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Norberto Nuno Gomes de Andrade\*

# Enhanced Cooperation: the Ultimate Challenge of Managing Diversity in Europe

## New Perspectives on the European Integration Process

*Diversity in the EU has always been a permanent factor accompanying the European integration process. With the recent enlargement and those in the pipeline this diversity will grow, bringing the ultimate challenge for the continuity and feasibility of the integration process: the management of this increasing variety. The mechanism of enhanced cooperation was established in the Amsterdam Treaty to provide a solution to this challenge. The following article sheds some light on the future utilisation of this mechanism and its consequences and repercussions for the European integration process.*

This article analyses the legal mechanism of enhanced cooperation in its different surrounding contexts: in legal, theoretical and politico-economic terms. By doing so, it presents the benefits arising from the use of this device and destroys the recurrent “clichés” of uniformisation and unity that accompany the talk of the European integration process, introducing into the political arena the “taboo” concepts of fragmentation and segmentation. A case will be put forward to demonstrate that the departure of a group(s) of countries and the development, in a faster way, of “their own” process of integration in a determined policy area, leaving the others behind, corresponds to the interests of the EU and of all its members. This is true provided that some kind of link is preserved between the pioneers and the ones in delay, in order for the latter to catch up with the former. This claim goes against the European integration process as conceptualised and implemented till now, based on the vision that all the member states should walk together, at the same speed – keeping the group united through compensation measures, redistributive procedures, solidarity schemes and transfer arrangements. A different vision is therefore presented, in which the formation of different pioneer groups of member states in various policy areas will unblock Europe, releasing it from the current

status of stagnancy and lack of inspiration. Furthermore, this upcoming scenario of different groups “in a higher gear” will definitely bring new dynamics and impulses to the integration process. The configuration of competent and efficient pioneer groups will have very positive effects on the rest of the member states, as the latter, with the passing of time, will not want to stay behind, but to improve and advance as well. The logic will then be to include and attract more and more member states to those groups (the “pull-effect”).

In short, the article makes an attempt to demonstrate that the enhanced cooperation mechanism will be triggered in the near future and that its use will be beneficial for the healthy continuation and development of the integration process.

### The Growth of Diversity

Since the very beginning of the EC/EU back in 1957 with the signing in Rome of the Treaties on the European Atomic Energy Community (EAEC or Euratom) and the European Economic Community (EEC), diversity has continually accompanied the evolution of the European integration process. From the intimate circle of the six founding members to the present day this diversity has grown in spectacular terms. As a matter of fact, from 1 May 2004, the EU is by far the biggest internal market in the world, encompassing 28 countries (with EFTA) and more than 450 million people. Ten new countries have just joined the family and many others

\* This article was written while the author was a researcher in the Department of International Relations and European Studies, Central European University, Budapest. The paper expresses the personal opinions of the author.

are queuing up behind them: Romania and Bulgaria in the eastern Balkans, plus the countries of the western Balkans and Turkey, with which the EU, based on the results of the 16-17 December European Council summit, has decided to open accession negotiations.

In this sense, EU is increasingly becoming bigger, heavier and more complex, continuously embracing more countries, more policies and more responsibilities. This trend will continue in the future and diversity will grow even more. This scenario raises the ultimate challenge for the European Union's own survival and development: the management of this increasing diversity.

In order to accommodate this growing "snowball of diversity" under the roof of the EU, a new mechanism was created: enhanced cooperation. This instrument, never applied so far, was designed to accept the challenge of integrating 25 countries (and more in the future) without halting altogether the deepening of integration. It is aimed at facilitating the process of integration in view of the upcoming variety of preferences and political views. Furthermore, it embodies a new approach to the European integration process: open differentiation and the practice of fragmentation.

In the first part of this article, a succinct overview of how the phenomenon of diversity has been managed till now will be provided, the enhanced cooperation mechanism will be presented and its procedure will be briefly described. Moreover, the rich terminology existent in this large topic of differentiated Europe will be collected and the "bicycle race" metaphor translating the functioning and the repercussions of enhanced cooperation will be presented. A theoretical framework will then be given to the instrument in question, inserting it into one particular model of the future pattern of European integration: the "eccentric ellipses" model. This is followed by a concise list of the legislative improvements applied to the enhanced cooperation mechanism, as these improvements constitute clear signs pointing to the future utilisation of this instrument. We then conduct a politico-economic study of enhanced cooperation, reflecting upon the political and economic implications of the use of this device and providing two case studies of its future application in the fields of environment and taxation. Considerations regarding the risks and dangers of an erroneous application of the enhanced cooperation mechanism are next presented, as well as recommendations for the optimisation of the procedure. In conclusion some brief final considerations will be presented, summarising the main points and conclusions of the article.

### Differentiated Integration Until Now

The phenomenon of differentiated integration has been managed, till now, in an undefined and imprecise way, through derogations, exceptions and recourse to cooperative arrangements outside the legal framework of the Union.

Until now, this differentiated Europe, which has existed since the very beginning of the EU, was effected through parallel procedures (Schengen Agreement), outside initiatives (creation of the EMS, afterwards contained within the Community Treaties) or partial exemptions or derogations (Protocol and Agreement on Social Policy, which contains a derogation for the United Kingdom). This was continuously pursued through the introduction of "forms of diversity that were ad hoc, impromptu and based on sometimes arbitrary criteria either to accommodate problem countries or to develop scope for forms of selective exclusion or inclusion".<sup>1</sup> This means that the multi-speed, variable Europe and the diversity in its policy regimes have never been clearly established and confessed by the EU in its legal framework. Moreover, the manifestations of the differentiated Europe have, so far, been kept either hidden away in outside agreements or marginalised in discrete protocols or annexes to the Treaties (e.g. Declaration concerning abortion and the Irish Constitution contained in a protocol, which basically declares that "nothing" established in the Treaty on European Union and the Treaties establishing the European Communities "shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland ...")

The establishment of enhanced cooperation puts, for the first time, the "cards on the table" and clearly demonstrates that the EU is open to differentiation and fragmentation, putting an end to parallel schemes or unclear (and usually discriminatory) agreements and establishing the legal framework to render a differentiated integration process feasible. Groupings or coalitions can now be perfectly formed and diversity in policy regimes can be introduced.

Whether subject to criticism or not, enhanced cooperation is the instrument through which the EU plans to accommodate the divergences and different speeds of the EU, admitting these diversities and allowing for different speeds. It may not seem of enor-

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<sup>1</sup> H. Wallace and W. Wallace: *Flying Together in a Larger and More Diverse European Union*, Netherlands Scientific Council for Government Policy Working Documents, 1995, pp. 69-70.

<sup>2</sup> Especially because this mechanism of enhanced cooperation has not yet been activated, a fact that obviously hides the real magnitude and implications of this instrument.

mous importance,<sup>2</sup> but the establishment of this legal figure is truly a major step and a brave response to the future demands of enlargement.

