

Differentiated Europe Nine Recommendations

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Key Points

- **More than ever before the EU requires different speeds, if the EU 27+ wants to remain effective.**
- **The creation of a new supranational Union – with an independent institutional structure and based on an independent primary law – is neither advisable nor realistic.**
- **Differentiated integration should be organized within the EU framework following the concept of *functional-pragmatic differentiation*, which does not adhere to a predefined master plan of Europe's political *finalité*.**
- **Differentiation outside the EU should follow the concept of an *Intergovernmental Avantgarde* open to all EU countries and aiming to integrate the *acquis* adopted outside the EU into the Union at the soonest possible moment.**
- **Concepts aiming to affiliate neighbouring European countries beneath the level of a full membership – *Association Plus, Partial Membership, Limited Membership* – should not exclude the prospect of fully joining the EU club.**
- **A more differentiated Europe will require the elaboration of a comprehensible “narrative of differentiated Integration” and the setting up of an “informal differentiation board”.**

The European Union (EU) requires different speeds, more than ever before. The growing diversity of interests and the increasing economic, financial, social and geopolitical heterogeneity among EU countries, diverging political objectives and expectations concerning the future path of integration in an EU 27+, and the need to respond to the pressure from third countries aiming to join the European club, while enlargement fatigue is widespread, call for a higher degree of differentiated integration.

Differentiation is no magic potion and it is not an end in itself. Nevertheless, a more differentiated Europe will be a necessity, if the EU 27+ wants to remain effective. As was the case in the past with the common currency, the Schengen accords, social policy, or more recently with the Treaty of Prüm intensified cooperation among a smaller group of countries or the fact that the EU's *acquis* does not apply equally in all states can help to overcome a situation of stalemate and improve the way in which the European Union functions. The EU is already today characterized by different levels of integration and cooperation. Some member states have introduced the euro others not, some attempt to develop the Union as an Area of Freedom, Security and Justice others not, most EU countries take part in European Security and Defence Policy or in the Schengen area others not. These examples show that the EU has already entered the path of differentiation. But the

degree of flexibility is likely to further increase in the future. The central question is not whether there will be a differentiated Europe, but how it will, or rather how it should look like.

The future path of differentiation will not be dominated by one single model. There is rather a whole set of diverging possible forms of flexible integration, ranging from the creation of a new separate Union to very limited forms of closer cooperation between a small group of EU members within or outside the Union's framework (see overview on page 6). In practice we are likely to witness the application of many and diverse types of flexible integration. But which path towards a more differentiated Europe should be followed? Which forms of differentiated integration should be avoided and which preferred? The following recommendations sketch some answers to these questions.

Recommendation 1

The creation of a new Union, which brings together a group of countries aiming to achieve a higher level of supranational cooperation, is neither advisable nor realistic.

The creation of a new supranational Union – with an independent institutional structure and based on an independent primary law – entails the risk of creating new dividing lines in Europe. The members of the new Union would most likely

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concentrate their political energies on the development of their newly founded entity. In return, the “old EU” would gradually become marginalized. In this case, the idea that the “old EU” could function as kind of a bracket between the two entities and ally the more integration-friendly European states and those less willing or able to further integrate in some sort of a “stability community” would not materialize. On the contrary, chances are high that the rivalry between the Unions might lead to a division of Europe into two opposing camps – on the one hand the members of the new Union, and on the other the excluded states, which seek their political fate in other (geo-)political constellations.

The creation of a new Union is not only undesirable, it seems also unrealistic. The EU has never 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 crisis following the double “No” in France and in the Netherlands to the Constitutional Treaty in 2005, the member states sought to find a practical and sober solution within and not beyond the EU. As long as the European Union has not arrived at a political dead end, the political, economic and administrative costs associated with the creation of a new supranational Union would not equal the benefits.

Recommendation 2
Differentiated integration should preferably be organized within the EU framework, as cooperation organized outside the Union’s Treaties bears a number of potential risks.

Differentiated integration creates numerous opportunities. However, it bears also a number of potential risks. Flexible cooperation among a small number of states can (i) lead to the creation of parallel institutional structures, which can weaken the EU’s supranational institutional architecture, (ii) exacerbate the problem of coordination between different policy areas and damage the overall coherence of the EU, (iii) lead to a fragmentation of legislation within and outside the EU framework, or (iv) decrease the level of transparency and democratic accountability. These risks are particularly high, if cooperation is implemented without clear procedures and norms and without the involvement of supranational institutions – which is the case, if differentiated cooperation is

organized outside the EU.

