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Multi-speed Europe?

Differentiated integration in the external relations of the European Union

Juha Jokela (ed.)

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Contents

AFSJ	Area of Freedom, Security and Justice
BIS	Bank for International Settlements
CCP	Common Commercial Policy
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
CoE	Council of Europe
DAC	OECD Development Assistance Committee
DCFTA	Deep and Comprehensive Free Trade Area Agreement
DI	Differentiated Integration
EATC	European Air Transport Command
ECB	European Central Bank
ECOFIN	The Economic and Financial Affairs Council
EDA	European Defence Agency
EDF	European Development Fund
EEA	European Economic Area
EEAS	European External Action Service
EFTA	European Free Trade Association
ENP	European Neighbourhood Policy
EMU	Economic and Monetary Union
EU	European Union
EUROMARFOR	European Maritime Force
ESDP	European Security and Defence Policy
ESM	European Stability Mechanism
FAO	Food and Agriculture Organization of the United Nations
FSB	Financial Stability Board
FYROM	Former Yugoslav Republic of Macedonia
GNI	Gross National Income
IBM	Integrated Border Management
ICC	International Criminal Court
ICO	International Civilian Office
IMF	International Monetary Fund
JHA	Justice and Home Affairs
NATO	North Atlantic Treaty Organization
NORDEFCO	Nordic Defence Cooperation
PESCO	Permanent Structured Cooperation
QMV	Qualified Majority Voting
OCCAR	Organisation for Joint Armament Cooperation
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development

SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association Process
TFEU	Treaty on the Function of the European Union
UK	United Kingdom
UNGA	United Nations General Assembly
US	United States
WEAG/WEAO	Western European Armaments Group/Organization
WEU	Western European Union
WTO	World Trade Organization

Introduction

Juha Jokela

Differentiated integration is argued to be on the rise in Europe. The European financial and economic crisis has resulted in extraordinary political decisions suggesting a deeper economic integration. Importantly, the member states' engagement with the crisis decisions as well as reforms of the Economic and Monetary Union (EMU) differ. While the strengthened EU economic governance system affects all the member states, tighter rules, surveillance and sanctions apply to the euro members. The euro area is also at the forefront of the envisaged reforms of the EMU, yet its third stage remains open to all EU member states. Moreover, the euro members have largely borne the financial brunt of the recent crisis decisions, which has also highlighted the area's political weight in the ongoing political processes. Finally, the non-euro members are currently re-evaluating the costs and benefits of joining the single currency. Even though the euro area has enlarged during the crisis years, and many EU members are keen to keep this option on their political agenda, some member states — most notably the United Kingdom (UK) — are re-assessing their relationship with the EU, while others have re-articulated their reservations towards the euro.

Differentiated integration is not a new phenomenon in European integration. It has taken various forms over a wide range of policy areas in the past. Importantly, differentiated integration is not merely an internal question for the EU as the Union's organization and

AUTHOR'S NOTE: I would like to thank Johanna Jacobsson, Kaisa Korhonen, Samu Kurri, Juha Raitio and Teemu Rantanen for their comments on earlier drafts of this report.

internal dynamics also shape its external actorness. Consequently, various forms of differentiation are present in the EU's external relations and policies. These reflect opt-outs from, and limited or non-participation in, certain key EU policy fields with external ramifications. These include for instance the EMU, the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), as well as the Area of Freedom, Security and Justice (AFSJ) and the Schengen area. Moreover, spontaneous and ad hoc cooperation takes place among the EU member states in their relations with the world. Often this occurs within, or at least loosely connected to, the EU framework. Importantly, differentiated integration has been predominantly viewed as an enabler in the EU's external relations. It has allowed the EU to move forward and promote joint action in the absence of full unanimity. Relatedly, it has been seen as a manageable phenomenon, which should fade away over time. The present developments and trends nevertheless suggest that it might be developing into a deeper and more permanent feature of the integration. Therefore it is both imperative and timely to map out and analyze it in the different policy fields of the Union.

The objective of this report is to take a closer look at differentiated integration in the EU's external relations and, in so doing, to discuss its implications for the EU's aspirations to forge more unitary and effective external policies. To this end, the contributors to this report will examine the different features of differentiated integration that currently exist in various fields of the EU's external relations. Relatedly, they will analyze whether the level of differentiation is increasing and, if so, what the key drivers of the current trends are.

DIFFERENTIATED INTEGRATION: TOWARDS AN EVER CLOSER UNION?

Differentiation has occurred and developed at several junctures of European integration ever since the Treaty of Rome. The present debates on the subject date back to the British rebate debate and the construction of a single market in the 1980s. British aspirations to secure exceptions to the general EU funding rules, and reluctance to move beyond the single market and towards the EMU and a political union, envisaged a notion of variable geometry suggesting special arrangements and differentiation within European integration. The establishment of the European Union in Maastricht in 1992 fortified

the debate on differentiated integration. The Danish and British treaty-based opt-outs resulted in ideas of a multi-speed and multi-tier Europe. The former suggested an increasing degree of flexibility in the integration process, allowing member states to move forward at a different pace towards the same goal. The latter indicated a more permanent differentiation among the member states and questioned the suggested common vision suggesting an ever closer union.

The British interventions have often been placed at the multi-tier and so-called *à la carte* end of a continuum of differentiated integration. They have highlighted member states' freedom to pick and choose those elements of integration deemed to be in their interests. At the other end are the German and French political views advocating a multi-speed model in which member states hold a common goal of more Europe for all, and some members show the way by moving forward first. This group of member states has been argued to form a centre of gravity or a pioneering group in moving towards an ever closer union.

While these structural aspects of differentiation have featured prominently in both past and present political and scholarly debates, a more nuanced discussion on the subject arose in the 1990s. The treaty changes since the Maastricht Treaty reflect an attempt to deal with and utilize differentiated integration through its institutionalization. While the political language related to the treaty changes referred to "flexibility", the Amsterdam Treaty introduced the legal concept of "closer cooperation", which was reformulated in the Nice Treaty as "enhanced cooperation". Relatedly, the Amsterdam Treaty introduced the possibility of "constructive abstention" in the CFSP to overcome some of the problems associated with the unanimity rule. These developments represented an attempt to establish a unified and treaty-based practice for differentiated integration in the EU. In the Nice and Lisbon Treaties the enhanced cooperation was also further clarified and extended to the CFSP, and a new form of institutionalized differentiated integration saw the light of day in terms of the possibility of permanent structured cooperation among EU member states in defence policy.

The enhanced cooperation has been utilized in aspirations to develop EU-wide patent legislation and to clarify divorce procedures in cases where the spouses come from different EU countries. Currently, the financial transaction tax proposal put forward by the Commission and agreed upon by France, Germany and nine other member states has been prepared through enhanced cooperation; and

the mechanism has also been flagged up in relation to some of the key EMU reforms. Interestingly, it has not been utilized within the CFSP. Relatedly, various forms of defence cooperation have emerged among the EU members, yet permanent structured cooperation has not been advanced. Moreover, the extraordinary political decision taken to safeguard the single currency has taken various forms including intergovernmental arrangements only loosely connected to the EU framework. Against this background, the formal and institutionalized forms of differentiation have not resulted in the demise of informal and ad hoc arrangements.

In various political and scholarly texts the terms differentiated and flexible integration are used interchangeably to refer to the different modes of integration adopted by different EU member states. Official texts and political statements often highlight flexibility instead of differentiation due to its more positive connotations. Whereas flexibility can be understood as an enabling factor in the upward-oriented integration process, differentiation might suggest disagreement and even a downsizing of the European project. Importantly, flexibility is often also associated with the treaty- based EU system (i.e. the notion of "flexibility within the Treaties"). Differentiation, however, also enables action at the margins of, or outside, the EU treaty-based framework.

In this report, differentiated integration is the term of choice, having been developed as a concept in European integration studies during recent decades.[1] As such, it constitutes a more precise and analytically sound term aimed at capturing, and accounting for, the various forms of differentiation associated with European integration.

DIFFERENTIATED INTEGRATION IN THE EU'S EXTERNAL RELATIONS

It is often noted that the complexity of the EU's external relations results from a thorny competence question. Member states have delegated some key policy fields with external ramifications at the EU

1 STUBB, ALEXANDER C-G. (1996) *A Categorization of Differentiated Integration*, in Journal of Common Market Studies 34(2): 283–295; DYSON, KENNETH AND ANLELOS SEPOS (2010) *Which Europe? The Politics of Differentiated Integration*, Basingstoke: Palgrave Macmillan; LEUFFEN, DIRK, BERTHOLD RITTBERGER AND FRANK SCHIMMELFENNING (2013) *Differentiated Integration: Explaining Variation in The European Union*, Basingstoke: Palgrave Macmillan.

level. While some fields have been placed under the EU's exclusive competence, others are powers shared with the member states, or remaining within the competences of the member states. As a consequence, the question of EU coordination, policy coherence and representation is a pertinent and difficult one in its external relations.

The picture is, however, further complicated by differentiated integration; namely, the member states' varying commitments to the key features and institutional arrangements of European integration. While all member states are fully engaged in the single market, and the EU trade policy has been placed within its exclusive competence, the member states' engagement in the monetary union varies, for instance. Only 18 member states are currently using the single currency; eight are expected to join later, and two — Denmark and the UK — have a treaty-based right to stay out. Due to the ongoing developments aimed at reinforcing the EMU after the European banking and sovereign debt crisis, the question of external representation of the Eurogroup has been raised. This topic will be taken up in Chapter 1 by Juha Jokela.

Importantly, aspirations to forge common foreign, security and defence policies also contain a clear element of differentiated integration aimed at enabling willing and able members to move forward within these policy fields without the full participation of all EU members. Chapter 2 by Timo Behr and Hanna Ojanen maps out and analyzes the recent developments within this policy field, including the increasing willingness to operate at the margins of, or outside, the EU framework.

The EU's internal organization also affects a number of countries aiming to become EU members or enhance their collaboration with the EU in terms of its neighbourhood policy. As Kristi Raik and Tanja Tamminen argue in Chapter 3, the border between the ins and outs is becoming blurred, as circles of varying degrees of integration are extended beyond the EU member states' territory. From the viewpoint of the outsiders, one of the key questions concerns who will decide which countries belong to which circles of European integration, and what the impact of ongoing reforms on their aspirations to join will be.

Importantly, the report takes a closer look at one of the key policy fields of the EU's external relations which is being shaped by diversity rather than institutionalized differentiation. To this end, Chapter 4 by Marikki Stocchetti ponders why differentiated integration has not been utilized in the development policy of the world's leading donor of official development assistance.

Finally, differentiated integration is also shaping the EU's external borders. Not all member states are part of the Schengen Agreement, which currently constitutes one of the strongest symbols of the EU and its area of freedom, security and justice (AFSJ). Moreover, some non-EU states such as Norway and Iceland are part of the Schengen area. Chapter 5 by Teemu Sinkkonen focuses on some of the recent challenges to the idea of a borderless Europe in relation to outside immigration, internal migration and the shortcomings of national and EU institutions in governing the area.

The report will argue that there is, to date, some evidence that the level of differentiation is indeed increasing in the EU's external relations as well. Moreover, these trends are partly related to the ongoing developments connected to the EU's financial and economic crisis. The report suggests that depending on the level and duration of differentiation embedded in the current reforms of the EMU, some consequences might occur in due course. First, the deteriorating economic outlook for the EU and the unfolding events in its neighbourhood are calling into question the idea of a borderless EU, and may lead to the reinforcement of its external borders. Second, the deepening economic governance within the eurozone prompts inevitable questions related to its external implications such as the Eurogroup's external representation. Third, the deeper EMU is likely to tighten the criteria for euro membership and thereby shape the EU enlargement policy with some implications for the neighbourhood policy and other association arrangements as well. Finally, while there is limited evidence to suggest that the deepening integration within the euro area would spill over to the other key policy areas with external ramifications, this possibility cannot be ruled out.

1

1. Differentiated integration in the EU's external relations: Towards a joint representation of the Eurogroup?

Juha Jokela

INTRODUCTION

Differentiated integration — the various speeds and tiers of European integration — is shaping the EU's external relations and representation. Moreover, the recent and ongoing changes propelled by the European financial and economic crisis, and the plans aimed at reinforcing the single currency and strengthening the EMU, suggest that differentiation is increasing in the EU. Currently, the euro area is largely seen as forming the core of European integration and EU politics, yet the single currency has remained open to all member states to join when they are ready to do so. These ongoing developments clearly have an external dimension. Most importantly, the debate on the Eurogroup's external representation has been reinvigorated. In the light of this, the European Commission has proposed that the efforts to strengthen the economic governance of the euro area need to be accompanied by a move towards a more unified and coherent external representation of the euro area.

This chapter will focus on the external representation of the EU in general and the suggested move towards a joint representation of the Eurogroup in particular. To this end, it will first set the scene by briefly discussing the recent changes brought about in the EU's external representation by the Lisbon Treaty. It will then set out the current plans to enhance the representation of the euro area and analyze the impact of this in terms of differentiated integration.

THE EU'S EXTERNAL REPRESENTATION AFTER THE LISBON TREATY

The ratification of the Lisbon Treaty in 2009 was a milestone in a long process aimed at streamlining and enhancing the EU's external relations and its representation. The aim of the reform was to enable Europe to perform better in the changing global environment by enhancing a more unitary European external action through one external voice and single message agreed within and delivered by the EU. The Treaty reforms set up new institutions and enhanced coordination among the EU's different policy fields with significant external ramifications. The reforms also created new high-level positions aimed at giving the EU a more visible presence and louder voice externally. Relatedly, the EU was assigned a legal personality, enhancing its opportunity to become a party to international treaties and multilateral arrangements.

The high hopes vested in the reforms proved to be premature, however. The bold political and scholarly statements declaring that a new era had dawned in Europe's relations with the world were soon called into question by the EU's internal and external developments. First, it became obvious that the member states' and EU institutions' take on the significance of the reforms differed over time and space. Although they were able to agree on the reforms, their different views on how the streamlined system was designed to work, as well as what its impact upon them would be, were exposed in the implementation of the reforms. This led to several struggles among the member states and EU institutions. Second, the architects of the reforms were only partly able to envisage the key trends shaping the EU's external environment. Globalization and increasing global competition were seen as the key drivers of the EU reforms. Relatedly, the increasing role of the non-state actors was seen to empower regional organizations in general, and the EU in particular, in an increasingly interdependent world. The accelerated global transformation of economic power relations also underlined an opposite trend, however, in that the relative decline of Europe and the United States has highlighted multipolarity. As a result, the EU has found it increasingly difficult to emerge as one of the major actors in the changing milieu of world economics and politics, in which

traditional and state-centric perceptions of great power relations and rivalry have gained ground in the mindset of the key actors.[2]

Finally, the most visible reforms of the Lisbon Treaty aimed to bridge the more intergovernmental foreign, security and defence policies of the EU Council with the more supranational European Commission's external relations and instruments. The establishment of the European External Action Service (EEAS) with almost 140 delegations in third countries, and international organizations led by a High Representative who is simultaneously a Vice-President of the European Commission, was hoped to lead to better coordination and policy coherence and provide a more unitary external representation for the EU.

