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**TEXTS ADOPTED**

*Provisional edition*

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**P8\_TA-PROV(2019)0077**

**Implementation of the Treaty provisions concerning enhanced cooperation**

**European Parliament resolution of 12 February 2019 on the implementation of the Treaty provisions concerning enhanced cooperation (2018/2112(INI))**

*The European Parliament,*

- having regard to the Treaty provisions related to enhanced cooperation and in particular Articles 20, 42(6), 44, 45 and 46 of the Treaty on European Union (TEU), and Articles 82, 83, 86, 87, 187, 188, 326, 327, 328, 329, 330, 331, 332, 333 and 334 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to the Treaty provisions on other existing forms of differentiated integration and in particular Articles 136, 137 and 138 TFEU relating to provisions specific to Member States whose currency is the euro,
- having regard to the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG),
- having regard to Protocol 10 on permanent structured cooperation established by Article 42 of the Treaty on European Union, Protocol 14 on the Euro Group and Protocol 19 on the Schengen *acquis* integrated into the framework of the European Union,
- having regard to its resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty<sup>1</sup>,
- having regard to its resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union<sup>2</sup>,
- having regard to its resolution of 16 February 2017 on budgetary capacity for the euro area<sup>3</sup>,
- having regard to its resolution of 16 March 2017 on constitutional, legal and institutional implications of a common security and defence policy: possibilities offered

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<sup>1</sup> OJ C 252, 18.7.2018, p. 215.

<sup>2</sup> OJ C 252, 18.7.2018, p. 201.

<sup>3</sup> OJ C 252, 18.7.2018, p. 235.

- by the Lisbon Treaty<sup>1</sup>,
- having regard to its resolution of 17 January 2019 on differentiated integration<sup>2</sup>,
  - having regard to the Commission white paper of 1 March 2017 (COM(2017)2025) and the five subsequent reflection papers (COM(2017)0206), COM(2017)0240, COM(2017)0291, COM(2017)0315, COM(2017)0358),
  - having regard to the Rome Declaration of 25 March 2017,
  - having regard to Rule 52 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
  - having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A8-0038/2019),
- A. whereas the Union has a particular interest in implementing enhanced cooperation in certain areas of non-exclusive EU competences in order to move forward the European project and to facilitate the life of citizens;
- B. whereas, pursuant to Article 20(2) TEU, enhanced cooperation is meant to be a measure of last resort, when the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole;
- C. whereas enhanced cooperation should not be seen as an instrument of exclusion or division of the Member States, but as a pragmatic solution to advance European integration;
- D. whereas the sensitive nature of certain policy areas makes it difficult to follow the ordinary legislative procedure, not only because of the unanimity requirement but also due to the established practice in the Council of always seeking consensus among the Member States, even when a qualified majority would be sufficient to take a decision;
- E. whereas with the exception of the Financial Transaction Tax, all enhanced cooperation initiatives could have been adopted in Council by qualified majority voting (QMV), had this rule been established instead of unanimity voting;
- F. whereas a number of cases exist of sub-groups of Member States carrying out bilateral or multilateral cooperation between themselves outside the Treaty framework, for example in fields such as defence; whereas the pressure exerted by the economic and monetary crisis to take swift decisions and to overcome the unanimity requirement in certain areas led to the adoption of intergovernmental instruments outside the EU legal framework, such as the European Stability Mechanism (ESM) and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG or the ‘Fiscal Compact’);
- G. whereas enhanced cooperation is a procedure whereby a minimum of nine Member States are permitted to establish advanced cooperation in an area within the structures of

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<sup>1</sup> OJ C 263, 25.7.2018, p. 125.

<sup>2</sup> Texts adopted, P8\_TA(2019)0044.

the EU, but without the involvement of the remaining Member States; whereas enhanced cooperation allows those participating Member States to achieve a common goal or initiative and to overcome paralysis in negotiations or a blockage by another Member State or Member States when unanimity is required; whereas pursuant to Article 20(4) TEU acts adopted in the framework of enhanced cooperation should bind only participating Member States; whereas enhanced cooperation is limited to areas in which the EU does not have exclusive competences;

- H. whereas pursuant to Article 328(1) TFEU, ‘the Commission and the Member States participating in enhanced cooperation shall ensure that they promote participation by as many Member States as possible’;
- I. whereas experience shows that enhanced cooperation has delivered satisfactory results in divorce law<sup>1</sup>, and offers interesting prospects with regard to property regime rules<sup>2</sup>, the European unitary patent and the European Public Prosecutor’s Office;
- J. whereas the initial experiences with enhanced cooperation have highlighted the difficulties associated with the application of this concept, due to the limited provisions available in the Treaties concerning its practical implementation and the lack of sufficient follow-up carried out by the Union institutions;
- K. whereas the analysis of different federal models used in EU Member States and federations outside the Union revealed that flexible cooperation mechanisms are often used by sub-federal entities in areas of common interest;
- L. whereas without the use of bridging clauses to move from unanimity to QMV in the Council, and in the absence of a thorough reform of the Treaties, it seems possible that in the future, the Member States would need to resort to the provisions on enhanced cooperation in order to address common problems and attain common goals;
- M. whereas it is of importance for the smooth application of enhanced cooperation to establish a list of questions that need to be addressed and to provide a roadmap for the effective functioning of enhanced cooperation in the letter and spirit of the Treaties;

