DRAFT REPORT

on differentiated integration
(2018/2093(INI))

Committee on Constitutional Affairs

Rapporteur: Pascal Durand

Rapporteur for the opinion (*):
Doru-Claudian Frunzulică, Committee on Economic and Monetary Affairs

(*) Associated committee – Rule 54 of the Rules of Procedure
<table>
<thead>
<tr>
<th>CONTENTS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION</td>
<td>3</td>
</tr>
<tr>
<td>EXPLANATORY STATEMENT</td>
<td>9</td>
</tr>
</tbody>
</table>
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION
on differentiated integration
(2018/2093(INI))

The European Parliament,

– having regard to the Commission’s white paper on the future of Europe: Reflections and scenarios for the EU-27 by 2024 (COM(2017)2025) and the accompanying reflection papers on the future of EU Finances, on the future of European Defence, on the deepening of the Economic and Monetary Union, on harnessing globalisation, and on the social dimension of Europe,

– 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”

1

– having regard to its resolution of 16 February 2017 on “Possible evolutions and adjustments to the current institutional set-up of the European Union”

2

– having regard to its resolution of 15 November 2013 on “Constitutional problems of a multiter governance in the European Union”

3

– having regard to Rule 52 of its Rules of Procedure (and 132(2)) of its Rules of Procedure,

– having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Budgets (A8-0000/2018),

A. whereas differentiated integration is a polysemous concept that can define various phenomena both from a political and from a technical point of view;

COMP 1 covers AM 5, 6, 7

B. whereas the political perception of differentiated integration varies significantly depending on the national context; whereas in some Member States, it can carry a positive connotation and be associated with the idea of creating a “pioneer group” aiming at achieving more rapid progress in the deepening of integration; whereas in others, it is may be perceived as a path towards the creation of first-class and second-class Member States of the Union or as a way of preserving national sovereignty and deviating from the political and legal acquis of the EU

C. whereas differentiated integration also refers to very different mechanisms that can have very different impacts on European integration; whereas one can distinguish between time differentiation, or multispeed Europe, where the goals are the same but the speeds to reach them are different, manners differentiation, or Europe à la carte, and space

1 P8_TA-PROV(2017)0049
2 P8_TA-PROV(2017)0048
3 P7_TA-PROV(2013)0598
differentiation, often referred to as variable geometry;

**COMP 2 covers AM 11 and 13**

D. whereas differentiation has been a stable feature of European integration in domains where the EU had competences but also elsewhere (13), and has sometimes allowed for (11) the deepening and widening of the EU to be pursued simultaneously (11); whereas, as a consequence, one cannot oppose differentiation to (11) integration nor present differentiation as an innovative path for the future of the Union;

E. whereas experience shows that, if interdependence works as a factor of integration, politicization often works as an obstacle to it; whereas, as a consequence, Union policy areas with the deepest integration are mostly the least politicized ones, such as internal market harmonization and regulation, while differentiated integration seems most likely to arise in policy areas characterised by high political polarisation, such as monetary policy, defence, borders control, fundamental rights or taxation;

**COMP 3 covers AM 19, 20, 21, 22, 23**

F. whereas the Treaties provide for the possibilities for Member States to take different paths of integration, namely via enhanced cooperation (Article 20 TEU) and Permanent structured cooperation (Article 46 TEU), without, however, containing provisions for permanent flexibility or differentiated integration as long-run objective or principle of European integration; whereas, moreover, enhanced cooperation under the common security and defence policy is now a reality, contributing to the construction of a genuine European Defence Union; whereas these different paths of integration should only be applied to a limited number of policies while being inclusive in order to allow all Member States to participate and they may not undermine the process of creating an ever closer Union as prescribed in Article 2 TEU;

G. whereas with the exception of the Financial Transaction Tax, all existing cases of differentiated integration could have been adopted in Council by qualified majority voting if this had been the rule to be applied instead of unanimity;

H. whereas some forms of differentiated integration might have centripetal effects, attracting more Member States to join the initiative later, while other forms of differentiated integration might have centrifugal effects, notably if they create deadweight effects and lead to the possibility for negative externalities by the non-participating Member States;

