

## Flexibility in EU Foreign and Security Policy

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European disunity provokes calls for differentiated integration whenever there is an international crisis. A group of states that is both willing and able should act as an avant-garde and in this circuitous way achieve a common European policy. This is not the case in the Iraq crisis, in which the opposing interests and strategies of EU states have become clearly apparent. There is an obvious division into camps, which means that a differentiated approach could split the European Union into at least two groups. However, the Iraq question should not be elevated to the decisive test case for a common foreign and security policy that is not yet mature. The Convention actually faces the task of forging a constitutional framework for a common foreign policy which, in the long term, will make it possible to pursue clear-cut EU policies towards neighbouring states and regions, global (trading) partners, and in international organizations. A fundamental and united EU position with regard to the question of war and peace, as in the case of the Iraq conflict, will emerge at the end and not at the start of this unification process.

Differentiated integration will be a central factor for the success of any future European foreign, security and defence policy. In fact the parallel enlargement and deepening of the European Union is inconceivable without the principle of differentiation. Already in the past important steps in integration have initially been implemented by only a limited number of member states (Schengen, social policy, EMU). And the importance of flexibility in a European Union of 25 and more member states will continue to increase.

Regarding foreign and security policy it will be necessary to think about different kinds of flexibility that allow those member states both willing and able to progress in the area of Common Foreign and Security Policy (CFSP) and the establishment of a European Security and Defence Policy (ESDP). Here the Convention will above all have to clarify whether the differentiation instrument of the Treaty, i.e. *enhanced cooperation*, will suffice for this purpose. The instrument was introduced by the Treaty of Amsterdam and revised in the Treaty of Nice (see box on page 5).

Although the ratification of the new EU Treaty has extended *enhanced cooperation* to CFSP, and although certain constraints have been removed, the areas where it is applicable still seem to be restricted. A necessary additional reform of this instrument presupposes a clear notion about possible and indeed necessary areas where differentiated integration should be applied in the field of CFSP/ESDP. Four dimensions of differentiated integration need to be distinguished: (1) integration projects of an enduring nature; (2) a flexible crisis reaction capability; (3) differentiation as a catalyst of *finalité*; (4) the involvement of non-EU states.

### (1) *Integration projects of an enduring nature*

This category of *enhanced cooperation* includes projects of an enduring nature which have hitherto failed to materialize as a result of a blockade by one or more EU member states, or which arise from new steps in the integration process. *Enhanced cooperation* can help to overcome entrenched blockade positions and provide member states which are both willing and able to engage in cooperation with the necessary room for manoeuvre. Possible integration projects of this kind are:

- the merger of diplomatic missions;
- long-term defence cooperation between certain EU member states which go far beyond project-specific defence cooperation (e.g. Eurofighter), thereby making it possible to improve specific operational capabilities, and do justice to the requirements of a common defence policy;
- joint representation in international organizations.

However, some of the clauses relating to *enhanced cooperation* in the Treaty of Nice will have to be revised in order to make this kind of cooperation possible:

- The right to veto *enhanced cooperation* in the field of CFSP should be eliminated. The use of constructive abstention could be retained.
- *Enhanced cooperation* should not be restricted to the implementation of a joint action or a common position.
- It should be possible to relate *enhanced cooperation* to matters which have military and defence implications in order to be able to act faster and to complement the EU's non-military capabilities in a more efficient manner.
- The number of member states required for *enhanced cooperation* should not be restricted to a stipulated minimum of eight. In fact the number should not be defined, since there are no inherent reasons for such a rule and since the establishment of *enhanced cooperation* would in any case require approval by a qualified majority.

- Greater coherence in EU foreign policy could be achieved by upgrading the role of the Commission. Its influence should not be restricted to the initiation and monitoring of *enhanced cooperation*, but should also cover the implementation phase.
- Cooperation between states willing to work together should take its bearings from the institutions, rules and procedures of the community method.

### (2) *A flexible crisis reaction capability*

In specific crisis situations the treaty should concede a greater degree of flexibility to those states which are both willing and able to participate in crisis management. It should be possible to organize the deployment of crisis reaction forces on the basis of the treaties, in order to prevent the formation of *ad hoc* coalitions outside the treaty framework. However, flexibility in cases of specific crisis cooperation differs in several ways from other forms of *enhanced cooperation*:

- Crises require a very rapid reaction.
- Decisions relating to the deployment of military crisis reaction forces in the name of the EU should be taken unanimously. Every member state should have a right to veto such decisions (though the instrument of constructive abstention could be retained).
- A crisis reaction executed in the name of the EU is not intended to be permanent. Every member state must under certain conditions – which need to be specified from case to case – be in a position to monitor the crisis reaction management and, if necessary, to ask for a vote on whether it should be terminated. Every state participating in a crisis reaction should have the right to withdraw from operational action after giving specific reasons for doing so.

