there would never be a majority for two groups both initiating enhanced cooperation. That view was supported by the Commission representative (Michel Bernier) and by the Belgian and French government representatives (Louis Michel and Pascale Andreani respectively).¹⁷ Given that the majority of Member States supported the Praesidium's proposal, the threshold for establishing enhanced cooperation was lowered to one third of Member States.

VIII. Assessing the Impact of Differentiated Integration on Small Member States

In the first pillar (EC), initiatives of enhanced cooperation should not be a serious point of concern for small Member States. This is because the provisions of enhanced cooperation ensure among other things that any such action should 'respect the single institutional framework', should 'respect the *acquis*', 'should not concern areas which fall within the exclusive competence of the community', 'should not undermine the internal market or economic and social cohesion', and 'should not constitute a barrier to or discrimination in trade between the Member States' (Article 43). Also, EU institutions have significant influence over the establishment of enhanced cooperation, something which favours the position of small Member States. According to the new Article 11, the Commission has the right to propose enhanced cooperation after interested Member States have requested it to do so. Authorization for enhanced cooperation is given by the Council by a qualified majority on a proposal from the Commission and after consulting the EP. When enhanced cooperation is to be established in an area where the co-decision procedure applies, the assent of the EP is required. In this way, the strict application of the Community method reflects the interests of small Member States that favour effectiveness and the respect of the Community method (Antola & Lehtimäki, 2001: 63). In any case, the most prominent example of differentiated integration in the first pillar, that is, the EMU, strengthens the view that any flexibility initiatives in this area will not leave small Member States behind. Solidly anchored in the Treaties and based on a handful of detailed convergence criteria, a firm timetable and a specific set of provisions (the European Central Bank, the opt-outs and the EMS-2, the Stability Pact), the EMU included all willing small Member States (Denmark and Sweden were not) and gave additional time to Greece to eventually catch up (Missiroli, 2000: 32).

In the third pillar (PJCCM) the situation is quite different as community institutions have less influence over initiatives of enhanced cooperation something that does not favour the position of small Member

14 Conference of the Representatives of the Governments of the Member States (CONFER 4760/00) 'IGC 2000—The Spanish Delegation on Enhanced Cooperation in the Second Pillar', Brussels, 14 July 2000.

15 Conference of the Representatives of the Governments of the Member States (CONFER 4810/00), 'Presidency: Summary Documents of Outstanding Topics', Brussels, 25 November 2000.

16 Report on the Convention Plenary Session 30-31 May 2002, 'Debate on Enhanced Cooperation, Economic Governance and Part III of the Constitution'.

17 Report on the Convention Plenary Session 30-31 May 2002, 'Debate on enhanced cooperation, economic governance and Part III of the Constitution'.

States. According to new Article 40a of the Treaty of Nice, Member States that wish to establish enhanced cooperation, must ask the Commission to submit a proposal. However, in contrast to the first pillar, if the Commission refuses to submit a proposal, the interested Member States (at least eight) may develop a proposal themselves and submit it to the Council for authorization, given by qualified majority and after consulting the European Parliament. In this sense, the six largest Member States along with two small (e.g. from the Benelux) can activate the procedures for enhanced cooperation and eventually authorize its implementation without the approval of the rest of the Member States.

In the second pillar (CFSP/ESDP), the situation is the most alarming for small Member States. In this area community institutions have the least influence over initiatives of enhanced cooperation. According to the provisions, interested Member States address a request to the European Council to authorize the cooperation. The Commission 'gives its opinion particularly on whether the enhanced cooperation proposed is consistent with Union policies' (Article 27c). Yet, unlike the first pillar where the Commission proposes legislation and the EP must give its assent, or the third pillar where the Commission may be involved in the submission of a proposal and the EP consulted, here the Commission and the EP must only be informed about developments. This effectively leaves small Member States as mere observers to any initiatives of enhanced cooperation by large Member States.