In several fields of the EU's external relations the duality of the Union's external representation has been reproduced, however. At the highest level, this is evident in the agreed arrangements highlighting the roles of the Presidents of the European Council and the European Commission in providing external representation for the EU. At the lower level, the High Representative and EEAS perform a key role in traditional foreign policy affairs, the EU's neighbourhood policy and enlargement, for instance. Yet this role is relatively more negligible in the EU's economic external relations, including the field of development. In these fields, the European Commission is often the key actor providing the coordination and external representation of the EU together with the member states. Relatedly, the rotating EU Council presidency has in many cases retained a role in the internal coordination of economic external relations in the ECOFIN Council, for instance, and also managed to be included in the EU delegation alongside the relevant European Commissioner in the international institutions and fora, such as the Group of Twenty (G20) finance ministers meeting and free trade agreement negotiations. Against this background, the EU's external representation continues to be multifaceted, reflecting its internal complexity as well as its external environment.

Internally, the position of the EU and its institutions is strongest within policy fields in which the member states have transferred competences to the EU level and, in so doing, placed them under the EU's exclusive competences. These include the customs union,

2 See GIOVANNI GREVI (2009) *The interpolar world: a new scenario*, Occasional Paper 79, Paris: The EU Institute for Security Studies.

competition policy, monetary policy for the euro area, fisheries policy, and trade policy (Lisbon Treaty, Article 3). The EU's role is also noteworthy in the fields of shared competences with the member states, and in areas within which EU coordination is required or instructed by the Treaties (Lisbon Treaty, Articles 4 and 5). Key examples of the former field with significant external relations implications are the single market, agriculture and forestry, environment, energy, development and humanitarian aid, and the area of freedom, security and justice. The latter categories include economic, employment and social policies. The Treaties also recognize some supplementary policy fields with implications for the EU's external relations such as health, industry, culture and education (Lisbon Treaty, Article 6).

The EU can also be said to be competent in the field of foreign, security and defence policies, including general political affairs. While the possibility and aspiration of common policies and action is clearly stipulated in the Treaties — the Union's "competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence" — the decision to act at the EU level has been left principally in the hands of the member states as the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) are "defined and implemented by the European Council and the Council acting unanimously", unless otherwise instructed by the Treaties.[3] The creation of a "permanent" president of the European Council, the strengthened post of the High Representative and formation of the EEAS were also seen to reinvigorate the member states' participation in the CFSP and provide a sound basis for the joint representation of the EU in this policy field.

The EU's complex internal system becomes further complicated when it meets its external environment: the current global governance architecture and its institutions. Equipped with a legal personality, the EU as a whole can seek an official status in multilateral institutions and arrangements. Full membership of these institutions is, however, often reserved for states, which means that

3 The Treaty of Lisbon (2009). Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:0010:0041:EN:PDF. Accessed: 13 November 2013.

the EU has continued to function also through its member states in those fields that fall under its exclusive competences. The EU has, however, secured membership of some global governance institutions and arrangements, including the Food and Agriculture Organization of the United Nations (FAO), the World Trade Organization (WTO) and the World Customs Union, or gained an (often enhanced) observer status in others such as the United Nations General Assembly (UNGA), the Council of Europe (CoE), the Organization for Economic Cooperation and Development (OECD) and the International Criminal Court (ICC). Interestingly, the EU's status is most state-like within the informal global governance forums. It has been an official member of the Group of Twenty (G20) since the group was formed at ministerial and central bank governors' level in 1999; and it managed to retain its membership when the group was upgraded to the heads of state and government level in 2008.[4]

The internal and external complexities explain the ambiguous nature of the EU's participation in global governance institutions.[5] The EU's interaction with the latter may involve EU institutions such as the European Commission, the European Central Bank and the presidencies of the European Council and Council of the European Union, as well as the High Representative and the EEAS.

The EU's role and representation in global governance is further complicated by the degree of differentiation within the EU. In short, due to various treaty-based opt-outs, as well as mechanisms allowing differentiation with the EU in terms of the member states' engagement and participation in different EU policy fields, an EU action does not automatically include all the member states.

Within the EU's exclusive competences this is clearest in the monetary policy field of the 18 euro area members, vested in the exclusive competences of the European Central Bank (ECB).[6] Here, however, the exceptional and enduring anomaly is the euro area's inadequate representation on the Executive Board of the

4 The EU is the only regional organization granted official membership of the group. It is not, however, able to assume the presidency of the group and host the G20 summits, unlike the 19 state members of the G20. This relates partly to the fact that four EU member states — France, Germany, Italy and the UK — are also members of the G20.

5 JØRGENSEN AND LAATIKAINEN (2013) "Introduction", in *Routledge Handbook on the European Union and International Institutions: Performance, Policy, Power*, edited by KNUD ERIK JØRGENSEN AND KATIE VERLIN LAATIKAINEN, Abingdon: Routledge, p. 2 (pp. 1–11).

6 The representation of the so-called monetary and economic legs of the EMU will be discussed further in the next section.

International Monetary Fund (IMF), within which the ECB has only a limited observer status.[7] On the other hand, other important monetary organizations such as the central bankers' club at the Bank for International Settlements (BIS), the G20 and Group of Seven (G7) at the central bank governors' level, and the Financial Stability Board (FSB), have all successfully incorporated the ECB as a full member.

The EU has an exclusive competence in trade matters, yet some degree of differentiation is present. This results largely from the incomplete nature of the single market, which allows a limited degree of differentiation among member states. The EU's exclusive competence in the field of Common Commercial Policy (CCP) means that in matters covered by this policy the EU's external policies are based on uniform principles towards third countries. Under Article 207 TFEU, the CCP is based on the "achievement of uniformity in measures of liberalization, export policy and measures to protect trade". As a customs union, the EU member states apply identical duties and other regulations of commerce towards third countries, and once goods have entered the single market, they are in free circulation. This, however, excludes so-called intra-EU differentiation in rules with regard to third countries. Moreover, in services trade a degree of differentiation has prevailed, even though services were brought under the CCP and the EU's exclusive competence in the Lisbon Treaty.

Due to the incomplete nature of the EU's internal service market, member-state-specific limitations towards third countries continue to apply. This can be observed in the fact that the EU's trade agreement concessions granted to third countries vary by member state, yet the EU is aiming to provide as uniform service offers to third countries as possible. The EU's long-established exclusive competence in the trade field is also reflected in its external representation. The EU is a member of the WTO alongside 28 member states. The general rule is that only the EU speaks and negotiates at different levels of WTO procedures, while member states have retained their right to be present.[8]

Within the category on shared competences between the EU and its member states, several policy fields and global and regional

7 EMERSON, MICHAEL, ROSA BALFOUR, TIM CORTHAUT, JAN WOUTERS, PIOTR MACIEJ KACZYNSKI AND THOMAS RENARD 2011, *Upgrading the EU's Role as Global Actor: Institutions, Law and the Restructuring of European Diplomacy*, Brussels: Centre for European Policy Studies, p. 42.

8 Ibid. pp. 85–86.

governance institutions demand attention. First, the UNGA as well as its committees, working groups and conferences, touch upon the policy domains of shared competences in a differentiated manner. For instance, the agenda of the sixty-seventh session of the UNGA included items such as (i) promotion of sustainable economic growth (with the subheadings of macroeconomic policy questions of international trade and development; international financial system and development; and external debt sustainability and development) and (ii) globalization and interdependence (with the subheading of international migration and development).[9] Within the topic of sustainable economic growth, the existing and increased differentiation plays an increasingly significant role in the formation and application of the EU's positions in the UNGA. The same kind of reasoning applies to global and regional financial and economic governance institutions such as the G20, G7/8, IMF and OECD, for instance. In terms of the question on international migration, the various opt-outs in the field of the EU's Justice and Home Affairs cooperation and the Schengen system must be noted in the EU's aspirations to speak with one voice, or deliver a single message externally.

Differentiation and flexibility are also clearly manifested in the policy field of foreign, security and defence affairs. As suggested in Chapter 2, the EU's security and defence policy (CSDP) can accommodate a degree of differentiation. Moreover, this also holds true in the field of the EU's foreign policy (CFSP): constructive abstention and enhanced cooperation have been enshrined in the EU treaties to enable the EU to act even if all the member states are not involved for one reason or another.

European foreign policy cooperation also takes place outside or at the margins of the EU system. This kind of cooperation has mainly taken the form of spontaneous-issue core groups and informal caucuses that involve those member states most affected by a particular foreign policy issue. These may be rather loose and temporary coalitions such as the Franco-British cooperation over the Libya crisis, or more permanent and institutionalized such as the EU3 (France, Germany, the UK) cooperation over the Iranian nuclear proliferation, and the various "contact groups" for the Balkans. Many

9 UNGA (2012) *Agenda of the sixty-seventh session of the General Assembly* — Adopted by the General Assembly at its 2nd plenary meeting on 21 September 2012. Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/67/251 Accessed: 12 November 2013.

of these forms of cooperation involve non-EU member states such as the 5+5 cooperation in the Mediterranean, or the Arctic Council. Due to the tendency of some of these groups to "pre-negotiate" European positions, or even represent the EU, some member states have been critical of being excluded from these forms of cooperation. Moreover, the various forms of flexible European foreign policy cooperation have surely contributed to the complexity of the European foreign policy system, and have cast a shadow over the aspiration to forge a unitary EU foreign policy. On the other hand, differentiated integration has been seen as important for European, if not EU, action in the absence of a full consensus within the EU. Relatedly, the EU system has proved to be important for fostering political support for European coalitions of willing countries.

In the light of the above, differentiated integration is indeed shaping the EU's external action and representation. Importantly, this has not been seen as a major obstacle to strengthening the EU's external relations and streamlining its representation. While it has created some challenges for the EU's external action, it has not risen to a level that would render it impossible. In short, the EU member states have been seen to be working towards the same goal, despite the differences in the speed in doing so. Relatedly, and in particular in the field of the CFSP/CSDP, differentiated integration has been seen to enable the EU to act and develop in the absence of unanimity, and despite variation in approaches to the CSDP. The same rationality applies to the EMU and in particular to its monetary leg. The launch of the euro has enabled the EU to act more unitarily in the external domain, even though only 18 out of the 28 member states are currently using the single currency.

DEEPENING THE EMU: TOWARDS THE JOINT REPRESENTATION OF THE EUROGROUP?

The ongoing internal developments and debate on the future of the EMU have some important implications for the EU's external relations, particularly for its aspirations to propel joint policies and representation. The challenges and opportunities are largely linked to the further development of the Economic and Monetary Union. This section will first outline the current state of the external representation of the EMU and then discuss the ongoing processes to reinforce and reform it, and their implications for external

representation. Finally, the section will discuss opportunities and challenges in the light of differentiated integration.

The representation of the so-called monetary leg of the EMU is unified and consistent.[10] The European Central Bank provides the external representation for the single monetary policy in all relevant institutions and contexts. The ECB's role and functions in providing the external representation are incorporated in the treaties. External representation is also clearly defined for exchange-rate matters, which are also an exclusive EU competence. Yet both the ECB and the ECOFIN Council (in practice the Eurogroup) have a role to play in this area, insomuch as Eurogroup members periodically review the exchange-rate developments. The Presidents of the Eurogroup and the ECB take part in these informal meetings. Importantly, the framework for international cooperation on exchange-rate matters has been adjusted to incorporate a monetary union with a central bank but without a government. In other words, the ECB is viewed as a full-fledged central bank among others internationally.

The external representation of the so-called economic leg of the EMU is more complex. This reflects the EU's internal state of affairs, in which competences related to the economic and financial policies are shared, to varying degrees, between the EU and its member states. In the establishment of the EMU and the ensuing developments, the EU member states have largely retained competences in the field of economic policy. It follows that national governments are the key external actors in this area, yet they need to take into account the fact that their economic policies are subject to EU-level coordination. Financial policies form another area where both the EU and national level are competent. Moreover, differentiated integration constitutes further complexities in providing external representation at the EU level on issues of relevance to the EMU. In other words, some issues are relevant for the whole EU such as the single market and financial sector regulation, while others concern only the euro area, such as euro monetary and exchange-rate polices. This means that internally different coordination processes are required, which in turn are reflected in the external representation of these policy areas. This is evident in the G20, for instance, in which the euro area is highly

10 The following analysis draws on the article: "The External Representation of the EU and EMU" in *ECB Monthly Bulletin*, May 2011.
Available at: http://www.ecb.europa.eu/pub/pdf/other/art2_mb201105en_pp87-97en.pdf.
Accessed: 12 November 2013.

relevant for discussions on global macro-economic imbalances, and the whole EU for discussions on the implementation of the regulation of the financial sector.

Another feature of differentiation is the fact that not all EU members are members of all international institutions. While all EU member states are members of the IMF, some are excluded from the OECD, G8/7, G20 and FSB, for instance. These EU members often highlight the importance of the indirect representation provided for them by the EU institutions. The picture is further complicated by the fact that the numerous EU institutions have a role to play in exercising the competences at the EU level. While the ECB is the sole institution that decides and speaks for the single monetary policy, a number of EU institutions are relevant actors in economic and financial affairs. The decision on a common EU position on financial regulation in the G20 may involve the Commission, the ECOFIN Council, the ECB and the newly established European System of Financial Supervision. Relatedly, the representation of a common position is not clearly stipulated and inter-institutional competition may occur, yet the need for clarity has been recognized by different actors.

Current key trends

The global financial crisis that manifested itself in Europe through the European sovereign debt crisis and the banking crisis has triggered development trends that are likely to be reflected in the external representation of the EMU over time. Moreover, the ongoing processes aimed at reinforcing and reforming the EMU primarily concern the euro area.[11] Even if the overall goal that all EU members — except for the UK and Denmark, which hold treaty based opt-outs — will join the final stage of the EMU (i.e. the single currency) when they are ready might still be valid, many have envisaged a deeper and longer differentiation between the insiders and outsiders of the euro area. The remainder of this chapter will deal with some of the opportunities and challenges posed by differentiated integration and the EMU's external representation.

The obvious opportunity embedded in the ongoing developments and differentiated integration is the ability to address some of the

11 KURRI, SAMU (2013) "Updating the EMU: Differentiated economic integration in the European Union", *FIIA Briefing Paper 143*, Helsinki: Finnish Institute of International Affairs. Available at: http://www.fiia.fi/en/publication/372/updating_the_emu/. Accessed: 12 November 2013.

obstacles pertaining to the external representation of the EMU by moving forward with the core or pioneering group of EU members, namely the Eurogroup. As the external representation of the single monetary policy is already clearly established, the innovations enabled by the current reforms of the EMU relate largely to the representation of the economic leg of the EMU.

First, the EU frameworks that govern the economic and financial policies have already been substantially revised. While some of the reforms concern all the EU members, the bulk of the new intergovernmental arrangements and EU legislation are euro-area-specific. The decisions that have been taken to date reflect the key risks discussed since the outset of the EU's monetary union, which has at least partly materialized during the years of crisis. Namely, a stable monetary union requires a deep economic union. Currently, the euro area members have agreed that national discretion in fiscal and macro-economic policies must be geared towards supporting the stability of the EMU. This logic has informed the substantial strengthening of supervisory and sanctions mechanisms at the EU level. The second lesson drawn from the crisis has highlighted the need to establish more credible financial regulation and enhance the EU toolbox in the area of financial crisis management and resolution.