I. whereas the process of differentiation has led to the creation of initiatives within the Union legal framework but also to some more flexible intergovernmental legal arrangements, which have led to the creation of a complex and non-understandable system for citizens, with reduced accountability of public decisions;

J. whereas Member States are not the only potential actors of differentiated integration; whereas Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) already allows for transnational cooperation on the basis of a
shared interest;

1. Insists that the debate should not be about pro-differentiation versus anti-differentiation but about the best ways to operationalise differentiated integration inside the EU institutional framework in the best interest of the Union and its citizens;

COMP 4 covers 23, 33, 34, 35, 36, 45

2. Considers that differentiated integration should reflect the idea that Europe does not work on a one-size fits all approach and should adapt to the needs and wishes of its citizens; Believes that differentiation may be needed sometimes to start new European projects (AM 45) and to overcome the deadlock arising from national political situations not connected with the common project (35); Believes that it should be used as a constitutional tool to ensure, in a pragmatic way, flexibility (33) without undermining the general interest of the Union and the equality of rights and opportunities between citizens; reiterates that differentiation should be conceived only as a temporary step on the way towards more effective and integrated policy making (34);

COMP 5 covers 40, 41

3. Recalls that Parliament believes that differentiated integration must remain, as foreseen under Article 20 and 46 (TEU) (41), open to all Member States and continue to serve as an example of deeper European integration where no Member State remains excluded from a policy in the long run (41) and should not be seen as a way to facilitate ‘à la carte’ solutions’ that threaten to undermine the Union method and EU’s institutional system; (40);

4. Affirms that any differentiation initiative that would lead to the creation or to the perception of the creation of first-class and second-class Member States of the Union would be a major political failure with detrimental consequences for the EU project;

5. Considers that one appropriate answer to the need for flexible tools is to solve one of the roots of the problem; therefore, calls for a further reduction of the voting procedures in the Council from unanimity to qualified majority voting, by making use of the ‘passerelle clause’ (Article 48(7) TEU);

COMP 6 covers AM 46, 48

6. Believes that differentiated integration should always take place within the Treaty provisions, maintain the unity of EU institutions and should not lead to the creation of parallel institutional arrangements or arrangements indirectly contrary to the spirit of Union law and its fundamental principles (48) but should instead allow specific bodies to be established where appropriate, without prejudice to the competences and role of the EU institutions; points out (46) that flexibility and adaptation to national, regional or local specificities could also be ensured via provisions in secondary law;

7. Emphasises that democracy should never be the price to pay for differentiation and that...
differentiated integration should not lead to more complex decision-making processes that would undermine the democratic accountability of Union institutions;

**COMP 7 on memberships covering AM 54, 55, 56 and 57**

8. Demands that the next revision of the Treaties rationalise the current disorderly differentiation by ending the practice of permanent opt-outs and exceptions for individual Member States from Union primary law, as they lead to negative differentiation in Union primary law (56, 57), distort the homogeneity of Union law and endanger the social cohesion of the EU (54);

8 ter Acknowledges, however, that some transitional periods can be necessary for new members on an exceptional, temporary and on a case by case (55) basis only; insists that some clear and enforceable legal provisions should be introduced in order to avoid their perpetuation in time;

**COMP 8 Covers AM 61, 62, 63, 65, 66, 67, 69, 70**

8 bis. Insists, therefore, that Membership of the EU would then require full compliance with Union primary law in all the policy areas, while those countries wanting a close relationship with the EU without being willing to commit to full compliance with primary law and which will not or cannot join the EU should be offered a form of partnership; Considers that this relationship should be accompanied by obligations corresponding to the respective rights, as for example a contribution to the EU budget and should be conditional to the respect of the Union’s fundamental values, the rule of law and, when participating in the internal market, also the four freedoms;

40. Believes that a step further would be to go beyond the existing Treaty limits and to initiate a change to the Treaty which would introduce two types of membership: full membership and associated membership;

11. Suggests that full membership would require full compliance with Union primary law and all the policy areas whereas associated membership would entail the participation in certain policies only and would not be fully integrated into the EU decision-making process. Believes that the associated membership should be accompanied by obligations corresponding to the associated rights, as for example a contribution to the EU budget and should be conditional to the respect of the Union’s fundamental values and to the four freedoms;