### The Enhanced Cooperation Mechanism

The Treaty on the European Union (EU Treaty), through the amendments carried out by the Amsterdam Treaty, which entered into force in May 1999, introduced the mechanism of enhanced cooperation, with the original name of “provisions on closer cooperation”. This legal figure was thus enshrined in the EU Treaty, which lays down its general principles in Articles 43 to 45 (Title VII - Provisions on enhanced cooperation, which more recently have been amended by the Treaty of Nice).

Enhanced cooperation is “a mechanism allowing a group of member states to use the EU framework to develop their cooperation or integration in policy areas under EU competence”,<sup>3</sup> especially whenever it appears impossible to do so with all of the member states. It constitutes an instrument for the prosecution of the objectives of integration, pre-defined in the Treaties,<sup>4</sup> an aspect which is clearly stated in the EU Treaty, Article 43 (a): “... the proposed cooperation is aimed at furthering the objectives of the Union and of the Community, at protecting and serving their interests and at reinforcing their process of integration.”

This mechanism, in very simple terms, allows a minimum of eight member states to advance (meaning integrate) more than others. It enables the selective group, within certain policy areas, to approve regulations and directives which will be applicable only to them. These groupings will usufruct of special and exclusive legal frameworks.

Moreover, it is important to mention that enhanced cooperation constitutes a measure of last resort, to be undertaken only when it is no longer possible to accomplish the objectives contemplated in the Treaties through the application of their own procedures. The reason for this *ultima ratio* character has to do with the disturbance in the pre-established institutional balance that enhanced cooperation causes. The latter, as a special decision procedure, bypasses the normal decision procedures established in the Treaties, disrupting the distribution of the interinstitutional powers.

Furthermore, the enhanced cooperation procedure cannot be applied in the areas of exclusive competence of the Community, nor constitute a barrier to, or discrimination in, trade between the member states, nor distort competition between them.

The enhanced cooperation mechanism can be interpreted in two different ways. On the one hand, it can be approached as a device at the disposal of the member states to account for the disproportions and disparities of the future enlarged EU, created in order to face and accommodate the inevitable and upcoming asymmetries that these future enlargements would create within the EU. According to this perspective, the main objective of the exercise is to maintain the functionality of the EU as a whole and to allow the continuity and feasibility of the process of integration for all its members. This will be accomplished by allowing some countries to temporarily advance more than others in order to achieve new areas and simultaneously prepare the path for the slower ones to reach them at a later stage. Thus, there would be the establishment of transitional periods, which would vary according to the countries or policies in question.<sup>5</sup>

On the other hand, the enhanced cooperation can, perhaps more realistically, be perceived as based on a more frivolous rationale, without this embedded philosophy of enabling integration for everyone. In this sense, the real purpose of this legal figure is to provide more flexibility to an “élite club” of wealthy countries, allowing them to follow their particular paths of integration, whether or not these coincide with the paths of the future member states. Therefore, and developing this point of view, the enhanced cooperation is seen as a vehicle of the most apt and prepared member states, allowing them to delineate and follow their own process of integration, in a faster and more intense manner, without having any kind of constraint or obstacle set up by the “not-so-capable” or “less enthusiastic” countries. In short, the enhanced cooperation would be a tool for the exclusive purpose and use of the wealthiest and more integrationist countries of the EU.<sup>6</sup>

Laying aside the debate about the real intentions of this mechanism, which can only be verified once it has been applied in practice, what is objectively pursued with this device is the establishment of a procedure

<sup>3</sup> E. Philippart: Optimising the Mechanism For Enhanced Cooperation Within The EU: Recommendations For The Constitutional Treaty, CEPS Policy Brief No. 33, 2003, p. 1.

<sup>4</sup> P. Pitta e Cunha: As Cooperações Reforçadas na União Europeia, in: Revista da Ordem dos Advogados, Vol. 61, 2001, p. 51.

<sup>5</sup> M. J. Palma: A cooperação reforçada após o Tratado de Nice: alguns alinhavos críticos, Estudos em Homenagem ao Prof. Doutor Inocêncio Galvão Telles – Coimbra: Almedina, Vol. 5, 2002, p. 23.

<sup>6</sup> The author's own view of the enhanced cooperation mechanism will be presented at a later stage of this article, as the present section is only devoted to introductory considerations.

that can regulate any kind of “differentiated integration”. To that end, Article 43 of the Treaty on European Union declares that “Member States which intend to establish enhanced cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by this Treaty and by the Treaty establishing the European Community”. Thus, the idea is to maintain all member states and their different behaviour and initiatives within the same set of rules and procedures, in a sort of keeping the family “legally together”, under the Treaties’ stipulations. In other words, the reason is to prevent any sort of “differentiated Europe phenomenon” from taking place outside the rules previously established by the Treaties, as happened previously with the UK’s and Denmark’s opt out from the third phase of EMU.

The advantages of employing a common procedure and framework are evident, since the use of common institutions will maximise the benefits and minimise the dangers of differentiation<sup>7</sup> – principle of institutional unity – reinforcing the democratic principle and the rule of law.<sup>8</sup>

In short, enhanced cooperation is “a laboratory or an implicit avant-garde”,<sup>9</sup> in which countries can test their ideas of integration, implementing the adequate measures for that purpose. This is all done within a more relaxed and open environment, favourable to enthusiastic initiatives and ambitious projects, and not characterised by the classic constraints and disagreements posed by the other member states.

#### Differentiated Integration and its Terminology

The enhanced cooperation mechanism is intimately connected to the larger and heated debate about “differentiated integration”. This topic, within the EU, is certainly one of the richest in terms of metaphors and analogies, as many terms and concepts have been coined: “multi-speed Europe”, “variable geometry Europe” and “Europe à la carte”, among many others. Although different in content, all these terms express the same concern of offering a concept of integration sufficiently flexible to accommodate the diversity of situations and preferences within the Union,<sup>10</sup> which can in the future easily surpass the number of thirty member states. In other words, these notions basically

illustrate the possibility of a group of member states pushing forward the integration process in certain areas while leaving the “rest of the family” lagging behind. While the multi-speed Europe concept expresses the idea that not every member state will necessarily take part in every future development of EU policy, enhanced cooperation explains and shows us how this selective participation can actually take place. Instead of seeing these two concepts as synonyms,<sup>11</sup> which can also be done, they should be distinguished.

So, while the metaphors of “two or multi-speed Europe”, “variable geometry” and “à la carte Europe” are descriptive concepts (modes of differentiated integration), explaining the reality of the EU and the way the integration process is being conducted, the concept of enhanced cooperation is a procedural and instrumental one. It is a device created in order to allow the acting out of these “alternative” processes of integration, to enable the performing of this differentiated integration through the stipulation of a legal framework establishing its *modus operandi*. In this sense, enhanced cooperation should be perceived as a reaction, an attitude and a stand of the EU against this situation of differentiated developments and diverse speeds. It is a remedy that allows countries to react to the very same divergences and divisions that they themselves create. It allows them to take a decision: to form a pioneer group and push integration in a certain policy or stay behind with the rest.