### ***Main observations***

1. Is concerned by the fact that even though enhanced cooperation offers a solution to a common problem, by taking advantage of the Union institutional structure and thereby reducing the administrative costs for the participating Member States, it has not completely eliminated the need to resort to forms of intergovernmental subgrouping solutions outside the Treaties, which have a negative impact on how consistently the EU legal framework is applied and therefore lead to a lack of appropriate democratic scrutiny;
2. Believes that the EU’s single institutional framework should be preserved in order to

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<sup>1</sup> Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (OJ L 343, 29.12.2010, p. 10).

<sup>2</sup> Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (OJ L 183, 8.7.2016, p. 1).

achieve its common objectives and guarantee the principle of equality of all citizens; insists that the Community or Union method should be upheld;

3. Underlines that contrary to intergovernmental Treaties, enhanced cooperation provides a tool for problem-solving that is not only legal but also convenient, as it is based on the Treaty provisions and operates within the Union institutional structure;
4. Points out that even though enhanced cooperation, due to its nature as a last resort measure, has not been used extensively since its inception in the Treaty of Amsterdam, it seems to be gaining importance and delivers tangible results;
5. Notes that, based on existing experience, enhanced cooperation most often arises in areas governed by a special legislative procedure requiring unanimity, and has predominantly been used in the area of justice and home affairs;
6. Points out that so far the procedure for the engagement and implementation of enhanced cooperation has been quite lengthy, notably due to the unclear definition of a reasonable period to ascertain that the necessary voting threshold cannot be reached and the lack of strong political will to move forward faster;
7. Notes that the lack of clear operational guidelines for creating and administering enhanced cooperation, for example the applicable law for common institutions or procedures to withdraw from already existing cooperation, might have rendered the conclusion of enhanced cooperation less likely;
8. Recalls that even though enhanced cooperation benefits from the Union institutional and legal order, its automatic integration into the *acquis* is not foreseen;
9. Believes that even though enhanced cooperation is considered as a second-best scenario, it is still a viable tool for problem-solving at the Union level and a tool to overcome some of the institutional deadlocks;
10. Is of the opinion that the same set of questions needs to be answered in order to effectively implement and organise enhanced cooperation, irrespective of the policy area that it concerns or the form it takes;

### ***Recommendations***

11. Proposes, therefore, that a number of questions need to be answered and a roadmap followed as set out below in order to ensure the smooth and effective implementation of enhanced cooperation;

### ***Decision-making process***

12. Points out that the political impetus for enhanced cooperation should come from the Member States, but discussions on its contents should be based on a Commission proposal;
13. Recalls that Article 225 TFEU gives Parliament the right of quasi-legislative initiative, which should be interpreted as the possibility for Parliament to initiate enhanced cooperation on the basis of a Commission proposal that did not manage to reach an agreement through the regular decision-making procedure within the mandate of two

consecutive Council presidencies;

14. Believes that it should be concluded that the objectives of an instance of cooperation cannot be attained by the Union as a whole, in line with the requirement in Article 20 TEU, if during a period covering two consecutive Council presidencies, no substantive progress has been made in the Council;
15. Recommends that Member States' requests to establish enhanced cooperation between themselves should, in principle, be based on objectives that are at least as ambitious as those presented by the Commission, before it is established that the objectives cannot be achieved by the Union as a whole within a reasonable timeframe;
16. Strongly recommends that the special passerelle clause enshrined in Article 333 TFEU be activated to switch from unanimity to QMV, and from a special to the ordinary legislative procedure, immediately after an agreement on the start of enhanced cooperation is approved by the Council, in order to avoid new blockages if the number of participating Member States is significant;
17. Finds it necessary that the decision authorising enhanced cooperation should specify the framework for relations with the non-participating Member States; considers that the Member States not participating in such enhanced cooperation should nevertheless be involved in the deliberations on the subject it addresses;
18. Recalls that both the Commission and the Council secretariats have an important role to play in ensuring that Member States that do not participate in enhanced cooperation are not left behind in a way that makes their participation at a later stage difficult;

#### *Administration*

19. Recommends that the Commission play an active role in all stages of enhanced cooperation from the proposal through the deliberations to the implementation of enhanced cooperation;
20. Affirms that the unity of EU institutions should be maintained and that enhanced cooperation should not lead to the creation of parallel institutional arrangements, but could allow specific bodies to be established where appropriate within the EU legal framework and without prejudice to the competences and role of the Union institutions and bodies;