**COMP 9 covers AM 59, 60**

9. Underlines that respect for and the safeguarding of EU’s fundamental values are the cornerstone of the European Union as a community based on values and that they bind the Member States together (59); Therefore, considers that differentiation should not be permissible when it comes to the respect of the fundamental rights and values referred to in Article 2 (TEU)(58); Also insists that differentiation should not be possible in policy areas where non-participating Member States could create negative
externalities, such as economic and social dumping; Demands that the potential centrifugal effects, including in the long run, are carefully examined by the Commission when it enhanced cooperation is proposed (60);

13. Suggests including a special procedure that would allow, after a certain number of years, when an enhanced cooperation was launched by a number of states representing a qualified majority in the Council and after the consent of the European Parliament, the integration of the provisions of enhanced cooperation into the EU acquis;

14. Underlines that flexibility and differentiation should go hand in hand with a reinforcement of common rules in core areas in order to ensure that differentiation does not lead to political fragmentation; Therefore, considers necessary the existence, in a future European institutional framework, of European Pillars of Political, Economic, Social and Environmental rights that would not be possible to evade;

COMP 10

14a new. Recognizes that regional cooperation plays an important role in strengthening European integration and considers that its further development has a strong potential to consolidate and deepen integration by adapting it to local specificities and willingness to cooperate;

COMP 11 covers 79, 80, 81, 82, 83, 84, 85

15. Suggests, when considering a future revision of the Treaties, to examine the possibility of permitting regions or other sub-state entities directly concerned, to participate in cases of enhanced cooperation, when competences attribution at national level allows it an, in full compliance with national constitutional provisions;

also proposes opening enhanced cooperation to the participation of candidate or non-member countries on a case by case basis, as is already provided for in the EU EGTC regulations; Considers that the aspects of representation and voting rights of those participating entities should also be examined;

K (new), whereas cooperation between all those potential actors, regardless of the legal form it could take, should always take place within the framework of the Treaties and in full compliance with national Constitutions

COMP 12 covers 86 and 87

16. Suggests developing tools within the Union law and budget for testing transnational and cross-border (87) initiatives within the EU (86) on issues that represent an EU-wide interest that could eventually turn into legislative proposals or cases of enhanced cooperation;

17. Suggest, based on good practices observed in the Australian federal model, to introduce a procedure that would allow individual Member States to mirror another Member State’s law or to enact the immediate application of a law based on another Member State’s law;
18. Instructs its President to forward this resolution to the Council and the Commission, and to the national parliaments.
EXPLANATORY STATEMENT

Differentiated integration in the EU takes many different forms: opt-outs, enhanced cooperation initiatives, permanent structured cooperation and intergovernmental formations outside the Treaty framework. In fact, the landscape of flexible solutions allowing some Member States to move forward with deeper integration in a certain policy area has become so varied that it is getting increasingly difficult to identify all cases of differentiated integration and to make sense out of them, not only for European citizens but also for policymakers.

Differentiated integration is not a new phenomenon, however. Discussions on the possibility of differentiated integration started as early as the 1970s and accelerated in the 1990s to reach one of the principal example of differentiation - the creation of the Economic and Monetary Union in 1993. Since then the landscape of flexible solutions has diversified exponentially and now covers five forms of opt-outs, two agreed cases of enhanced cooperation and three more on the way, permanent structured cooperation (PESCO) under Article 46 TEU and intergovernmental cooperation through the European Organisation for Nuclear Research and the European Space Agency.

Differentiated integration can be considered a good instrument to bridge the gap between the diverse political opinions in Europe but it also raises some important political, legal and institutional questions. The first one is how to balance between flexible solutions and the Union’s unity. The second one considers the choice between intergovernmental and more flexible legal arrangements, and the homogeneity of Union law. The third one questions the need to create separate institutions for the cases of differentiated integration or the need to preserve the institutional unity of the EU.