Moreover, another point of concern regards the provision of the critical mass of Member States needed to allow these states to initiate enhanced cooperation. The Nice compromise of setting the critical mass to eight Member States should not leave small Member States very satisfied. Based on these provisions, in an EU-27, the 13 smallest countries can be voted down by the 14 largest ones. In theory, the 14 largest countries can also introduce enhanced cooperation between themselves—or 8 of them—with which 13 other countries are not happy (Bonde, 2001: 54). The provisions of the Convention are even more alarming since the critical mass is set at 1/3 of Member States in an enlarged EU.

Furthermore, reasons for concern also arise regarding the scope of enhanced cooperation as it relates to initiatives within the CFSP/CESDP. The provisions in both the Treaty of Nice and the Convention state that enhanced cooperation can be initiated only for the implementation of joint actions or common positions and not in matters having military and defence implications (Articles 27a-e). While at first the exclusion of defence matters from the scope of enhanced cooperation can seem positive from a small Member State perspective, it can actually have negative implications in the long run. Antola & Lehtimäki, for example, argue that flexibility rules in the area of defence can help prevent the creation of a directorate of large Member States. Such rules can assure the inclusion of each Member State in negotiations and shaping of the rules, even if they decide to remain outside common defence. On the other hand, if directorates set the rules among the participating states, later entry will be difficult and the rules of the game will have already been set (Antola & Lehtimäki, 2001: 57). Similarly, Wallace & La Serre argue that the political advantage of greater enhanced cooperation in this pillar would be that 'it might militate against the emergence of a directorate, a recurrent directing coalition, more or less formal, whether within the EU or outside of it' (Wallace & La Serre, 1997: 17).

The creation of 'directorates', 'inner circles' or 'core groups' in the CFSP/CESDP is perhaps the greatest threat that small Member States face in the second pillar. According to Stephan Keukeleire, there are five reasons that favour a special status for large Member States in the CFSP/CESDP. The most important justification, in his view, is the fact that foreign policy decision-making is, by nature, in the hands of a limited number of decision-makers on the national level. There is a need for high confidentiality, and the sensitivity of the issues speaks in favour of limiting the participation only to actors that are instrumental. Keukeleire also points to the fact that large states, such as France, Germany and the UK, enjoy a different international status in the eyes of the outside world as foreign policy actors, as opposed to smaller Member States. This is true in terms of economic, financial and particularly military power, in terms of external ambitions and interests, and in terms of influence in international forums such as the UN Security Council, NATO and the G8. Keukeleire's third argument is that the enlargement actually strengthens the case for a directorate since reaching consensus will become even more difficult and new members will add uncertainty in decision-making. A fourth

related argument is that a rotating Presidency as a form of foreign policy leadership is not an optimal arrangement and contributes to the problem of coherence. Finally, Keukeleire points to the fact that France and the UK are de facto nuclear powers and this will take upon an even greater significance if sometime in the future the CESDP develops a nuclear programme (Keukeleire, 2001: 83-84).

Indeed, there are already signs that some large Member States are moving towards the creation of directorates within this pillar. The Contact Group for Bosnia in 1993-1994 is the prime example of such effort. Consisting of France, Germany and the UK, together with the US and Russia, the Contact Group aimed to put a stop to the Bosnian conflict by proposing the 'Joint Action Plan', an initiative developed by the US. This effectively meant that the four EU countries went against the ' Vance-Owen Peace Plan' which was being promoted by the EU. It was the first important indication of the large EU member states removing their focus and loyalty from the EU to the Contact Group forum. It implied that the emphasis moved from common decision-making by the (then) twelve EU Ministers of Foreign Affairs to decision-making that was to a large extent dictated by what the most powerful EU Member States agreed with the US and Russia.¹⁸ Also, the role of the UK, France and to a lesser extent Germany in creating the European Rapid Reaction force is also an example of a directorate leading the way in defence matters. Other countries were of course invited to participate, but it was clear that the broad lines of policy were set in Paris, London and to a lesser extent, Berlin.¹⁹ Moreover, in October 2003 the 'big three' led a successful diplomatic mission to Iran in an effort to stop its suspected nuclear weapons programme—sidestepping the EU's diplomatic chief Javier Solana. More recently, on February 2004, the French President Jacques Chirac, German Chancellor Gerhard Schroder and UK Prime Minister Tony Blair, along with six ministers from each state, met in Berlin to discuss among other things, on how to revive the talks on the draft EU constitution, economic reform and the 'Lisbon Agenda', as well as social affairs, education and foreign policy.²⁰