If politically feasible and legally possible, differentiation should thus be organized inside the Union. Closer cooperation within the EU (i) respects and benefits from the Union’s single institutional framework, (ii) preserves the supranational powers and composition of the Commission, the European Parliament and the European Courts, (iii) limits the anarchic and uncontrolled use of flexibility, (iv) guarantees a high level of calculability, due to the existence of clear-cut rules concerning the inception, the functioning and the widening of differentiated cooperation, (v) is characterized by a high degree of openness, (vi) guarantees a high level of democratic legitimacy through the involvement of the European Parliament and national parliaments, (vii) enables the continuous development of the EU’s *acquis* in line with the requirements of the EU Treaties, and most importantly (viii) reduces the overall risk of a confrontational split between the “outs” and the “ins”.

Recommendation 3
Differentiated cooperation within the EU framework should not follow a single master plan with a predefined idea of Europe’s finalité.

The idea of applying the instruments of differentiation to create some sort of a “United States of Europe” (Verhofstadt) is unrealistic and counterproductive. It is unrealistic, because the wider public and increasingly also parts of the elites even in the most integration friendly countries are not (yet) willing to further surrender substantial national competences in order to develop some sort of a federally organized political union. It is counterproductive, because the idea to create a “United States of Europe” via instruments and procedures of differentiation raises negative suspicions. Eurosceptics get the impression that differentiation is another way towards something they want to avoid – a devil in disguise leading to the creation of a federal union. Many of the EU’s smaller and new countries (mis)perceive such proposals as an attempt to create a closed core Europe and fear that they could be excluded from such an elitist club. Independent of whether such suspicions or fears are justified or not, they raise distrust between EU countries and in return limit the chances that the instruments of differentiation are constructively employed in practice.

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Recommendation 4
Differentiation within the Treaty framework should follow the concept of *functional-pragmatic differentiation* based on flexibility instruments and procedures laid down in the EU Treaties.

The concept of *functional-pragmatic differentiation* does not adhere to a predefined master plan. It rather follows a case-by-case approach while aiming to overcome specific blockades of certain member states, which are either not willing or not able to engage in a higher level of cooperation. In the years ahead, greater use should be made of the various instruments of differentiated integration laid down in the EU Treaties, in order to reduce the widespread scepticism concerning further differentiation and to limit the necessity for extra-EU cooperation. It will be particularly important that EU institutions and member states become familiar with the general flexibility instrument of *enhanced cooperation*, which should be applied in practice in order (i) to prove whether or not the strict conditions laid down in the EU Treaties can be met, (ii) to ascertain how well the current legal and institutional provisions work and where further improvements are needed, and (iii) to test the practicability of the new *special passerelle clause*, which in theory allows the improvement of the decision-making procedures within *enhanced cooperation*. The instrument of *enhanced cooperation* should initially be applied and tested in the context of smaller cases, most probably in the realm of policy areas still subject to unanimity in the Council.

Recommendation 5
In some cases closer cooperation might have to be organized outside the EU framework in order to make a step forward instead of waiting indefinitely for a small step inside the Union.

If closer collaboration between a group of countries is politically and legally feasible only outside the EU, cooperation should follow the concept of an *Intergovernmental Avantgarde*, which is open to all member states and aims to integrate the legal norms adopted outside the EU into the Union at the soonest possible moment. The recent case of the Treaty of Prüm has shown that the chances to successfully incorporate a legal *acquis* into the EU framework are higher, if the participating states keep the “outs” constantly informed, and if key member states very actively

promote the quick integration of a set of legal norms originally defined outside the Union into the EU. The German government had been very eager to integrate the Prüm *acquis* into the Union’s legal framework and used its EU presidency in the first half of 2007 to successfully accomplish this objective. Cooperation outside the Union should not follow the model of a *Europe of Nations*, because long-lasting intergovernmental cooperation that escapes the EU and engages only a limited number of governments has the potential to fundamentally weaken the Union, as the danger of political and legal ruptures between the “ins” and the “outs” increases over time.

Recommendation 6
Concepts aiming to affiliate neighbouring European countries beneath the level of a full membership should not exclude the prospect of joining the EU club.

The wish of many neighbouring states to join the club or at least to intensify cooperation with the EU and the widespread enlargement fatigue inside the Union increase the pressure to develop innovative ways affiliating partner countries beneath the level of a full and unlimited EU membership. However, such concepts can only be successful and effective, if the perspective of joining the European club is not excluded. Concepts denying the membership carrot, like the one of a *Privileged Partnership* or an *Extended Associated Membership*, are in most cases doomed to fail, because they are unattractive for neighbouring European countries, which aim to ultimately join the EU. Moreover, concepts denying the ultimate membership perspective are also counterproductive for two reasons: (i) Excluding the prospect of EU membership provokes negative reactions in the partner countries and thus actually limits the potentials to constructively tie neighbouring European countries closer to the Union bellow the level of full membership. (ii) A denial of the membership perspective substantially limits the Union’s ability to impose conditionality. Without the long-term perspective of further enlargement the European Union is less in a position to effectively influence the overall political orientation and the transformation process of its neighbouring European countries. For most states in the geographic vicinity of the Union the prospect of EU membership provides an important impetus for the initiation or continuation of the political, economic and social transformation process towards democracy and market economy. In sum,