The tighter boundaries on national discretion over economic and financial policies have also reinforced the need to cooperate over external representation. Moreover, the establishment of the European Stability Mechanism (ESM) constitutes a permanent framework for euro area governments to provide (and receive) financial assistance, which is likely to amplify the euro area's voice externally. As the previously launched loan programmes have been provided jointly with the IMF, this underlines the need for a strong and unitary Eurogroup voice in the IMF. The creation of the banking union also comes with some potential external ramifications. The representation of the Single Supervisory Mechanism in relevant international organizations such as the FSB should be clarified. It has been suggested, for instance, that countries which are members of the Single Supervisory Mechanism should reconsider their seats on the FSB, as the ECB is already a member of the latter.[12]

12 VERHELST, STINJ (2013), *Assessing the Single Supervisory Mechanism: Passing the Point of No Return for Europe's Banking Union*, Egmont Paper 58, Brussels: Egmont — The Royal Institute of International Relations, p. 38. Available at: http://www.egmontinstitute.be/paperegm/ep58.pdf. Accessed: 12 November 2013.

The Single Resolution Mechanism and plans to establish a common European deposit guarantee scheme are likely to be represented by the authorities created to govern them. As these key features of the banking union also touch upon the political decision-making of the Eurogroup, such as providing a credible financial backstop for the banking union, the Eurogroup's external representation is likely to emerge as one of the subsequent questions of the ongoing reforms. Moreover, the current plans to move beyond the banking union include suggestions to deepen financial and economic integration, and to create an EU-level fiscal capacity and authority. The external representation of this authority is difficult to envisage at the moment as the governance system of the reinforced EMU has not been resolved.

The fact that the reforms are likely to advance throughout the euro area might empower the intergovernmental features of the emerging system and highlight the political legitimacy embedded in the hands of euro area member governments and parliaments respectively. If this trend prevails, the Eurogroup's president is likely to emerge as the key authority in providing the external representation of the group. In contrast, should the role of the European Commission be strengthened in governing the euro area, the role of the relevant member of the Commission as well as its president is likely to be enhanced in international institutions and fora. This would also raise the thorny question of voting in the EU Council and the European Parliament on euro area affairs, as well as install at least one member of the European Commission with responsibilities for the euro area instead of the EU as a whole.

If the emerging governance system of the euro area does highlight the roles of the Eurogroup and the Commission, EU coordination and representation challenges very similar to those found in the field of foreign policy — that is, the CFSP and the Commission's external relations — will re-emerge. Attempts to solve the problems might include the formation of a euro area economic action service (or treasury) aimed at enhancing the coordination between the Eurogroup and the European Commission, with functions to provide external representation.

While these developments suggesting differentiated integration may indeed solve some of the problems facing the EU's external representation and provide a more unitary representation for the euro area in relevant international institutions and fora, they might also work against common EU external representation. First, the deepening of the EMU has highlighted the role of the euro area in

the EU. While other member states have not been willing or able to join many of the ongoing processes aimed at stabilizing the euro and preventing a further crisis by reforming the EMU, the euro area has decided to press ahead in any case. This has altered the "balance of power" within the EU. Importantly, the UK has been largely sidelined.

Other kinds of dividing lines have also emerged based on the economic and political geography of north and south. While many of these dividing lines are also present within the euro area, the heightened division between the euro countries and non-euro countries is significant in terms of the EU's unity and its external representation. The increasingly powerful position of the euro area within the EU might highlight national rather than European interests, particularly in those member states that are not part of the strengthened core of the EU. The political disunity might spill over into other areas of integration with external ramifications. Differentiation and diverging interests among the EU member states could duly make it increasingly difficult to forge a unitary and coherent EU external action.

The first symptoms would most likely be seen in policy fields with shared EU and member state competences and a weak EU decision-making structure (i.e. unanimity rule). However, problems might also beset the strongest features of integration, such as the single market characterized by supranational decision-making structures. As Charles Grant notes, the further institutionalization of the euro area might lead to competing and conflicting interests of the euro area and non-euro countries, which might fracture the single market.[13] Consequently, the EU's aspiration to forge unitary and joint trade policies might become more difficult. This would have implications for the EU's position in the WTO and other fora, for instance in the FTA negotiations.

The recent developments in the UK's European policy are indicative of these kinds of trends. As Eurosceptic tendencies have grown in the UK, its aspirations to negotiate a new settlement with the EU are partly motived by the fact that the UK has been sidelined in the EU. While its concrete negotiation agenda is largely unknown and will most likely be linked to its ongoing review of the impact of EU legislation on the UK (the so-called balance of competence

13 GRANT, CHARLES 2012, "A Three-tier EU puts single market at risk", *The Financial Times*, 26 October.

review), the UK has already suggested that it aims to secure opt-outs and safeguards in terms of the single market legislation, such as financial market regulation. In addition, it has voiced criticism towards the EU's employment and social legislation.

It is unclear as yet whether the UK is a distinctive case among the EU members. While Prime Minister David Cameron's recent landmark speech on Europe clearly aimed to secure some support on the continent for the UK's concerns, its impact is yet to be seen. Relatedly, some observers have suggested that while some of the non-euro-member economies of the EU have expressed reservations in joining the single currency, they have been keen to highlight their influence and involvement in the ongoing developments, rather than their estrangement from them. Moreover, the euro area has been enlarging during times of crisis as well. Estonia joined in 2011 and Latvia from the beginning of 2014.

CONCLUSION

This chapter has suggested that differentiated integration is a significant feature of the EU's external relations and representation. On the one hand, it further complicates the EU's external action as the member states' commitment to it, and participation in it, vary across different policy fields. On the other hand, it has enabled the EU to move forward in developing its external relations and representation. The ongoing development trends of the EU resulting from the European sovereign debt crisis and banking crisis pose both opportunities and challenges in moving towards increasingly unitary external policies and representation. The reforms of the EMU will enable the EU to address the external representation of the so-called economic leg of the EMU and improve its position in relevant international institutions and fora. Yet the deepening differentiation between the euro area and rest of the EU might have some negative consequences for the EU's ability to formulate coherent and unitary external action for the EU as a whole.

2

2. Differentiated integration in security and defence: The only way forward?

Timo Behr and Hanna Ojanen

Notions of common defence and a common defence policy have accompanied the entire European integration process, from the 1940s onwards, but a security and defence policy proper was not included in the treaties until the 1990s when the Maastricht Treaty established the Common Foreign and Security Policy (CFSP). Various reasons have been cited for trying to integrate this policy field, including strengthening the EU externally and increasing the overall cohesion of the political union internally. Now, the main incentive for integration is the economy – and it is a strong one.

The economic crisis and the ensuing constraints on state expenditure, including defence, have forced the member states to search for possible savings through pooling and sharing, for instance. At the same time, the costs of defence technology have tended to increase particularly fast. Smaller countries in particular face the risk of having to downsize their defence if they do not find new solutions. What is more, the new Asian or Pacific direction US policies are taking is reinforcing the need for the member states to try to ensure their own defence capability, in addition to the need for force projection. An additional push towards deepened defence integration in the EU originates from NATO. The Organization faces exactly the same financial challenges and incentives and tries to encourage the EU to do more in this field, as this would also benefit the Alliance.

According to a widespread interpretation, progress in security and defence integration in the EU is possible only through differentiated integration, that is, through some member states proceeding first, and the rest eventually joining them at a later stage. Flexibility is needed because of the sensitivities that characterize defence policy,

and even more so because of the marked differences between the member states in this field, both as regards their strategic and doctrinal thinking and in the way they have organized their defence. Defence has been a strongly divisive issue among the member states, some of which have been more 'Europeanist' and thus in favour of increased cooperation limited to European countries, while others have been more 'Atlanticist', preferring not to challenge NATO. Integration in defence is, for many, a step too far into the core of a sovereign state. The United Kingdom and France are the only members with considerable projection power, and they are also nuclear powers. While most EU countries are moving towards professional armies, some still count on conscription. While most EU countries are members of NATO, some are not. There is also one member state that has from the outset opted out of any cooperation in the field of defence, namely Denmark. The countries differ further in terms of their spending on defence and their arms industry.

The rationale for achieving common defence through differentiated integration would consequently be for the ones most resembling each other to join forces, and for those most willing to point the way. Deepened cooperation, so the argument goes, would strengthen the EU as a whole in that by improving the participating member states' capabilities, it would also lead to the whole Union having more capable forces at its disposal when needed for international crisis management. Some also aim at facilitating the EU's reaction in international crises where not all members can agree, and where only a coalition of the willing and able proceeds.

Critics, however, would envisage a danger for European unity. 'Differentiated integration' would weaken rather than strengthen the Union: those unwilling or incapable of joining the core would be left behind, the gap would only widen between them and the core, and the external world would be confused to see a split Union in this field. Provisions have been made for some to actually proceed further than others. Interestingly, however, the different forms of differentiation provided for in the treaties (see below) have not been used by the member states. The forms and the contents are at odds. The member states do, however, find ways to cooperate bilaterally and regionally outside the Treaty, as is seen below, but, in some cases, with a link to the common framework provided by the European Defence Agency (EDA).

INTRODUCTION OF SECURITY AND DEFENCE IN THE MAASTRICHT TREATY

The Maastricht Treaty established the European Union and the Common Foreign and Security Policy (CFSP). It "shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence". Thus, it was open to all member states to take part in. In order to achieve this, provisions on decision-making had to be tailored carefully so as not to compromise member countries' sovereignty. A prerequisite for including this domain was the pillar structure and the idea that decision-making could take place in different ways in different domains. The CFSP became the second pillar: as the field was sensitive, intergovernmental decision-making was to be the rule. Decisions would be taken unanimously, even though some possibilities for qualified majority voting were foreseen in the implementation of decisions previously taken by unanimity.

Some member states were in favour of bolstering the defence policy side of the CFSP by integrating the Western European Union (WEU) into the EU. Italy, Belgium and Spain were in favour of a Franco-German proposal to such effect. The UK, Portugal, and the Netherlands were against the proposal, as such ideas could be dangerous for NATO. A compromise was reached that suited all, in that defence questions would be introduced progressively. The plan was to take them up again later, in the Intergovernmental Conference of 1996. The WEU had not been merged with the CFSP at this point, but it was defined as an integral part of the development of the Union. It was also stipulated that the WEU could take military measures on behalf of the EU.

What Maastricht consequently accomplished was the gathering together of all EU member states behind one vision of a developing security and defence policy. All states but Denmark, that is, as it was granted an opt-out on defence, the latter being seen as one of the features of the new structure that was too federal in nature. Soon after Maastricht, however, the need for flexibility became an issue for more than one country. With the Amsterdam Treaty that entered into force in 1999, the EU became more of an actor in this field: the European Security and Defence Policy (ESDP), now known as the Common European Security and Defence Policy (CSDP), was to include crisis management tasks (the so-called Petersberg tasks), while a Headline Goal was introduced in the development of

European military capabilities. This development was accompanied by new treaty provisions on differentiation that were to allow for greater flexibility when it came to the member states' participation.

DIFFERENTIATION INSIDE THE TREATIES AFTER MAASTRICHT

The EU treaties provide a variety of options for greater flexibility in the domain of foreign, security and defence policies. These have been introduced progressively since the adoption of the Maastricht Treaty and have been repeatedly fine-tuned as a result of the Treaty revisions adopted in Amsterdam, Nice and Lisbon. On the whole, these provisions represent a cumbersome compromise between those countries most eager to deepen cooperation on security and defence policy matters and those more hesitant about a two-speed Europe.

Constructive abstention

Introduced under the Treaty of Amsterdam, constructive abstention enables single member states to abstain from voting on CFSP issues without blocking the entire decision-making process.[14] Member states that abstain will not be bound by common decisions, but are obligated to refrain from actions that run counter to the spirit of these decisions. According to the Lisbon rules, in the event that one third of member states representing one third of the Union's population abstain, a decision will not be adopted.[15] So far, the procedure has only been used once during the Kosovo crisis of 2008.[16]

Enhanced cooperation

The option of "closer cooperation" was first introduced under the Treaty of Amsterdam, but originally only applied to the first and third pillars of the treaties. Under the Treaty of Nice, "enhanced cooperation" was extended to the second pillar, but still excluded military affairs. With the adoption of the Lisbon Treaty, enhanced cooperation applies to both the CFSP and CSDP, and it can be established on the basis of a joint action or common

14 Article 23(1) TEU.

15 Article 31(1) TOL.

16 In 2008 the Republic of Cyprus used the constructive abstention procedure in order not to participate in the police mission in Kosovo. Cyprus does not support the independence of Kosovo for fear that this would lend legitimacy to the Turkish Republic of Northern Cyprus.

position and requires a unanimous decision by the member states.[17] Lisbon also sets a numerical limit of nine countries for the launching of enhanced cooperation and endorses the principle of "openness", which requires that all projects must remain open to all members without prejudice. To date, there has been no example of enhanced cooperation in the field of the CSDP/CFSP under these provisions.

Delegation of missions

The Council may entrust a group of member states to carry out tasks to "protect the Union's values and serve its interests".[18] In contrast to the enhanced cooperation procedure, there is no numerical limit on the number of member states that have to participate in these missions. The decision to delegate such tasks has to be taken by unanimity. The Council then decides upon the general objectives and conditions of a mission, while the day-to-day implementation is left to the participating member states, which have an obligation to regularly inform the Council on its implementation. The common costs of EU missions — representing only a fraction of the overall mission costs — are shared in accordance with the ATHENA mechanism first set up in 2004.[19]

Permanent structured cooperation

By far the most ambitious provision is the protocol on permanent structured cooperation (PESCO) that has been introduced by the Lisbon Treaty.[20] PESCO provides for a different scope and intensity of cooperation than that foreseen under enhanced cooperation. Under PESCO, participants agree to achieve approved objectives pertaining to investment expenditure and institutional harmonization in order to develop their joint defence capacities. The decision to initiate PESCO, moreover, can be taken by qualified majority and there is no numerical limit on the number of participants. PESCO also foresees the monitoring and assessment of agreed objectives by the European Defence Agency. After the failure to find common ground on PESCO amongst the member states in 2010, the focus has since shifted towards pooling and sharing initiatives through the EDA.

17 Article 20 TOL. The HR and the Commission are also requested to give their opinion on any proposal of enhanced cooperation and the European Parliament needs to be informed. Cf. Article 328 TOL.

18 Article 42(5) and Article 44 TOL.

19 For the latest version, see Council Decision 2011/871/CFSP, adopted on 19 December 2011.

20 Articles 42 & 46 TOL and Protocol 10 TOL.

Despite all the effort put to defining these various formal procedures for differentiated integration in foreign, security and defence matters, they have in practice not been used at all. They are seen as methods of last resort and, thus far, there has been no need to use them. The procedures were, in fact, drafted in the early 2000s when the EU did not yet have any concrete crisis management experience, and when uncertainty prevailed about how the upcoming big enlargement could change the dynamics in this field. As a consequence, even though EU crisis management operations are a typical example of activity where not all member states take part, the formal possibility to delegate missions to a smaller group is not used. Decisions on the launch of an operation are made according to the normal procedure (unanimity in the Council of Ministers).

Another example of differentiation or flexible forms of cooperation within the EU framework are the EU Battlegroups. Launched as a result of a French–German–UK initiative in 2004, the EU Battlegroups are based on voluntary member state contributions, often comprising several member states. While the Battlegroups remain under the control of the Council, they are based neither on PESCO nor on the enhanced cooperation procedure, but represent a sui generis case of differentiation.