Finally, there are also reports that point to the existence of a secretive so-called *quint* (Gegout, 2002). Consisting of five states, France, the UK, Germany and Italy, as well as a notable outsider—the US—this directorate is known mainly for its discussion on the relations between the EU and the Balkans, but it also discusses the relations between the EU and other parts of the world.²¹ It is a leadership group in the EU decision-making process that takes decisions affecting the interests of other EU Member States and this without their participation: on some occasions the final EU decision seems to reflect the outcome of the discussions made within this directorate. Although most officials date the creation of the quint from the creation of the Contact Group for Bosnia, the quint seems to began life within the NATO framework, when there were discussions on Greece and Turkey in the early 1990s (Gegout, 2002: 334).²² Its membership is extremely limited, it seldom associates with the Council secretariat, it rarely involves the Commission, and it seems to exclude the presidency of the EU. The presence of the EU institutions in the quint is therefore different from that in the contact group, as EU institutions are not automatically part of the quint whereas they are of the contact group. The quint

18 The concept of the contact group is not a new one. From April 1977 to mid-1982, a contact group made up of the USA, the UK, Canada, the Federal Republic of Germany and France worked to negotiate an agreement on Namibian independence. At the time, the EPC was 'content to leave action to that body' (Nuttall, 1992: 152). For more on the Contact Group of Bosnia see C. Schwegmann, 2000. *The Contact Group and its Impact on the European Institutional Structure*. Occasional Papers No.16 (Paris: West European Union Institute for Security Studies).

19 Initially, there was the Anglo-French St Malo initiative on European defence (December 1998) which was followed by the Franco-German defence paper presented at the EU summit in Tampere in October 1999. This in turn led the following month to the Anglo-French call for the creation of a European Rapid Reaction force by 2003 of about 60,000 troops, a goal that was endorsed at the Helsinki summit in December 1999.

20 Earlier on 19 January 2004, British, French, and German foreign ministers met in London to discuss Iran, Iraq and other issues.

21 The difference between the quint and the contact group is that the quint does not include Russia, is not acknowledged by the EU Member States, and seems to discuss issues that are not restricted to policy towards the Balkans.

22 Italy became part of the quint since the 1996 Italian Presidency.

meets whenever it is necessary on an ad hoc basis, and quite frequently: during the Kosovo crisis for instance, ‘the five would speak by telephone conference every evening (Lockwood, 1999).

The above are not to suggest that a ‘big three’ or ‘big four’ directorate is already an institution in Europe and that small Member States are merely following behind. The reality is more complex than that. Indeed, the three most powerful European states are increasingly working closely together in deepening integration, yet there are some fundamental differences between them that raise questions regarding the durability of such initiatives. These differences exist in regard to their general position in the international environment, their general views on foreign policy and their stance towards specific policy issues and crises. For example, the position of London and Paris in many respects differs from the German position: France and the UK are permanent members of the UN Security Council, they possess their own nuclear weapons and they have more than any other EU state the capability and willingness to intervene militarily outside their borders and to accept sacrifices. Their position is also specific as they evaluate international relations in much more strategic terms than Germany, which (just like the other Member States) emphasizes more the moral dimension and the factor of legitimacy in its analysis of international relations (as can be seen in the different views on the need of a UN or OSCE mandate for EU actions). And there is also, of course, the gap between London, Paris and Berlin as a result of their divergent external interests and ambitions and divergent views about the European and international security architecture as well as, in particular, about the role of the US, NATO and the EU within this security architecture (Keukeleire, 2001: 87).