#### *Parliamentary scrutiny*

21. Recalls that Parliament is in charge of the parliamentary control of enhanced cooperation; calls for stronger involvement from national parliaments, and in those Member States where it is relevant, from regional parliaments, alongside the European Parliament in the democratic scrutiny of enhanced cooperation if it concerns policy areas of shared competence; underlines the possibility of establishing an interparliamentary forum similar, for instance, to the Interparliamentary conference under Article 13 of the TSCG and the Interparliamentary conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), where necessary and without prejudice to the powers of Parliament;
22. Stresses the need for the Member States participating in enhanced cooperation to

include those regions that have legislative powers in matters that affect them, with a view to respecting the internal division of powers and reinforcing the social legitimacy of such enhanced cooperation;

23. Recommends that Parliament play a stronger role in enhanced cooperation by suggesting to the Commission new forms of cooperation via Article 225 TFEU, and by monitoring proposals or existing cooperation; expresses the conviction that Parliament should be involved in every stage of the procedure, rather than just being expected to provide its consent, and that it should receive regular reports and be able to comment on the implementation of enhanced cooperation;
24. Calls on the Council to engage with Parliament in a possible future enhanced cooperation procedure prior to the request for Parliament's consent on the final text, so as to ensure maximum cooperation between the Union's co-legislators;
25. Regrets, however, that despite Parliament's constructive and measured approach to the enhanced cooperation procedure, the Council has shown little interest in engaging formally with Parliament prior to the request for Parliament's consent on the final negotiated text;
26. Deems it necessary that Parliament improve its internal organisation in relation to enhanced cooperation; believes, to this end, that each case of enhanced cooperation should be followed by the relevant standing committee and recommends that Parliament's rules of procedure should therefore authorise the setting up of ad-hoc sub-committees in which full membership is primarily given to those MEPs elected in the Member States that are participating in such enhanced cooperation;

#### *Budget*

27. Takes the view that operating expenditure linked to enhanced cooperation should be borne by the participating Member States, and if this cost is borne by the EU budget, the non-participating Member States should be reimbursed, unless the Council, after consulting Parliament, decides in accordance with Article 332 TFEU that such cooperation is to be funded by the EU budget, thereby making such expenditure part of the latter and therefore subject to the annual budgetary procedure;
28. Considers that if the activity regulated by enhanced cooperation generates revenue, this revenue should be assigned to cover the operating expenditure linked to the enhanced cooperation;

#### *Jurisdiction*

29. Believes that enhanced cooperation should fall under the direct jurisdiction of the Court of Justice of the European Union (CJEU), without prejudice to the possibility of establishing an arbitration procedure or a dispute settlement court of first instance that could be required for the functioning of a particular case of enhanced cooperation, unless the Treaty provides otherwise, which should be specified in the legal act establishing such enhanced cooperation;
30. Points out that if a case of enhanced cooperation requires that a special arbitration mechanism or court be put in place, the final arbitration body should always be the CJEU;

### *Adjustments to the institutional structure of the Union*

31. Proposes the creation of a special enhanced cooperation unit in the Commission, under the leadership of the Commissioner responsible for inter-institutional relations, to coordinate and streamline the institutional setting up of enhanced cooperation initiatives;
32. Considers it necessary to make the role of both the Commission and Council secretariats more proactive in the context of enhanced cooperation, and therefore proposes that they actively search, in conjunction with the Committee of the Regions and, in particular, with its European Grouping of Territorial Cooperation (EGTC) platform, for areas where enhanced cooperation could be useful for the advancement of the European project or for areas adjacent to existing forms of enhanced cooperation, in order to avoid overlaps or contradictions;

### *Withdrawal or expulsion of Member States*

33. Points out that there are no provisions in the Treaties regarding the possibilities for Member States to withdraw, or be expelled, from existing cases of enhanced cooperation, with the exception of Permanent Structured Cooperation (PESCO);
34. Believes that clear rules should be laid down in all cases of enhanced cooperation on the withdrawal of a Member State that no longer wishes to participate and on the expulsion of a Member State that no longer fulfils the conditions of the enhanced cooperation; advises that the terms and conditions of the possible withdrawal or expulsion of a Member State should be specified in the act establishing the enhanced cooperation;

### *Recommendations for the future evolution of enhanced cooperation*

35. Considers it necessary to devise a procedure for the fast-track authorisation of enhanced cooperation in fields of high political salience to be accomplished within a shorter timeframe than the duration of two consecutive Council presidencies;
36. Urges Member States participating in enhanced cooperation to work towards integrating enhanced cooperation into the *acquis communautaire*;
37. Calls on the Commission to propose a regulation, on the basis of Article 175, third subparagraph, or Article 352 TFEU, in order to simplify and unify the relevant legal framework for enhanced cooperation (for example, the guiding principles on the applicable law for common institutions or a Member's withdrawal), thereby facilitating the conclusion of such cooperation;
38. Suggests that the next revision of the Treaties should explore the possibility of regions or sub-national entities playing a role in enhanced cooperation where the latter relates to an area of exclusive competence of the level in question, with due respect for national constitutions;

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39. Instructs its President to forward this resolution to the Council, the Commission and the national parliaments.