

**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
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**CONSTITUTIONAL AFFAIRS**

# **Which lessons to draw from the past and current use of differentiated integration?**

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## **Abstract**

This briefing note starts from the assumption that differentiated integration is already a reality in the EU27 and that the degree of flexibility is most likely to increase in future. The paper lists and analyses nine key lessons from the (recent) past and on that basis draws a number of conclusions for the (near) future with respect to a higher level of differentiation in the area of economic, fiscal and monetary affairs.

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## **LIST OF ABBREVIATIONS**

<b>AFSJ</b>	Area of Freedom Security and Justice
<b>CSDP</b>	Common Security and Defence Policy
<b>EFSF</b>	European Financial Stability Facility
<b>EMU</b>	Economic and Monetary Union
<b>ESDP</b>	European Security and Defence Policy
<b>ESM</b>	European Stability Mechanism
<b>EU</b>	European Union
<b>MFF</b>	Multiannual Financial Framework
<b>TEU</b>	Treaty on European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TSCG</b>	Treaty on Stability, Coordination and Governance

## EXECUTIVE SUMMARY

This briefing note starts from the assumption that differentiated integration is already a reality in the EU27 and that the degree of flexibility is most likely to increase in future. The paper lists and analyses nine key lessons from the (recent) past and on that basis draws seven conclusions for the (near) future with respect to a higher level of differentiation in the area of economic, fiscal and monetary affairs.

With respect to the lessons from the (recent) past the briefing note argues the following: (1) differentiated integration provides a strategic opportunity as a catalyst for a deepening of EU integration; (2) differentiated integration has not followed a master plan but rather the principle of *functional-pragmatic differentiation* aiming to overcome blockades of certain Member States in specific areas of (potential) cooperation; (3) differentiation has not led to a 'closed core Europe', i.e. it has not resulted in a small, coherent group of Member States, which has formed an exclusive *avant-garde* (actively) separating itself from other EU countries; (4) differentiation organized within the EU framework reduces the (potential) challenges related to a differentiated Europe; (5) risks of differentiation outside the EU are reduced if cooperation follows the notion of an *intergovernmental avant-garde*, which is open to all EU countries willing to join, involves/strengthens the existing EU institutions, refrains from the creation of new parallel structures, and aims to integrate the *acquis* adopted outside the EU into the Union's treaty framework at the soonest possible moment; (6) a limited number of opt-outs are no anathema if this is confined to a restricted number of cases concerning a limited number of Member States; (7) new intergovernmental treaties/agreements since 2010 have followed the notion of an *intergovernmental avant-garde*; (8) differentiation in the context of the euro crisis occurred under exceptional circumstances; and, finally, (9) the euro crisis has provoked a new debate about the potential perspectives and consequences of 'negative differentiation', i.e. the possibility of a Member State to either exit the EU or disassociate itself from certain policy areas.

Concerning the (near) future of differentiation, the paper concludes the following: (1) there is a need to 'de-dramatize' the debate about differentiated integration; (2) the use of differentiation should not follow a specific conception of the EU's *finalité*; (3) any further deepening of cooperation among euro countries should be organized inside the EU framework; (4) the elements of differentiation initiated outside the Union since 2010 should be integrated into the EU sooner rather than later; (5) cooperation organized outside the 'community framework' should be organized along the lines of an *intergovernmental avant-garde*; (6) in the process towards a 'genuine Economic and Monetary Union' EU institutions and Member States need to steer clear of steps fostering the creation of a 'two-tier EU' involving any kind of involuntary second-class membership; and, finally, (7) EU Member States and institutions should, in the long term, aim to decrease the level of differentiation in the EU and especially in EMU – the bulk of Member States, which have a treaty obligation to join the common currency, should be attracted and persuaded to join the euro in the foreseeable future.

## 1. STARTING POINT AND INTRODUCTION

The euro crisis has put European integration to a major test – more profound and more serious than ever before. The final outcome of the crisis is by no means certain. But one thing can be taken for granted: the responses to the crisis since 2010 have and will most likely continue to lead to a higher level of integration in the framework of the Economic and Monetary Union (EMU) and especially among the countries of the eurozone.

The roadmap aiming at a so-called *Genuine Economic and Monetary Union* due to be adopted by EU leaders at the December 2012 European Council will include additional measures/innovations that will result in an even higher level of differentiation on the basis

of the Lisbon Treaties and eventually maybe even beyond the Union's current legal framework. The final outcome of this process is by no means predictable and its success is by no means certain. However, at the end of day, it seems highly likely that it will lead to some form of *sui generis* fiscal, economic and, ultimately, maybe even to some kind of 'political union'.

But not all EU Member States are able or willing to participate in a further deepening of European integration at the same time and with the same intensity and speed. The current government in the UK seems even willing to enter a path of 'negative integration' aiming to disassociate itself from the country's current level of integration.

As was the case in the past with the common currency (Louis 2001), in the area of social policy (Falkner 1998), concerning integration in the fields of security and defence (Quille 2008; Biscop 2008; CEPS/Egmont/EPC 2010), with respect to the Schengen and Prüm Treaties, or the Area of Freedom, Security and Justice (AFSJ) (Kietz/Maurer 2006; Monar 2011), more intense cooperation among a smaller group of countries or the fact that the EU's *acquis* does not apply equally in all Member States (opt-outs) can help to overcome a situation of stalemate and improve the effectiveness and the functioning of the EU.