The disagreements between the ‘big three’ became very clear during several episodes of the crisis in former Yugoslavia, especially in the latter’s early stages, when the EU still bore the largest responsibility for finding a solution to the crisis. Disagreements between France, Germany and the UK during that period not only appeared in the EU and the Contact Group, but also in the WEU, the UN Security Council and NATO. In each of these forums those disagreements had a restraining influence on the policy-making and actions vis-à-vis the Balkan crisis. More recently, during the negotiations of the Convention, Britain’s reluctance to follow France and Germany on issues of defence was evident. When proposals of various forms of enhanced cooperation in article 30 on defence, and especially that covering mutual defence, were brought up, UK Government Representative Peter Hain said bluntly that Britain would not agree to an EU common defence because London supported the NATO guarantee provided to 19 of the soon to be 25 Member States.²³ Britain’s reluctance should not be taken lightly. According to Daniel Keohane, of the Centre of European Reform in London, Germany and France would need the UK on board in order to develop a credible structure on security and defence but they would have a hard time convincing the British to follow them on these issues.²⁴

Moreover, the problematic nature of the relationship between the ‘big three’ and other large states such as Italy, Spain and Poland may also undermine the success of directorate initiatives. Although these countries consider themselves to be part of the group of major EU countries they are nevertheless not included in the ‘big three’ initiatives. This has already resulted in Italian frustration at not being a member of the Contact Group for Bosnia despite the fact that its territory was used as a forward base for NATO air strikes over Bosnia and that it increasingly became a front-line country and actor (Keukeleire, 2001: 89). The lack of enthusiasm of the ‘big three’ to extent or institutionalize the system of a directorate of the five-six major EU countries can be related to their refusal to allow countries like Spain, Italy and Poland to gain status in the EU. Yet, the frustration of these countries of not being included in these initiatives now seems to be evolving into opposition to the whole notion of a directorate. Indicative were the sharp reactions of these states to the February 2004 ‘trirectoire’ meeting in Berlin. Silvio Berlusconi described the meeting as a ‘big mess’ and stressed that ‘nobody needs a directorate in Europe’, while Spanish foreign minister Ana Palacio argued that ‘nobody should

23 *EU Observer*, 15 December 2003.

24 *EU Observer*, 15 December 2003.

be allowed to kidnap the general interest in Europe'.²⁵ Włodzimierz Cimoszewicz, the head of Polish diplomacy, simply stated that 'establishing a "directoire" by the three states would not serve the interests of the European Union'.²⁶ The 'big three' went to great lengths to defend their actions arguing that their meeting was open and that they informed the Irish EU Presidency and the Commission, yet the mentioned Member States were not convinced. Eventually, German foreign minister Joschka Fischer was compelled to make a strong statement against core Europe, arguing that the idea is now 'passé' and that 'he did not see France and Germany forging ahead' if disagreements continued on issues such as the Constitution.²⁷

Moreover, even if large Member States go ahead with the institutionalization of directorates this does not necessarily mean that small Member States will be excluded. There is indeed not always a clear demarcation line between large and small Member States when it comes to differentiated integration initiatives in foreign policy and defence issues. For example, during the crisis in Albania at the beginning of 1998 Italy took the lead in demanding an active EU policy, which had to include in the eyes of Rome the deployment of peace-keeping forces to Albania. The Italian proposal received support from—among others—Austria and Denmark, two small Member States that traditionally are quite critical towards active EU involvement in violent conflicts.²⁸ Likewise, the participation of the three 'neutral' EU Member States to WEU operations also illustrates this fact. Although only having observer status in the WEU, Austria, Finland and Sweden participated in the WEU mission in Mostar; Finland and Sweden took part in the WEU operation in Albania; and Sweden even took up the 'lead nation' role in the WEU de-mining operation in Croatia (Keukeleire, 2001: 89).