Mechanism	Policy Area	# Limits	Decision-making procedure	# usage
Constructive abstention	CFSP	>1/3 MS/pop.	Unanimity	Once
Enhanced cooperation	CFSP/CSDP	9 MS	Unanimity	Never
Mission delegation	CSDP	None	Unanimity	Never
Permanent structured cooperation	CSDP	None	QMV	Never

Table 1.
Treaty provisions

DIFFERENTIATION OUTSIDE THE TREATIES

Due to the complexities involved in using flexible mechanisms under treaty provisions, as well as the reluctance of member states to submit to EU monitoring on sensitive defence issues, more ad hoc forms of flexible cooperation outside of the treaty provisions have been the norm. While some see these embryonic "islands of cooperation" as the most natural and efficient way forward for

cooperation amongst like-minded countries, others fear that a process of parallel deepening might permanently undermine the Union's ambitions for a common foreign, security and defence policy and foster a "strategic disconnect" between different groups of member states.[21] Smaller member states, in particular, have been cautious about becoming sidelined in the process.

In the realm of defence, a complex network of overlapping bilateral and multilateral cooperation initiatives has proliferated, ranging from a simple pooling of orders for certain types of equipment to permanent bilateral defence treaties that create common military commands and shared assets. At the very least, it seems to be possible to differentiate between three qualitatively different forms of cooperation frequently used by member states: 1) bilateral defence treaties, 2) multilateral and regional cooperation, and 3) joint acquisition of military platforms and capabilities.

Bilateral defence treaties have been adopted by several European countries and usually include some provisions for joint exercises, acquisitions, the establishment of joint forces and headquarters, or the sharing of logistics and training commands. The form and purpose of these treaties varies considerably, depending on their intent. Thus, while the Franco-German Élysée Treaty of 1963 was concluded in order to foster bilateral reconciliation and pave the way for greater European defence cooperation, the aim of the 2010 Franco-British Defence Treaty is to cut costs and to generate more effective bilateral expeditionary forces. The effectiveness of these treaties in generating greater capabilities has varied in accordance with their purpose and clarity.

In addition to these bilateral treaties, several examples of multilateral and regional cooperation exist. The European Air Transport Command (EATC) founded by France, Germany, the Netherlands and Belgium in 2010 pools the tactical air transport and air-to-air refuelling capacities of these countries and will be charged with the command of their jointly acquired A400M fleet.[22] Unlike regional defence initiatives, the EATC remains open to the participation of other European countries. In contrast, regional initiatives, such as NORDEFCO, established by Norway, Finland, Denmark, Iceland

21 TOMAS VALASEK, *Surviving Austerity: The case for a new approach to EU military collaboration*, CER, April 2011.

22 According to former EATC commander Jochen Both, the EATC is 20% more effective in all aspects than running separate national organizations, including costs.

and Sweden or the Franco-Spanish-Italian EUROMARFOR, tend to be closed to outsiders. While regional defence initiatives provide a natural and pragmatic focus for deeper cooperation, they also have the potential to create some measure of duplication and might in some cases impede interoperability.

Finally, European countries cooperate through various institutionalized and ad hoc measures for the joint acquisition of military platforms and capabilities. Previously, many multilateral armaments projects have been managed through the Western European Armaments Group/Organization WEAG/WEAO and the Organization for Joint Armament Cooperation OCCAR. More recently, many joint capabilities programmes have been brought under the umbrella of the European Defence Agency (EDA) and are open to all EU member states, and partner countries Norway and Switzerland. In addition, EU member states participate in joint armaments projects on a bilateral and multilateral level, as well as under the NATO smart defence initiative. In 2010, the German-Swedish Ghent Initiative initiated a new review process for the pooling and sharing of capabilities.

Table 2. Examples of "Islands of cooperation".

Regional grouping	Year of launch	# countries	Purpose/Ambition
BENELUX DEFCO	2012 (1948)	3	BE-NL integrated naval command; Shared BE-NL naval training and maintenance; Military education
NORDEFCO	2009 (1960s)	5	Common procurement programmes; Joint training; Specialization in education; Common Air Transport Command (NATC); Nordic Battlegroup
Weimar Triangle	2006	3	Weimar Battlegroup
Baltic cooperation	2011	3	Baltic Defence College; Joint ammunition tenders; Baltic Naval Squadron; CBRN cooperation; Exercises
Visegrad Group	(2001)	4	Visegrad Battlegroup; Joint ammunition storage; Exchanges
Franco-British	2010	2	Integrated Carrier Strike Group; nuclear weapons technology; UCAV project; A400M bilateral joint user group; bilateral mine countermeasures group; Cooperation on R&D; Joint Expeditionary Force
Franco-German	2012 (1963)	2	Franco-German Brigade; Franco-German Battlegroup; Joint Helicopter Training School; Joint procurements (NH-90, Tiger, A400M); Planned projects (MALE UAV, missile defence, Space Situational Awareness)

The field of security and defence could be characterized as 'parallel deepening'. Indeed, the question has become how to live with the reality of various forms of differentiated integration.

Given the slow progress of both top-down and bottom-up initiatives at the European level, a growing number of analysts have suggested abandoning efforts to establish permanent structured cooperation, and to opt instead for multiple, discreet, regional "islands of cooperation" to improve defence capabilities. This approach has some obvious attractions. Flexible cooperation outside the treaties, based on sub-regional groupings such as NORDEFCO, is often easier and quicker to implement and benefits from greater trust, solidarity and a complementarity of strategic cultures. A focus on regional cooperation may also foster role specialization and allow countries to concentrate on those issues and capabilities they care most about. This is also why NATO has shown interest in highlighting 'clusters' such as NORDEFCO as examples to follow. Most prominently, flexible islands of cooperation appear to be the only way forward in the absence of workable EU provisions.

However, a Europe of many "mini defence unions" also entails considerable risks. Chief amongst these is the potential for consolidating differences, not only by fostering a potentially dangerous strategic disconnect, but also by hindering inter-operability, due to the acquisition of incompatible platforms. Regional cooperation may also lead to a duplication of efforts and commands, and does not provide the same scale effects in terms of capability development and acquisitions. Furthermore, in the event of a de facto hierarchy between the various islands of cooperation being established, smaller countries and groupings would risk being frozen out of the most high-end decisions. At the same time, they would still suffer the potential consequences by being pulled into international conflicts started by others on the pretext of European solidarity. Finally, there is a risk that a multispeed European defence may result in a fracturing of the EU's external image.

European decision-makers will have to carefully weigh up the potential impact of either option. For the time being progress in many concrete questions appears most feasible within the framework of islands of cooperation. However, in order not to deter wider European cooperation, these ought to be designed in an open fashion that avoids unnecessary duplication and fosters interoperability

across Europe. The role of the EDA will be particularly important in ensuring the requisite transparency. Given that scale effects and costs savings increase in accordance with the number of countries involved, this should provide policy-makers with an incentive to continue working on EU-level initiatives in a time of austerity.

	PESCO	Islands of cooperation
Pros	✔ Avoids duplication ✔ Fosters strategic culture ✔ Greatest scale effects ✔ Fosters interoperability ✔ Builds trust/solidarity ✔ Common external image	✔ Quickest way forward ✔ Flexible and pragmatic ✔ Plays to strengths/interests ✔ Fosters role specialization
Cons	✔ Slowest approach ✔ Cumbersome procedures ✔ Risk of down-scaling	✔ Fosters strategic disconnect ✔ Risk of duplication ✔ Smaller scale effects/savings ✔ Fosters mistrust ✔ Fractured external image ✔ Hinders interoperability

Table 3.

Economic austerity may, however, also diminish the need for differentiated integration altogether. The factors alluded to at the beginning of this chapter — austerity, rising costs, changing US positions — combined with the fact that the member states have now accumulated experience in defence cooperation, may facilitate further steps being taken by the Union as a whole.

Defence issues have been taken up with renewed vigour in the Union recently. The December 2013 European Council meeting concentrated on defence and identified four priority actions: increasing the effectiveness, visibility and impact of CSDP, enhancing the development of capabilities and strengthening Europe's defence industry. The Council further stated that cooperation should be facilitated by increased transparency and information sharing in defence planning, and welcomed the existing cooperative models. In time, the member states might be convinced to adopt more binding rules in this field, and thus more common policies, by showing how mutual commitments reduce uncertainty with regard to what capabilities are really at the member states' disposal, for instance. The treaty provisions on enhanced cooperation and PESCO may still remain in the background as a last resort option — and also as a warning for more reluctant members.

3

3. Inclusive and exclusive differentiated integration: Enlargement and the European Neighbourhood Policy

Kristi Raik & Tanja Tamminen[23]

The concept of differentiated integration most often refers to a variety of forms of integration *inside* the EU, in other words, the differences among the member states as regards the application of EU norms and participation in the institutional process. Yet parts of the EU *acquis* already apply to a number of non-members that are excluded from the EU institutional framework. The border between the ins and outs is blurred, as circles of varying degrees of integration are extended beyond member states and the EU practises 'extended governance' vis-à-vis neighbouring countries.[24] The European Economic Area (EEA) is a well-established model of integration for countries that have close ties to the EU, but have declined full membership for domestic reasons. Different kinds of association agreements have been concluded and are being negotiated with neighbouring countries that aspire to membership, but do not yet meet the accession criteria or are not even acknowledged by the EU as potential members.

To date, enlargement has been based on the presumption that candidate countries will adopt the whole EU *acquis*. The European Neighbourhood Policy (ENP) also aims in principle at the maximum extension of EU norms to the partner countries, but the record thus far is very limited in comparison to the enlargement policy. Increased application of differentiated integration has been seen as a possible

23 We are grateful to Timo Behr and Hanna Ojanen for their advice on the Southern neighbourhood and Turkey, respectively.

24 See S LAVENEX, *A governance perspective on the European neighbourhood policy: integration beyond conditionality?* Journal of European Public Policy 15:6, 2008, pp. 938–955.

way to make future enlargement easier by offering flexibility to the extent of adopting EU norms and creating new models of partial integration of neighbouring countries that do not wish, or are not ready, to become full members. The larger the EU becomes, the more tempting the option to turn to a differentiated mode and deepen integration among a core group of the willing, rather than trying to move forward with all member states. Some candidate countries may also be interested in a selective approach, notably by staying out of the eurozone.

However, differentiated integration may increase not only the flexibility, but also the dividing lines and inequalities among European countries. It is hard to envisage an outer circle of integration that would not be perceived as second-class membership. For the EU insiders, differentiated integration has usually been conceptualized as an inclusive process, with circles of deeper integration open to any member state willing to join, whereas for outsiders, it tends to follow an exclusive logic, with the EU defining the degree of integration made available to others. From the viewpoint of outsiders, one of the key questions is consequently who decides which countries belong to which circle. Many might be willing to pick and choose the best parts of integration, but it is hardly feasible that the EU could function if each European country were to choose its own *à la carte* model. Would, then, only the most influential countries be able to negotiate a tailor-made solution in accordance with their preferences, whereas for others, the EU would offer no more than a limited and partly exclusionary form of integration? In other words, differentiated integration might be *à la carte* with the full range of options for some, but a restricted menu for others. The latter option is not likely to be welcomed by the current EU outsiders.

This chapter examines the key characteristics of the existing models for extending integration beyond EU borders: the EEA, enlargement and the ENP. It also discusses the potential for developing differentiated integration *inside* the EU as a way to offer a looser form of membership to some outsiders. It points to two possible paths towards a 'membership-lite' alternative for those countries that cannot or do not want to be part of the deepening core. The first option would be 'membership minus eurozone' where the current institutional structure, including all member states, is maintained, while the eurozone continues to develop forms of deeper integration. To make the system more flexible, accession

countries might no longer be required to commit themselves to eventually joining the eurozone. This option would essentially not make accession easier, since no country joining the EU since the introduction of the euro has immediately joined the eurozone, too. The other, more radical model of 'two-tier integration' would re-structure the EU institutions so that a clear separation would be established between the inner core of eurozone members and the outer circle. To conclude, the authors argue that while the 'membership-lite' idea holds some appeal among the candidates and neighbours, its implementation along the lines of the first model would change little in comparison to the status quo. The latter model, in turn, would be likely to lead to the dissolution or fragmentation of the integration project and is unlikely to gather sufficient political support among member states and partner countries.

THE EEA — A NON-ATTRACTIVE ALTERNATIVE TO ENLARGEMENT

The European Economic Area was negotiated in 1989-1992 between the then European Community and members of the European Free Trade Association (EFTA). The EEA countries participate in the EU's internal market and adopt most of its legislation, but they are involved in the related policy-making only to a limited degree.[25] The extensive and binding adoption of EU legislation by EEA countries makes this by far the most advanced model of differentiated integration that goes beyond EU borders. The EEA countries also contribute financially to the EU for their participation in the single market, but they are not entitled to receive subsidies from EU funds.

Out of the seven EFTA states that originally signed the EEA treaty in 1992, three (Austria, Finland and Sweden) soon became EU members. The other four (Iceland, Lichtenstein, Norway and Switzerland) have so far chosen to stay outside the Union, but have joined the Schengen area. Switzerland rejected membership of the EEA in a referendum in 1992 and has since developed a unique and complex relationship with the EU, based on a number of bilaterally negotiated agreements in specific fields. Norway has come close

25 On the Europeanizing effects of the EEA, see M EGEBERG & J TRONDAL, *Differentiated Integration in Europe: The Case of EEA Country Norway*, Journal of Common Market Studies, 37: 1, 1999, pp. 133–142.

to joining the EU twice, but the 'no' camp won the referenda in 1972 and in 1994. Iceland applied for EU membership in 2009 and proceeded rapidly in accession negotiations held from 2010 to early 2013. However, Icelanders are not so keen on joining the EU (not least due to the EU fishing restrictions), and the new government that came to power in 2013 put the negotiations on hold.

Neither the EEA nor the Swiss model are particularly attractive alternatives to full membership: There is a strong logic for the partner countries to pursue full membership once they have committed themselves to implementing EU legislation in any case, so as to avoid being governed by externally decided rules. From the viewpoint of democracy, the EEA is a rather problematic arrangement due to the limited possibilities that the EEA countries have to influence EU law-making.

Some countries have reflected upon and rejected the EEA as a model for their relationship with the EU. For example, British PM David Cameron has referred to the EU relations of Norway and Switzerland as models that would not serve the interests of the UK.[26] Some representatives of the EU have suggested the EEA or 'EEA plus' as a possible solution for Turkey, Ukraine and other neighbouring countries in the east and south, but the idea has received little support and has not been officially proposed by the Union.[27] These countries lack the specific features of the current EEA members that make the latter fairly satisfied with the EEA, and hesitant or opposed to full EU membership. The EEA countries are rich and lack the prospect of gaining from the EU's agricultural policy and Structural Funds. They are relatively stable internally and do not need EU membership as a stabilizing factor. Unlike some EU neighbours (see more on the Eastern neighbourhood below), they do not have security concerns that would push them to seek membership of the EU. Iceland, however, has recently experienced unprecedented political instability and the rise of new security concerns (resulting from the withdrawal of US forces in 2006), which have pushed the

26 Speech by DAVID CAMERON, 'UK and the EU', 23 January 2013.

27 Official Norwegian Reports NOU 2012: 2, *Outside and Inside: Norway's agreements with the European Union*, unofficial translation, Chapter 13, http://www.eu-norway.org/Global/SiteFolders/webeu/NOU2012_2_Chapter%2013.pdf.

country further away from the EU up to now, but may yet lead to a revival of interest in EU accession.[28]

Moreover, the EEA is ill-suited as a model for ENP countries because the latter lack the administrative capacity to implement the obligations of EEA membership — the same applies, of course, to their possible EU membership. It is also worth noting that the purpose of the EEA is not to serve as a stepping stone towards full membership, but is rather seen as a permanent arrangement for those countries that are not interested in joining the EU.