But what are the key lessons one can draw from the history of differentiated integration? And what do these lessons tell us with respect to a further deepening in the area of Economic and Monetary Union (EMU)? This briefing note addresses these two key questions: the first part will list and analyse nine key lessons from the (recent) past and the subsequent section will on the basis of this analysis draw a number of conclusions for the (near) future with a special emphasis on the future of EMU.

## **2. NINE KEY LESSONS FROM THE (RECENT) PAST**

### ***Lesson 1: Differentiated integration provides a strategic opportunity***

The debates about *directorates, triumvirates, pioneer and avant-garde groups, centres of gravity, core groups, Europe à la carte, variable geometry, Europe of concentric circles* etc. (for an overview see Stubb 1996; Giering/Janning 2001; Thym 2004; Emmanouilidis 2005 and 2008a; Holzinger/Schimmelpfennig 2012) have been to a large extent characterized by oversimplifications, by threats and fears, and by semantic as well as conceptual misunderstandings, which overshadow the fact that differentiated integration provides a strategic opportunity in a bigger and more heterogeneous European Union (EU). The experience of the last decades has repeatedly proven that closer cooperation between Member States has, at the end of the day, been a (strong) catalyst for a deepening of EU integration.

Differentiated integration and 'multi-speed Europe' are already a reality as the existing EU27 is characterized by different levels of cooperation and integration and the degree of flexibility is most likely to increase further in the future. The central question is thus not whether there will be a 'differentiated Europe', but how it will or rather how it should look like.

However, differentiated integration is no magic potion and no end in itself; it rather is a necessity if the EU wants to remain effective and overcome current and future challenges. At the same time, there is a need to take into account the diverse potential dangers posed by differentiated integration, especially if cooperation is perceived as a 'seed of division' between 'ins' and 'outs' and if it is conducted on a permanent basis outside the EU framework (see also below).

### ***Lesson 2: Differentiated integration has not followed a master plan but rather the principle of functional-pragmatic differentiation***

Differentiation within the EU has not followed a single master plan with a predefined idea of the Union's ultimate *finalité*. Differentiated integration has been most successful when it has followed the principle of *functional-pragmatic differentiation* aiming to overcome blockades of certain Member States in specific areas of (potential) cooperation (see Emmanouilidis 2008a). Differentiated integration has been understood and applied as a last-resort mechanism either inside or outside the treaty framework – as an *ultima ratio* if 'progress' could not be achieved with all Member States at the same time and with the same pace.

The idea to apply the means of differentiated integration to create some sort of a 'federal entity' is rather unrealistic and also counterproductive. It is rather unrealistic, because the wider public and increasingly also parts of the (political) elites are not (yet) willing to further surrender/pool substantial national competencies to develop some kind of a "United States of Europe" (Verhofstadt 2006). On the contrary, 'ambitious muddling through' via incremental steps – determined currently by the pressures coming from the crisis – is likely to remain the Union's dominant mantra for the foreseeable future (Emmanouilidis 2012a).

It is counterproductive, because the idea to create some sort of a 'federal union' via instruments of differentiated integration raises suspicions and fears. Eurosceptics use it as a welcome opportunity to argue that differentiation is just another way to dismantle the nation-state of its old prerogatives. Those who are not in the 'core' may feel that differentiated integration is a means to create a 'two-tier Europe' (Piris 2011) from which they are and might continue to be excluded. The reality is obviously more complex. But independent of whether such fears and suspicions are justified or not, they can raise distrust and in the end limit the chances that differentiated integration is constructively employed in practice.

### **Lesson 3: Differentiation has not led to a 'closed core Europe'**

Differentiated integration has not led to an institutionalized 'closed core Europe', i.e. it has not resulted in a small, coherent group of Member States, which has formed an exclusive avant-garde (actively) separating itself from other EU countries. On the contrary, the different areas and forms of differentiated integration (including Schengen/AFSJ; euro; ESDP/CSDP; Charter of Fundamental Rights; Euro Plus Pact; 'fiscal compact treaty'; or *enhanced cooperation* concerning divorce law, the EU patent or the new Financial Transaction Tax) involve diverse groups of different EU countries – although 15 of the 17 countries of the eurozone participate in almost all areas of differentiated integration. Conversely, differentiation within the EU has not led to a coherent 'club of outsiders' including Member States which do not participate in any area/form of differentiated integration.

EU institutions and Member States have very consciously tried to avoid the creation of a 'two-tier EU', which could lead to a (deep) split/rift between 'ins' and 'outs'. EU countries and institutions have adhered to three core principles: (i) avoid the creation of 'insurmountable barriers' between 'ins' and 'outs'; (ii) shun from the creation of permanent, parallel institutions involving only the countries participating in a particular form of differentiated integration; and (iii) secure the involvement of 'outs' as far as practically and politically possible.

