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**THE FUTURE
OF A MORE
DIFFERENTIATED
E(M)U –
NECESSITIES,
OPTIONS,
CHOICES**

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THE FUTURE OF A MORE DIFFERENTIATED E(M)U – NECESSITIES, OPTIONS, CHOICES

by Janis A. Emmanouilidis*

Abstract: This paper argues that future EMU reforms will require a higher level of differentiation between Euro and non-Euro countries. However, the creation of a closed *core Europe* involving merely the “willing and able,” which would establish a two-tier Europe with different institutionalized classes of membership, is neither likely nor desirable. It should not be the *Leitbild* (guiding concept) steering the way towards a more differentiated Europe. The EU and its members should rather adhere to the notion of *functional-pragmatic differentiation* by applying instruments of differentiated integration foreseen by the EU Treaties. However, given the experience since 2010, member states are likely to continue to revert to intergovernmental avenues of differentiation outside the EU’s framework. In this case, it would be advisable to make sure that future agreements/arrangements follow the logic and principles of an *intergovernmental avant-garde* to avoid some of the risks linked to a higher level of cooperation outside the Union’s legal framework..

Keywords: EU integration | EMU | Eurozone crisis | Economic governance

Introduction

Differentiated integration has been, is and will remain a key feature of European construction. The European Union (EU) is characterized by different levels of cooperation and integration between its members and the degree of flexibility is likely to further increase in future. Not all member states share the same currency; some EU countries are not part of Schengen; some do not participate in all aspects related to the Area of Freedom, Security

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and Justice; others are only partially involved in the Union's security and defence policy; and a majority in the United Kingdom (UK) has voted for Brexit, opening the door to "differentiated disintegration." Given these realities, the central question is not whether there will be a differentiated Europe, but rather what it will look like.¹

Debates about a Europe of multiple speeds have been characterized by oversimplifications, threats and fears, and semantic as well as conceptual misunderstandings. Although differentiated integration is no magic potion and should not be considered an end in itself, it provides a strategic opportunity in a bigger, more heterogeneous and more complex EU. History has repeatedly shown that more intense cooperation among a smaller group of countries or the fact that the Union's *acquis* does not apply in all EU countries (opt-outs) can help to overcome a situation of stalemate and improve the functioning of European cooperation. From a purely functional perspective, differentiation is a (strategic) necessity if the EU wants to remain effective and cope with current and future challenges.

Today, many commentators, analysts and policy-makers ask themselves whether differentiated integration might be a viable way forward, especially when it comes to deepening cooperation and integration in the context of Economic and Monetary Union (EMU). To adequately answer this query, there is a need to address some basic questions: Is there a need to further deepen the level of cooperation within the EMU? If this is the case, are we likely to witness such reforms in the foreseeable future? And what role could or rather should differentiated integration play in this context?

1. State and prospects of E(M)U affairs – a half-baked project

Is there a need to further improve Eurozone governance? The clear-cut answer is: yes. Despite all efforts at relieving the Euro area crisis, there is a need to further deepen cooperation. More than 25 years since the Maastricht Treaty, the EMU is still a half-baked project and the Euro is not shielded from potential future storms, despite the reforms of recent years.

¹ For an overview of different potential forms of differentiated integration see Janis A. Emmanouilidis, "Conceptualizing a Differentiated Europe", in *ELIAMEP Policy Papers*, No 10 (June 2008), <http://www.eliamep.gr/en/european-integration/conceptualizing-a-differentiated-europe>.

The state of affairs is further complicated by the circumstance that the Euro area crisis lies at the core of a more fundamental crisis, which undermines some of the historic achievements of European integration. Europe is facing a “poly-crisis” that includes a number of highly complex, multi-rooted and deeply interlinked crises, involving not only a financial and economic crisis but also the geopolitical crisis with Russia and the severe instability in Europe’s direct neighbourhood, the looming migration and refugee crisis, the security challenges linked to (Islamist) terrorism, as well as the many uncertainties related to Brexit and the future of transatlantic relations in the new Trump era.² None of the crises have been structurally resolved and the EU and its members suffer from the collateral damage caused by the poly-crisis.