The potential for cooperation between small and large Member States is also enhanced as a result of the fact that several small Member States have fundamentally adapted their views on European Security and Defence Policy and have accepted the proposals of the larger Member States. 'Neutral' countries such as Sweden and Finland formulated and pushed through concrete proposals on 'civil crisis management' that perfectly supplemented the other proposals which focused more on military crisis management. For Keukeleire, this changing attitude of the traditionally 'neutral' countries is essential to prevent the larger Member States from moving forward outside the EU framework (Keukeleire, 2001: 94).

Furthermore, there is an understanding that the creation of one single directorate within the CFSP with a fixed (and limited) number of large Member States may not be very useful, as it may exclude smaller Member States that can provide an important contribution to policy-making in a specific issue. Some point to the fact that small and large Members have different capabilities, which can actually be mutually reinforcing. Although the variation in resource bases of members of different size is a fact, smaller Member States can offer resources that larger states lack (Antola & Lehtimäki, 2001: 56). Keukeleire, for example, argues that small Member States have the potential of becoming important partners to large Member States in ad hoc directorates when fast developments in a specific area require 'a small confidential framework to follow and analyse the developments and quickly to formulate policy answers (e.g. Belgium in relation to Congo; Portugal in relation to East Timor; and Sweden and Finland in relation to the Baltic Area) (Keukeleire, 2001: 97). In this sense, there is an added incentive for big powers to include small Member States in their various initiatives.

25 *EU Observer*, 18 February 2004. Note that criticism was also present in the days leading up to the meeting. More specifically, Spanish foreign minister Ana Palacio stated that 'Europe needs to speak with many voices and a directorate would lead to tensions'. Echoing Spanish fears, Italian foreign minister Franco Frattini stated that the idea of a directorate worries Italy 'because we think Europe should be a mechanism in which power is shared rather than concentrated' (*EU Observer*, 2 February 2004).

26 *EU Business*, 19 February 2004.

27 *EU Observer*, 1 March 2004. Joschka Fischer's words are all the more significant given his 2000 landmark speech at Humboldt University where he first spelt out the need for a two-speed Europe.

28 The proposal failed, however, as it did not get support from especially the UK and Germany, which were not willing to accept EU/WEU involvement in this conflict.

Finally, small Member States are not passive actors in the face of any such developments. They can also move ahead and form their own initiatives in various areas. Cooperation between small states has already taken place between and among the Nordic countries (Denmark, Finland, Sweden, Norway, Iceland), the Baltic States (Estonia, Latvia, Lithuania), the Benelux (Belgium, Luxembourg, The Netherlands) and the Visegrad countries (Czech Republic, Hungary, Poland, Slovakia).

The Benelux cooperation is well documented. Established in 1944 as a customs union between Belgium, the Netherlands and Luxembourg, it is often seen as a precursor of the European Communities, promoting trade among neighbouring countries by abolishing trade barriers. With the exception of the early years of European integration, the three sometimes defended divergent positions on major dossiers and their cooperation was very much taking place on an ad hoc basis. Recently, however, there have been renewed attempts to deepen that relationship and act as a small Member State directorate. This was most notable during the Intergovernmental Conferences leading to the Amsterdam and Nice Treaties as well as in the European Convention, where the Benelux countries put forward joint memoranda outlining their common views with regard to some of the major issues on the agenda (Bossaert & Vanhoonaeker, 2000: 169).