While differentiated integration could be seen as a positive instrument for the advancement of European integration at the pace and in the form most appropriate for the current political climate, its use and the forms that it can take should be simplified and streamlined in order to improve its democratic legitimacy.

Clarification of the concept of differentiated integration

Differentiated integration has various technical and political meanings. Technically, one can distinguish between time differentiation (often referred to as multispeed Europe: same goals but different speeds to reach them), manners differentiation (Europe à la carte, which means participation in policies of interest without aiming to reach the very same goal for all at the end) and space differentiation (variable geometry that can last over time and is of more geographical nature). All these instruments can be defined as “differentiation” but have very different impact on the EU.

The political rhetoric on differentiation also follows different patterns. When it is used by relatively more populous Member States or those that have been members of the Union for a longer period of time, it is often perceived as showing their willingness and aptitude to deepen

---

1 The UK and Ireland from the Area of Freedom, Security and Justice; UK and Denmark from the single currency; UK and the Czech Republic from the Treaty on Stability, Cooperation and Governance; the UK, Ireland and Denmark from Schengen; and Denmark from the Common Security and Defence Policy
2 European Unitary Patent and Divorce Law
3 European Public Prosecutor, Financial Transaction Tax and Property Regime Rules
the EU integration process, and such groups of Member States often consider themselves “pioneers”. On the contrary, differentiated integration is often perceived, especially in Member States that recently joined the EU, as a path towards the creation of first-class and second-class membership of the Union.

According to the Rapporteur, differentiation should reflect the idea that Europe does not work on a one-size fits all approach, but can adapt to the needs and wishes of its citizens. Therefore, differentiation should be a constitutional tool to ensure flexibility when needed without compromising the entire political system and the equality between citizens.

**The need for differentiation**

- Differentiated integration is integration:

Various studies demonstrate that differentiation has been concomitant to the EU integration deepening and widening. In fact, differentiation has increased and consolidated as the EU’s powers, scope of policies and size of memberships have grown. Therefore, while it is often wrongfully described as a pragmatic and temporary path towards policy convergence, reality shows that it is actually not an exception but a “normal” feature of EU integration.

The debate should therefore not be about pro-differentiation versus anti-differentiation but about how to organise differentiation within the EU, what kind of mechanisms are acceptable, under which conditions and in which domains.

- Differentiated integration has responded to obstacles in highly politicized areas

When looking at policy areas and their variation in terms of differentiation, we can observe that interdependence works as a driver of integration while politicization often works as an obstacle to integration. The consequence of this observation is that differentiation tends to emerge in cases of high interdependence and high politicization.

This also explains when the types of differentiation in the EU have evolved over time. Before the 1980s, we had more vertical differentiation (variation of the level of centralisation in certain policy areas but on the whole EU territory) but no horizontal one (same degree of centralisation but variation of the territory on which the policy applies). Horizontal integration has grown with the level of politicization of the topics and with the widening of the EU.

The result is that, while the EU has very integrated policies when it comes to low politicized area like the harmonization of goods and market regulation, it has very differentiated policies in core political areas like monetary policies, defence and foreign affairs, fundamental rights, taxation, social affairs etc. This poses an important challenge in the context of

**Challenges of differentiated integration**

1) The need for differentiation is often procedurally explained by the need to reach a unanimous decision in the Council. Indeed, with the exception of the Financial Transaction Tax, all the different cases of enhanced cooperation could have been adopted with qualified majority. It is worthwhile noting that some enhanced cooperation are only done to avoid the veto power of only two Member States (the European unitary patent has 26 Member States participating!).
2) Differentiation has occurred in sectors that are more “political”: Fundamental rights, Schengen, the Euro-zone, the Financial Transaction Tax. Less politicized areas have led to more integrated policies (internal market rules etc.) However, in an interdependent, interconnected and democratic political entity, such as the EU, differentiation cannot be acceptable in all fields.

3) Some forms of differentiation have had centripetal effects, leading to more Member States joining later, but others can have centrifugal effects if they create deadweight effect by giving the possibility to non-participating Member States for having negative effect on the participating Member States.