ENLARGEMENT — THE INCREASING APPEAL OF DIFFERENTIATION?

The enlargement process is designed so that each candidate country will ultimately become a full member of the Union, adopting the whole *acquis*. Even if the accession country is not immediately able to adopt the euro, or does not yet fulfil the Schengen criteria, it is expected that the country, when inside the EU, will continue striving towards full membership of the eurozone as well as the Schengen area. To do so, countries have to fulfil the membership criteria, and as the delays in the Romanian and Bulgarian entry into Schengen suggest, they have to secure unanimous political support among the members. On the other hand, we have already witnessed the case of Bulgaria, which joined in 2007, and which despite now fulfilling the necessary criteria to actually adopt the euro, has opted not to enter the eurozone. Similarly, Sweden is seen to possess a *de facto* opt-out from the euro, due to the negative result in the referendum on the issue of joining the single currency.

The Western Balkan countries have all been given an EU membership perspective. Croatia recently joined in July 2013. The former Yugoslav Republic of Macedonia, Montenegro and Serbia are official candidates. Albania, Bosnia-Herzegovina and Kosovo[29] are potential candidates. The Commission has described the EU accession of these

28 ALYSON J K BAILES & BALDUR THORHALLSSON: Iceland and Europe: Drifting further apart? *FIIA Briefing Paper 139*. The Finnish Institute of International Affairs, September 2013. Available at: http://www.fiia.fi/fi/publication/360/.

29 In official EU documents an asterisk is always added to the name Kosovo, referring to the footnote "This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence".

countries as a technical process, which must follow clearly defined steps. Any state wishing to join the Union must first negotiate an association agreement with the EU. For the Western Balkans countries participating in the Stabilisation and Association Process (SAP) this means a Stabilisation and Association Agreement (SAA). Even the SAP itself is defined with clear steps. The slower the process has become with regard to some of the countries, the more official "baby steps" have been introduced into the process to preserve the illusion of constant progress.

Member states have a number of ways of slowing down the process of negotiating an association agreement with a country that wishes to join the EU, whether for selfish reasons or to push the partner country towards faster and more effective reform processes. In fact, the decisions to launch negotiations or to sign an agreement are political decisions taken in unanimity by the member states. To give positive signs to the partner country and to exert pressure to support political reforms, the EU can, for example, freeze the negotiations (as in the case of Serbia when it failed to cooperate with the Hague war crimes tribunal) or just initial the agreement (to show that the agreement text is finalized), but not sign it until requested reforms are implemented or political conditions met. Member states can delay the process by slowing down the ratification process in their national decision-making procedures as well, for example by not presenting the agreement to parliament for ratification.

In many Western Balkan countries such measures cause frustration as EU membership recedes further into the distance. This frustration is in evidence when we look at public opinion ratings in these countries, where support for EU membership is dwindling compared to the impressive ratings it used to garner in the recent past. In the face of rising popular criticism towards the EU and the strict requirements of the EU enlargement process, the political elites of the candidate and potential candidate countries need to balance their actions and political speech between populism and EU compliance. It is anticipated that in the case of newcomers an increased desire to opt out of certain specific features of EU membership will occur. After a long, tiring and sometimes frustrating negotiation process, the national governments will need to show their respective publics that their countries are not merely being force-fed all the EU conditions and the *acquis*, but that they actually have a sovereign capacity to take some decisions at the national level when it comes to defining their EU rapprochement and eventual membership.

As a new EU member state, Croatia is unlikely to call for any special arrangements or opt-outs in the near future. However, as the EU single market competition will take a heavy toll on the local economy, especially agriculture, the public support for the single currency may not be very strong even when conditions are met.

Serbia's EU journey has been slow, due in part to the complicated relations with Kosovo, which declared independence in 2008. Contradictory messages are surfacing among EU actors as to whether or not recognizing Kosovo's independence will be a condition for Serbia to enter the EU. Public support for EU accession has been in decline. According to a poll carried out in December 2012, only 41% of citizens support EU integration. Many more support the reforms that the EU is requiring from Serbia as conditions for EU accession, however, as they are seen to contribute to a better standard of living in the country.[30] Serbia took a major step forward in June 2013 when, in appreciation of the country's constructive role in the EU-facilitated Pristina-Belgrade dialogue, Serbia was promised that its EU enlargement negotiations would start in January 2014 at the latest.

It is expected that Serbia's public administration will be strong enough to move swiftly in the membership negotiation process when it is launched. Yet the political question remains as to whether Serbia's accession treaty would need a special clause to the effect that, when a full EU member, Belgrade would nevertheless not be able to unilaterally block slower moving Kosovo's EU path. Currently such clauses do not exist and Greece, for example, is keeping the former Yugoslav Republic of Macedonia blocked from both NATO and the EU due to the bilateral dispute over the name of the country (as, according to the Greeks, the name Macedonia refers to their northern region).

Kosovo is a unique case as its independence has not been recognized by a number of countries, including five EU member states. Thus, despite not fitting into the traditional understanding of differentiated integration as introduced above, Kosovo needs to be provided with a special, tailor-made integration path for political reasons. The bottom-up status negotiations led by Martti Ahtisaari during 2006 led to the comprehensive status proposal that outlined the mechanisms of surveillance: the International Civilian

30 Serbian European Integration Office, H*igh level support for the reforms necessary for EU accession*. Available at: http://www.seio.gov.rs/news.101.html?newsid=1393.

Office (ICO) and the European Union Rule of Law Mission would be deployed in Kosovo.[31]

The status proposal did not gain the unanimous support of the international community and was never endorsed by a new Security Council Resolution. However, in the independence declaration on 17 February 2008 the "leaders of Kosovo" committed themselves to implementing the Ahtisaari plan. Five EU member states (Spain, Romania, Slovakia, Cyprus and Greece) refused to recognize Kosovo's independence. As the EU foreign policy and enlargement policy both require unanimity within the member states, without being recognized as a sovereign state by all, Kosovo had difficulties in entering into contractual relations with the European Union. The EU was also unable to use similar incentives in the case of Kosovo as those used to encourage compliance in the rest of the Western Balkans, such as the candidate status.

However, European institutions did not want Kosovo to be too distanced from its neighbours in the implementation of the *acquis communautaire*. Thus a number of other SAP-related mechanisms, such as the Structured Dialogue on the Rule of Law, were created to monitor Kosovo's compliance with the EU rules. In the Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo from 2012, the European Commission confirms that Kosovo is largely ready to open negotiations for a Stabilisation and Association Agreement. For Kosovo, more than Serbia's opposition, the non-recognition of the five EU member states was, however, a stumbling block on the EU road. It is highly unlikely that countries such as Spain and Cyprus, with territorial disputes of their own, will recognize Kosovo anytime soon.

The situation changed in June 2013 when Serbia was promised that membership negotiations would begin. Kosovo needed recognition of its positive role in the dialogue, and so a solution was found to give Kosovo a Stabilisation and Association Agreement, but in a status-neutral way. Given that the SAAs of other Western Balkan countries have been signed with the EU member states and ratified by their parliaments, this time, thanks to the new provisions provided by the Lisbon Treaty, Kosovo will be granted an 'EU-only'

31 Cf. M AHTISAARI *Report of the Special Envoy of the Secretary-General on Kosovo's future status*, attached to the letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, S/2007/168.
Available at: http://www.unosek.org/docref/report-english.pdf.

SAA. Most of the content and text will be similar to the other SAAs, but the agreement itself will be signed with the EU and does not require ratification by the member states. The SAA negotiations will take place during 2013–2014 with two lead negotiators from the EU side, one representing the Commission and one representing High Representative Ashton. For Kosovo, this may be a politically less interesting solution than an agreement reached with all member states, but in practice such an 'EU-only' SAA can enter into force much more quickly than a normal Association Agreement, which would have to go through the ratification process. The political reality and the strategic need to ensure stability in the region have consequently forced the EU to devise a tailor-made method of integration compared to other candidate countries.

Curiously enough, Kosovo already uses the euro as its official currency (it had adopted the German mark in the aftermath of the 1999 war), so the perspective of entering the eurozone in the distant future is not publicly debated. In fact, there are very few people in Kosovo who know what eurozone membership, including the convergence criteria, would actually entail as the use of the currency is the only tangible evidence they have. Montenegro also uses the euro. It had adopted the German mark in 1999 with the consent of Berlin when still in a federation with Serbia. However, since the adoption of the euro, the EU has been more critical about Montenegro's unilateral use of the currency, which was also highlighted when signing the Stabilisation and Association Agreement in 2007. The counter-argument is that Montenegro, just like Kosovo, is too small an economy to affect the eurozone and should therefore pose no problem.[32]

The integration process of these small Western Balkan countries has been very much a Brussels-led exercise, with the countries themselves having little say when it comes to the pace of the process or the agenda of the negotiations. Facing sometimes humiliating setbacks and the frustration of the local populations, governments have come up with alternative ways of enhancing their political stance vis-à-vis Brussels. Serbia utilized the Kosovo status question every time it served its needs in its relations with the EU: As a result, Serbia was given candidate status, visa liberalization, and

32 A BOGAVAC, *Montenegro's peculiar path to EU membership*, Deutsche Welle 7 February 2013, http://www.dw.de/montenegros-peculiar-path-to-eu-membership/a-16583842.

subsequently a date for the start of the negotiations, always in the context of positive steps taken on the Kosovo issue. In Kosovo, on the other hand, where the supervised independence period ended with the closing down of the ICO in September 2012, the government has been exerting pressure on the EU to use development tools similar to those in any other Western Balkan countries. For example, the government would like to end the executive powers of the EU rule of law mission in Kosovo, arguing that assistance is welcome, but should be provided in the framework of the Instrument of Pre-Accession only, rather than a special CSDP mission. It has been employing strong EU-critical rhetoric, especially towards a domestic audience disappointed with the EU status-neutral stance towards Kosovo.

The possibility of a special model that would differ from full membership has also been debated in the case of Turkey, which has been proceeding slowly in its EU accession talks, which started in 2005. Turkey is already in a customs union with the EU and has harmonized its legislation in many areas. The EU formally acknowledged Turkey as a candidate country in 1999. Ever since then, the resistance of some member states, notably Germany and France, to Turkish membership has provoked reflections on a possible multi-tier Union where Turkey could be a member, but not in the inner core. Turkey has rejected the alternative proposals, seeing them as an offer of second-class membership.

However, the recent discussion about Britain's place in Europe has revived visions of differentiated integration where the core group (the eurozone) would move towards deeper integration, while another group of member states would adhere to a looser form of integration. Several commentators have reflected on the possibility that Turkey and the UK might enter a similar new form of relationship with the EU. Importantly for Turkey's national pride, this new option can be presented as "Turkey's British way — not secondary status" but "full membership".[33] Alternatively, a new kind of associate or "virtual" membership could be negotiated as

33 KEMAL DERVIS, quoted in Hürriyet Daily News, 6 February 2012, http://www.hurriyetdailynews.com/eu-to-have-two-types-of-memberships-scholar.aspx?pageID=238&nID=40637&NewsCatID=344. See also KATINKA BARYSCH, "Can Turkey and the UK learn from each other's EU strategies?" Centre for European Reform, 25 January 2013; NATHALIE TOCCI AND DIMITAR BECHEV, "Bringing Turkey back to the EU debate", EurActiv, 21 December 2012; Andrew Duff, "The case for an Associate Membership of the European Union", LSE blog, 6 March 2013 http://blogs.lse.ac.uk/europpblog/2013/03/06/associate-eu-membership/.

a temporary solution that would tie Turkey more closely to the EU while negotiations on full membership continue.[34]

Considering the frosty reception among the member states to the British idea of a re-negotiated EU relationship, it is hard to imagine that the EU would be ready to negotiate a special deal for Turkey that would give the latter full membership rights but limited responsibilities. A new kind of differentiated model with different institutional frameworks and decision-making powers for the core group versus the others might be more acceptable for some core countries, but it is hard to claim that this would not imply a secondary status for the outer tier.

THE EUROPEAN NEIGHBOURHOOD POLICY — A FORM OF EXCLUSIVE DIFFERENTIATION

The ENP aims at political association and economic integration for the neighbouring countries. The EU's relations with the ENP countries are currently based on rather loose bilateral agreements: it has concluded Partnership and Cooperation Agreements with the Eastern neighbours, except for Belarus, and Association Agreements with the Southern neighbours, apart from Libya and Syria. There are also sectoral treaties that integrate some neighbouring countries into the EU's legal framework in certain areas, notably the Energy Community Treaty (concluded with the Western Balkan countries, Ukraine and Moldova) and the European Common Aviation Area Agreement (concluded with the Western Balkan countries, Georgia, Jordan, Moldova and Morocco). Some Southern neighbours (Jordan and Morocco) have been granted an 'advanced status' that foresees the intensification of political relations and trade.

In recent years, the EU has developed a new, more ambitious model of association agreement that includes deep and comprehensive free trade (DCFTA). The new agreement, originally designed for Ukraine in response to its 'orange revolution' of 2004, was envisaged as an ambitious and innovative tool for extending EU norms beyond its borders and bringing neighbouring countries as close as possible, while stopping short of membership. In 2011, the EU and Ukraine concluded

34 Cf. S ÜLGEN, *Avoiding a Divorce: A Virtual EU Membership for Turkey*, Carnegie Endowment for International Peace, 5 December 2012.

negotiations on the first new type of association agreement that includes DCFTA. However, the EU suspended signing the agreement due to the failure of Ukraine to address serious problems with the rule of law, such as politically motivated trials, lack of independence of the judiciary, and the selective use of the law. The case of Ukraine suggests that the EU's leverage and ability to use the agreement as a tool to push for reforms is weak. The low level of democracy and the rule of law may become an obstacle in other cases, too.

Negotiations on similar agreements were concluded with Moldova, Georgia and Armenia in 2013.[35] A DCFTA is to be extended to the Southern neighbourhood as well. Negotiations with Morocco were launched in March 2013 and Tunisia is expected to follow soon.

What makes the DCFTA truly ambitious and controversial at the same time is that it has a legally binding character and implies extensive adoption of EU common market legislation by the partner countries. The latter can benefit from the new business opportunities created by the DCFTA only if they do actually implement the common market standards regarding competition policy, sanitary and phyto-sanitary rules, public procurement, intellectual property rights, and so forth. By contrast, the political and sectoral parts of the ENP association agreements list a number of commitments and goals, for example in the areas of migration, energy, transport and environment, but their implementation hinges on the goodwill of the parties, and non-compliance is not likely to have severe consequences or high costs.

