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Committee on Constitutional Affairs

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A5-0288/2000(INI)

REPORT

on reinforced cooperation
(2000/2162(INI))

Rapporteur: José María Gil-Robles Gil-Delgado

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At the sitting of 8 September 2000, the President of Parliament announced that she had authorised the Committee on Constitutional Affairs to draw up an own-initiative report pursuant to Rule 163 of the Rules of Procedure on reinforced cooperation and that the Committee on Legal Affairs and the Internal Market and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had been asked for their opinions.

At its meeting of 6 July 2000 the Committee on Constitutional Affairs had appointed José María Gil-Robles Gil-Delgado rapporteur.

At its meetings of 11 September 2000 and 2 and 12 October 2000 the committee considered the draft report.

At the last meeting it adopted the motion for a resolution by 19 voters to 2 with 3 abstentions.

In the vote with Mr Giorgio Napolitano in the chair:

- the following voted for: Giorgio Napolitano, chairman; Ursula Schleicher, vice-chairman; José María Gil-Robles Gil-Delgado, rapporteur; Teresa Almeida Garrett, Enrique Barón Crespo, Richard Graham Corbett, Giorgos Dimitrakopoulos, Andrew Nicholas Duff, Monica Frassoni, Jo Leinen, Hanja Maij-Weggen, Iñigo Méndez de Vigo, Gérard Onesta (for Johannes Voggenhuber), Jacques F. Poos (for Dimitrios Tsatsos), Reinhard Rack (for François Bayrou), Mariotto Segni, António José Seguro, Margrietus J. van den Berg (for Olivier Duhamel) and Bob van den Bos (for Cecilia Malmström);

- the following voted against: Georges Berthu and Jens-Peter Bonde;

- the following abstained: Christopher J.P. Beazley, vice-chairman; Sylvia-Yvonne Kaufmann and The Earl of Stockton.

The Committee on Legal Affairs and the Internal Market announced on 9 October 2000, and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs announced on 2 October 2000, that they had decided not to draw up opinions.

The report was tabled on 12 October 2000.

The deadline for tabling amendments will appear in the agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on reinforced cooperation (2000/2162(INI))

The European Parliament,

- having regard to Title VII of the Treaty on European Union, entitled 'Provisions on closer cooperation', and to Article 40 of the Treaty on European Union and Article 11 of the EC Treaty,
 - having regard to its resolutions of 19 November 1997¹, 16 July 1998² and 13 April 2000³,
 - having regard to the conclusions of the Feira European Council on reinforced cooperation,
 - having regard to Rule 163 of Parliament's Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs (A5-0288/2000),
- A. having regard to the fundamental agreement subscribed to by all the Member States, with due regard to the principles of subsidiarity and proportionality, to create an ever closer union among the peoples of Europe and the Member States of the European Union,
- B. whereas excessive differentiation entails the risk of undoing the links of solidarity between the Member States and breaking up the Community legal area, and any form of differentiation must therefore be organised in such a way as to avert that risk,
- C. whereas the risk of blockage still exists, especially due to the fact that Member States' expectations are not always identical and that in many cases unanimity is still required in the Council; whereas this risk is liable to increase as the Union's membership increases,
- D. whereas the Community method has, since 1957, implied the recognition that a certain degree of differentiation as regards the pace and scope of European integration can be desirable for further progress in building the Community, provided the shared objectives are preserved and differentiation is conceived as an instrument of an exceptional and transitional nature,
- E. whereas the Treaty of Amsterdam introduced into the Treaty on European Union a set of general enabling clauses permitting differentiated integration under the name of 'reinforced cooperation', applying to the first and third pillars,

¹ OJ C 371, 8.12.1997, p. 99

² OJ C 292, 21.9.1998, p. 143

³ awaiting publication in the OJ

- F. whereas the Feira European Council concluded on 19 June 2000 that the work of the IGC should pay attention to 'the provisions on closer cooperation introduced into the Treaty of Amsterdam (...) while respecting the need for coherence and solidarity in an enlarged Union',
- G. whereas the future enlargement will accentuate the presence of different characteristics within the Union and it is therefore important to remember that the European Union - given that its foremost objective is to maintain democracy and peace - has a responsibility for the whole of the European continent,
- H. whereas the EU must provide suitable political responses to this growing phenomenon of difference, in such a way as to preserve solidarity between the Member States,