The Nordic countries (Denmark, Finland, Sweden, Norway, Iceland) have also been cooperating, more particularly in the field of security and defence. In 1998 the Nordic Coordinated Arrangement for Military Peace Support (NORDCAPS) was established and aimed at improving the capability of the Nordic countries to act jointly in peace-keeping activities. Since then these states have also established a Nordic peace-keeping brigade and have been conducting the joint 'Nordic Peace' exercise within the Partnership for Peace framework aiming at improving their capabilities to perform tasks together (Herolf, 2000: 138). Also, the Nordic members of the EU—following the pattern of the 'big three'—have started the habit of meeting to hammer out common positions before summits, and they have recently asked the Baltic states along to their meetings too.²⁹

The Baltic States have been cooperating in foreign policy, and in the economic and military sphere. In foreign policy they have been cooperating in terms of efforts to join the EU and to relations with Russia. In the economic sphere they have established a Baltic free trade agreement in 1993, a free trade agreement on agricultural goods in 1996. Their strongest cooperation, however, has been in the military sector with various multilateral projects such as the Baltic peacekeeping battalion (BALTBAT), the Baltic naval squadron (BALTRON), the Baltic air space surveillance network (BALTNET), and the Baltic Defence College (BDC) (Kapustans, 1998: 21).

For the Visegrad countries, although the level of institutionalization of the group is lower than that of the Benelux, the Nordic or the Baltic States, there has also been cooperation in various areas. The Central European Free Trade Agreement (CEFTA), established in 1992 by the Czech and Slovak Republic, Hungary and Poland is an example. The aim of CEFTA was to diminish the negative effects of the collapse of COMECON and preserve the trade relations that existed between these countries. It introduced a free trade area and also touched upon other economic spheres, including the free movement of labour and capital, creation of conditions which stimulate direct links between enterprises and foreign investment, development of transport and infrastructure, coordination of national energy systems and telecommunications systems etc (Bleiere, 1997: 26).³⁰

Cooperation between these sub-groupings has also taken place. For example, the Nordic countries have been cooperating with the Baltic States within the framework of the Northern Dimension Initiative (NDI). Initiated by Finland and adopted as an EU policy in 1997, the NDI aimed to improve cooperation between the EU and such outside organizations as the Barents Euro-Arctic Regional Council and the Council of Baltic Sea States on the one hand, and to increase coordination between different programmes and pillars within the EU, on the other. The areas for cooperation under the

29 *EU Observer*, 12 February 2004.

30 CEFTA has since expanded its membership to include Romania, Bulgaria, Croatia and Slovenia.

Northern Dimension are the environment, nuclear safety, energy cooperation, Kalinigrad, infrastructure, business cooperation, Justice and Home Affairs, social development and others. Other countries that fall within its scope are Estonia, Latvia, Lithuania, the Russian Federation, Poland, Norway and Iceland (Arter, 2000: 693). Finally, there has been a Nordic-Baltic Cooperation in the field of sustainable rural development, established in 2000, through a Copenhagen Declaration on Sustainable Rural Development. The Declaration confirmed support for enhanced cooperation between the Nordic countries and the Baltic States in the field of forestry and agriculture.

This history of cooperation between groups of small states suggests that there is a significant potential for further enhanced cooperation in an enlarged EU, with these states utilizing the provisions of the Treaties to go ahead with their own initiatives in areas of their interest. One could imagine, for example, enhanced cooperation between the Visegard countries and the Baltic States in order to combat organized crime stemming from, say, Russia, Ukraine, Belarus etc. Such initiatives can also include Bulgaria and Austria.