However, despite these efforts, the crisis and the reactions to it have increased the perception in many countries outside the euro area that the gap between euro and non-euro countries is growing. The 'pre-ins', i.e. the eight non-euro countries who have a treaty obligation to join the common urgency, feel particularly side-lined as they are not included in the decision-making processes in the Eurogroup and in the preparatory work conducted by the Eurogroup Working Group; they feel excluded from decisions that have a direct and immediate effect on them in the current situation and from decisions affecting the overall future of the eurozone and the EU in general (von Oндarza 2012). They feel that non-euro

countries have since 2010 confronted them repeatedly with a *fait accompli*, which they were not able to influence or reverse.

#### **Lesson 4: Differentiation organized within the EU reduces the challenges of a differentiated Europe**

Most institutional, legal and political challenges related to differentiated integration can be eased if cooperation is 'organized' inside the European Union (on the basis e.g. of Article 136 TFEU or through the flexibility instrument of enhanced cooperation). Flexibility within the EU framework: (i) respects and benefits from the Union's single institutional framework; (ii) preserves the prerogatives and powers of the European Commission, the European Parliament and the European courts; (iii) limits the 'anarchic' and uncontrolled use of flexible forms of cooperation; (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 inclusiveness and openness towards Member States (originally) not participating ('pre-ins' and 'outs'); (vi) ensures a high level of democratic scrutiny/legitimacy through the involvement of the European Parliament; (vii) enables the continuous development of the EU's *acquis* in line with the requirements of the EU Treaties; and, most significantly, (viii) reduces the overall risk of a rupture or even confrontational split between the 'pre-ins'/'outs' and the 'ins'.

One rather recent development could have a particular effect on the prospects for differentiated integration within the EU: the application of the instrument of *enhanced cooperation* since the entry into force of the Lisbon Treaty (transnational divorce; EU patent; Financial Transaction Tax) has proven that the strict conditions laid down in the EU Treaties can be met and that the existing legal and institutional provisions can work in practice (Philippart 2003; Emmanouilidis 2005a; Kuipers 2012; von Ondarza 2012). The recent experience makes it rather likely that the instrument of enhanced cooperation, which allows a minimum number of Member States (nine) to cooperate more closely on the basis of a clear set of preconditions, rules and procedures concerning the authorization, operation and widening of cooperation as well as the involvement of 'outs', will be applied in even more cases in the future.

#### **Lesson 5: Risks of differentiation outside the EU are reduced if cooperation follows the notion of an intergovernmental avant-garde**

Closer cooperation outside the EU bears a number of potential risks: (i) challenges to the EU's institutional coherence; (ii) lack of democratic scrutiny at both the national and European level; (iii) potential negative spill-overs on other policy areas (e.g. Single Market); (iv) danger of a (deep) split between 'ins' and 'outs' in case the latter feel excluded; (v) potential obstacles concerning the 're-integration' of a cooperation originally initiated outside the EU into the Union's legal and institutional framework.

However, past experience has repeatedly shown that closer cooperation needs in some cases – as an *ultima ratio* – 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 (Schengen/Prüm; social policy; Treaty on Stability, Cooperation and Governance (TSCG) also known as 'fiscal treaty' or 'fiscal compact treaty').

In such cases, EU integration has, at the end of the day, profited if cooperation outside the treaty framework has followed the notion of an *intergovernmental avant-garde*, which is (i) open to all Member States willing to join, (ii) involves or even strengthens the role of EU institutions, (iii) refrains from setting up new parallel institutions outside the Union, and (iv) aims to integrate the legal norms adopted and the cooperation initiated outside the EU into the treaty framework at the soonest possible moment.

Previous cases like the Schengen or Prüm Treaties have proven that the chances to incorporate an *acquis* into the EC/EU framework are higher if the participating states keep the 'outs' constantly informed and involved and if key EU states actively promote a 'quick' incorporation of outside cooperation into the Union's framework. In the past, Member States have concluded intergovernmental treaties outside the Union's framework before a new round of treaty change aiming to use the next possibility to integrate the respective cooperation into the EU's *acquis*.

### **Lesson 6: Limited number of opt-outs are no anathema**

There is no need to 'demonize' the allocation of opt-outs if this is confined to a restricted number of cases concerning a limited number of Member States. In the current situation, three countries have been granted substantial opt-outs: Denmark (AFSJ, EMU, CSDP, citizenship), Ireland (Schengen, AFSJ (opt-in)), and the UK (Schengen, AFSJ (opt-in), EMU).

The granting of opt-outs is a perfect example of a *Europe à la carte* as opt-out countries choose in which fields of cooperation they do not want to participate and in some cases they are even granted the right to 'opt in' providing them the opportunity to join in and implement certain legislative acts despite their opt-out. This form of 'cherry picking' makes the EU more complicated, less transparent, and in some cases even less coherent and less solidary.

However, at the end of the day, even a 'radical instrument' such as an opt-out can result in integrationist dynamics for a number of reasons. First, the attribution of opt-outs has in the past been a necessary political prerequisite for deepening cooperation, as the opt-out country would have not accepted a higher level of integration if it had not been granted an exemption.

Second, the granting of opt-outs has led to an integrationist dynamic including even opt-out countries as the widespread use for example of the opt-in by the UK and Ireland in the area of Justice and Home Affairs has shown (Adler-Nissen/Gammeltopf-Hansen 2010; Funda 2011; Monar 2011; von Ondarza 2012). Yet, the granting of opt-ins has, on the other hand, reduced the pressure on respective Member States to fully join a particular policy area.