#### The “Flying Geese”

More recently, one new metaphor has been coined – “the flying geese” – adding to the already long list of analogies but expressing an opposite “philosophy of integration”. The term was created with the intention of presenting a positive and constructive perspective of this phenomenon, rather than the negative one that dominates the subject. This aerodynamic metaphor represents a “group travelling regularly and systematically in the same direction, but varying the roles of leadership and carrying different stresses and strains, depending on their position in the formation”.<sup>12</sup> According to this image, the geese fly together, normally in V formation, rotating positions “in order to vary the responsibilities for the group as a whole and to protect the tired members of the flock”.<sup>13</sup>

The metaphor follows a logic of collective action to the detriment of dispersed segments, underlining the

<sup>7</sup> C. D. Ehlermann: *Increased Differentiation or Stronger Uniformity*, European University Institute, Florence 1995.

<sup>8</sup> Examples of cooperation outside the common institutions are the Schengen Agreement and Europol.

<sup>9</sup> E. Philippart, *op. cit.*, p. 7.

<sup>10</sup> J. Pisany-Ferry: *L'Europe à géométrie variable: une analyse économique*, in: *Politique Étrangère*, No. 2, 1995, pp. 447-465, here p. 447.

<sup>11</sup> P. Pitta e Cunha, *op. cit.*, p. 51.

<sup>12</sup> H. Wallace and W. Wallace, *op. cit.*, p. 11.

<sup>13</sup> *Ibid.*, p. 28.

idea of inclusiveness that should inspire this differentiated integration to the detriment of the exclusive perception. The “novelty” of this metaphor, compared to all the previous ones, is the emphasis on keeping all the member states together. The image, therefore, envisages a compact, unified group, possessing its own internal strategies of how to advance together within the integration process (changing the “pacemaker” as in an athletics race, allowing the less prepared countries to rest and helping the poorest ones). Once again, the authors insist on the unity and synchrony of the group as a whole, avoiding any negative statements of dispersion and segmentation.

The enhanced cooperation mechanism has literally shattered the “flying geese” construction, as it is now possible to have geese detaching themselves from the flock, ending the single configuration image. This model, in addition, entails one of the myths and clichés that this article is aimed at refuting: the vision of European integration as a process to be exclusively carried out by the absolute principles of uniformity, unity and homogeneity.

The “flying geese” model, besides being obviously outdated since the introduction of the enhanced cooperation mechanism in the Amsterdam Treaty, insists on the maintenance of a process of integration involving all the member states as a compact group, which is an old-fashioned and unfeasible model of integration, which is definitely unattainable with the increasing size and diversity of the EU. In this sense, it is necessary to look at reality and acknowledge that policy development is often blocked due to the absence of certain member states in the participation of the projects. These blockages will, sooner or later, render EU progress and development impossible. Hence, this deadlock should be avoided and tackled through the use of the enhanced cooperation procedure. According to this reasoning, the process of integration can only proceed efficiently with the segmentation into different groups of countries, abandoning the idea of a large flock of geese flying together. The difficulty “confessed” by Wallace and Wallace in the construction of these metaphors constitutes a truly definite obstacle to the idea of collective integration, as the authors explain. “The difficulty is that the birds may not after all be geese, or at least some of them may not be, but rather a mixed flock of eagles and sparrows as well. And some may be chickens who cannot fly.”<sup>14</sup> In fact, all different kinds of bird populate the EU and, with the recent and forthcoming enlargements, more birds will enter the club. Therefore, it is impossible to maintain

<sup>14</sup> Ibid., p. 111.

the talk of the uniformity and unity of the integration process as absolute, untouchable and flawless principles. With the passing of time, these uncontested guideline-principles of integration are proving to be ineffective and fallible in a number of situations.

### The “Bicycle Race”

The “bicycle race” is a metaphor not aimed (like all the others) at transmitting the general phenomenon of differentiated integration, but to directly translate how the legal provision of enhanced cooperation will enable a particular procedure of “differentiated integration” to be adopted by the EU. Hence, it constitutes an image illustrating how this mechanism will operate (its *modus operandi*) and develop in the future, helping us to predict what consequences will derive from its utilisation.

The metaphor moves away from the general content and panoramic perspective that all the previous analogies undertake. This is due to the fact that all the previously mentioned metaphors and images were drawn in a period when no one knew exactly what form “differentiated integration” would take. Therefore, the image of a “bicycle race” benefits from the advantage of knowing the precise way in which this multi-speed integration will operate, i.e. through the enhanced cooperation mechanism – the legal procedure created in order to enable such differentiated integration.

According to this metaphor, the bicycle race (“Il Giro d’Italia, “Le Grand Tour” etc.) represents the integration process, the riders symbolise the individual member states, the “peloton” embodies the whole EU (the 25 members as a compact group) and the riders that initiate a breakaway and escape from the “peloton” correspond to the group of enhanced cooperation.

The intention here is to draw a parallel between the effects of the enhanced cooperation and a bicycle race. In the latter, it is very common to observe “breakaway riders” that depart from the “peloton” at a certain point in the race, riding at a much higher speed than all the others and gaining some distance in relation to the rest of the riders. Nevertheless, the effect of these “breakaway riders”, in a very high percentage of cases, is to provoke the consequent reaction of the “peloton”. Hence, the “peloton”, when the breakaway riders have already gained quite some distance, begins to increase its speed as well, going increasingly faster in order to catch up on the “fugitives”. The result of this pursuit is to have the race ending with all the “peloton” together, “absorbing” the breakaway riders and crossing the line as a compact group. This is exactly how the enhanced cooperation mechanism

should be perceived, as enabling a breakaway group to go faster and, subsequently, provoking the consequential reaction of the main group, that will inevitably accelerate as well, catching the breakaway countries at the end.

In contrast to the “flying geese” metaphor coined by Wallace and Wallace which is based on the ideas of collective behaviour, unity and synchrony of the group, this new notion advocates fragmentation, segmentation and isolated action by a particular group of member states. Nonetheless, it should be borne in mind that such behaviour is not at all prejudicial for the EU, but on the contrary, is beneficial for the entire process of integration. This is due to the effect exerted by the “breakaway riders” upon the “peloton”, which will not want to stay behind, excluded from the decisions of the enhanced cooperation group in a certain policy area. In this sense, the constitution of a pioneer group in a determined policy area will, sooner or later, end up by pulling and embracing all the others – an outcome which goes by the name of “pull effect”. Therefore, the enhanced cooperation will act as a machine of influence and incentives, raising the level of the game and calling to the others to play along.

The constant increase in the number of members in the pioneer group (logic of inclusiveness) introduces a factor of dynamism into the enhanced cooperation mechanism, maintaining its vitality and energy (new participating member states bring new ideas and fresh perspectives) as well as preventing its “mummification” among the initial founding members. In this respect, it should not be forgotten that enhanced cooperation is open to all members and that the Commission and the participating member states have the duty to encourage as many member states as possible to take part (Article 43b EU Treaty). Moreover, the enhanced cooperation mechanism is conceived as an “anti-static instrument” in the sense that its main function and purpose is to allow progress, innovation and breakthroughs in a determined policy area that was previously “blocked” and held back due to a majority of disagreeing states. Enhanced cooperation permits the enactment of laws and the adoption of policy measures that would never be achieved with the entire “peloton” deciding.