Today, fears of a “Euro implosion” have receded, but many of the underlying challenges remain unresolved. Given the circumstance that the EMU construction remains incomplete and the fact that many of the structural reform elements proposed in the so-called Four Presidents’ and Five Presidents’ Reports³ have not been implemented, there is a danger that the Euro crisis might re-escalate. Despite all progress achieved in past years, the common currency is still not strong enough to weather possible major storms in future, with the biggest current potential danger deriving from political destabilization in one key member state or another combined with a further strengthening of anti-EU and anti-Euro sentiments.

But what are the realistic prospects for additional EMU reforms in the foreseeable future? Some maintain that the EU should perform a (major) qualitative leap. Advocates of this approach argue that the Euro crisis has provided ample evidence that the Union does not have the institutional structures, legal competences or tools and instruments it needs to confront the challenges it faces.

There are strong arguments as to why a higher level of integration would increase the EU’s ability to sustainably overcome the Euro area crisis and tackle the other pillars of the poly-crisis. Moves in this direction would enhance the Union’s competences and equip its institutions with more

² For a detailed analysis of the “poly-crisis” see Janis A. Emmanouilidis and Fabian Zuleeg, *EU@60 – Countering a Regressive and Illiberal Europe*, Brussels, European Policy Centre (EPC), October 2016, p. 3-11, http://www.epc.eu/pub_details.php?cat_id=1&pub_id=7020.

³ Herman Van Rompuy et al., *Towards a Genuine Economic and Monetary Union* (Four Presidents’ Report), 5 December 2012, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/134069.pdf; Jean-Claude Juncker et al., *The Five Presidents’ Report: Completing Europe’s Economic and Monetary Union*, June 2015, <http://europa.eu/!cY66kX>.

discretionary powers. It would provide EU institutions with the ability to transcend and balance national interests, which would allow the Union to break out of the negative crisis spiral in which it is currently trapped.

But despite strong arguments, making a major leap does not appear to be a viable option, at least not in the current political climate. The vast majority of national political elites and European citizens are (highly) reluctant to enhance the powers of supranational institutions by pooling core elements of national sovereignty at European level.

The fragmentation and distrust between member states, the perception that European cooperation is no longer a win-win exercise, widening gaps in the EU both in real terms and in terms of thinking, the lack of social and political cohesion within countries, and widespread frustration with the EU as it stands playing into the hands of anti-EU/Euro forces are all elements of collateral damage caused by the poly-crisis and make it highly unlikely that the EU and its members will be ready and able to make a (major) qualitative leap in the foreseeable future. On the contrary, any attempt to significantly deepen the level of integration now could backfire given the major differences between member states.

As we are not likely to witness significant moves towards a (much) more integrated Europe, what should we expect in the foreseeable future? The most likely answer: more of the same. Since the outbreak of the poly-crisis, the EU and its members have followed a “kick-the-can-down-the-road” approach. Given the state of the Union and the many disagreements among the EU-27 and considering the experience of recent years, it is more than likely that the Union will continue to muddle through. This does not mean stand still; it rather implies an incremental step-by-step process driven by the immediate pressures of the poly-crisis, based on lowest common denominator approaches without a clear proactive vision of the future – neither with respect to the future path nor the *finalité* of European integration.

2. What role for what kind of differentiated integration?

Given the current state of the Union characterized by an unresolved poly-crisis and the limited prospects for a further deepening of European integration among the EU-27, one should at this juncture not expect much immediate progress with respect to the future of EMU. This is not the result of any lack of ideas and proposals, but rather due to profound disagreements as well as an insufficient political will and courage of EU governments to further deepen financial, economic and fiscal integration.

In simple words: the EU seems to be stuck and the question is whether differentiated integration might be a way out of this impasse? The plain and simple answer: it must be – at least with respect to the future of EMU. The Euro is the product of differentiated integration and will continue to be so for some time to come, as one cannot expect all non-Euro countries (“pre-ins” or “outs”) to join the common currency in the foreseeable future, although they should be motivated to eventually become part of the Euro area.

As a consequence of the current state of affairs, the Euro countries will have to enhance their cooperation in an effort to (further) increase the resilience of the common currency. But what kind of differentiated integration could or rather should be pursued? To answer this question, there is a need to analyse and evaluate different potential forms of differentiated integration by focusing on three main options: (1) creation of a (closed) core Europe; (2) functional-pragmatic differentiation within the EU framework; or (3) following the model of an intergovernmental avant-garde operating outside the Union’s Treaties.