Finally, one should bear in mind that the allocation of opt-outs does not mean that an *acquis* adopted will not apply to future Member States, which is a major difference compared to e.g. the instrument of enhanced cooperation, since acts and decisions adopted in the framework of the latter do not form part of the EU's overall *acquis* and are thus 'only' binding for the participating states and not automatically also for future EU countries.

### **Lesson 7: New intergovernmental treaties/arrangements follow notion of an intergovernmental *avant-garde***

The response to the euro crisis has led to the conclusion of a number of intergovernmental treaties outside the EU framework (European Financial Stability Facility (EFSF); European Stability Mechanism (ESM); TSCG) and to new arrangements beyond the traditional 'community method' (Euro Plus Pact), which – according to some commentators – could lead to a more permanent 'two-speed' or even 'two-tier' Europe increasing the gap between euro and non-euro countries.

These risks should not be underestimated. However, the new treaties/arrangements have largely adhered to the above-mentioned notion of an *intergovernmental avant-garde*:



- *No new, parallel institutional structure:* The intergovernmental treaties and arrangements put in place since 2010 have not led to the creation of a new parallel institutional framework outside the EU, which could undermine the Union's existing institutional architecture. The 'only' substantial innovation, which took place within the Union's structures, relates to the creation of the so-called *Euro Summit* bringing together the Heads of State or Government of the euro area, together with the President of the European Commission (Article 12 TSCG). But even in this case, EU governments and institutions have been eager to strengthen the links between 'ins' and 'pre-ins'/'outs' by agreeing to a number of provisions: (i) meetings of the Euro Summit should take place after European Council meetings; (ii) the President of the Euro Summit is elected at the same time as the European Council President, which increases the changes that both posts will also in future be held by the same person; and (iii) non-euro countries would participate in at least one Euro Summit per year and in all discussions related to the "modification of the global architecture of the euro area and the fundamental rules that will apply to it in the future" (Article 12.3 TSCG).
- *Strengthening/involvement of existing EU institutions:* The measures aiming to overcome the euro crisis have not led to a weakening of existing EU institutions. On the contrary, key responses to the crisis have strengthened in particular the position of the European Commission, which plays a stronger role in the framework of the enhanced Stability and Growth Pact and a key role in the European Semester, the Macroeconomic Imbalance Procedure, the Fiscal Compact (included in the TSCG), and in the context of national 'rescue programmes' where the Commission is part of the 'troika'. In the framework of a lending of organs (*Organleihe*), the European Court of Justice has been also attributed a key role in the context of the Fiscal Compact (Article 8 TSCG) on the grounds of Article 273 of the Treaty on the Functioning of the European Union (TFEU). However, despite the involvement/strengthening of EU institutions, one should not omit, that the European Parliament has more than once since 2010 run the risk of being politically side-lined – particularly in the early phase of the process aiming to advance the EU towards a *Genuine Economic and Monetary Union*.
- *Involvement of non-euro countries:* EU institutions and Member States (including both the 'ins' and 'pre-ins') have in the course of the crisis actively sought to avoid a rupture or even split between euro- and non-euro countries. The 'pre-ins', have since 2010 exerted strong pressure on the Euro-17 to avoid a decoupling of non-euro countries from major developments in the eurozone, which at the end of the day will have strong repercussions also for countries that have not (yet) introduced the common currency. EU institutions and governments have been eager to keep non-euro countries closely aligned to the enhanced system of economic governance. Six non-euro countries have joined the Euro Plus Pact (Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania) and eight non-euro countries have signed the TSCG (Bulgaria, Denmark, Hungary, Latvia, Lithuania, Poland, Romania, Sweden). It seems likely that additional innovations currently discussed, such as the introduction of a new "fiscal capacity" or the idea that Member States should enter into "individual arrangements of a contractual nature" with the EU institutions, will also foresee the involvement of non-euro countries. However, the 'devil lies in the detail': the 'pre-ins' are e.g. concerned that a separate budget/fund might negatively impact the Multiannual Financial Framework (MFF) (e.g. through a reduction of cohesion funding) and that a new fiscal capacity could provide even more 'assistance' to the current euro-zone members and thus (further) undermine a level-playing field in the EU27 (Emmanouilidis 2012b).
- *Repatriation clause in the TSCG:* The signatories of the fiscal treaty have agreed that within five years, at most, following its entry into force, the necessary steps will be taken to incorporate the substance of the TSCG into the EU's legal framework ('repatriation clause'; Article 16 TSCG). This is a clear indication that Member States aim to integrate legal norms adopted outside the EU into the Union's treaty framework,

which at some not to distant point in time will require an amendment of the Union's primary law.

### **Lesson 8: Differentiation in the context of the euro crisis occurred under exceptional circumstances**

The higher level of cooperation among euro countries since 2010 has been initiated and implemented under very specific circumstances: the unprecedented dangers of the crisis for the common currency and for the EU in general have put enormous pressures on Member States to come up with 'crisis recipes', which required also some particular (re)actions among and concerning in particular the Euro-17 (EFSF, ESM, 'six pack', 'two pack', Euro Summit). At the same time, non-euro countries (grudgingly) 'accepted' more differentiation, as the economic, financial and political costs of a failure to rescue the common currency would have had a (highly) negative impact on them and on European integration in general.