Nevertheless, the idea that a particular pioneer group of countries, practising a specific policy in a different stage of integration from all the others and simultaneously strengthening the whole process of integration, is only feasible if accompanied by other conditions and requirements – such as the perma-

nent acceptance of member states that decide to join (“open-door” clause), respect for the Treaties, for the single institutional framework of the Union, for the *acquis communautaire*, and for the integrity of the internal market, among others – all established in Article 43. In short, the first condition of Article 43, that the proposed cooperation is aimed at reinforcing the process of integration and protecting the common objectives and interests of the Union, demonstrates that the EU can, in fact, be “physically deformed” as long as it is “spiritually united”.

In respect of the defence of this new vocabulary, words such as “fragmentation” and “breaking away” should be carefully measured and interpreted. “Fragmentation” is not the same as “disintegration” and “breaking away” is completely different from “breaking apart”. While “fragmentation” can be defined as the division of member states into different groups for the purpose of further and strengthened integration in certain policy areas, “disintegration” consists in the retrogression and weakening of that same integration process. “Breaking away” describes the departure of a group of member states from the rest of the EU countries, engaging in a more intense level of integration in a determined area. This notion entails that the states left behind will, sooner or later, catch up with the “fugitives”. “Breaking apart” implies a kind of unbridgeable rupture and definite “split up” among the member states, each one pursuing its different ways.

### **Theoretical Framework**

Through the use of a determined theoretical framework it is possible to present how enhanced cooperation will, in practice, work, speculating about the implications and consequences of its use for the European integration process.

Theory is, in fact, a speculative exercise – which may stand or fall according to whether “it can successfully describe a phenomenon or predict the consequences of that phenomenon”.<sup>15</sup> Therefore, this section is devoted to the insertion of the enhanced cooperation mechanism in a determined theoretical framework, namely in a particular model of the future pattern of European cooperation: the eccentric ellipses model.

This model is the one that best translates how enhanced cooperation will perform, the consequences that this device will bring about and its repercussions in the development of the integration process. According to Wallace and Wallace, “eccentric ellipses

<sup>15</sup> Ben Rosamond: *Theories of European Integration*, 2000, Macmillan, p. 9.

<sup>16</sup> H. Wallace and W. Wallace, *op. cit.*, p. 106.

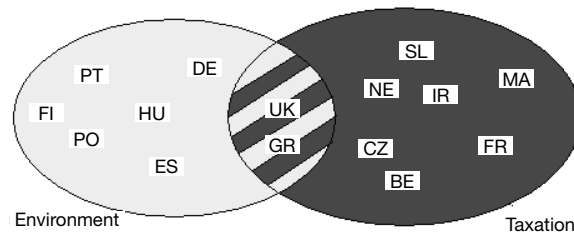
presume more than one axis of policy integration, with different groups of participants which might and probably would to an extent overlap".<sup>16</sup> This is exactly what will happen with the triggering of the enhanced cooperation mechanism. There will be the formation of several groups of enhanced cooperation (the "ellipses"), which will focus on a certain policy. These ellipses, in terms of membership, will overlap (e.g. member state "X" being simultaneously part of an enhanced cooperation in the fields of environment and transport network). In addition, the tendency, following the line of the "pull effect" and the pursuit of the "peloton", will be the enlargement and the continuous overlapping of these ellipses, till the moment they form only one overarching (in terms of membership and policies) ellipse.

According to Figure 1, which shows the eccentric ellipses model, we have two contemporary enhanced cooperation groups in the fields of environment and taxation that would overlap (namely with the UK and Greece participating in both of these groups). These groups would tend to enlarge, by absorbing more member states, and cluster, forming a unique ellipse at a later stage.

The "eccentric ellipses" model has the virtue of picturing the integration process as a "mosaic" of different groups of member states, capturing different levels of development within the same policy areas, as well as allowing for the segmentation and overlapping of these groups. Moreover, this model provides the perfect scenario for the performance of the "pull-effect".

The decision of one member state to participate in a determined enhanced cooperation will necessarily affect the neighbouring country that is not participating. The choices of one country are not totally independent from the choices of other countries. These interdependences and repercussions play a vital role in the tendency to have the enhanced cooperation group(s) continuously enlarging and overlapping. The ellipses will tend to expand and cluster together. This phenomenon has been identified, though in slightly different contexts, by other authors as the "domino effect"<sup>17</sup> or "centripetal force".<sup>18</sup> The latter, in its economic analysis of variable geometry Europe, states that the establishment of a union by a minority of member states may drive the majority to participate because once this union is formed, they will have more benefits

Figure 1  
Eccentric Ellipses



by joining it than by staying behind. In this way, a centripetal force that will act upon all countries, whatever their preferences may be, will be created.<sup>19</sup>

The economic interdependence among the EU member states is so entrenched that a move from a particular group of countries will inevitably affect the others. In this sense, if the moving forward of some members is unfavourable to the ones not participating, they will be incited to join.<sup>20</sup> This "contagious nature" of the enhanced cooperation resembles the neofunctionalist concept of "spillover". Transposing this notion to our context, the creation and deepening of integration through enhanced cooperation in one economic sector would create pressures for the subsequent participation of other member states in that same integration process.

#### Legislative Improvements

The legislative improvements applied to the enhanced cooperation's provisions contemplate several indicators based on which the use of the enhanced cooperation mechanism in the future can be predicted.

In the first place, it is well-known that the requirements necessary to launch an enhanced cooperation have become less and less rigid. In fact, from its first formulation in the Amsterdam Treaty to its future ruling in the Constitution for Europe there has been a quite visible trend rendering the enhanced cooperation instrument easier to apply.

The mechanism has been armoured with more detailed, explanatory and complete provisions. These rules now explain more clearly the general aims and purposes of the mechanism (explicit mention of the objective of reinforcing the process of integration that should preside in the formation of any enhanced cooperation, Article 43); they also clarify the content and the procedure of its enabling clauses (namely the last resort condition in Article 43a, the control of which was assigned to the Council, now in charge of verifying whether the objectives of such a cooperation can

<sup>17</sup> R. E. Baldwin: A Domino Theory of Regionalism, NBER Working Paper No. W4465, Sep. 1993.

<sup>18</sup> J. Pisany-Ferry, op. cit.

<sup>19</sup> Ibid., p. 458. Author's translation.

<sup>20</sup> Ibid., p. 457f.



or cannot be attained within a responsible period by applying the relevant provisions of the Treaties); and, finally, they provide more details on how the mechanism will actually function once it is triggered (in particular, through the reference to the binding nature and direct applicability of the acts and decisions upon only the member states which participate in such a cooperation, Article 44).