IX. Conclusion

The increased cooperation between the ‘big three’ (i.e. Germany, France, UK) raises some concerns for small Member States, but as it has been indicated these states have such fundamental differences between them that it would be difficult to institutionalize a directorate. At the same time, other large states which are named in a possible core (i.e. Spain, Italy and Poland) are precisely the ones which are now opposed to such initiatives. But even if large Member States go ahead with the creation of a directorate it would be unlikely that it would survive in the long run without the inclusion of some small Member States. Past examples indicate that small Member States can play an important role in such initiatives and their capabilities and resources can actually compliment those of large Member States when it comes to forming such directorates. Moreover, small Member States can also go ahead and form their own initiatives in case they are excluded by large power schemes—indeed there is a history of cooperation between groups of small states that is likely to continue upon enlargement in the form of differentiated integration initiatives. Therefore, if one is to make a prediction based on past initiatives, current trends and the provisions of enhanced cooperation in the Treaties, one can argue that in an enlarged EU any initiatives of differentiated integration will not come in the form of a large or small Member State directorate; instead, it is more likely that we will have a situation where different constellations of Member States (both small and large) will move forward in some areas—and that only when agreement is otherwise impossible to reach. In this sense, small Member States are likely to be as active participants in differentiated integration initiatives as large Member States, and therefore, the ‘danger discourse’ that is taking place in some of these small states is not entirely justified.

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Appendix A. The Provisions on Enhanced Cooperation in the Treaty of Nice

The Treaty provisions on ‘enhanced cooperation’ are divided into general (enabling) clauses and clauses specific to each pillar of the EU. Title VII ‘Provisions on Enhanced Cooperation’ of the Treaty on European Union (TEU) contain some general provisions for the use of the instrument in the EU framework. They are sometimes referred to as ‘enabling clauses’ because they give a general permission to interested Member States to create ‘enhanced cooperation’ within the framework of the Treaties.

More specifically, according to Article 43, Member States may establish closer cooperation between themselves and may, to this end, make use of the EU institutions, procedures and mechanisms if the cooperation: is aimed at furthering the objectives of the Union and the Community, at advancing the integration process, and at protecting and serving their interests; respects the Treaties, the single institutional framework, and the *acquis communautaire*; concerns Union or Community policies but not those that fall within the exclusive competence of the Community; does not undermine the internal market or economic and social cohesion; does not constitute a barrier to or discrimination in trade between the Member States and does not distort competition between them; involves a minimum of eight Member States; respects the competences, rights and obligations of non-participating Member States; does not affect the Schengen Protocol; and is open to all Member States.

According to Article 43a, enhanced cooperation may only be used as a last resort. Article 43b requires that enhanced cooperation is open to all Member States as long as they comply with the conditions for participation; both Commission and participating Member States shall encourage as many EU countries as possible to take part. Also, according to Article 44(1), all Member States take part in the deliberations on enhanced cooperation, but only the participating Member States adopt the provisions.

In addition to these general provisions, there are specific clauses for each pillar. They mostly concern decision-making procedures. In the first pillar (the EC pillar), EU institutions have significant influence over the establishment of enhanced cooperation. According to the new Article 11, the Commission has the right to propose enhanced cooperation after interested Member States have requested it to do so. Authorization for enhanced cooperation is given by the Council by a qualified majority on a proposal from the Commission and the after consulting the EP. When enhanced cooperation is to be established in an area where the co-decision procedure applies, the assent of the EP is required. A Member State may also request that the matter be referred to the European Council for discussion. After the matter has been raised before the European Council, decision-making proceeds as outlined above.

The Treaty of Nice also introduces new clauses on ‘enhanced cooperation’ in the second (Common Foreign and Security Policy) pillar. According to Articles 27a-e, enhanced cooperation may be used for joint actions or common positions, but not in matters having military or defence implications. Interested Member States address a request to the European Council to authorize the cooperation. The Commission ‘shall give its opinion particularly on whether the enhanced cooperation proposed is consistent with Union policies’ (Article 27c). Otherwise, the Commission and the EP must only be informed about developments.

In the third (justice and home affairs) pillar, also, Member States wanting to establish enhanced cooperation may ask the Commission to submit a proposal. However, in contrast to the first pillar, if the Commission refuses to submit a proposal, the interested Member States may develop a proposal themselves and submit it to the Council for authorization. Authorization is given by a qualified majority and after consulting the EP. Again, a Member State may request that the matter be referred to the European Council (Junge, 2003: 387).

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