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the possibility of joining the EU should in principle remain open to all European countries, even if the prospect of membership in many cases might still be very distant or even indefinite. Or to put it more bluntly: An attempt to once and for all define the borders of Europe would be politically unwise. However, it would be equally unwise to disregard the enlargement fatigue in many EU member states. As a consequence, the Union should avoid any enlargement automatism and for some time neither directly nor indirectly grant any further accession offers beyond the countries, which have already the status of a candidate country (Croatia, Turkey and FYROM) or of a potential candidate country (Albania, Bosnia and Herzegovina, Montenegro and Serbia including Kosovo). In many member states further offers would unnecessarily exacerbate popular dissatisfaction with the EU's enlargement and neighbourhood policy.

Recommendation 7

Limited Membership can alleviate EU accession but makes sense only as an intermediate step. In order to avoid potential blockades, "partial" members should not have the ability to block EU reforms.

Conceptually one can differentiate between three forms of affiliation beneath full membership: *Association Plus*, *Partial Membership* and *Limited Membership*. The concept of a *Limited Membership*, which allows certain states to join the Union albeit subject to some long-term limitations in certain (sub-)policy areas, can alleviate and speed up the accession of new member states. The concept of a *Partial Membership* offers a *de facto* membership status in a certain sectoral (sub-)policy field without the respective country joining the EU as a whole. The concept of an *Association Plus*, which aims at the closest possible affiliation beneath the level of membership, is characterized by the fact that the associated countries do not participate in the internal process of EU decision-making. In contrast, "limited" or "partial" EU members would have the right to fully or at least partially take part in the Union's decision-taking process. However, both a *Limited* and a *Partial Membership* would lead to new sub-forms of membership and citizenship. The imposition of second-class membership can over time lead to a rupture between old and new EU members, if the latter feel discriminated by the former. The notion of being discriminated can fuel anti-EU sentiments in

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the new members and in return put pressure on the ruling class to improve their country's membership status in the EU. This could lead to severe tensions between both sides, which might not only negatively affect the EU's ability to act in certain policy areas, but also structurally impede the Union's further development. In an attempt to compel fellow EU partners to remove the remaining full membership barriers, "limited" members would be in a strong position to block the overall development of the EU. As a consequence, the concept of a *Limited Membership* politically makes sense only as an intermediate step on the way towards a full-fledged unlimited membership. In order to extend their membership status to other areas or to the Union as a whole, "partial" members could attempt to put pressure on the EU and its member states to reach this objective. In this case "partial" members could be tempted and would actually have effective means to paralyze the sectoral policy area which they have joined. In any case and in order to avoid a potential blockade of the Union's overall development, *Partial Membership* should exclude the right to participate in treaty revision procedures on an equal footing. "Partial" members should not be able to block EU reforms in the framework of a Convention or an Intergovernmental Conference or through the application of the passerelle clauses.

Recommendation 8

The voluntary withdrawal of less integration friendly countries can enable a further deepening of EU integration. However, this form of "negative differentiation" can also weaken the EU and even lead to a new European antagonism, if both sides fail to redefine their relationship.

The voluntary withdrawal of one or more countries from the Union can enable a further deepening of EU integration, if countries not aspiring to deepen cooperation decide to leave the Union. However, if the EU and the withdrawing state(s) fail to constructively redefine their relationship, one might witness a deep and enduring political rift between both sides possibly even resulting in a new European antagonism. Moreover, the departure of one or more countries from the Union can weaken or even destabilize the EU if the number of countries exiting the Union is large and if the withdrawing states have played a significant role in a certain policy field (e.g., UK in ESDP). In order to continue to profit from the advantages of the

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internal market and to benefit from a functioning inter-institutional structure, the withdrawing state(s) could decide to join the European Economic Area (EEA) as members of the European Free Trade Association (EFTA). The accession of former EU states could lead to a renaissance of EFTA/EEA, which in return would also become more attractive for other neighbouring countries aspiring but not yet able to join the EU. Alternatively, a withdrawing state could also become a "partial member" of the EU in one or more policy areas, in case both sides consider this to be in their interest.

Recommendation 9

A more differentiated Europe will require the elaboration of a comprehensible "narrative of differentiated Integration" and the setting up of an "informal differentiation board".