The closest precedents to the new association agreements are the Stabilisation and Association Agreements (SAA) with the Western Balkan countries, a key difference being that the SAAs confirm the status of the partner countries as "potential candidates for European Union membership", whereas the ENP agreements are (so far) not foreseen to make similar commitments. The DCFTA can also be compared to the European Economic Area, where the partner countries have themselves chosen to stay outside the EU. Hence, all the partner countries that have previously negotiated agreements comparable to the DCFTA have been included in the EU accession process if they so wished. Yet the ENP explicitly rejects the question of membership, thus creating an exclusive model of differentiated integration.

35 In addition, Azerbaijan is negotiating a new association agreement excluding DCFTA.

Russia has been putting pressure on Ukraine, Armenia, Moldova and Georgia to join the Customs Union of Russia, Belarus and Kazakhstan, which is incompatible with DCFTA. So the EU has been drawn into geopolitical rivalry over its Eastern neighbourhood. Since no DCFTA is in force as yet, and there is no clarity over the potential of the Customs Union, one can expect the rivalry to continue in coming years.

There is a clear mismatch between the expectations and goals of Ukraine, Moldova and Georgia on the one hand, and the EU on the other. The three Eastern neighbours ultimately wish to become full members, but at the same time they tend to look at the association agreements with the EU primarily through geopolitical lenses, as a safeguard against Russian dominance. They also seek the EU's support in managing their conflicts with Russia, particularly when it comes to the separatist regions of Georgia and Moldova. Paradoxically, they seek to strengthen their sovereignty vis-à-vis Russia through deepening their relationship with the EU, although European integration is all about sharing sovereignty and the DCFTAs imply ceding parts of national control to the EU. The EU orientation of the Eastern partners is uncertain for a number of reasons, including the domestic political (principally for the more authoritarian leaders) and economic costs of EU approximation and the unclear endpoint of the process. Furthermore, the economic crisis has weakened the EU's attractiveness and soft power.

For those Eastern neighbours interested in EU membership, some form of membership-lite or associated membership (similar to that proposed for Turkey) might be an interesting alternative, not least because it would be more feasible than full membership, taking into account that these countries are very far from satisfying the membership criteria. However, the option of having to implement EU rules without taking part in their creation is hardly tempting unless it is an intermediary phase on the path towards full membership.

As regards the Southern neighbours, membership is not on the cards at all, while closer regulatory integration through a DCFTA is a distant prospect even for the most advanced countries such as Morocco and Tunisia. Some form of associate membership based on the common market might be envisaged for the future, but it would still be exclusive and hegemonic in the sense that the EU would carefully define the limits of integration and exclude the partners from certain areas. At the same time, regulatory integration offers little help in addressing the urgent problems in the Arab world such

as social tensions and poverty, not to mention war-torn Syria and its regional implications. Yet economic reforms are badly needed across the Arab world, and for most Southern neighbours their market orientation remains strongly towards Europe. Thus, in the longer perspective, integration with the common market is a promising avenue, but the potential gains are remote and extensive support is needed from the EU for the adoption of relevant norms.
By comparison, impact assessments made in the case of Ukraine foresee substantial long-term benefits, but point to the short-term costs of market opening and the implementation of EU norms.[36]

One should also note that there is huge variation among the ENP countries, firstly between the Eastern and Southern dimensions, and secondly within both groups of countries. Hence, their EU relations are bound to remain very different. The EU has tried to encourage regional integration among its neighbours, but for most of the neighbours themselves, bilateral relations with the EU take priority over regional ties.

CONCLUSION: THE (LIMITED) POTENTIAL OF 'MEMBERSHIP-LITE'

In spite of its relative global decline, Europe has not ceased to be the centre of gravity for most of its neighbours. For most of the ENP countries, the EU remains the most important trade partner and provider of support for political and economic reforms. However, the economic crisis has reduced the EU's attractiveness and soft power and made the citizens of candidate countries more hesitant about the virtues of accession.

As full membership is difficult to attain, some form of 'membership-lite' may appeal to the candidate countries and certain neighbours. A 'pick-and-choose' approach to accession, notably 'membership minus eurozone', may sound attractive, but is not easily accepted by the current members and, as argued above, does not actually make accession easier. Moreover, it would undermine the often-emphasized European solidarity and the idea of Europe as a joint project. A more radical change towards a 'two-tier integration'

36 O SHUMYLO-TAPIOLA, *Ukraine at the Crossroads: Between the EU DCFTA & Customs Union*, Ifri Russia/NIS Center, Russie.Nei.Reports No. 11, April 2012.

within the EU, with distinct institutional structures for the 'inner' and 'outer' circles of members, would be even more damaging to the whole integration project.

It is important to maintain the inclusive nature of enlargement in the sense that all candidate countries can become part of the inner core if they wish, providing that they meet the relevant criteria. This is about the EU keeping its promises; otherwise the enlargement policy that is based on strict conditionality would lose its foundation. Candidates are requested to implement reforms that are often painful and unpopular in the eyes of the local populations, be it convicting war criminals, seen by many as national heroes as in the former Yugoslavian countries, or opening up the markets, which means certain death for many small enterprises and family farms. Full EU membership is an irreplaceable reward for the difficult structural changes.

The ENP sets an ambitious goal to integrate the neighbours into the EU's internal market, but for most neighbours, especially in the South, this goal is distant and costly and fails to respond to the more immediate needs for stability and economic growth. At the same time, the flexible integration of non-members is increasing and welcomed as a tool to support political and economic reforms in the more European-oriented and stable countries in the neighbourhood. Yet its exclusive nature, with the EU defining the boundaries of integration, remains a source of discontent among the neighbours and reduces the appeal of adopting EU norms.

4

4. Diversity without differentiation: The case of EU Development Policy

Marikki Stocchetti

The EU's claim to fame as the world's leading donor of official development assistance (ODA) is widely acknowledged. It is, however, much less clear "who" that "EU" in international development actually is. The dual presentation of the EU and member states in international conferences or in the OECD Development Committee (DAC) raises the old question of who to call if you want to discuss the EU and world development. The ambiguity is apparent not only to outsiders, as it took nearly 50 years for the EU itself to come out with its first joint vision of development in 2005. Even though there was no common policy entitled "*EU* development policy" before the changes to the terminology brought about by the Lisbon Treaty (2009), the EU and its predecessor, the European Community, had agreed on joint funding instruments associated with jointly agreed goals and priorities. Relatedly, the words "coordination, co-operation and harmonization" have become frequently used terms in everyday development policy parlance across the Union. Even more importantly, since the Treaty of Maastricht (1992), both member states' and Community policies have officially shared development policy competence and a common goal — namely, the reduction and eventual eradication of world poverty.

Having a common goal without fully integrated policies and the full transfer of competence to the EU level is not a new phenomenon in European integration. In several policy fields, competences are shared, as with development policy. Moreover, pioneering groups of willing and able member states have decided to forge ahead, while it is hoped that the rest will follow their example in due course. In EU development policy no such groups of a more permanent nature have

been created as yet. There are surely groups of like-minded countries, but no institutionalized forms of horizontal cooperation among some member states. However, what sets the EU's development policy apart is the special nature of the policy, which involves direct engagement in partner countries' political, social and economic changes. Control over development funding is also an issue that the EU member states seek to keep in their own hands.

This chapter sets out to explore why there has been so little pressure to utilize differentiated integration in EU development policy and to what extent this may change in the future.

THE EU'S DEVELOPMENT POLICY

From the perspective of the integration process, development policy appears to have something of a schizophrenic profile. In the face of decolonization, the Treaty of Rome (1957) established a two-track model for the Community and member states' development cooperation and aid. In this two-track model, all member states contribute to the Community funding that is still channelled via the separate European Development Fund (EDF), and maintain their bilateral relations and development policy budgets simultaneously. This setting duly left the door open for new member states and developing countries to join while maintaining this dual structure.[37]

Despite the extensive international engagement by both the European Community and the member states, there was no grand design for European development cooperation until the Treaty of Maastricht (1992). Yet the Lomé Conventions (1975–2000) and the Cotonou Agreement (2000–2020) between the EU and African, Caribbean and Pacific States set up a comprehensive model for European development cooperation. In addition to the European Development Fund, it came to include joint institutions, preferential trade agreements (until 2008), as well as political dialogue between the parties.

37 The expansion of development cooperation started with former colonies in West Africa and extended to cover African, Caribbean and Pacific States. These states became members of the EDF and parties to the historic Lomé Conventions (1975–2000) and Cotonou Partnership Agreement (2000–2020). Since the late 1980s, the scope of the cooperation has expanded to cover Latin America and Asia, extending its global dimensions while deepening links to the neighbouring regions in the post-Cold War period.

In the post-Cold War period, the web of European development cooperation has expanded towards new partners in Latin America, Asia and nearby regions. In this setting, a Community development policy was defined as complementary to policies pursued by the member states. Two other principles were laid down to advance a common European contribution. These formed the so-called triple Cs: complementarity, co-ordination and coherence, which were later complemented with a fourth C component: consistency of EU external relations Article 178 of the Amsterdam Treaty (Ex Article 130v). In practice, however, these loose principles have left considerable room for competing interpretations. The Lisbon Treaty (2009) did not essentially change this situation.

Currently, the EU provides the main junction box through which connections are made between the national level and the global sphere.[38] Importantly, the point of reference for development cooperation is found in international agreements negotiated and adopted between the EU and its member states.[39] Hence, the logic of cooperation between the member states and the EU level revolves largely around these international references, such as the United Nations Millennium Development Goals (2001-2015), the Paris Declaration on Aid Effectiveness (2005) and other OECD standards, rather than focusing on the development policy integration within the Union.

However, this does not rule out the possibility of common approaches that are shared both by the member states and the EU. On the contrary, the EU decides on and adopts common standards in line with the international recommendations that result in joint positions. For instance, the EU-led process on the UN Financing for Development (2002) succeeded in raising both global and EU levels of official development assistance. The common EU pledge to provide 50% of increased development aid to Sub-Saharan Africa serves as a more recent example of such an action.[40] However, this kind of common action is possible only as long as member states' competence and national sovereignty are not being questioned.

38 H WALLACE, W WALLACE & MA POLLACK, *Policy-Making in the European Union*. Fifth Edition. Oxford University Press, Oxford & New York, 2005, pp. 8, 21.

39 These include UN Conventions and Millennium Development Goals (MDGs), the Paris High Level Forum on Aid Effectiveness, OECD DAC Development Policy Guidelines, the Busan Global Partnership on Effective Development Cooperation, or other jointly adopted frameworks.

40 H WALLACE, W WALLACE & MA POLLACK, *Policy-Making in the European Union*. Fifth Edition. Oxford University Press, Oxford & New York, 2005, pp. 8, 21.

This also leaves room for differentiated degrees of engagement among the member states in line with their own capacity and interest in international development. As a result, national policies may and often do converge with one another, as well as with the EU level.

DIVERSITY AND DIFFERENTIATION IN DEVELOPMENT POLICY

Despite the joint undertakings, the very existence of development policy in the Union is often underpinned by a tension between the member states' bilateral policies and the attempt to move towards a common EU policy. This tension is often crystallized into the question of "Europeanization". While acknowledging that the concept has different meanings, in development policy Europeanization refers to a process that starts with coordination and harmonization that will finally lead to communitarization or integration.[41] Whereas the stepping stones of coordination and harmonization are already in place thanks to the EU treaties and international development commitments[42], communitarization is generally regarded as difficult to achieve because member states' interests in this field do not converge fully.[43] The member states vary both in terms of their commitment to development policy as well as their relationship to the European Commission. Regarding the latter, the support is related to the idea of Europeanization under the leadership of the European Commission rather than financial allocations to the Union. In fact, member states that are less interested in the development policies prefer to allocate a higher percentage of their development aid via the Union due to the lack of national administration capacity and resources.

To elaborate on the member states' commitment to development policy, Carbone (2007) has divided the members into four groups

41 LOQUAI, *The Europeanisation of Development Cooperation: Coordination, Complementarity, Coherence*. ECDPM Working Paper No. 13. October 1996, p.

42 See Paris Declaration on Aid Effectiveness and Donor Harmonization of 2005, as well as Doha 2008.

43 LOQUAI, *The Europeanisation of Development Cooperation: Coordination, Complementarity, Coherence*. ECDPM Working Paper No. 13. October 1996. p. 6.

according to their performance as donors.[44] In this regard, the main divisions emerge between the big donor countries, the Northern member states, the Southern member states, and the Eastern member states. The Big Three comprise the largest bilateral donor countries of the UK, France and Germany. They are significant development actors both within the EU as well as in international development at large. However, none of them has reached and maintained the UN pledged level of 0.7 % of their Gross National Income (GNI). From the point of view of Europeanization, the UK stands out as a particularly awkward member state as it has strongly opposed the whole idea. On the one hand, it ranks high as a donor both in terms of quantity and quality. The UK also emphasizes the poverty eradication objective and has focused aid allocations on Sub-Saharan Africa, paying special attention to the least developed countries in general.[45] In contrast, France has the closest ties to the Community development policy and administration. Similarly to France, Germany has contributed a high proportion of its assistance through the Community channel.[46]

The Northern member states include Denmark, the Netherlands, Sweden and Finland. In addition, Carbone has included Luxembourg, Ireland and also Belgium in the group of Northern member states on account of their good performance in foreign aid. Out of this group, the three member states that have reached and exceeded the 0.7% target include Sweden (1.02), Luxembourg (0.99), and Denmark (0.86). Belgium (0.53), Finland (0.52) and Ireland (0.52) still have work to do. The former model pupil, the Netherlands, has been the first country to cut its aid (from 0.78 to 0.63) on the grounds of the financial crisis.

As regards member states' attitudes towards the possible Europeanization of the development policy, out of the best-performing group, the Netherlands and Finland are more supportive of EU efforts to coordinate and formulate development policy, while Denmark and Sweden are much more critical towards the Europeanized

44 The member states' performance is ranked in the Commitment to Development Index by the Centre for Global Development. The basic aim of the index is to rank countries according to their performance as donors by rewarding them for high volumes of aid. On the other hand, it penalizes countries for tying aid, for overloading recipients with too many small projects, and for receiving debt payments for loans.

45 M STOCCHETTI, Academic Dissertation, 2013.

46 M CARBONE, *The European Union and International Development: The Politics of Foreign Aid.* Routledge, London & New York, 2007, pp. 45–46, and COM (2010) 159 EU Donor Profiles.

development policy.[47] For their part, Belgium and Luxembourg align very closely with the EU development policy, aims and initiatives. Contrary to the Northern group, the Southern donor countries, namely Spain, Italy and Portugal, emerge as the worst performers.[48] Their donor profile is characterized by low net aid as a share of their economy, which varies between 0.11 and 0.30 of their GNI. They are generally supportive of the Commission's coordination role at the EU level.[49] Given the current economic crisis, it is unrealistic to expect this trend to change anytime soon. The last group comprises yesterday's recipients and today's donor countries, namely the Eastern member states of Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia, as well as Cyprus and Malta, which are still seeking their role in development policy.

In short, the member states' commitments vary considerably and there are substantial differences when it comes to aid provision. Yet, there is a common goal with regard to the amount of allocated aid that member states are moving towards at different speeds. Diversity also characterizes their attitudes towards Europeanization. By the same token, the performance of the European Commission has been under the constant scrutiny of vigilant member states, the DAC peer review, as well as the European Parliament. The traditional EU-sceptical countries — the UK and Denmark — are important to the European development policy both in terms of quality and quantity. They are also in favour of harmonizing policy measures according to the international standards, but they prefer to operate outside the Union framework.