Principles

1. Believes that reinforced cooperation must be developed within the institutional framework of the Union; considers it essential to preserve the single institutional framework within which all MEPs and all Commissioners participate fully in the exercise of the functions corresponding to each institution;
2. Considers that only the Community system offers the necessary guarantees in terms of democratic control, legal controls and solidarity;
3. Stresses that the political and legal conditions placed by the Treaty of Amsterdam on the development of reinforced cooperation are intended to reduce the risks of undoing the links of solidarity between the Member States and breaking up the Community legal area which are inherent to any form of differentiation enabling certain Member States to undertake closer integration in certain specific fields with the final objective of encouraging the remaining Member States to join such reinforced cooperation;

Scope

4. Considers that the common foreign and security policy and defence policy must be included within the field of reinforced cooperation as regulated by Title VII of the TEU;
5. Stresses that the Commission's power of initiative, the full participation of Parliament - via codecision in the legislative sphere, consultation in the area of foreign policy and common defence and security policy and assent in the remaining fields - and legal control by the Court of Justice must be the rule for all forms of reinforced cooperation, both those describing themselves as such and those using the 'predetermination' formula in accordance with their own treaty texts (on the lines of Schengen or EMU);
6. Considers that the requirement that reinforced cooperation should be employed only as a last resort must be complemented by excluding the possibility of employing it in the areas where the Treaties provide for decision by majority vote, and by establishing the necessary time-limits for concluding that a decision can no longer be expected owing to a failure to achieve unanimity in Council and that an attempt has to be made to

overcome this blockage by means of reinforced cooperation between the Member States;

7. Believes that, pursuant to Parliament's resolution of 13 April 2000, the minimum threshold for participation in a reinforced cooperation procedure must be one-third of the Member States; stresses, nonetheless, that the greater the number of participants the stronger the guarantee will be that the initiative corresponds to a widely-felt need and is not being used as an instrument of differentiation in the service of a small group;
8. Considers that the word 'interests' in Article 43(1)(f) of the Treaty on European Union should be deleted;
9. Stresses that no Member State should be denied the option of integration at any moment into an existing reinforced cooperation procedure, and, for this purpose, considers that in Article 43(1)(g) of the Treaty on European Union a provision should be added to the effect that the conditions for future incorporations will be established in the basic decision;
10. Considers that the specific qualifying conditions in respect of the different pillars should be harmonised, in the interests of simplification and transparency for the public, in particular Article 40(1)(a) of the Treaty on European Union and Article 11(1)(a) and (b) of the EC Treaty;
11. Considers that the limits referred to in Article 11(1)(c) and (d) of the EC Treaty should be removed;

Activation of reinforced cooperation

12. Considers that the possibility existing under the Treaty of Amsterdam of a right of veto by any Member State is contrary to the intention of using this instrument to resolve specific situations of blockage and should therefore be removed.
13. Considers that the procedure for activating reinforced cooperation should be the same for all the pillars, and should be based on the existing procedure for the first pillar, with the following modifications:
 - an initial proposal by the Commission should be required in all circumstances;
 - the consultation of Parliament should be replaced by its assent;
 - the possibility of referral to the Council in its manifestation as Heads of State and Government should be removed, or, at least, unanimity in Council should be replaced by decision by a qualified majority;

Democratic control

14. Recalls that under no circumstances is it acceptable to call in question the institutional indivisibility of the European Parliament or the Commission in the activation or implementation of reinforced cooperation;

15. Believes that when instituting reinforced cooperation it is essential to respect the principle of budgetary unity; the Union budget must provide a structure incorporating revenue and expenditure to permit entering of the expenditure incurred; such appropriations should not be counted under the threshold for own resources and the financial perspective; the implementing arrangements could be defined in the context of a new interinstitutional agreement and the revision of the Financial Regulation;
16. Calls for the strict application of transparency to the field of reinforced cooperation;
17. Stresses that where enlargement is concerned the tried and tested instrument of transitional arrangements should be used in preference to reinforced cooperation;

Internal development and incorporation

18. Stresses that the internal development of reinforced cooperation procedures should, for all the pillars, operate in parallel with the normal functioning of the institutions as applying at present to the first pillar;
19. Considers that the procedure for incorporating a Member State into a reinforced cooperation procedure where that Member State did not participate from the outset should be revised by:
 - eliminating the distinction between pillars;
 - requiring a Commission proposal, the assent of Parliament and a decision in Council by a qualified majority;
 - establishing a three-month period for each of the above procedures;
 - establishing a one-year period for reconsideration should the outcome of the proposal, the assent procedure or the decision be negative;
20. Instructs its President to forward this resolution to the Intergovernmental Conference for the reform of the Treaties, the Council, the Commission, and the Governments and Parliaments of the Member States and the applicant countries.