The need for more differentiation in an EU 27+ and the application of very diverse forms of differentiation inside and outside the EU framework will lead to a twofold challenge: (1) The complexity of a Europe of different speeds will require the elaboration of a "narrative of differentiated integration" portraying and explaining to European citizens the objectives and the overall logic of differentiation. The EU and its member states need to explain to the wider European public in a comprehensible fashion the purpose and reasoning behind flexible integration. However, it would not be wise to base such a

narrative on a particular vision of Europe's political *finalité*, as this might create suspicions and therefore actually limit the potentials of flexible cooperation. The "narrative of differentiated integration" should rather rely on the definition of one or more European projects, the implementation of which requires the use of more flexible forms of cooperation. (2) The management and supervision of a highly differentiated Europe will at some stage necessitate the setting-up of an "informal differentiation board" to coordinate the activities of the various differentiation projects inside and outside the EU framework. Such a coordinating body could function as kind of an umbrella providing the opportunity to informally exchange information, experiences and views, to institutionally link the various differentiation projects and to provide impetus for further cooperation. The "informal differentiation board" should in particular include the European Commission as the central guardian of the Treaties and representatives of the member states participating in the individual differentiation projects. Similar to the Eurogroup, the later could be selected by the states participating in the respective projects. The board would not be limited to an exclusive circle of countries forming some sort of a *directoire*, but rather represent a mixture of EU members including small and big, new and old, northern and southern, eastern and western, euro and non-euro countries.

The EU and its members need to explain the purpose and reasoning behind flexible integration.

Further readings

- Janis A. Emmanouilidis, Conceptualizing a Differentiated Europe, ELIAMEP Policy Paper, May 2008 (forthcoming).
- Enhanced Cooperation: From Theory to Practice, in The Treaty of Lisbon: Implementing the Institutional Innovations, Joint Study of CEPS, EGMONT and EPC, Brussels 2007, pp. 97-119.
- Charles Grant, Europe's blurred boundaries: Rethinking enlargement and neighbourhood policy, Centre for European Reform (CER), London 2006
- Daniel Thym, Ungleichzeitigkeit und europäisches Verfassungsrecht, Baden-Baden 2004.

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Key Characteristics of Six Forms of Differentiated Integration

Form	New supranational Union	Cooperation via established procedures and instruments		Intergovernmental cooperation outside the EU		
		Creation of a Federal Union	Functional-pragmatic differentiation	Europe of Nations	Intergovernmental Avantgarde	Loose coalitions
Key characteristics	<ul style="list-style-type: none"> group of member states (MS) creates new Union objective: higher level of supranational cooperation leading to a federal political union separate treaty/constitution immediate transfer of competences high degree of openness 	<ul style="list-style-type: none"> inside EU use of general instruments of differentiation or predetermined procedures for specific policy areas participation must be open to every MS at every time (but: participation criteria or minimum number of states) 	<ul style="list-style-type: none"> functional case-by-case approach to overcome specific blockades no pre-defined final outcome 	<ul style="list-style-type: none"> (originally) outside EU limited to intergovernmental relations no (immediate) transfer of sovereignty rights cooperation adheres to principle of loyalty: supremacy of EU acquis; not undermine functioning of EU cooperation not possible in areas in which EU has exclusive competences 		
		<ul style="list-style-type: none"> differentiation aims at creation of a federal political union – a “United States of Europe” 	<ul style="list-style-type: none"> no wish to transfer competences to higher supranational authority no motivation to integrate cooperation into EU rather low degree of openness 	<ul style="list-style-type: none"> Avantgarde takes lead integration of cooperation into EU as soon as possible independent treaty or agreement participation in principle open to every MS 	<ul style="list-style-type: none"> single task or purpose oriented very low level of institutionalization closed circle 	
Form	Differentiation through opt-outs	Affiliation beneath full membership			Negative differentiation through withdrawal	
		Association Plus	Partial Membership	Limited Membership		
Key characteristics	<ul style="list-style-type: none"> allocation of opt-out(s) initiative from opt-out country principle decision to grant opt-out requires assent of all MS legal and institutional rules and procedures laid down in EU Treaties 	<ul style="list-style-type: none"> closest possible affiliation beneath membership no participation in EU decision-taking process core EU institutions remain closed divergent forms and levels of affiliation 	<ul style="list-style-type: none"> de facto membership in certain policy areas (sectoral integration) full-fledged political, legal and institutional participation no exclusion of membership perspective 	<ul style="list-style-type: none"> membership subject to certain limitations exclusion from certain policy areas or no application of certain parts of acquis “Limited” members enjoy all legal and institutional rights and obligations 	<ul style="list-style-type: none"> EU countries pursue higher level of cooperation after voluntary withdrawal of state(s) withdrawing state concludes agreement with EU EU Treaties cease to apply to withdrawn country 	

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