A potential (further) de-escalation of the crisis could change the general conditions with respect to more integration/differentiation in EMU for a number of reasons. First, a crisis de-escalation might reduce the readiness of non-euro countries to accept a higher level of integration/differentiation in the euro area, especially if 'pre-ins' feel discriminated against and excluded by the 'ins'. In this context, the devil again lies in the detail, as euro and non-euro countries have to seek compromise solutions with respect to individual measures, which affect not only euro but directly or indirectly also non-euro countries. One prominent recent example relates to the introduction of an ECB-based "single supervision system" for European banks, which – even if it is applied 'only' to financial institutions in the eurozone – has potential (strong) effects on the banking system in non-euro countries. Second, should the EU be able not only to manage but eventually overcome the crisis, one can expect that 'pre-ins' will eventually foster their efforts to join the common currency in the foreseeable future. Third, from the perspective of the Euro-17, one can expect that an easing of the crisis could to some extent take away pressure from euro countries to further deepen EMU integration at the highest possible speed. As the systemic risk of a euro implosion seems to have declined since the summer of 2012, there are already first signs of fatigue and complacency, which could undermine efforts to continue strengthening the more immediate crisis shields and to further deepen *sui generis* fiscal, economic and (ultimately) political integration (Emmanouilidis 2012b).

Taking into account the potential consequences of a de-escalation of the crisis, there is some reason to believe that the pressures to increase the level of differentiation within the euro area between 'ins' and 'outs' might in the foreseeable future be less strong than in 2010-2012. In the end, a potential introduction of the common currency in more Member States – which is in the interest of both euro and non-euro countries – could in the longer term substantially decrease the overall level of differentiation in the EMU/EU.

### **Lesson 9: New debate about 'negative differentiation'**

The euro crisis has provoked a new debate about the potential perspectives and consequences of 'negative differentiation' (Giering/Emmanouilidis 2003), i.e. the possibility of a Member State either exiting the European Union or disassociating itself from certain policy areas. The speculations about a potential 'Grexit' or 'Brexit' have sparked a widespread debate about the likelihood and about the financial, economic and political costs/benefits of an EU Member State leaving the EU/euro.

An 'EU exit' is legally possible on the basis of the withdrawal clause (Article 50 Treaty on European Union (TEU)), which since the Lisbon Treaty foresees the voluntary exit of a country from the EU (not from the euro!). After the country in question has notified the European Council of its intention to withdraw, the two sides – i.e. the exiting state and the

EU – would have to negotiate and conclude an agreement “setting out the arrangements of its withdrawal, taking into account of the framework for its future relationship with the Union.”

The history of European integration does not provide any precedents and it is thus by no means clear how a withdrawal from the EU would be concretely organized in practice and how a “future relationship” between the exiting country and the EU could look like. However, three principle variants seem possible: (i) association (plus); (ii) partial membership; or (iii) limited membership/associate membership (see also Atilgan/Klein 2006; Bechev/Nicolaidis 2007; Emmanouilidis 2008b; Lippert 2006 and 2008).

Provided that both sides concur, an agreement between the exiting state and the EU could lead to some form of **association (plus)** similar to or going even beyond the status of countries aligned with the Union through the European Economic Area (EEA), which is the most developed framework for relations between EU and non-EU countries (Varwick/Windwehr 2007). Whatever form of bilateral or multilateral arrangement the EU and the exiting state would agree on, one key feature would characterize such a relationship: associated countries do not enjoy the right to participate in the internal process of EU decision-making, which remains the sole privilege of EU Member States.

Going beyond a ‘mere’ association, the exiting country and the EU could also agree on some form of **partial membership** in one or more policy areas, which would allow a country exiting the EU to (continue to) participate in certain policy areas – provided that both sides would agree to such a complex arrangement. ‘Partial members’ would participate or at least have the ability to (strongly) influence the Union’s decision-making process from the inside and would have to financially contribute to the policy-relevant budget. Partial members would thus not be ‘degraded’ to mere recipients of the EU’s *acquis* (like in the case of the EEA), but would be attributed a substantive dimension of EU membership, which was hitherto reserved to full EU members (see Emmanouilidis 2008b).

Ideas along the lines of partial membership have already been proposed in the past. However, these proposals did not address countries exiting the EU but were rather aimed to explore new ways to align neighbouring countries with the EU below ‘full membership’ (e.g. “Security Partnership” proposed by Charles Grant in 2006; “Gradual Integration” proposed by Cemal Karakas in 2005; “Junior Membership” proposed by Franz-Lothar Altmann in 2005; or “Extended Associated Membership” proposed by Wolfgang Quaisser and Steve Wood in 2004). All these proposals, which transcend both the traditional ‘association’ and ‘enlargement paradigms’ have never been put into practice as EU members and institutions have refrained from introducing any kind of ‘alternative forms of belonging’ beneath the level of full and unlimited EU membership. However, the exit of a country from the EU could provide the withdrawing country with enough leverage and the remaining Member States with enough interest to put in place some form of ‘partial membership’ in certain policy areas – provided that both sides hold that they could profit from such an arrangement.