EXPLANATORY STATEMENT

I. INTRODUCTION

1. The European Community - today the European Union - has, from its inception, pursued the objective of *unity*, a concept which should not, however, be confused with *uniformity*. The particular circumstances of certain Member States, the successive enlargements and the different manifestations of 'vis comunitaria' among the peoples of Europe have all been factors inducing various forms of flexibility in integration and in the rhythms and forms taken by it.
2. For the purposes of this report it is not necessary to provide a detailed background. It should be sufficient to recall that the Treaty of Amsterdam introduced:
 - i) a new Title VII entitled 'Provisions on closer cooperation';
 - ii) new articles (EC Treaty Article 11 and TUE 40) defining the specific conditions for application of closer cooperation, under the first and third pillars of the Treaty respectively;
 - iii) a specific protocol for the incorporation of the Schengen acquis into the Treaty.
3. The Feira European Council declared that the work of the IGC should pay attention to *'the provisions on closer cooperation introduced into the Treaty of Amsterdam (...) while respecting the need for coherence and solidarity in an enlarged Union'*.

The Presidency has accordingly put five questions to the preparatory group. These questions will be considered in this report.

II. THE AIM OF REINFORCED COOPERATION

4. The positions to be adopted in relation to these questions will be determined primarily by the attitude shown towards the aim or object of reinforced cooperation.

Under the Treaty of Amsterdam, reinforced cooperation is treated as an instrument:

- i) for moving beyond the contradiction between the need for an closer and fuller union between the peoples of Europe and the diversity of the Member States, which will increase as the Union enlarges;
 - ii) for enabling certain Member States to integrate further in certain specific fields as a *vanguard group* or *motor group*, with the ultimate objective of encouraging the others to join such closer cooperation;
 - iii) to apply within the framework of the Union and not outside it.
5. Your rapporteur considers that these objectives should be maintained and that the other two alternative objectives should be avoided. These latter would be:
 - i) to use reinforced cooperation as a means of moving towards an 'à la carte Europe' or a 'variable geometry' set-up under which each Member State would only take part in those

policies and programmes which it believed were in its own interest and the *acquis communautaire* would be reduced to the minimum; a Union organised on such a basis would not only have its integrative capacity radically reduced, but would actually prove ungovernable;

ii) to use reinforced cooperation to create a 'hard core' or 'directorate' of 'privileged' Member States which would, by reason of its cohesion and collective weight, end up directing the rest, by means of joint or even different institutions; such an objective would be unacceptable both to a majority of existing Member States and to the applicant countries; in fact, the repetition of the supposed need for such a 'hard core' or 'centre of gravity' lies at the source of many of the reservations expressed by the Member States and by the European Parliament itself over reinforced cooperation.

6. Any revision of reinforced cooperation by the current IGC should therefore, in your rapporteur's view, be based on the objective of making it possible to create a vanguard or motor group while avoiding either of the other two alternatives. The questions which this report is designed to answer will accordingly be dealt with on this basis.