Option 1: creation of a (closed) core Europe – neither likely nor desirable

Given the Union’s (increasing) heterogeneity and major differences among EU countries, there are many who argue that the “willing and able” member states should make a qualitative leap forward on their own, if others do not share the same expectations, aspirations and values. The creation of a core Europe (*Kerneuropa*⁴) should enable the countries that are ready to further progress on the path towards a higher level of integration, to do so. Most advocates of this line of thinking maintain that the countries of the Euro area should constitute the core of a much more differentiated Europe, aiming to substantially deepen economic and fiscal as well as political integration.

The discussions surrounding the idea to create a core Europe are absorbing a substantial amount of political energy in the debate about the future of European integration. For its proponents, it is the only way out of the current impasse. For others, who fear that they might be left behind, proposals aiming to create a core group involving merely the “willing and able” and excluding other member states, should never be pursued – for them the creation of a core is pure anathema.

⁴ See Wolfgang Schäuble and Karl Lamers, *Überlegungen zur europäischen Politik*, Bonn, CDU/CSU, 1 September 1994, <https://www.cducsu.de/upload/schaeublelamers94.pdf>.

But all these discussions seem to be in vain. Under the current conditions, the creation of a core involving a limited number of EU/Euro countries is neither likely nor desirable.

The creation of a core Europe is politically unrealistic for a number of basic reasons: first, even the most integration-friendly countries – within or outside the Euro area – would, at least at this point in time, strongly hesitate to make any qualitative leap, which would imply a further loss/pooling of economic and fiscal sovereignty. But the creation of a core Europe would not make sense without some federal momentum. Second, the countries most likely to be included in any core group (e.g. the six founding members or the 19 countries of the Euro area) are very heterogeneous, lack political cohesion, and have very different views on the future of the E(M)U. Third, no group of countries would be ready to actively exclude other member states, and some key capitals, including first and foremost Berlin, would strongly oppose any kind of move that could signal a (new) division of Europe into a core and a periphery. Even if they support a multi-speed Europe, they want to avoid the impression that differentiated integration implies the creation of a “two-tier Europe,”⁵ which creates different classes of membership and closes the door to certain countries.

But the creation of a core Europe is not only unrealistic: it is also undesirable, as it could fuel a deep rift in Europe between those who are part of a core and those who are not. For good reasons, differentiated integration has in the past not led to an institutionalised core, i.e. it has not resulted in a small, coherent group of countries, which has formed an exclusive avant-garde actively separating itself from other member states. EU institutions and governments have always avoided the creation of qualitative divisions between member states by adhering to three basic principles when applying the means of differentiated integration: (i) avoid the creation of insurmountable barriers between the “ins” and “outs;” (ii) secure the strong involvement of “outs” as far as possible; and (iii) shy away from creating permanent, parallel and separate institutions involving only those countries who participate in a particular form of differentiated integration. These principles could be undermined, if a group of countries went ahead with establishing a core Europe involving only the “willing and able,” against the will of the “outs.”

Having said all that, the creation of a “new Union” involving the “willing and able” might become a necessity should a worst-case scenario materialize. A

⁵ See Jean-Claude Piris, *The Future of Europe. Towards a Two-Speed EU?*, Cambridge, Cambridge University Press, 2012, p. 6-7.

meltdown of the common currency or a full implosion of the EU might create the need to start from scratch by creating a new entity potentially involving merely a limited number of countries. In this case, one could envisage the establishment of a "new Union" with novel institutional structures and mechanisms of governance. However, even in this extreme case – which seems highly unlikely from today's perspective – one should not assume that its founding members would advocate the creation of a new supranational entity with much stronger executive, legislative and judicative institutions. It might well be that a "new Union," potentially involving also the creation of a common currency, would follow a purely intergovernmental rather than supranational path.

Option 2: functional-pragmatic differentiation within the EU framework – desirable but not likely

In the past, differentiation has not followed a single master plan with a predefined idea of the Union's ultimate *finalité*. On the contrary: differentiated integration has been most successful when it has adhered to a functional-pragmatic approach aiming to overcome concrete blockades of individual member states in specific areas of (potential) cooperation. The result has been a complex map of differentiated integration involving different groups of different countries in different policy areas rather than one core group separating itself from the rest.

Most institutional, legal and political challenges related to a Europe of multiple speeds can be eased if cooperation is "organized" inside the framework of the EU Treaties applying instruments and avenues foreseen by and legally possible according to the Union's primary law (e.g. enhanced cooperation; permanent structured cooperation (PESCO); constructive abstention; opt-outs etc.).