A clear example of the insertion of more detailed and explanatory provisions is the new Article 45, which gives the Council and the Commission the role of ensuring the consistency of activities initiated within an enhanced cooperation and its compliance with the policies of the Union and the Community. Another major evolution concerns the enhanced cooperation participation's threshold. In this sense, the change from the rule stipulating the involvement of a majority of member states in the Amsterdam Treaty (which would mean eight out of fifteen member states) to the one fixing the minimum participation threshold at eight member states at Nice, constituted one of the main steps in terms of facilitating the use of enhanced cooperation and of relaxing its requirements. If no alteration had been established, the formation of an enhanced cooperation would now demand the majority participation of thirteen out of twenty-five member states, which would render almost impossible the deployment of this mechanism.

Another welcomed innovation was the replacement of the possibility of an individual veto (known in EU jargon as the *frein d'urgence* or "emergency break") for an eventual re-evaluation of the authorisation proposal. The Amsterdam Treaty stipulated that the permission for an enhanced cooperation could be blocked if one of the member states opposed such an authorisation (in which case no vote was taken). The Council could then decide to refer the matter to the European Council for a decision by unanimity. Since Nice, this procedure *à la Luxembourg Agreement* only applies to the second pillar. In the other pillars, the member states can no longer block the authorisation and force a unanimous decision by the European Council. They can still, nevertheless, slow down the process, introducing a sort of "pause for reflection in the process". Such a suspension consists in allowing a member state to ask for the authorisation proposal to be acknowledged by the European Council and, afterwards, waiting for the final word of the Council, which, acting by qualified majority, decides whether or not to grant the authorisation. Nevertheless, the continuous process of rendering the enhanced cooperation easier to apply has gone even further, as

this "reflection break" provision has been suppressed altogether in the European Constitution. This change is one more demonstration of the tendency to relax the requirements of enhanced cooperation, bringing more functionality and applicability to this mechanism.

### Role of the European Constitution

One other important innovation brought by the European Constitution is the simplification of the proposal procedure. At the moment the proposal procedure varies from case to case. Depending on the pillar, the Commission, the interested member states, or a combination of these have the authority to submit a proposal. The Constitution, aiming at transcending the pillar structure and simplifying the functioning of the Union, has established a unique process of requiring authorisation for enhanced cooperation: Article III-325 (with the exception of the common foreign and security policy). Moreover, the Constitution has provided more details regarding the content of such a request, which must specify the scopes and objectives of the enhanced cooperation proposed.

Furthermore, the scope of action reserved for the enhanced cooperation mechanism has also suffered important modifications. In the current system, this procedure cannot operate in the areas which fall within the exclusive competence of the EC, namely customs policy, external economic relations, the internal market (including the "four freedoms" and financial services), competition policy, structural and cohesion policies, association agreements and, where the euro area is concerned, monetary policy. Nonetheless, these forbidden territories will soon be open to the enhanced cooperation procedure as the condition forbidding the formation of enhanced cooperation in areas of exclusive competence of the Community has been abolished in the Constitution, rendering the creation of different groupings of member states possible in any area covered by the document.

Another development worth mentioning is the insertion in the Constitution of a more detailed and completed explanation of the procedure for the subsequent participation of other member states. According to this new procedure, the Commission, after verifying the fulfilment of the conditions of participation, can adopt the transitional measures deemed necessary for the newcomers (the member states joining in) to apply the acts already adopted within the framework of enhanced cooperation. If the Commission rejects the fulfilment of any conditions of participation, it can indicate the arrangements to be adopted to fulfil those

conditions, setting a deadline for re-examining the request for participation.

A last modification established by the Constitution (no less important than the above) – following the path of “de-complicating” the figure – is the possibility of “changing the rules of the game”. Hence, a group of member states forming an enhanced cooperation can, acting unanimously and regarding only acts or decisions to be implemented within that particular enhanced cooperation, change the voting system (from unanimity to qualified majority, for example) or the legislative procedure (from a special legislative procedure to an ordinary one).

In short, the mechanism has been transformed into a more functional and light one, containing more precise and detailed instructions on how it is to be used and controlled, allowing the member states (both “in” and “out” of the enhanced cooperation) to know better how to trigger the mechanism, what to count on and what to expect from its use. In this context, the process of initiating enhanced cooperation<sup>21</sup> has been considerably facilitated. Its requirements and conditions have been relaxed in order to make the mechanism more attractive and operational. It is now less complicated and less overloaded with prerequisites, restrictions and stipulations. Furthermore, this tendency to soften and ease the process – as the Constitution for Europe demonstrates – is likely to continue.

### **Politico-economic Assessment**

The economic and political implications deriving from the use of enhanced cooperation will now be assessed. To this end, a brief practical and technical study of the enhanced cooperation mechanism will be presented. In other words, the use of this device will be hypothesised in two policy areas and its implications upon the functioning of the EU will be analysed. With these two case studies, chosen from the most probable policy areas to be targeted by enhanced cooperation, the idea is to demonstrate the actual importance of the mechanism, its real applicability and the political and economic implications lying behind its forthcoming utilisation.

### **Political Implications**

In policy-making discourse, the enhanced cooperation mechanism can reveal itself as a truly revolutionary instrument. Through its use, small member states, with very little weight in Europe, minor influence in the Council of Ministers and very modest decision-making power, would now have the possibility to regulate

and decide on policies that the big states do not want to touch upon. Thus, the small member states could acquire a louder voice and climb a few steps in the political ladder, expressing their will with a political autonomy and supremacy that they never had before, forming enhanced cooperation groups with a majority of small member states (countries which together have fewer votes in the Council than Germany alone). Nevertheless, this enhanced cooperation would tend to remain on paper, not seeing daylight, as the enhanced cooperation project composed of small members would require a qualified majority from the Council and, in certain areas, the assent of the EP. Therefore, the real prosecution of such enhanced cooperation would probably be blocked by the big states through the qualified majority rule in the Council.

Yet, this enhanced cooperation project would serve as a political statement from the small member states, which through the request for enhanced cooperation to the Commission and its proposal to the Council would transmit their message throughout Europe. The small states would thus have the chance to present their ideas, plans and views about the integration process, and this already constitutes a victory.

Moreover, through this political statement and demonstration of their thoughts on integration, the small member states could eventually gain the sympathy of some of the big countries and have their enhanced cooperation made reality. If this happens, the small member states would have more decision-making power and political influence (in the policy area targeted by the enhanced cooperation) than they ever had before. This scenario would certainly pull other small states, and big ones as well, which would be eager to participate in such a cooperative group.

Therefore, one of the main political implications of this device is the creation of new balances of power in Europe through the formation of innovative allegiances and original coalitions. The majority of these alliances will not work in practice and will fail in their intent of forming an enhanced cooperation. But this is not the point. What matters is that the enhanced cooperation procedure allows for these unexpected or unpredictable unions of countries to “shake” and reshape the map of power and influence in Europe. In this respect, it is almost irrelevant whether these “odd” coalitions attain their goals or not: what is extremely interesting is their opportunity to enlist a big state to their side and to set it against the others, to create divergences among the small states or to generate brand new divisions and separations within the European family.