‘Negative differentiation’ must not always lead to the exit of a country from the EU but could rather result in a (further) disassociation from one or more policy areas in the framework of some sort of **limited membership** (Emmanouilidis 2008a), **membership minus** (Lippert 2008) or **associate membership** (Duff 2012). All these concepts have one basic idea in common: the respective country remains (or becomes) a member of the EU but subject to key limitations. The exact nature and institutional details of a limited membership would have to be defined and negotiated among all EU Member States. They could range from an exclusion from certain policy areas through e.g. the granting of (additional) opt-outs leading to a more ‘differentiated *acquis*’ or they could go further including e.g. the introduction of a “formal second class membership” (Duff 2012) laid down in the treaties and involving *inter alia* also a limited participation in the EU

institutions. Any one of these alternatives would make the EU more complex and – in the worst case – even threaten the functioning of the Union.

All of the above-mentioned variants could also open up new perspectives of differentiated integration for non-EU countries beneath the level of a full and unlimited EU membership. The debate about 'alternative forms of belonging' is not new, it is with us at least since the early 1990s, when the countries of Eastern Europe started to knock on the EC/EU's door and many inside the club had their doubts whether the EC/EU would be ready to respond to their neighbours' requests. However, alternatives beyond mere association and beneath full membership were never put into practice due to strong and valid arguments against them on both sides (see Emmanouilidis 2008b). However, an increased level of differentiation might well increase the likelihood that alternative forms of belonging become more realistic in case the boundaries between full membership, limited membership, partial membership or association plus become increasingly diffuse.

### 3. SEVEN KEY LESSONS FOR THE (NEAR) FUTURE

On the basis of the above analysis, one can ask what lessons EU governments and institutions should draw from the (recent) past for the (near) future of differentiated integration and here especially for the integration and differentiation perspectives concerning the future of EMU. The following seven key lessons seem particularly relevant:

- There is a need to 'de-dramatise' the debate about differentiated integration. One needs to explain to a wider public that 'multiple speeds' is no new phenomenon in the EU and that closer cooperation among those who are willing and able is the right way to proceed as long as differentiation adheres to three core principles: openness, inclusiveness and purposefulness. In other words: differentiated integration should (i) be open to all Member States willing and able to join, (ii) closely involve and align the existing EU institutions and the 'outs', and (iii) be perceived and construed not as an end in itself but rather as a (temporary) means to overcome a situation of stalemate aiming to improve the effectiveness and the functioning of the EU.
- The use of differentiated integration should not follow a specific conception of the EU's *finalité*. On the contrary, a debate about the Union's ultimate finality would be counter-productive in the present situation due to the conceptual schisms among and within Member States. Taking a lesson from history, differentiated integration should rather pursue a functional approach on the grounds of a convincing, future-oriented 'narrative' laying down the need for a further deepening of cooperation especially in the context of EMU as a means to overcome the eurozone crisis.
- Any further deepening of cooperation among euro countries should be organized inside the EU framework in order to (i) benefit from the EU's single institutional framework; (ii) limit the dangers deriving from any form of 'anarchic differentiation'; and (iii) ensure democratic scrutiny either at European and/or the national level. The EU should further exploit the possibilities provided by the instrument of *enhanced cooperation*, while carefully respecting the legal boundaries set by the Treaties, ensuring in particular that enhanced cooperation does not undermine the internal market (Article 326 TFEU).
- Those elements of differentiation, which have been initiated outside the Union since 2010, should be integrated into the EU sooner rather than later. The latter should apply especially to the 'fiscal treaty', the substance of which should be incorporated into the EU Treaties at the soonest possible moment in line with Article 16 TSCG. The amendment of the EU's primary law might require an *ordinary treaty revision procedure* (Article 48 TEU) involving most probably also a European Convention followed by an intergovernmental conference and ratification in all Member States. Alternatively, the European Council could also apply the *simplified revision procedure* – as it has in the

course of crisis already done with respect to Article 136 TFEU –, provided that the amendment is restricted to all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union.