III. THE NEED TO MODIFY THE EXISTING QUALIFYING CONDITIONS

7. The note from the Council Presidency of 11 July 2000 (CONFER 4758/00) contains the following two initial questions, addressed to the preparatory group:
 - *are the existing qualifying conditions laid down in the TEU (Articles 40, 43, 44 and 45) and the EC Treaty (Article 11) among the factors that explain the non-use of the reinforced cooperation procedures introduced by the Treaty of Amsterdam?*
 - *if this is the case, what more stringent conditions should be examined by the IGC as a matter of priority?*
8. Your rapporteur considers that it is difficult, if not impossible, to answer the first question, in view of the lack of objective, publicly available and comparable data on which to base a reply; indeed, he does not believe that it is necessary to answer this question in order to revise the qualifying conditions. The scope of the IGC is not confined to reforming what is not working properly or not working at all; it also falls within its brief to pre-empt possible future malfunctionings and improve the existing mechanisms. It should therefore be determined whether the oft-repeated qualifying conditions need to be modified or not, even if it is not possible to evaluate their effect over the short time for which they have been in force.
9. The first qualifying condition is that reinforced cooperation should *be aimed at furthering the objectives of the Union and at protecting and serving its interests*. It would, in fact, be difficult to state any other explicit aim, and it therefore seems undesirable to modify or remove this condition.
10. It would, however, be coherent with this end *to include the common foreign and security policy within the field of reinforced cooperation*, rather than excluding it as Article 45, without actually saying so, appears in fact to do. According to Article 11 of the Treaty of Amsterdam, the *raison d'être* of the common foreign and security policy is the pursuit of a number of the Union's cardinal objectives (independence, integrity, peace, respect for human rights, etc). There seems, then, to be no reason to exclude it.

11. It is claimed that the second pillar provides alternative instruments for this purpose, such as constructive abstention. However, while constructive abstention can be useful for achieving an action by certain Member States only, it cannot be applied to the preparation of means of defence or preventive action. This should be abundantly clear from the Treaty of Amsterdam itself, since its Article 17(4) explicitly provides for reinforced cooperation between two or more Member States in the field of common defence. There is surely no reason to keep reinforced cooperation of this kind outside the Union framework.
12. Your rapporteur believes that the above solution is not compatible with the objective of reinforced cooperation, and, indeed, would be prejudicial to transparency of decision-making and to democratic control. He therefore considers that the second pillar should be brought within the domain of the common regime for reinforced cooperation; the alternative, i.e. to keep the status quo, is neither practicable nor desirable. In other words, *the French Presidency's fourth question should be answered in the affirmative.*
13. The second condition contained in Article 45 is that reinforced cooperation must *respect the principles of the Treaties and the single institutional framework of the Union*. The aim here is to exclude *the creation of institutional structures other than those provided for by the Treaties*, with a view to preserving the coherence of the system and the participation of all the Member States, at the very least by means of information and discussion.
14. Your rapporteur's position is that this condition should be retained and strengthened: that is, *for all instances of reinforced cooperation the rule should be that the Commission's power of initiative and the participation of Parliament, at least in the form of consultation, must apply*. This should extend to those cases which are not called by the name of reinforced cooperation but which in practice amount to the same thing, e.g. the third stage of EMU. There is no reason whatever why establishing a form of reinforced cooperation should lead to an alteration in the Union's institutional balance to the detriment of democracy.
15. The third qualifying condition under Article 45 is that reinforced cooperation *should only be used as a last resort*. This condition should certainly apply, but your rapporteur feels that it should be made more specific in two aspects, i.e.:
 - *the areas for which the Treaty requires the adoption of decisions by majority vote should be excluded*: reinforced cooperation should be used as a means of moving forward in cases where unanimity becomes a blocking instrument, but its role is not to serve as a pretext for not trying to secure a majority;
 - *time-limits should be established for concluding that the absence of a decision in Council means that there is a blockage* for the resolution of which reinforced cooperation should be attempted; this specification is in line with the principle of legal security.
16. The fourth qualifying condition is that *reinforced cooperation should concern at least a majority of Member States*. Parliament has proposed that this threshold should be reduced to one-third of the Member States; your rapporteur considers, however, that the present arrangement is preferable to an exact numerical threshold, whether higher or lower. To set the threshold below a majority of Member States would encourage the emergence of reinforced cooperation processes with variable membership (in other words, an 'à la carte Europe'), and would reduce the motor force of the group of cooperating Member States;

while a threshold of a higher number of Member States would make reinforced cooperation all but impossible. In addition, the majority requirement is a guarantee that cooperation in a particular field is a response to a widely-felt need, rather than an instrument at the service of a small group of Member States.