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<sup>21</sup> Although it has not yet been used.

This redesign of power will be very useful to tackle the current phase of stagnancy and lack of imagination that Europe is going through. It will make the member states think and reflect about the future path of integration; it will make them take a stand and adopt a position. Through the proposal issued by the Commission following the request for an enhanced cooperation, all the member states will have to decide on whether to allow the formation of enhanced cooperation – this will bring a breath of fresh air to the political discourse. These divisions should be perceived as constructive ones, as they foster debate and discussion, which are absolutely fundamental to generate new ideas and advance the European project. Moreover, these coalitions are “healthy” ones, in the sense that they aim to attract other countries and to envisage a particular process of integration.<sup>22</sup>

It is uncertain whether the member states will actually form these alliances (classical and predictable, unexpected and surprising), but the point is that they have the possibility of doing so. The challenge is proposed and now it’s up to the political will and creativity of the countries to accept it.

### Economic Implications

An economic analysis will now be presented which describes the possible impact of enhanced cooperation on the long-term characteristics of the normal process of integration. To that end, this part of the article will base its analysis in the study provided by Martin and Ottaviano<sup>23</sup> in which the authors use the tools of “new geography” to describe the potential influence of a multi-speed approach to integration on the location choice of industries and therefore on the long-term geography of economic activities in Europe.

In order to transpose correctly the findings of this study to the analysis of the use of enhanced cooperation, the context and some terms of the study will be changed or renamed. Thus, the multi-speed approach will be perceived under the general term “differentiated integration”, integration among the model countries of the study will be conceived as enhanced cooperation between those countries, and the impact of that particular enhanced cooperation will be examined within the economic integration process of the EU of 25 members, and not between the EU of 15 and the Central and East European Countries (CEECs) as still outside the EU (which was the context of the study by

Martin and Ottaviano). The two scenarios drawn in this study, one where agglomeration economies cannot set in during the transition period and one where they can, will be understood not as permission or prohibition of migration of human capital (which has no sense within the EU of freedom of movement), but as the existence (or not) of massive labour movements to the enhanced cooperation group.

The authors use a three-country model in which two identical rich countries decide to integrate (in our case, where a minimum of eight equally wealthy member states engage in an enhanced cooperation), leaving a third country (or all the others), poorer and temporarily outside. According to this model, integration is characterised by the elimination of transaction costs, and a country is considered to be rich if it has a higher endowment of human capital (entrepreneurs), which will work as the criteria to define the income gap between the enhanced cooperation members and the poor country. They strive to know whether the transition period (before joining the enhanced cooperation) will generate the displacement of labour to the cooperation group, an increase in income divergence and, consequently, the indefinite postponement of subsequent participation in the group. The answer will depend on whether there is a massive movement of labour.

Let us start with the hypothesis that workers will not massively migrate to the enhanced cooperation countries, which signifies that incomes (“flow of money, goods or services to any economic agent or unit”<sup>24</sup>) will be fixed geographically. In this case, and according to the authors, when the enhanced cooperation group lowers its transaction costs (e.g. say in the trade of advanced environmentally clean technologies, which only takes place within that enhanced cooperation), the entrepreneurs of that business branch belonging to the excluded country will locate their plants in the core group (while the human capital remains at home). Therefore, the excluded country will always be confronted with the relocation of its firms to the integrated area, due to the fact that enhanced cooperation countries become a better export base to each other than the excluded country. Therefore, from the perspective of the location of economic activities, the excluded country would have preferred that the enhanced cooperation had never been formed in the first place. Nevertheless, this does not mean that the excluded country should struggle to participate in the enhanced cooperation as quickly as possible – if it does so,

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<sup>22</sup> Examples of alliances other than the small member states one can be provided, such as geographical ones.

<sup>23</sup> P. Martin, G. Ottaviano: *The Geography of Multi-Speed Europe*, CEPR Discussion Paper No. 1292, November 1995.

<sup>24</sup> G. Bannock, R. Baxter, E. Davis: *The Penguin Dictionary of Economics*, 7th Edition, Penguin Books, England 2003.

and as transaction costs are lower, the income gap between the previously excluded country and the core group will be aggravated as the largest number of industries will be located in the latter. Therefore, if it joins the enhanced cooperation, its firms will tend to transfer themselves to the richest markets within the group. If, instead, the country waits and uses the transition period for the purpose of income convergence, the final outcome will be different and enhanced cooperation will be a good idea: it enables the *peripheral* country to join the integrated area at a time when the income differential is not too large and does not generate the massive relocation of firms to the enhanced cooperation group. The transition period will then be characterised by the relocation of firms from the enhanced cooperation to the periphery.

A completely opposite conclusion is reached if the workers, the human capital, and the entrepreneurs massively flee to the enhanced cooperation group, which means that incomes are not fixed geographically. This implies that the temporary exclusion of the poor country may trigger the accumulation of the increasing returns sector in the enhanced cooperation, provoking divergence in terms of incomes between the core and the periphery. The authors call this the “agglomeration effect of multi-speed integration”. This is a very negative picture, as the country excluded may never be able to catch up with the enhanced cooperation if the transition period itself is conditioned on income convergence.

The findings of this study, transposed to a hypothetical enhanced cooperation scenario, lead us to the conclusion that such an enhanced cooperation can, in fact, generate positive economic implications. In the first place, it is common knowledge and accepted reality that the movement of labour is a “mirage” within the EU (moreover, it is the only freedom among the four that is simply not happening). Therefore, the second outcome presented by Martin and Ottaviano, in which the enhanced cooperation would have perverse effects on the countries that were left out, increasing the gap between the latter and the ones forming an enhanced group and condemning them to loneliness, will most likely not occur, as its assumption – massive movement of labour – will not be confirmed. Furthermore, if such a movement of the labour force is not happening now, with enlargement as a reality and within the normal process of integration, there is absolutely nothing to indicate that this will happen in the future with enhanced cooperation.

Therefore, the enhanced cooperation is indeed positive and constructive to the whole process of integration. Picturing an enhanced cooperation dealing with the environmental technologies market with a number of countries excluded from the cooperation but willing to take part, the trend will be towards a “spillover” from the enhanced cooperation (the breakaway riders) to the member states willing to join (the “peloton”). This “spillover” will consist in the creation of a new technologies market and in the implementation or relocation of “green” industries to the territory of these countries in order to prepare and allow them to enter the enhanced cooperation group.

At this point, emphasis should be given to the status of “pre-in” countries,<sup>25</sup> meaning a group of countries willing to participate in the enhanced cooperation group but not apt (in economic and developmental terms) to do so. The status of “pre-in” countries would grant them a number of privileges in relation to the “out” countries (eligibility for support schemes and participation in the enhanced cooperation discussions and decisions), facilitating their accession to the core group. But, even more important, this category, which should be explicitly contemplated in the enhanced cooperation legal framework, would create “expectations” in the entrepreneurial community. In this sense, the various entrepreneurs in the respective economic branch would look at these “pre-in” countries as their next market area, as their future target of expansion and development. Therefore, the status of “pre-in” countries and its resulting commercial expectations would accelerate the economic convergence process during the transition period, facilitating the inclusion of the initially unprepared member states in the enhanced cooperation group. Moreover, the transition period, which should be devoted to the relocation of firms from the core to the periphery, should be neither too short nor too long in order to serve the purpose of allowing the excluded member states to tail along, preventing them from staying indefinitely and hopelessly behind.