In this regard, 2005 promised to mark a turning point for "European" Development policy, with a historical joint statement entitled "The European Consensus on Development". In this statement, all the EU member states, the Commission and the Parliament together formulated a common EU vision of development, reinforcing the preceding international commitments taken to promote global development. For the first time in the history of development policy, the jointly adopted EU vision was based on a set of common values, principles and means through which the

47 M CARBONE, *The European Union and International Development: The Politics of Foreign Aid.* Routledge, London & New York, 2007, p. 46.

48 Ibid.

49 Ibid.: 46.

goal of eradicating world poverty could be achieved. This vision of a "Common European Development Policy" was based on the idea of a common framework which would guide development policy-related activities both in the Union and in the member states. Due to resistance from a number of member states, the statement was labelled as a European vision and not as an EU policy. The opposing member states included Denmark and the UK, which was holding the Council presidency at the time.

In this respect, the adoption of a common policy framework both for the European and national tracks was seen as a major step towards Europeanization. Even more importantly for differentiated integration, the policy formulation process opened up possibilities to build up coalitions around joint objectives and to advance them at different speeds in deeper cooperation. However, this option has largely remained in the shadow of the Commission, on the one hand, and of member state interrelationships and national profile-raising, on the other. Regarding the former, the European Commission and the member states agreed on a Common Code of Conduct and Division of Labour between the Commission and the member states in 2007. In line with the international Paris Declaration on the effectiveness of development aid, these EU guidelines are designed to enhance complementarity between different actions to ensure better quality of aid and to avoid gaps and duplications in partner countries. There are two principles that are of particular interest for differentiated integration: the lead donorship arrangement and delegate cooperation in the field. Lead donorship refers to the encouraged practice of one member state overseeing the coordination between all donors in the field of its expertise and priority. By the same token, according to the delegate cooperation principle, one dedicated EU donor has the power to act on behalf of the others concerning the administration of funds and dialogue with the partner government in the sector concerned. These practices are in line both with the international guidelines as well as the sheer rational argument of good aid governance and budget spending. In the light of the current economic crisis, this argument is likely to resonate even more strongly. According to the AidWatch 2012 report, much work remains to be done in both regards.

However, the question remains as to what extent the member states would embrace this kind of differentiated integration. In the light of experiences to date, there is a substantial amount of horizontal cooperation on an ad hoc basis, whereas member states

hesitate in making this cooperation more systematic. Similarly to the security and defence policy case (see Chapter 3 by Behr and Ojanen), the more committed member states, in this case the Nordic group and the UK, do form "an island of cooperation" or "avant-garde" forces that aim to influence the initiatives and to advance joint objectives both within the EU as well as internationally. It is possible to speculate that in the future it would be increasingly rational for the Nordic donors and the UK and Ireland to embark on more intense cooperation. Taken together, the smaller countries with a greater commitment to development – namely Denmark, Finland, Sweden, the Netherlands, Luxembourg, Belgium, and Ireland – already form a group of seven. Combined ideally with the Big Three grouping of the UK, Germany and France, they would exceed the critical number of nine member states to fulfil the criterion of enhanced cooperation in EU law. However, this delineation would not take shape in practice without the support of the UK and/or Denmark. On the other hand, it would not exclude deeper coordination outside the official Union framework.

CONCLUDING REMARKS

The more the question of integration is understood in terms of shifting competence from nation states to the Union, the more unlikely the vision of an integrated development policy seems to be. Again, British Prime Minister David Cameron's message on the Future of the European Union also applies here: "...many others, including Britain, would never embrace that goal".[50] Yet there are still a range of options left to be explored to increase convergence between member states' policies and Union policies. In this regard, the common development policy objectives and international agreements provide the incentive for closer coordination. In fact, both the treaty and the development policy objectives oblige the parties in this regard. In addition, international principles of effective development cooperation speak for more systemic coordination between the European donors, although reaching the level of enhanced cooperation appears very unlikely. So far,

50 Cf. Introduction of this report. Prime Minister David Cameron's speech on the future of the EU and the UK's relationship with it, 23 January 2013. Available at: http://www.number10.gov.uk/news/david-cameron-eu-speech/.

the differentiated targets relate to attempts to increase development funding and ensure its efficiency with joint standards. These features suggest that there is room for differentiated integration.

However, as the breakdown of the member states' performance showed, much work remains to be done. Ideally, member states should aim at good performance in their bilateral relations and cooperate to improve the common EU output, be it a joint position in international negotiations or in the EU's own development agreement with an individual developing country or a region. The collective targets stimulate progress within Europe and signal the EU's commitment to international standards and stable international development at large. This, of course, is also in the Union's long- term interests. An effective development policy also serves the construction of a more positive image of the Union in the eyes of others. Insofar as differentiated integration can be understood as improved coordination between more development-oriented member states, namely the Nordic countries and the Big Three of the UK, Germany and France, there is still underutilized potentiality.

The overall development policy puzzle is, and will remain, complex. In the face of continued budgetary constraints owing to the ongoing crisis, the EU collective ODA decreased from €53.5 billion in 2010 to €53.1 billion, bringing the EU ODA level to 0.42% of GNI, down from the 2010 outcome of 0.44% of GNI. Although the EU has maintained its position as the biggest global donor, accounting again for over half of the total ODA to developing countries in the world, there is a need to get more value for the money that is spent on development cooperation. This claim is justified from both the development policy and the budgetary perspectives. In this regard, differentiated integration still merits a closer look by the member state donors in their operations in the partner countries.

What is safe to assume is that both diverse interests towards development aid and the need for development cooperation will increase. This again points to the need for a more systemic division of labour amongst the European donors, The key question remains how well official development aid will be combined with other financial flows to developing countries, and how easily the illicit ones can be stemmed. The Union needs a progressive Commission as well as member states not only to maintain the financial allocations but to shape attitudes and share knowledge on development more widely.

5

5. European borders in transformation: From Schengen to Integrated Border Management

Teemu Sinkkonen

Freedom of movement is one of the core principles of the European Union (EU) and its purpose is to facilitate communication, business, and the lives of Europeans in general. The establishment of the Schengen area with minimum border controls among the participating states was a necessary step in reaching this goal. Even if the Schengen area was formally established by an intergovernmental treaty in 1985, it was politically closely connected to the formation of the European single market in 1986, and duly incorporated into the EU treaties. Since then, Schengen provisions have become one of the cornerstones and strongest symbols of the EU and its "Area of Freedom, Security and Justice" (AFSJ). It has also paved the way for the Integrated Border Management (IBM) strategy of the EU, which aims to unify European practices at the external borders of the EU. Importantly, both the internal dynamics of the Schengen area and the IBM concept have transformed, and are still transforming, the borders of Europe.

Although the principles of Schengen and IBM are relatively simple, the reality in border management is highly complex. This complexity makes border management an excellent example of differentiated integration. In the Schengen area, for example, there are over 400 million people living in 26 countries. However, not all of the EU countries are part of the Schengen area since the UK and Ireland have opted out, and Bulgaria, Cyprus and Romania have not yet been admitted. There are also countries that are not part of the EU, but are part of the Schengen area, such as Norway, Switzerland and Iceland. The former Yugoslavian countries are also a case apart because although they are physically inside the EU, the borders between them

are relatively new and developing. While Croatia and Slovenia belong to the EU already, the membership of Serbia, Bosnia, Montenegro, FYROM, and Kosovo remains a rather distant goal. In addition to these, there is a long list of anomalies that have their background in European colonial history. Such areas include the Canary Islands, Ceuta, Melilla, Martinique, French Guyana, and Gibraltar. The aim of this chapter is to take a closer look at the external dimension of European border control from the point of view of differentiated integration. First, the differentiated borders of Europe are mapped out. Then some of the key political challenges of border control are described and their implications for the integration process assessed. It is argued that the amendments are making the EU more able to tackle the future challenges to the Schengen regime, and facilitating further integration, but they may also lead to more variability in the European geometry. Furthermore, reaching the border control further away from the physical external border of Europe can help to ease the pressure in the Schengen area, but at the same time it is becoming increasingly difficult to pinpoint where the true boundaries of Europe are, and how they are controlled.

DIFFERENTIATED INTEGRATION AND BORDERS

The Schengen area and the area of freedom, security and justice are the most complex in terms of differentiated integration. Old "pillar divide" and cumulative treaties in the fields belonging to the area have made it a complex web of exceptions and *acquis* for different countries. By and large, there are five types of differentiated integration: 1) the "opt-outs", 2) the "opt-in" possibilities, 3) the "enhanced cooperation" possibilities, 4) the Schengen "association" status and 5) new EU members waiting in line.[51] If the external action of the EU in the framework of the IBM concept is taken into account, these categories can be extended with 6) countries that are candidates for EU membership, 7) countries that belong to the European Neighbourhood Policy of the EU, 8) countries where the EU is active in the form of a Security Sector Reform or Border Assistance

51 Cf. J MONAR, *The 'Area of Freedom, Security and Justice': 'Schengen' Europe, Opt-outs, Opt-ins and Associates*, in K DYSON & A SEPOS (Eds.), *Which Europe? The Politics of Differentiated Integration*, Palgrave Macmillan, Houndmills, 2010, pp. 280–283.

operation, and 9) countries that have border management-related bilateral agreements with the EU.

Without going into detail regarding the legal status of the types, the 1) "opt-out" status refers to the UK, Ireland and Denmark. The UK and Ireland have mainly excluded themselves from the Schengen acquis relating to border control, visas and migration, whereas Denmark is a special case: It is part of the Schengen Agreement, but it does not wish to be bound by "communitarized" Schengen measures. 2) The "opt-in" possibilities basically allow the opt-out countries to "pick and choose" which Council decisions they want to implement in their national laws together with the "core" Schengen countries. Since some of the EU member states do want further and faster integration than others, a possibility of 3) "enhanced cooperation" allows multi-speed integration in the AFSJ. The Prüm Convention of 2005 is an example of enhanced cooperation related to the Schengen Agreement. In the convention, seven EU member states decided to improve data sharing in order to step up the fight against crime and terrorism. 4) The fourth mode of differentiated integration concerns the non-EU countries that are part of the Schengen Agreement, namely Iceland, Norway and Switzerland. The association members have to implement all the legal acquis of the Schengen system, but they do not have formal decision-making powers in the Council of the EU. 5) The fifth category refers to the four countries that do belong to the EU, but have not yet achieved a status in the Schengen area, namely Bulgaria, Cyprus, Romania and Croatia. Bulgaria and Romania joined the EU in 2007 and were due to enter the Schengen area five years later, but in 2012 their accession was postponed by at least one year. The main reason for the postponement was related to the condition of the border controls between Greece and Bulgaria, which needed to be enhanced. The status of Cyprus is more complex since the division of the island and the role of Turkey is making the decision politically fraught. This category is a good example of multi-speed Europe. Countries waiting in line are required to fulfil the requirements properly before they are allowed to join the Schengen area.

Countries that are in the EU's borderlands are important to IBM because its core aim is to tackle security-related challenges, such as trafficking illegal goods, before they even reach the physical borders of the EU. Some EU neighbours are duly expected to join the Union. These type 6) countries include the former Yugoslavian countries, for instance. Since Croatia and Slovenia are already EU member

states, it is expected that the rest of the Western Balkans will join the EU when their state structures and economic performance fulfil the requirements for new members. Turkey is another country that belongs to this category, although it is not clear how committed it is to the accession process, and whether the EU would eventually be politically prepared to allow Turkey into the Union. 7) The ENP category includes countries that have a bilateral agreement with the EU, aimed at improving the democratic transition, human rights, the market economy, sustainable development, and the rule of law. As an incentive, visas to the Schengen area are easier to get for citizens from ENP countries, and candidate status may follow later. In the east, countries like Ukraine, Moldova, Armenia, Georgia and Azerbaijan are part of the ENP. However, also in North Africa and the Middle East, the ENP is an important feature of the EU's external relation, including Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria and Tunisia. Belarus and Syria remain separate from most parts of the ENP. 8) Countries that have an IBM-related EU operation can be categorized here individually, although there is some overlap with the previous categories. For example in Kosovo, Moldova, Ukraine and Libya there are EU missions related to border management, although they can also be listed as ENP countries, and Kosovo may even become an EU candidate at some point. 9) This final category includes countries and other actors that have some kind of border management-related strategic partnership agreement with the EU. Such agreements are often related to topics like migration, customs and trade liberalization. Currently Frontex has bilateral agreements on border control with 17 countries. Many of them could also be listed in the other external categories here, such as the ENP category. In addition to these, there is cooperation without formal agreements on border security issues that all participants can agree to cooperate on, in fora like the Africa-Frontex Intelligence Community, which mainly deals with the methodology of data-gathering for intelligence purposes. In practice, the differentiation regarding the EU's borders means that Europe is not yet borderless, and the freedom of movement is not similar everywhere and for everyone. As the case of the Bulgarian and Romanian accession problems demonstrates, the state structures and border controls are not seen to be at an adequate level in every EU country, not to mention the countries that are aiming to enter the EU and the Schengen area. During the events of 2011, the borders between Greece and Bulgaria and Greece and Turkey were

not functioning properly, which had repercussions in the rest of the Schengen countries. This is partly due to integration processes in other institutions, in this case regarding Frontex, which is still a relatively new institution that is taking over some of the work at the external borders that used to belong to the member states. In other words, the practice has not yet met the principle in all parts of the Schengen area. However, the most visible effects are related to the opt-out category. For example, the UK and Ireland still require visas from citizens of several countries, whereas the rest of the EU does not. This also includes the EU member states Romania and Bulgaria. There are also signs that the UK is willing to move even further away from the common goal, since Prime Minister Cameron has suggested putting more limitations on access to the UK, especially for the southern European countries. Nevertheless, these differences should not undermine the effectiveness of the security structures, since it mainly means that the opt-out category countries are only applying stricter rules than the rest of the countries.

Similarly, IBM in the European neighbourhood is still a developing practice. While there has been considerable progress in the Western Balkans, the turmoil in North Africa and the Middle East, mainly concerning the Libyan and Syrian conflicts, has also had a significant impact on Europe and its borders. Immigration is arguably the most contentious issue, since many immigrants and refugees wish to enter the Schengen area, but the armed conflicts have led to a troubling increase in the trafficking of weapons and other illegal goods. As a consequence, IBM has also become more important with regard to differentiated integration inside the EU.

CURRENT CHALLENGES FOR THE BORDERLESS EU

The recent repatriation debate in the UK[52] and practical examples challenging the core concept of the Schengen Agreement — freedom of movement — emerging from France, Italy and Denmark in 2011 demonstrate that the principle of a borderless Europe and the

52 For what could be regarded as a culmination of the debate, see Prime Minister David Cameron's speech on the EU and the UK, 23 January 2013.
Available at e.g.: http://www.telegraph.co.uk/news/worldnews/europe/eu/9820230/David-Camerons-EU-speech-in-full.html.

protocols that govern it cannot go unquestioned. The criticism is loosely based on three arguments.