The fact that these instruments are subject to clearly specified rules and constraints enshrined in the EU Treaties minimizes the potential negative effects of a more differentiated EU. In more concrete terms, differentiation within the Union's 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 Court of Justice; (iii) limits the anarchic and uncontrolled use of flexible forms of cooperation and integration (no "cherry-picking"); (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 and (when applicable) national parliaments; (vii) enables the continuous development of the Union'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 "pre-ins"/"outs" and "ins."

Given their complexity, the usage and application of instruments of differentiated integration included in the EU Treaties is a rather difficult and cumbersome exercise in practice. However, the experience of recent years has proven that avenues of differentiation foreseen by the Union's primary law are possible, provided that the (involved) member states have the political will to pursue such paths.

Option 3: intergovernmental avant-garde outside the EU Treaties – a potential necessity under crisis pressure

However, 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. There have been numerous cases where a limited number of member states decided or felt obliged – given the (severe) opposition of certain EU governments – to intensify their cooperation outside the EU. The Schengen Treaty, cooperation in the area of social policy or, more recently in the context of the Euro area crisis, the intergovernmental Treaty on Stability, Cooperation and Governance in the Economic and Monetary Union (TSCG) (also known as the fiscal treaty), the Euro Plus Pact, the intergovernmental agreement creating a Single Resolution Fund in the context of banking union, or the establishment of the ESM, have all been points in case.

But closer cooperation outside the EU Treaties bears a number of potential risks: first, it can challenge the EU's institutional coherence, especially if cooperation outside the Union involves the creation of new, separate and parallel institutional bodies; second, it might suffer from a lack of democratic scrutiny at both national and European level if parliaments are not (sufficiently) involved; third, it can lead to negative spill-overs on other policy areas including, first and foremost, the Single Market; and, last but not least, cooperation outside the Union's framework entails the danger of a (deep) split between "ins" and "outs" if the latter feel excluded.

The chances of the abovementioned risks materializing in practice can be limited if cooperation outside the treaty framework follows the notion of an "intergovernmental *avant-garde*," which is open to all member states willing

to join, involves or even strengthens the role of EU institutions, refrains from setting up new separate and parallel institutional structures outside the Union, and aims to integrate the legal norms adopted and the cooperation initiated outside the EU into the treaty framework at the earliest possible moment.

With respect to EMU, the intergovernmental treaties and arrangements put in place since 2010 have to a large degree adhered to the abovementioned characteristics of an intergovernmental avant-garde.⁶ First, although new bodies were set up, this has not led to the creation of a new parallel institutional framework outside the EU, which could have undermined the Union's existing institutional architecture. Second, EU institutions and national governments have in the course of the crisis actively sought to avoid a rupture or even split between Euro- and non-Euro countries by making sure that new arrangements are open to all member states and by keeping non-Euro countries involved or at least closely aligned to the enhanced system of economic governance including the banking union, the Euro Plus Pact or the TSCG.⁷ Third, the participating member states have agreed that the substance of the fiscal treaty and the Single Resolution Fund should be incorporated into the Union's legal framework, although it is by no means sure that EU governments will live up to this obligation in the foreseen period, given that national capitals are opposing a new round of treaty change.

Conclusions: The right choices for a more differentiated E(M)U

An analysis of today's state of the Union shows that there is a need to further deepen EMU integration. Despite all efforts to resolve the Euro area crisis, it would be premature to assume that the common currency is strong enough to weather possible future storms. But the aspirations of member states to resolve the remaining structural deficiencies are low. Efforts to further enhance EMU much beyond the current level of integration have run out steam. Muddling through has been the dominant mantra since the end of

⁶ See also Janis A. Emmanouilidis, "Which Lessons to Draw from the Past and Current Use of Differentiated Integration?", in Ingolf Pernice et al., *Challenges of Multi-Tier Governance in the European Union. Effectiveness, Efficiency and Legitimacy*, Brussels, European Parliament, March 2013, p. 62-77, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-AFCO_ET\(2013\)474438](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-AFCO_ET(2013)474438).

⁷ Four non-Euro countries have joined the Euro Plus Pact (Bulgaria, Denmark, Poland, and Romania) and six non-euro countries have signed the TSCG (Bulgaria, Denmark, Hungary, Poland, Romania, and Sweden).

2012.

