

Which lessons to draw from the past and current differentiated integration ?

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I. STARTING POINT AND KEY ASSUMPTION

'Differentiated integration' (DI) and 'multi-speed Europe' are **already a reality** as the existing EU 27 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**. But **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, one should not omit the challenges posed by differentiated integration, especially if cooperation is conducted on a permanent basis outside the EU framework (see also below).

Key responses to the **euro crisis** since 2010 (i.a. EFSF/ESM; 'fiscal compact treaty'; Euro Plus Pact; 'Stability and Growth Pact III' ('six pack'; 'two pack'); banking supervision) **have and will most likely continue to lead to a higher level of integration** especially among the countries of the Eurozone. The '**road map**' aiming at a "Genuine Economic and Monetary Union" due to be presented by the four presidents (Presidents Van Rompuy, Barroso, Juncker and Draghi) to the EU Summit in December 2012 **will most likely include additional measures leading to a higher level of differentiated integration** on the basis of the Lisbon Treaty and maybe even beyond the Union's current primary law. The **final outcome** of this process is by no means predictable and its success is by no means certain, but at the end of day it **will most likely have to lead to some form of *sui generis* fiscal and economic union**.

II. ELEVEN KEY LESSONS FROM THE PAST AND FROM MORE RECENT DEVELOPMENTS

The **debates** about *directorates, triumvirates, pioneer and avant-garde groups, core groups, centres of gravity, Europe á la carte* etc. have been to a large extent **characterized by oversimplifications, by threats and fears, and by semantic and conceptual misunderstandings**, which overshadow the fact that **differentiated integration provides a strategic opportunity in a bigger and more heterogeneous EU**. The experience of the last decades (i.a. Schengen, 'Euro', Prüm Treaty) has repeatedly proven that closer cooperation between member states has been a (strong) **catalyst for a deepening of EU integration**.

Differentiated integration within the EU has **not followed a single master plan** with a predefined idea of Europe's *finalité*. Differentiated integration has rather followed the principle of **functional-pragmatic differentiation** aiming to overcome blockades of

certain member states in specific areas of (potential) cooperation inside or outside the EU Treaties. In addition, differentiated integration has been understood and applied as a **last-resort mechanism** – as an *ultima ratio* if ‘progress’ could not be achieved with all member states at the same time.

Differentiated integration 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. On the contrary, the different areas and forms of differentiated integration (including Schengen; ‘Euro’; CSDP; Charter of Fundamental Rights; or enhanced cooperation concerning divorce law or the EU patent) involve different groups of member states. 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. Finally, differentiated integration has **not led to** another potential variant of differentiated integration: **the creation of a ‘new Union’** or a **‘Union within the Union’** with a separate institutional structure and a separate set of primary law.

Most **institutional and political challenges** related to differentiated integration **can be eased if cooperation is ‘organized’ inside the EU**. Flexibility within the EU framework: **(i)** respects and benefits from the Union’s single institutional framework; **(ii)** preserves the powers and composition 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 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 importantly, **(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 differentiated integration within the EU: the **use of the instrument of enhanced cooperation** since the entry into force of the Lisbon Treaty (transnational divorce; EU patent; and potentially regarding the 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. The recent experience makes it rather likely that the instrument of **enhanced cooperation will be applied even more in the future**.

One should **not demonize the allocation of opt-outs** if it is limited to a relatively small number of member states. The granting of opt-outs has in the past been the only way to overcome the opposition of certain member states towards a further deepening of integration. At the end of the day, even a ‘radical instrument’ such as an **opt-out can result in integrationist dynamics** throughout the Union, 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. However, one should not omit that the **granting of ‘opt-ins’ has reduced the pressure** on respective member states **to fully join** a particular form of (differentiated) cooperation.

Closer **cooperation outside the EU bears** a number of **potential risks** (including in particular: challenges to the EU's institutional coherence or the danger of a (deep) split between 'ins' and 'outs') and has in the past been **sought only as an *ultima ratio***. In such cases, EU integration has profited if cooperation outside the EU has followed the notion of an ***intergovernmental avantgarde***, which is **open to all member states** and **aimed at integrating the legal norms** adopted and the cooperation initiated outside the EU **into the EC/EU at the soonest possible moment**. Previous cases like the Treaty of Prüm have proven that the chances to incorporate a legal and political *acquis* into the EC/EU framework are higher if the participating states keep the 'outs' constantly informed/involved and if key EU states actively promote a 'quick' incorporation of outside cooperation into the Union's framework. In this context and in the framework of the 'euro rescue', it is worth mentioning that the signatories of the "Treaty on Stability, Coordination and Governance" have agreed that within five years at most following its entry into force, the necessary steps will be taken to insert the substance of the intergovernmental treaty into the EU's legal framework ('repatriation clause'; Article 16).

The management of the **euro crisis** has **led to a number of intergovernmental arrangements/treaties** outside the EU framework (EFSF; ESM; Euro Plus Pact; Treaty on Stability, Coordination and Governance (TSCG) (also known as 'fiscal treaty' or 'fiscal compact treaty'), **which – according to some commentators – could lead to a more permanent 'two-speed' or even 'two-tier' Europe** between euro and non-euro countries.

One should not underestimate this risk. However, **euro countries have been eager to keep non-euro countries and EU institutions closely aligned** to these and other intergovernmental arrangements. 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). With respect to the involvement of EU institutions, the Commission has been attributed a particular role in the implementation of the fiscal compact included in the TSCG. In addition, and in order to strengthen the link between 'ins' and 'pre-ins'/'outs', it was agreed that (i) meetings of the Euro Summit would take place after European Council meetings, that (ii) the President of the European Council would also preside the meetings of the heads of state and government of the Euro-17, and that (iii) non-euro countries would participate in at least one Euro Summit per year.