- If it is not possible to organize a further deepening of fiscal and economic integration within the EU's legal framework due to the opposition of individual Member State, EU governments and institutions should once again make sure that cooperation is organized along the lines of an *intergovernmental avant-garde*. In other words, any kind of additional, *ultima ratio* intergovernmental arrangements – along the lines proposed e.g. by Jean-Claude Piris or the Tommaso Padoa-Schioppa group – should be open to all EU countries willing to join, involve or even strengthen the existing EU institutions, refrain from the creation of new parallel structures, and – first and foremost – aim to integrate the *acquis* adopted outside the EU into the Union's treaty framework at the soonest possible moment.
- In the process towards a *Genuine Economic and Monetary Union* EU institutions and Member States need to steer clear of steps fostering the creation of a 'two-tier EU' involving any kind of involuntary second-class membership. In more concrete terms, there is a need to: (i) involve non-euro countries as much as possible in the deliberations and decisions concerning the future of EMU, which could *inter alia* also include a stronger alignment of 'pre-ins' with the work conducted in the Eurogroup and in the Eurogroup Working Group; (ii) refrain from the creation of 'insurmountable barriers', which would make it more difficult for 'pre-ins' to join the common currency in the foreseeable future; (iii) avoid the creation of parallel institutions outside the EU framework excluding non-euro countries. In more concrete terms, EU governments should refrain from setting up a separate parliamentary formation outside the European Parliament (no 'euro parliament' or 'euro commission'; Piris 2011). However, a potential extension of EP rights concerning the euro area might eventually result in some form of distinction between MEPs from euro and non-euro countries in an attempt to enhance democratic legitimacy. Yet, concrete proposals aiming to strengthen democratic accountability along these or other lines cannot be comprehensively discussed and decided before there is more clarity about the concrete additional measures/innovations foreseen in the three main building blocks of a 'Genuine EMU' (integrated financial framework, integrated fiscal framework and integrated economic policy framework).
- In more fundamental terms, EU Member States and institutions should ultimately aim to decrease the overall level of differentiation in the EU and especially in EMU. The bulk of Member States, which have a treaty obligation to join the common currency, should be attracted and persuaded to join the euro in the foreseeable future. The eurozone crisis has proven that the common currency has – next to the internal market – become the core of European integration and the non-inclusion of a substantial number of EU countries should be overcome in the course of this decade.

## REFERENCES

- Adler-Nissen, Rebecca/Gammeltoft-Hansen, Thomas, 2010: "Straitjacket or Sovereignty Shield? The Danish Opt-out on Justice and Home Affairs and Prospects after the Treaty of Lisbon", *Danish Foreign Policy Yearbook*, pp. 137-161.
- Altmann, Franz-Lothar, 2005: „EU und westlicher Balkan – Von Dayton nach Brüssel: ein allzu langer Weg?“, *SWP-Studie S 1*, January 2005, Berlin.
- Atilgan, Canan/Klein, Deborah, 2006: „EU-Integrationsmodelle unterhalb der Mitgliedschaft“, *Arbeitspapier der Konrad-Adenauer-Stiftung*, Nr. 158/2006, May 2006, Berlin/Sankt Augustin.
- Balfour, Rosa/Schmid, Dorothée, 2008: A Union for the Mediterranean, disunity for the EU?, *EPC Policy Brief*, Brussels.
- Biscop, Sven, 2008: "Permanent Structured Cooperation and the Future of ESDP", *Egmont Paper 20*, Brussels.
- Bechev, Dimitar/Nicolaidis, Kalypso, 2007: "Integration without Accession: The EU's Special Relationship with the Countries in its Neighbourhood". Report for the European Parliament, October 2007, Oxford.
- CEPS, EGMONT and EPC, 2007: "Enhanced Cooperation: From Theory to Practice", in *The Treaty of Lisbon: Implementing the Institutional Innovations*, November 2007.
- CEPS, EGMONT and EPC, 2007: *The Treaty of Lisbon: A Second Look at the Institutional Innovations*, Brussels.
- de Búrca, Gráinne/Scott, Joanne (eds.), 2000: *Constitutional Change in the EU: Form Uniformity to Flexibility?*, Oxford/Portland.
- Duff, Andrew, 2012: *On Governing Europe*, Policy Network, London.
- Emmanouilidis, Janis A., 2005: „Der Weg zu einer neuen Integrationslogik – Elemente flexibler Integration in der Europäischen Verfassung“, in Weidenfeld, Werner (ed.), *Die Europäische Verfassung in der Analyse*, Gütersloh, pp. 149-182.
- Emmanouilidis, Janis A., 2008a: "Conceptualizing a Differentiated Europe". *ELIAMEP Policy Paper No 10*, June 2008, Athens.
- Emmanouilidis, Janis A., 2008b: "Alternatives between Full Membership and Non-Membership – Fata Morgana or Silver Bullet?", Athens.
- Emmanouilidis, Janis A., 2010: "Die Differenzierung Europas – Fluch oder Segen?", in Algeri, Franco/Kammel, Arnold (eds.), *Strukturen globaler Akteure. Eine Analyse ausgewählter Staaten und Regionen*, AIES Beiträge zur Europa- und Sicherheitspolitik, Baden-Baden, pp. 157-184.
- Emmanouilidis, Janis A., 2012: *Europe's Ambitious Muddling Through*, Project Syndicate, Prague/New York.
- Emmanouilidis, Janis A., 2012b: "Stepping stone to an ambitious deal? – the results of an 'intermediate summit'", *EPC Post-Summit Analysis*, Brussels.