However, at some point in time, reform pressures are likely to increase – although nobody can exactly predict when this will happen and under which circumstances. But when this moment arrives, the EU and its members, especially those sharing a common currency, will be compelled to initiate additional reforms regarding economic, financial and fiscal governance. These reforms will require a higher level of differentiation between those who share a common currency and those who are (still) outside the Euro area. The question is thus not whether we will witness a more differentiated E(M)U, but what it will or rather what it should look like.

The present analysis argues that the creation of a core Europe involving merely the “willing and able,” which would establish a two-tier Europe with different institutionalized classes of membership, is neither likely nor desirable. It should not be the *Leitbild* (guiding concept) steering the way towards a more differentiated Europe. The debates about creating a core Europe are not only in vain, they absorb a substantial amount of political energy and they further undermine political cohesion among the EU-27 and within the Euro-19, which makes it even more difficult to deal with let alone solve Europe’s poly-crisis.

Instead of aspiring towards some kind of a closed core Europe, the EU and its members should rather attempt to apply instruments and avenues of differentiated integration foreseen and applicable within the Union’s legal framework. Differentiated integration has been most successful when it has adhered to the notion of a functional-pragmatic differentiation aiming to overcome the resistance of individual member states in specific areas of (potential) cooperation. Most institutional, legal and political challenges related to a Europe of multiple speeds can be eased if cooperation is organized inside the framework of the EU Treaties, given that the available instruments and procedures are subject to clearly specified rules concerning the inception, the functioning and the widening of differentiated cooperation.

However, the present political climate and the fact that EU governments are currently not ready to substantially reform the EMU, makes it unlikely that the Union and its members will, at least at this juncture, use the existing instruments of differentiated integration to substantially deepen economic, financial and fiscal integration beyond reform efforts already on track. A next potential window of opportunity might open after the 2017 elections in key EU countries including the Netherlands, France, Germany, and maybe also Italy. However, this would require, first and foremost, an agreement between Berlin and Paris, which presupposes that the new French President and the

newly elected German government will be ready and able to overcome some of the major differences between France and Germany and agree on how to further intensify cooperation among countries sharing the same currency. A Franco-German compromise would be the indispensable prerequisite for obtaining the support of other (key) member states.

But one should not be too optimistic that EU governments – both inside and outside the Euro area – will be ready to proactively commence a new round of major EMU reforms if events do not force them to do so. The experience since 2010 has repeatedly proven that the EU and its members feel obliged to take bold decisions only when immediate crisis pressures force them to do so. Along the lines of this logic, a potential re-escalation of the Euro area crisis might compel governments to further deepen their level of economic, financial and fiscal cooperation. In this case, one can expect that member states will once again revert to intergovernmental avenues of differentiated integration outside the EU Treaties. Experience has repeatedly shown that closer cooperation needs in some cases – as an *ultima ratio* – to be organized outside the EU framework to make a step forward instead of waiting indefinitely for a small step inside the Union.

When this moment arrives, it would be advisable to make sure that intergovernmental agreements/arrangements initiated and implemented outside the treaty framework follow the logic and principles of an intergovernmental avant-garde to avoid some of the risks linked to an even higher level of cooperation outside the Union's legal framework. These risks can be limited if intergovernmental cooperation is open to all EU countries, involves a strong role for EU institutions, avoids the creation of parallel institutional structures, and aims to integrate the legal norms adopted outside the EU into the Union's legal framework at the earliest possible moment. It is important to highlight the need to adhere to these guidelines, given that some influential political actors are proposing a (further) strengthening of intergovernmental mechanisms, which would not only sideline EU institutions but also question the viability of additional EMU reforms and thus the long-term future of the common currency.

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2017 is set to be a crucial year for the European Union (EU) and its Member States. Multiple crises, key electoral appointments and the celebrations of the 60th anniversary of the signing of the Treaties of Rome are among the most important events in the EU agenda. Against this backdrop, the Istituto Affari Internazionali (IAI) and the Italian Ministry of Foreign Affairs and International Cooperation (MAECI), in cooperation with the Centro Studi sul Federalismo (CSF) and in the framework of IAI's strategic partnership with the Compagnia di San Paolo, have launched a new research project: EU60: Re-founding Europe. The Responsibility to Propose. The initiative seeks to re-launch the EU's integration process, and will involve researchers from leading European think tanks who will contribute policy papers analysing specific political or institutional dimensions of the EU.



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