17. The fifth condition stipulated in Article 45 is that reinforced cooperation *should not affect the acquis communautaire and the measures adopted under the other provisions of the Treaties*. This requirement is compatible with reinforced cooperation, since the aim of the latter should be not to dilute the Union but to develop it further. It should, therefore, remain.
18. The sixth qualifying condition is that reinforced cooperation *should not affect the competences, rights, obligations and interests of those Member States which do not participate therein*. Competences, rights and obligations are all concepts that can be defined in law; the term '*interests*', however, is far more imprecise and subjective, and could be employed to create serious obstacles to the establishment of reinforced cooperation. Your rapporteur accordingly proposes that *this word should be deleted* and the remainder retained.
19. The seventh qualifying condition is that reinforced cooperation *should be open to all Member States and allow them to become parties to the cooperation at any time, provided that they comply with the basic decision and with the decisions taken within that framework*. This condition is compatible with the notion of a *vanguard or motor group*; nonetheless, it will become more useful in practice if it is added that *the conditions for future incorporations will be established in the basic decision*. The experience of EMU has made it clear that such an approach is not just possible but highly desirable, avoiding decisions being made *intuitu personae*.
20. On the matter of the *specific qualifying conditions*, your rapporteur's view is that:
 - the aim should be to *strive for harmonisation* wherever possible, in the interests of simplification and transparency for the public; in particular, Article 40(a) of the Treaty on European Union and Article 11(a) and (b) of the EC Treaty should be harmonised;
 - *the restrictions specified in Article 11(c) and (d) of the EC Treaty should be removed*, since the aim of reinforced cooperation is, precisely, to achieve further progress in integration.

IV. THE NEED FOR REVISION AND HARMONISATION OF THE PROCEDURES

21. The existence of more than one procedure serves only to *reduce the role of the European Parliament and the Commission* in the implementation of reinforced cooperation arrangements under the third pillar. The *existing distinction should therefore be abolished*, and both procedures should be replaced by a single one based on that currently applying to the first pillar, with the following modifications:
- the requirement of a *Commission proposal* should remain;
 - *consultation of Parliament* should be replaced by the *assent of Parliament*;
 - *the stage of referral to the Council* in its manifestation as Heads of State and Government *should be removed*, or else unanimity in Council should be replaced by qualified majority voting - i.e. *the veto should be removed*.
19. On the matter of the *internal development* of reinforced cooperation processes, your rapporteur favours:
- maintaining the concept of *parallel operation* with the *normal functioning* of the institutions, as provided for in the case of the first pillar;
- adopting this system for the third pillar as well.
23. Finally, the ***procedure for incorporation*** into reinforced cooperation of Member States which did not participate from the outset should be revised on the basis of the following measures:
- eliminating the distinction between pillars;
 - requiring a Commission proposal, the assent of Parliament and a decision in Council by a qualified majority;
 - establishing a three-month period for each of the above procedures;
 - establishing a one-year period for reconsideration should the outcome of the proposal, the assent procedure or the decision be negative.

MINORITY OPINION

The report by Mr Gil-Robles Gil-Delgado on reinforced cooperation is a reflection of a monolithic concept of the Union, under which all forms of cooperation would have to operate within a 'single institutional framework' and would necessarily imply the goal of creating a superstate.

The report even proposes bringing the common foreign and security policy and the common defence policy within the purview of reinforced cooperation, thus centralising those policies even more than at present (paragraph 4).

These proposals are not acceptable: the need for cooperation within Europe is genuine but also diverse and multiple, and it can no longer be locked into a uniform Community framework based on majority voting. Furthermore, the report - in a significant silence - contains no concrete explanation as to how cooperation procedures involving one-third of Member States could be made to work within the existing institutions unless those institutions are reformed.

In reality, Parliament is practising delaying tactics. Parliament wished earlier to prevent the emergence of differentiated forms of cooperation in the Treaty of Amsterdam, but was finally obliged to give way and accept 'reinforced cooperation'. It is now attempting to prevent the flexibilisation of reinforced cooperation, but here too it will eventually lose.

We believe that 'differentiated' cooperation procedures (this is the best term) should not have to follow predetermined lines in their objectives; nor should there be limits on their creation or constraints on their operation. Some procedures could use the Community framework should this be found desirable; others could create their own ad hoc institutions, linked to the Union only by a liaison secretariat. Differentiated cooperation should preferably operate on the basis of the unanimity principle, thus avoiding any relapse towards the disadvantages of the Community method.