- Falkner, Gerda, 1998, „Das Maastrichter Sozialprotokoll: Differenzierte Integration wider Willen“, in Breuss, Fritz/Griller, Stefan (eds.), *Flexible Integration in Europa: Einheit oder "Europa á la carte"?*, Vienna/New York.
- Funda, Tekin, 2012: *Differentiated Integration at Work: The Institutionalisation and Implementation of Opt-outs from European Integration in the Area of Freedom, Security and Justice*, Baden-Baden.
- Giering, Claus/Janning, Josef, 2001: „Flexibilität als Katalysator der Finalität? Die Gestaltungskraft der 'Verstärkten Zusammenarbeit' nach Nizza“, *integration 2*, Berlin, pp. 146-155.
- Grant, Charles, 2006: "Europe's blurred boundaries: Rethinking enlargement and neighbourhood policy", Centre for European Reform (CER), October 2006, London.
- Gutenberg, Johann zu, 2004. „Die Beziehungen zwischen der Türkei und der EU – eine ‚Privilegierte Partnerschaft‘“, *Aktuelle Analysen* Nr. 33, Hanns-Seidel-Stiftung, Munich.
- Hillion, Christophe, 2007: "Negotiating Turkey's Membership to the European Union: Can the Member States do as they please?", *European Constitutional Law Review* 3 2007, pp. 269-284.
- Holzinger, Katharina/Schimmelpfennig, Frank, 2012: "Differentiated Integration in the European Union: Many Concepts, Sparse Theory, Few Data", in *Journal of European Public Policy* 19 2, pp. 292-305.
- Hrbek, Rudolf, 2011: "Der Integrationsprozess und das Konzept 'differenzierter Integration'", in Diedrichs, Udo et al (eds.), *Europe Reloaded: Differentiation or Fusion?*, Baden-Baden, pp. 78-109.
- Karakas, Cemal, 2005. „Für eine Abgestufte Integration – Zur Debatte um den EU-Beitritt der Türkei“, *HSFK Standpunkte* 4/2005, Frankfurt am Main.
- Kietz, Daniel/Maurer, Andreas, 2006: "From Schengen to Prüm", *SWP Comments* 15, Berlin.
- Kuipers, Jan-Jaap, 2012: "The Law Applicable to Divorce as Test Ground for Enhanced Cooperation", *European Law Review* 18 2, pp. 201-229.
- Lippert, Barbara, 2006: „Assoziierung plus gesamteuropäische Aufgabenkonföderation: Plädoyer für eine selbstbewusste EU-Nachbarschaftspolitik“, *integration 2/2006*, Berlin, pp. 149-157.
- Lippert, Barbara, 2008: *Alternatives between Full Membership and Non-Membership – Fata Morgana or Silver Bullet?*, Athens.
- Louis, Jean-Victor, 2001, "Differentiation and the EMU", in De Witte, Bruno/ Hanf, Dominik/Vos, Ellen (eds.), *The Many Faces of Differentiation in EU Law*, Antwerpen/Oxford/New York, pp. 43-64.
- Maurer, Andreas/Haerder, Max, 2007: "Alternatives to Full Membership of the EU", in Warwick, Johannes/Lang, Kai-Olaf (eds.), *European Neighbourhood Policy. Challenges for the EU-Policy Towards the New Neighbours*, Opladen/Farmington Hills, pp. 197-218.
- Maurer, Andreas, 2007: „Alternativen Denken! Die Mitgliedschaftspolitik der Europäischen Union vor dem Hintergrund der Beziehungen zur Türkei“, *SWP-Aktuell* 36, Berlin.

- Minchev, Ognyan, 2005: *Towards a European Commonwealth of Nations – A Strategic Response to the EU 'Enlargement Fatigue'*, Institute for Regional and International Studies (IRIS), Sofia.
- Monar, Jörg, 2011: "The 'Area of Freedom, Security and Justice': 'Schengen Europe', Opt-outs, Opt-ins and Associates", in Dyson, Kenneth/Sepos, Angelos (eds.), *Which Europe? The Politics of Differentiated Integration*, Basingstoke, pp. 279-292.
- Müller-Graff, Peter, 2007: "Differenzierte Integration'. Konzept mit sprengender oder unitarisierender Kraft für die Europäische Union", *integration* 30 2, Berlin, pp. 129-139.
- Philippart, Eric, 2003: "Optimising the Mechanism for 'Enhanced Cooperation' within the EU: Recommendations for the Constitutional Treaty", *CEPS Policy Brief* Nr. 33, Brussels.
- Piris, Jean-Claude, 2011, *The Future of Europe: Towards a Two-Speed EU?*, Cambridge.
- Stubb, Alexander, 1996: "A Categorization of Differentiated Integration", *Journal of Common Market Studies* 34 2, pp. 283-295.
- Thym, Daniel, 2004: *Ungleichzeitigkeit und europäisches Verfassungsrecht*, Baden-Baden.
- Tommaso Padoa-Schioppa group, 2012: *Completing the Euro: A road map towards fiscal union in Europe'*, Paris.
- Quaisser, Wolfgang/Wood, Steve, 2004: "EU Member Turkey? Preconditions, Consequences and Integration Alternatives", *forost Arbeitspapier* Nr. 25, Munich.
- Quille, Gerrard, 2008. "The Lisbon Treaty and its implications for CFSP/ESDP", Directorate-General for External Policies of the Union, European Parliament, February 2008, Brussels.
- Varwick, Johannes/Windwehr, Jana, 2007: „Norwegen und Schweiz als Modellfälle differenzierter Integration?", *Aus Politik und Zeitgeschichte (APuZ)* 43/2007, pp. 15-20.
- Verhofstadt, Guy, 2006: *United States of Europe*, London.
- von Ondarza, Nicolai, 2012: "Zwischen Integrationskern und Zerfasserung: Folgen und Chancen einer Strategie differenzierter Integration", *SWP-Studie* S 20, Berlin.