4) The overall process of differentiation has led to the creation of some instruments within the Treaty framework (few enhanced cooperation initiatives, PESCO etc.) but also outside the Treaty (intergovernmental solutions). This has led to a complex and non-understandable systems for citizens, which reduces the accountability of public decisions. Among the underlying problems of these intergovernmental arrangements outside the EU treaty framework is the lack of parliamentary scrutiny, as the Parliament’s involvement is essential for ensuring the democratic legitimacy.

The way forward

Without Treaty change:

1) The first step to solve the roots of the problem and to reduce the need for differentiated integration is to remove the unanimity rule in all possible areas. This can be done by making use of the ‘passerelle clause’ (Article 48(7) TEU), which could authorise the Council to switch from unanimity to QMV in applicable cases where the Treaties currently require unanimity.

2) Opt-out from Treaty provisions should not be possible anymore as they are cases of negative differentiation. Instead of a group of Member States moving forward with European integration, opt-outs are permitting Member States to move backward towards less integration. Therefore, they should be eliminated.

3) If differentiation is sometimes the price to pay for integration, democracy should never be the price to pay for differentiation. Therefore, differentiation should not lead to more complex decision-making processes that would undermine the accountability of EU institutions. One way to ensure this is to make sure differentiation always takes place within the treaties framework, be it enhanced cooperation (Art. 20 TEU) or permanent structured cooperation (Art. 46 TEU).

4) Differentiation should be a way to accommodate the heterogeneity between Member States without risking to undermine the general interest. While the insufficient level of preparedness (for example, criteria for joining the euro or Schengen are not met yet) is a legitimate factor to provide for temporary multispeed solutions, unwillingness cannot be legitimate in every fields, especially when it has negative impacts on the other Member States or on the EU as a whole.

In addition, the policy fields which would be open to differentiation would say a lot about what kind of EU we want to build in the future. As the EU is democratic space based on
shared values and objectives, the Rapporteur believes that no differentiation should be possible in terms of existing fundamental rights and values and in domains where non-participating members generate negative externalities on the others, such as social and economic dumping.

5) The existence of flexibility and differentiation, being via enhanced cooperation or via legislation itself (when for example certain specificities are taken into account within a regulation or a directive) should go hand in hand with a reinforcement of common rules in core areas, like the rule of law.

6) Differentiated integration should maintain the unity of EU institutions and should not lead to the creation of parallel institutional arrangements. In its recent resolutions Parliament expressed the view that differentiated integration must remain open to all Member States and to continue to act as an example of deeper European integration, not as a way to facilitate ‘à la carte’ solutions’.

With Treaty change:

1) As a step beyond the existing Treaty limitations, the Rapporteur considers useful to consider the possibility to introduce two sorts of Union memberships: full and associate membership. Full membership would mean full compliance with primary law and with the policies that are excluded from the possibility of launching enhanced cooperation. Associated members would participate in certain policies only and would not be fully integrated into the EU decision-making processes.

2) When enhanced cooperation is launched by a number of Member States representing a qualified majority in the Council, there should be a special procedure to integrate it easily into the EU acquis after a number of years of implementation.

3) Member States are not and should not be considered as the only potential source of differentiation and flexibility need in the EU. For this reason, the Rapporteur believes that, when competences attribution allows it, regions should be permitted to participate in cases of enhanced cooperation as well as should candidate countries.

4) Tools for the testing of trans-border initiatives that could eventually turn into cases of enhanced cooperation should be provided by the Treaty and opened to Member States and/or regions. These tools could be opened to a smaller number of states/regions at first. If the initiative is positive, the Commission could decide to initiate a legislative proposal. This could allow regional trans-border initiatives to be tested (and financed) within the EU framework.

5) There is a need to have European Pillars of Civic, Economic, Social and Environmental rights from which it would not be possible to derogate.

6) Other forms of differentiation via mirror legislations could be envisaged, based, for example, on good practices observed in the Australian federal model.

---

1 Resolution of 16 February 2017 on “Improving the functioning of the European Union building on the potential of the Lisbon Treaty” (P8_TA-PROV(2017)0049) and Resolution of 16 February 2017 on “Possible evolutions and adjustments to the current institutional set-up of the European Union” (P8_TA-PROV(2017)0048)