In sum, **euro countries have actively sought to avoid a rupture or even split** between euro- and non-euro countries. In addition, **non-euro countries**, especially the so-called 'pre-ins', have since 2010 **exerted strong pressure on the Euro-17 not to be decoupled** from major developments in the Eurozone, which at the end of the day have strong consequences also for countries which have not (yet) introduced the common currency. Last but not least, the measures aiming to overcome the euro crisis have not led to a weakening of supranational EU institutions. On the contrary, **key reactions to the euro crisis have strengthened in particular the role 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, in the Macroeconomic Imbalance Procedure and in national 'rescue programmes' as part of the troika. With respect to the role of supranational institutions, one should not omit, that the **European Parliament runs the**

risk of being sidelined in some of the processes aiming to lead to a “Genuine Economic and Monetary Union”.

With respect to the euro crisis, one should not overlook the circumstance, that the **higher level of cooperation among euro countries since 2010 has been initiated and implemented under very specific circumstances**: the unique pressures on the common currency and on the EU in general have put **unprecedented pressure** on member states to come up with ‘crisis recipes’, which required particular (re)actions among euro countries. 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. However, the **‘devil 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 also non-euro countries**. One prominent recent example is banking supervision, 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.

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 exiting the Union or – as discussed in the case of Greece – the euro. The latter is not explicitly foreseen by the current EU Treaties. However, since the Lisbon Treaty the EU’s primary law (Article 50 TEU) for the first time includes a withdrawal clause, which states that after the country in question has notified its intention to withdraw to the European Council, the two sides – i.e. the exiting state and the EU – will 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.”

III. KEY SET OF QUESTIONS FOR THE FUTURE

On the basis of the above listed key lessons from the past and from more recent developments one can identify six major sets of questions/challenges for the future:

Set of questions 1: Avoiding a ‘two-tier Europe’

What needs to be done in order to avoid the creation of a ‘two-tier’ or ‘two-level Europe’? How can non-participating countries be closely aligned to new forms of differentiated integration without undermining the efficiency of the system? How to ensure that the deepening of economic and fiscal integration will not create new entry barriers for ‘pre-ins’ who at some point of time want to or rather have to join the euro? How can one avoid that measures taken to ‘rescue’ the common currency will not negatively affect non-euro countries?

Set of questions 2: Reform of EU Treaties

Will the attempts to create a “Genuine Economic and Monetary Union” at some point in time require an amendment of the EU Treaties? How and when can intergovernmental arrangements/treaties adopted since 2010 (in particular the TSCG) be integrated into the EU framework? Does the EU in the years to come have to engage in yet another major treaty reform exercise including a European Convention? If yes, will this reform process be

limited to economic and fiscal matters or will it entail also a more fundamental reform of the EU's primary law going well beyond issues related to the current euro crisis?

Set of questions 3: Institutional challenges

Will a deepening of economic and fiscal integration require the reform of existing institutional arrangements or even the creation of new institutions/bodies? Will a higher level of differentiation between euro and non-euro countries require a distinction between members of the European Commission and/or members of the European Parliament coming from countries which have or have not introduced the euro? Would the latter not undermine institutional coherence and foster distrust between 'ins' and 'pre-ins'/'outs' with possible negative spill-over effects for the EU as a whole? In more radical terms, is there a need to set up new separate, parallel institutions for the Eurozone? Would the latter for example include setting up a separate institutional arrangement providing legitimacy for decisions taken within the Eurozone ('euro chamber')? How can national parliaments be associated more closely to decisions taken among euro countries? Should one consider the introduction of a separate 'euro budget' and if yes, what should it be 'used' for and how big should it be?

Set of questions 4: Consequences of a potential inability to deepen economic and fiscal integration within the EU framework

What to do if individual members states outside the euro are not willing to accept a further deepening of integration towards a "Genuine Economic and Monetary Union"? Assuming that the worst of the euro crisis can be overcome, would this lead to a more hesitant position of non-euro countries *vis-à-vis* a higher level of differentiation within EMU? Would opposition from non-euro countries lead to new and more permanent intergovernmental arrangements/treaties outside the EU framework? In more general terms, what happens if a future new Treaty, which provides the legal grounds for a higher level of integration especially among euro countries, cannot enter into force due to ratification failure in one or more member state? Would this ultimately lead to the creation of a 'new Union' or a 'Union within the Union' with new institutional structures on the basis of a separate treaty?

Set of questions 5: New 'forms of belonging'

Will a higher level of differentiated integration within the EU lead to new 'forms of belonging' beneath the level of full membership or even to cases of 'negative differentiation' due to a voluntary withdrawal of member states from the EU or from certain key policy areas? What are the potential consequences of possible cases of 'negative differentiation' for the EU and for a country exiting the Union? Would new 'forms of belonging' beneath full membership create opportunities for non-EU countries to align themselves more closely with the Union without becoming a fully-fledged member ('membership minus'; 'partial membership'; 'limited membership')?

Biography

Janis A. Emmanouilidis is a Senior Policy Analyst and Head of Programme at the European Policy Centre (EPC) in Brussels. He has published widely on the European Union's overall political and institutional development, the perspectives of differentiated integration in an EU 27+, the Union's foreign, security and defense policy, and on EU enlargement. His latest book, *The Delphic Oracle on Europe*, co-edited with Loukas Tsoukalis, was published by Oxford University Press in May 2011. Janis has been an advisor to various governments, EU institutions; European parties and NGOs on a broad range of issues related to European integration and has commented widely on EU affairs in the media. Janis has studied international relations and strategic studies in the UK and economics in Germany.