These economic implications reinforce the importance of the “open-door” clause and of the “pull-effect” in the enhanced cooperation mechanism, as vital elements of dynamism and positive influence in the process of integration. It demonstrates that the “peloton” can only benefit if it decides to follow the “escape riders”, using the transition period for its training and preparation. The economic analysis, besides confirming the significance of establishing a category of

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<sup>25</sup> Category conceived by Eric Philip part, *op. cit.*

“pre-in” member states, underpins the enhanced cooperation mechanism as a machine of incentives and influences, attracting the rest of the member states – directly, in the case of countries that want, but are unable, to participate, and indirectly, by frustrating the others that, all of a sudden, will be left without a voice and position in the matters regarding the enhanced cooperation (and which will make them re-evaluate their possible participation).

Nevertheless, attention should be paid to the dangers of not accompanying and supporting the “peloton” in their chase for the breakaway riders. In this respect, it is highly improbable that the Commission can actually pressure the enhanced cooperation countries to “spillover” their arrangements and agreements to the rest of the member states, namely to those who wish to participate. Therefore, this task must be undertaken by the member states that are out of the group and want to join in, making a constant effort to follow and trying to participate in the developments of the enhanced cooperation. Otherwise, it will be highly perilous to leave the enhanced cooperation to itself, alone and isolated, as it can break away in a definite and irreversible way. The point of the exercise is to include and expand the enhanced cooperation group to as many member states as possible.

### Case Studies

A quite substantial catalogue of EU policy areas, presenting traditional lines of division and inspiring conflictive approaches by member states, form the list of candidates for the upcoming application of enhanced cooperation. Examples of these are environmental policy, immigration, energy, the air traffic market (open-sky initiatives), tax harmonisation, direct income supports to farmers and the transferability of social security claims.<sup>26</sup> Among this inventory, our attention will be focused on taxation and environmental policies. These are, in fact, the policies showing the most concrete signs of divisions of perspectives and divergences of approaches among the member states, which will inexorably provoke the formation of different groups of integration. Moreover, the traditional “all-for-one and one-for-all” integration model will not easily solve these divergences, as taxation policy matters are ruled by the principle of unanimity in the Council and the environmental policy is characterised by traditional and culturally embedded different mentalities towards “green affairs”.

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<sup>26</sup> List taken from L. Csaba: *The Future of the EU: a Post-Laeken Perspective*, Tiger Working Paper Series, No. 21, 2002.

Both cases which will be examined here are concerned with taxation issues, but while corporate tax is strictly connected to the issue of tax harmonisation and its different approaches, the “eco-tax” (although pertaining as well to the taxation field) is deeply connected to the environmental policy area and to the divergences this topic provokes among the member states.

The first case study will concern the possible formation of an enhanced cooperation among the “green countries” countries for the implementation of an “eco-tax”.

The second case study will examine the corporate tax within the EU. In this area, Germany and France have already announced their will to form an enhanced cooperation, a project which was also supported by the former Commissioner for the Internal Market, Taxation and Customs – Frits Bolkestein – who advocated the same idea in several public interventions.

### “Eco-Tax”

Environmental policy has always been a “battlefield” with “green-minded” member states measuring forces with “laggard” countries in the fight for increasing the standards of environmental protection. Being “green” requires having the finances and savings to practise it, which is not an easy task as the costs of environmentalism lead to cautious approaches by some governments. This difference of “mentalities” and “pockets” renders a common EU environmental policy difficult to attain, allowing individual country variations in the implementation of policy. In this respect, there is a manifest “implement deficit”.<sup>27</sup>

Not only the mentalities and concepts diverge, but also the tools used to pursue these different ideas and concepts. Thus environmental policy, taking all this into account, constitutes a perfect stage for the performance of future enhanced cooperation groups. One example of this is the “eco-tax” issue, the “history” of which – one of permanent conflict and clashes among the member states – can ideally have its final development with the formation of an enhanced cooperation.

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<sup>27</sup> A. Sbragia: *Environmental policy: economic constraints and external pressures*, in: W. Wallace and H. Wallace (eds): *Policy-Making in the European Union*, Oxford 2000, Oxford University Press, pp. 294-316, here p. 305.

<sup>28</sup> This Protocol constitutes a clear example of a “changing the rules of the game” clause, one of the innovations put forward for the optimising of the enhanced cooperation mechanism. If this device accepts this clause in its legal framework, the Protocol (if presented once again) will most probably be approved within an “eco-tax” enhanced cooperation.

During the IGC that led to the Amsterdam Treaty, the Danes strived to introduce an “eco-tax”, proposing a Protocol that would have excluded the unanimity rule in the Council for certain environmental taxes. This proposal, which otherwise would have made the future adoption of environmental taxes much easier, was not supported.<sup>28</sup>

As Sbragia points out, “variants of an ‘eco-tax’ have been frequently discussed and adopted by some member states, but (...) have failed to find general agreement in the EU”. A particular example of that is the eco-tax on oil, gas and coal (all non-renewable energy sources), which has produced the most heated contestations. Proposed by the Commission in 1992, it was vetoed by the ECOFIN (EU’s Council of Economic and Finance Ministers). One year later, the Danish Council presidency, after miraculously reaching a compromise of acceptance with Portugal, Greece, Ireland and Spain (traditionally and fiercely opposed to such a tax) saw its “eco-tax” proposal demolished by British objections. Again in 1996, 1997 and 1999 new attempts were made, but the classical clash between the “green states” of Austria, Finland, Sweden, Denmark, the Netherlands and Germany and the opposing axis of the UK, Portugal, Spain, Ireland and Greece ended up with the same result: the blocking and non-progression of the “eco-tax”. The only solution for the future is the formation of an enhanced cooperation, which is probably already being envisaged by the “willing and capable” states. Moreover, this initiative could trigger others within the environmental policy area, such as the constitution of enhanced cooperation groups for the implementation of clean and environmentally friendly new technologies – another topic of division in the EU.