These peculiarities of a flexible EU crisis reaction capability reveal the need to develop a differentiation instrument specifically designed for cases of acute crisis. It must take into account the existing duties of the participating states that derive from other security alliances. A special instrument designed for flexible crisis cooperation will also allow a uniform implementation of *enhanced cooperation* in other parts of the treaty.

### (3) *Differentiation as a catalyst of finalité*

In an attempt to further develop the EU towards a political union and a defence union, differentiation can function as a catalyst of *finalité* by ways of further communitarizing large areas of CFSP/ESDP. The principle of differentiation might help to deepen the cooperation of states willing to work together more closely in the area of foreign, security and defence policy in a situation in which not all member states of an enlarged EU are prepared to embark on such a substantial step. Differentiated integration could be utilized as a kind of learning phase for the future. It should, however, be understood as

a means applied merely for a limited period of time. When differentiation projects prove to be a success, other member states will join in.

However, the differentiation instrument of *enhanced cooperation* as it currently stands is of limited use as a defining feature of a constantly growing and at the same time deepening Union. Although many restrictions on *enhanced cooperation* are now less severe, the application of the differentiation instrument is restricted to the solution of area-specific blockades in “everyday” politics of an EU with 25 or more member states. Large leaps in existing areas of integration or the development of new policy areas do not seem possible on the basis of the reformed flexibility rules. The principle of *enhanced cooperation* cannot be applied to establish an area of gravity which will lead to a new quality of integration. In fact, substantial progress in integration can be made either by means of a *sui generis* arrangement – similar to the EMU model (joint decision, different tempi) – or outside the treaty framework – similar to the Schengen model. Appropriate areas would be the establishment of a security council based on majority decision-making, or the foundation of a genuinely European army as the cornerstone of a European defence union.

#### **(4) *The involvement of non-EU states below the level of full membership***

The principle of differentiation could also be applied to permit non-EU and candidate states, which for the foreseeable future have not set their sights on full membership or cannot attain it for political or economic reasons, to participate in certain community policies prior to EU membership. In this respect one can refer to the Schengen agreement, in which Norway and Iceland are participating as associated states. Even after Nice the rules of *enhanced cooperation* do not envisage this kind of early involvement of non-EU states. Here the Convention should make the necessary amendments in order to provide the EU with new types of incorporation strategies, which in view of the Union’s future direct neighbourhood might become even more important.

#### **Conclusions**

The overlapping membership structures of the EU and NATO, specific “coalitions of the willing”, the rule of “constructive abstention” included in the Treaty of Amsterdam, the possibility to act by qualified majority when adopting decisions on the basis of a common strategy, and the extension of *enhanced cooperation* to the second pillar all illustrate the necessity of flexibility in the field of CFSP/ESDP. This is the only way to reconcile the differing interests of member states, be they of a security policy, geo-strategic or alliance-based nature. However, the fact that the flexibility instruments already contained in the treaty have not been extensively utilized in the past demonstrates that the present treaty regulations and instruments are insufficient. Thus further development of the instrument of *enhanced cooperation* and the establishment of



additional differentiation instruments are particularly important in view of both short-term and fundamental steps towards reinforced integration in the field of the CFSP/ESDP. The instruments of differentiated integration are not designed to divide the EU member states permanently. Their objective is to help overcome national reservations, and to pave the way for a united foreign, security and defence policy. Without differentiation Europe will clearly not be able to attain a uniform global policy.

### **Enhanced Cooperation after Nice**

The Treaty of Nice contains the following regulations governing *enhanced cooperation* in field of the CFSP:

- *Enhanced cooperation* has been extended to cover foreign and security policy.
- *Enhanced cooperation* in the field of CFSP can only relate to the implementation of a joint action or a common position (TEU-N Art. 27b).
- *Enhanced cooperation* must not relate to matters having military or defence implications (TEU-N Art. 27b).
- *Enhanced cooperation* may be undertaken only as a last resort (TEU-N Art. 43a).
- *Enhanced cooperation* must involve a minimum of eight member states (TEU-N Art. 43g).
- In contrast to the Community area, *enhanced cooperation* in the field of the CFSP can be blocked by a member state, based on important and stated reasons of national policy (de facto veto) (TEU-N Art. 27c in conjunction with Art. 23, para. 2).
- In the case of *enhanced cooperation* in the field of CFSP the Commission has a right to give its opinion and the European Parliament is being kept informed. However, both institutions are in a weaker position than in the case of *enhanced cooperation* in the community area (TEU-N Art. 27c).