The first and perhaps the most important challenge for the Schengen regime is that of immigrants, both those that have legal documents and those that do not, entering the agreement area. The hardest test to date came in 2011 when due to the North African revolutions, immigration increased rapidly on the Mediterranean routes to Europe, primarily from Tunisia to Italy. Overall, there was a 35% increase in illegal border crossing in 2011.[53] In order to alleviate the sudden influx of immigrants, Italy quickly granted visas to many immigrants, which enabled them to move freely inside the Schengen area. Countries like Germany, France and Austria protested and accused Italy of breaching the Schengen *acquis*. In addition, France decided to close part of its border with Italy and stop some trains for the purpose of passport control. In a short period of time, more than 700 people were arrested for illegal border-crossing, despite the fact that they had been granted permission to enter Italy — and simultaneously the Schengen area.[54] Many were turned back to Italy. The Commissioner of Justice and Home Affairs (JHA), Cecilia Malmström, responded to the French policy by saying that since it did not constitute a serious "threat to public safety", as stated in the Schengen Agreement on temporary border controls, France had no right to establish passport controls at the Franco-Italian border.[55] The controls were halted when France and Italy agreed bilaterally to enhance control of the EU's external border next to Lampedusa, an island on the main route from Tunisia to Italy. Consequently, after the border control debacle between France and Italy, the European Commission decided to amend the Schengen provisions with the possibility to re-introduce border controls in the event of "persistent deficiency to manage a section of the Union's external

53 Frontex, "Annual Risk Analysis 2012". http://frontex.europa.eu/assets/Attachment_Featured/Annual_Risk_Analysis_2012.pdf. Accessed: 3 April 2013.

54 S VELJANOVSKA, *Danish 'No' for Schengen Agreement — Beginning of the Disintegration of the European Union?*, Singidunum Journal of Applied Sciences, 9 (1), 2012, pp. 88-94.

55 E.g. Euroactiv.com, *Italy, France tussle over 'boat people'*, 4 April 2011. http://www.euractiv.com/east-mediterranean/italy-france-tussle-boat-people-news-503746. Accessed: 3 April 2013.

border"[56] by one of the member states and to improve the evaluation and monitoring mechanisms of the European Commission.[57] The Lampedusa route and immigration once again became a heated topic after a boatful of immigrants sank in October 2013 and over 300 people drowned in the vicinity of the island. The tragedy provided the impetus for an initiative on a surveillance system for border control and there has also been talk of reforming the European asylum system. Currently, it is the receiving country that takes care of immigrants seeking refugee status in Europe, but since it is the Mediterranean countries that are struggling the most with the flows, the load could be eased by sharing the costs with less affected member states.

Second, internal migration in Europe is no longer regarded in as positive a light as previously. This, coupled with concerns related to international crime, has been one of the underlying reasons why Romanian and Bulgarian accession to the area has been postponed.[58] The argument against internal migration was used by the UK when Prime Minister David Cameron expressed willingness to limit the visa-free movement of people from Southern Europe.[59] Although the UK is not part of the Schengen area, its position in Europe and stance towards Schengen nevertheless play a significant role in the future of the area. As an example, Cameron's famous speech on the UK's role in the EU in January 2013 surely inspired many Eurosceptic powers from smaller member states, including Finland[60], to demand an *à la carte* model for their countries as well. Similar opinions are also likely to be voiced inside the Schengen area, since the euro crisis

56 European Commission, COM (2011) 561. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0561:FIN:EN:PDF. Accessed: 3 April 2013.

57 European Commission, COM (2011) 559. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0559:FIN:EN:PDF. Accessed: 3 April 2013.

58 At the time of writing, accession should be granted in January 2014, but the necessary unanimity is lacking in the Justice and Home Affairs Council and the accession may be postponed once again.

59 E.g. Euractiv.com, Cameron wants 'restrictions' put on EU freedom of movement, 7 January 2013. http://www.euractiv.com/future-eu/cameron-wants-restrictions-eu-fr-news-516886. Accessed: 3 April 2013.

60 See for example A Brittain, Cameron Draws Criticism in Europe, The Wall Street Journal, 23 January 2013. http://online.wsj.com/article/SB10001424127887323539804578259541624539374.html. Accessed: 3 April 2013.

has already prompted hundreds of thousands of people to leave the countries that have suffered the most from the high unemployment figures — primarily Spain, Ireland and Greece — in order to seek jobs in countries with better economic prospects.[61] These internal flows could challenge the vision of a common goal and lead to multi-tier integration in border issues rather than multi-speed integration.

The third challenge to the borderless Europe is the growing scepticism towards the Schengen area and common security institutions related to border control. There are several processes of deepening integration on internal security and strengthening established institutions like Frontex and Europol which go hand in hand with the Schengen area, and which should make it easier and more efficient to combat crime. Due in part to the euro crisis, several EU countries have witnessed the rise of neo-nationalism and populist parties that are openly against further integration, and have already agreed on processes and protocols. A good example of such a challenge was the Danish border debacle in 2011, occurring shortly after the above-mentioned dispute between France and Italy, when the Danes decided to re-establish border controls. The main reasoning behind the Danish decision, in addition to stemming the tide of illegal immigrants, was to reinforce national control over the movement of illicit goods and organized crime[62], which the Danish Eurosceptic party considered necessary since the common controls were not effective enough in their opinion. To use the general parlance of differentiated integration, Denmark demonstrated that it was questioning the common goal of a borderless Europe and that it wanted to go *à la carte*, choosing a model that would be the best fit for its national and domestic interests. In order to respond to this challenge, the EU needs to improve the common institutions and also succeed in implementing the IBM concept. Since IBM is aimed at improving border control beyond the physical external borders of the EU, success in preventing trafficking, international crime, and other vices is an important factor in shaping the way in which the internal dynamics, institutions and protocols are perceived in the area.

61 In 2011 the highest number of emigrants in Europe originated from Spain, where over 500,000 people left the country. Eurostat, "Migration and Migrant Population Statistics", March 2013. http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Migration_and_migrant_population_statistics. Accessed: 3 April 2013.

62 M MUNKØE, *The 2011 Debacle over Danish Border Control: A Mismatch of Domestic and European Games*, EU Diplomacy Paper, College of Europe. Bruges, 2012, p. 9.

Different positions on the kind of Europe that is required are apparent in the discourses on the aforementioned challenges. Whereas the British are demanding more flexibility in order to facilitate the British position in an *à la carte* Europe, the amendments of 2011 can be seen as facilitators of a kind of lighter version of the agreement, without losing the common goal of a borderless Europe. The amendments make it easier to allow new members to join the Schengen area, since in the event that a new member state fails to control its external border, there are now better capabilities to respond to this both at the Commission level and at the national level. IBM and the institutions related to it are also part of the dynamics, as through them the external pressures in the Schengen area can be alleviated. Hence, the borders of Europe are transforming.

CONCLUSIONS

What was the impact of the 2011 amendments on the Schengen area or AFSJ? How is the IBM concept affecting the way in which European borders are transforming? Is there still a common goal of a borderless Europe? These are some of the core questions that this chapter attempted to address, albeit briefly. It is clear that the amendments of 2011 eased some of the internal pressure on the Schengen countries, as the member states now have greater flexibility in introducing short-term border controls at the internal borders of the Schengen area. This should make it easier to allow new member states like Bulgaria and Romania to enter the area, but since there is still a lack of unanimity between the member states on their accession, it seems that the amendments alone cannot resolve the political challenges inside the Schengen area. Growing scepticism towards the EU and its institutions naturally affects border control as well, because many of the populist parties are rallying against the immigration flows into Europe and also against internal migration. There is consequently a need for enhanced border control, more efficient institutions, and also for tailored solutions to specific problems. IBM is already trying to tackle many of the challenges outside of the AFSJ, extending many aspects of border control to the European neighbourhood and countries willing to cooperate with the EU.

Increased cooperation and better institutions should improve border control and tackle some of the key challenges presented in this chapter. This may be a double-edged sword, however. Tailoring

solutions case by case can actually lead to more differentiated integration and growing complexity rather than solving problems, since they can also lead to the loss of the shared goal of a borderless Europe. Furthermore, adding to the exceptions makes the boundaries between EU member states and external states increasingly more blurred. Bearing in mind the road that the UK seems to be taking in distancing itself from the EU, coupled with the growing role of EU-sceptic parties in many member states and probably in the European Parliament as well, it is more likely that the member states will not be able to reach a common understanding of the goal that everyone should aim for regarding borders and border controls. This means that the future of Europe's transforming borders is likely to lie in multi-tier rather than multi-speed differentiated integration.

Conclusion

Juha Jokela

This report has taken a closer look at differentiated integration in the EU's external relations. The rationale for this exercise draws on the observation that differentiated integration is increasingly present in the EU because of the developments associated with the financial and economic crisis and the reinforcement of the Economic and Monetary Union. Many have seen differentiated integration as a way forward to address current challenges, and tackle the crises which have destabilized the single currency, caused economic hardship and created political divisions within the EU. Others, however, have pointed out that differentiation might turn out to be a more permanent and deeper feature of European integration than previously envisaged, and as such it could also lead to fragmentation and even disintegration. Some member states' willingness to re-evaluate their relationship to the European Union — particularly the UK — is often mentioned as an indicator of such a possibility.

Against this background, the contributors to this report have found it both highly interesting and challenging to examine differentiated integration in the EU's external relations in a policy-relevant manner. They have attempted to map out the form and extent of differentiation within key fields of the EU's external relations and pondered whether differentiated integration is increasing, and, if so, how? In so doing, they have aimed to pinpoint the key drivers and implications of the current developments for the EU.

The report has suggested that differentiated integration is an important feature of the EU's external relations in general. On the one hand, it further complicates the EU's external action as the member states' participation in it varies across different policy fields.

On the other hand, it has enabled the EU to move ahead in developing its external relations. The ongoing EU development trends resulting from the European sovereign debt crisis and banking crisis give rise to both opportunities and challenges in moving towards increasingly unitary external policies and representation. The EMU reforms will enable the EU to address the external representation of the so-called economic leg of the EMU and improve its position in relevant international institutions and fora. Yet the deepening differentiation between the euro area and the rest of the EU might have some negative consequences for the EU's ability to formulate coherent and unitary external action for the EU as a whole.

In the light of these developments, the field of security and defence has been characterized as undergoing a process of so-called parallel deepening. One of the current policy questions is how to live with the reality of various forms of differentiated integration in this field. Given the slow progress of both top-down and bottom-up initiatives at the European level, a growing number of analysts have suggested abandoning efforts to establish permanent structured cooperation and to opt for multiple, discrete, regional islands of cooperation to improve defence capabilities. Yet a Europe of many "mini defence unions" also entails considerable risks. Chief amongst these is its potential for consolidating differences, not only by fostering a potentially dangerous strategic disconnect, but also by hindering interoperability, due to the acquisition of incompatible platforms. Currently, there is some evidence that defence issues might feature higher on the EU's agenda in the near future. Relatedly, the member states might be convinced to adopt more binding rules in this field, and thus more common policies, by showing how mutual commitments reduce uncertainty as to, for instance, what capabilities there really are at the member states' disposal. The treaty provisions on enhanced cooperation and PESCO would still remain in the background as a last resort option — and also as a warning for more reluctant members.

In spite of its relative global decline, the report suggests that Europe has not ceased to be the centre of gravity for most of its neighbours. For most of the ENP countries, the EU remains the most important trade partner and provider of support for political and economic reforms; yet the economic crisis has reduced the EU's attractiveness and soft power and made the citizens of candidate countries more hesitant about the virtues of accession. The report also suggests that as full EU membership appears to be increasingly

difficult to achieve, some form of 'membership-lite' arrangements might appeal to some candidate countries and neighbours. While 'a pick-and-choose' approach to accession, notably 'membership minus eurozone', may sound attractive, it will not be easily accepted by the current members, and does not make accession any easier in practical terms. A more radical change towards 'two-tier integration' within the EU, with distinct institutional structures for the 'inner' and 'outer' circles of members, would even be rather damaging to the whole integration project and make the EU increasingly difficult to comprehend in its neighbourhood.

In terms of the EU's aim to enhance European efforts to foster development in various regions of the globe, clear incentives exist for deeper coordination. In fact, both the treaties and the development policy objectives oblige the parties in this regard. In light of these aspirations, differentiated integration might provide some avenues to move forwards. Yet the report concludes that more systemic coordination between EU member states based on enhanced cooperation among some of them appears highly unlikely. Member states' own interests and the need for national visibility are still too important. At the same time, the shared competence provides the member states with a high degree of flexibility. It is argued that the form of integration is of secondary importance as the output is what counts. Insofar as differentiated integration can be understood as improved coordination between more development-oriented member states, namely the Nordic countries and the Big Three of the UK, Germany and France, there is, however, some underutilized potentiality embedded in differentiated integration in the broader sense.

Finally, the report looked into differentiation at the EU's borders, and the recent developments in the Schengen area resulting from immigration and migration pressures underpinned by the unfolding events in the EU's neighbourhood as well as the economic crisis. The recent amendments have eased some of the concerns related to migration flows, since they enable temporary border controls at the national borders. On the other hand, the amendments form a double-edged sword, since they could also lead to the loss of the shared goal of a borderless Europe resulting from unitary external borders. If a member state starts to abuse the possibility to make an exception, that would mark a step towards a multi-tier Europe rather than multi-speed integration. In the event that the economic crisis is protracted and Eurosceptic forces continue rising, it will be important

to enhance the integration rather than the differentiation of the Area of Freedom, Security and Justice, while focussing at the same time on Integrated Border Management in the European neighbourhood. Common services like Frontex and Europol play a central role in this respect, as they are narrowing the distance between practice and principle that some of the EU members are facing and, in many cases, clearly add value to the national capabilities.

In sum, this report has argued that thus far there is rather limited evidence that the level of differentiation is increasing in the EU's external relations due to the ongoing developments related to the EU's financial and economic crisis. Relatedly, the report suggests that depending on the level and duration of differentiation embedded in the current reforms of the EMU, some consequences may arise in due course. First, the deteriorating economic outlook for the EU and unfolding events in its neighbourhood are calling into question the idea of a borderless EU, and may lead to the reinforcement of its external and internal borders. Second, the deepening economic governance within the eurozone cannot escape the questions related to its external implications, such as the Eurogroup's external representation. Third, the deeper EMU is likely to tighten the criteria for euro membership and thereby shape the EU enlargement policy with some implications also for the neighbourhood policy and other association arrangements. Finally, while there is limited evidence suggesting that the deepening integration within the euro area would spill over to the other key policy areas with external ramifications, this possibility cannot be ruled out.

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Multi-speed Europe?

Differentiated integration in the external relations of the European Union

Juha Jokela (ed.)

Differentiated integration is not a new phenomenon in European integration. It has taken various forms over a wide range of policy areas in the past. Importantly, differentiated integration is not merely an internal question for the EU as the Union's organization and internal dynamics also shape its external actorness. Consequently, various forms of differentiation are present in the EU's external relations and policies.

The objective of this report is to take a closer look at differentiated integration in the EU's external relations and, in so doing, to discuss its implications for the EU's aspirations to forge more unitary and effective external policies. To this end, the contributors to this report will examine the different features of differentiated integration that currently exist in various fields of the EU's external relations. Relatedly, they will analyze whether the level of differentiation is increasing and, if so, what the key drivers of the current trends are.

Thus far there is rather limited evidence that the level of differentiation is increasing in the EU's external relations due to the ongoing developments related to the EU's financial and economic crisis. Depending on the level and duration of differentiation embedded in the current reforms of the EMU, some consequences might occur in due course.

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