### Corporate Tax

The question concerning the adoption of a single EU-wide company tax base to be used by companies in their EU-wide activities is currently on the agenda, showing no signs of being an easy and peaceful one. In fact, this issue is dividing Europe, with two factions fighting each other. One side is enthusiastic and favourable towards its adoption: the Commission, Germany and France; and the other is against it: the UK and Ireland, which traditionally and consistently oppose tax harmonisation, and probably the new member states, which have no interest in sharing a

standard scheme for calculating corporate tax as low company tax rates attract business into these areas. On the pro-single EU-wide tax side is the Commission, which advocates the proposed approach as, in the long term, “the best response to the current challenges in the corporate tax field in the EU side of the dispute”.<sup>29</sup> Moreover, “a common tax base would be the most effective means of tackling the company tax obstacles which hamper our businesses and undermine their international competitiveness”.<sup>30</sup> Nevertheless, the Commission, perfectly aware of the division that is cutting Europe and the business community in half, knows that the optimum solution of having all member states agreeing to EU-wide legislation in this area will fail because of the unanimity voting principle in tax matters. Therefore, the Commission, predicting the failure to achieve unanimous agreement on this issue, is seriously taking into consideration other options for solving the question. In the words of the former Commissioner for the Internal Market, Taxation and Customs – Mr. Frits Bolkestein – one option “would be the mechanism introduced by the Amsterdam Treaty and developed by the Nice Treaty to allow ‘enhanced cooperation’ between smaller groups of countries. After all, it will be unfair if some member states are allowed to stand in the way of the elimination of tax obstacles to cross-border business when this is crucial to the development of the EU Internal Market, economic growth and job creation”.<sup>31</sup> As a matter of fact, the Commissioner even “threatened” to put the idea of enhanced cooperation to leaders at the European 2004 spring Council with a view to making a proposal by the autumn of the same year.<sup>32</sup> Furthermore, this idea was previously put forward by one member of the European Parliament, namely Ms. Randzio-Plath – chairwoman of the EP Committee on Economic and Monetary Affairs – who also supported the formation of an enhanced cooperation group to make progress on a common European corporate tax base.<sup>33</sup>

Such an enhanced cooperation is a clear example of a “positive undermining of the common market”. On the one hand, the member states forming the enhanced cooperation will introduce a different scheme of taxation, adding to the existing ones and, therefore, not reaching its full application to the whole EU (and in this sense maintaining a distortion in the common market). But on the other hand, these “enhanced

<sup>28</sup> Speech made by Frits Bolkestein, European Commissioner for the Internal Market, Taxation and Customs, to the European Parliament Committee on Economic and Monetary Affairs, Brussels, 16 March 2004.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Press Review 14 May 2004 at [www.eupolitix.com](http://www.eupolitix.com).

<sup>33</sup> In a speech made at a company tax conference in Rome, December 2003.

countries” will adopt the same rules on corporate taxation, thereby bringing down cross-country barriers, boosting trade transactions and strengthening the European single market.

To sum up, both case studies demonstrate that the enhanced cooperation mechanism is most likely to pass from words to actions. This mechanism is on the table of negotiations, knocking the door and entering the arena.

### **Arguments in Favour of the Enhanced Cooperation Mechanism**

The enhanced cooperation mechanism, although constituting a dangerous weapon if not accompanied by certain precautions, is, at the end of the day, a very positive instrument, enabling the “healthy” prosecution of the European integration process and removing the blockages that frequently hinder its path. Nevertheless, this instrument can still be improved through the introduction of certain modifications to the text of its legal provisions. Before listing the improvements to which this mechanism can be subject, some words should be devoted to the risks that the employment of this instrument may bring about.

#### **Risk of Permanent and Definite Fragmentation**

One of the main dangers of deviating from the classic model of integration provoked by the use of the enhanced cooperation mechanism is the risk of permanent and definite fragmentation, meaning the creation of an unbridgeable gap between the “breakaway riders” and the “peloton”. In many bicycle races the breakaway riders turn out to be successful in their breakaway, finishing the race far away from the “peloton”, which was left behind with no reaction whatsoever. To overcome this problem, bridges need to be maintained between the different groups of members, embracing them in the common and general set of goals and objectives. Here, two ideas collide: the concession of “solidarity” mechanisms that preserve a sense of constructive cohesion and the lack of popularity that financial solidarity schemes are going through, clearly losing their momentum in Europe (as net payers start to resist paying these costs). In this debate, it should be realised that a Europe of subsidies and support schemes is ineffective and detrimental to the general project of integration. Member states should not be “carried” but “taught how to walk”, developing themselves with their own tools and from the inside, not relying constantly on external help.

This does not mean, however, that countries left out of enhanced cooperation should not receive any kind

of funding to allow them to reach the pioneer group. As mentioned before, the countries willing to participate should be granted special status, being allowed to participate in the discussions and deliberations regarding enhanced cooperation and receiving moderate support schemes. This is vital for the logic of inclusiveness and the attractiveness factor that should armour any enhanced cooperation. Nevertheless, these financial aids should work only as incentives. Emphasis should be put on the self-development of those countries in order to catch up with the others. Europe should follow the path of abolishing the logic of compensation measures, redistributive procedures, cohesion schemes and transfer arrangements. Nevertheless, this abolishment should be gradual and enhanced cooperation should not be extreme to the point of disregarding any “solidarity feeling” towards the ones that were unable to take part. Therefore, a minimum of mechanisms allowing the members that stay behind to pursue and come closer to the breakaway group should, for the time being, be maintained.

#### **Improvements**

In this context, it would be highly recommendable to modify the current funding system, stipulating that the expenditures resulting from the implementation of enhanced cooperation should be borne by the Union’s budget, changing the current stipulation in which those expenditures are borne by the participating member states, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

In this point, Philippart rightly finds a logical contradiction between the condition of serving the objectives and interests of the Union, that is implicit in enhanced cooperation’s authorisation, and the financing of the mechanism by the participating states. The incongruity is based on the fact that participating member states, in order to implement acts that reinforce the process of integration as a whole and that uphold the interests of the EU, have to pay the costs of the implementation from their own pockets. Furthermore, unanimity is nowadays a “rare species” on most budgetary issues, having no reason to reappear in the enhanced cooperation budget. Therefore, the Council should be authorised to decide by a qualified majority that the Union’s budget will support the enhanced cooperation’s operational costs.<sup>34</sup> This will act as a factor of attraction to more member states to participate in enhanced cooperation, following the policy of encouraging as many member states as possible to

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<sup>34</sup> E. Philippart, *op. cit.*, p. 1.

take part. Moreover, it will render enhanced cooperation more genuine and authentic, allowing “less rich” countries to freely express their perspectives of integration and to engage in the projects without the usual financial constraints, making them active participants in the integration process (giving a rest to the classic Franco-German “duet”). It would be very interesting to see what these countries would propose and realise if they were given the opportunity to sit on the “throne”, relieving them from their traditional economic blockages. In short, this measure would refute the concept of enhanced cooperation as an “élite club” idea, governed by money and financial power. It would no longer be about money (or, realistically speaking, the money would count less), but about will. Moreover, every time the operational expenditures of an enhanced cooperation were to be borne by the Union, the assent of the European Parliament should certainly be required.<sup>35</sup>

As another improvement, it would be very beneficial to lower the requisite of a qualified majority in the Council for the development of enhanced cooperation. As long as the use of this instrument is efficiently controlled and verified, passing all the objective criteria and conditions, there is no reason for making its acceptance so difficult. Moreover, this is a device of fragmentation, the “departmental” nature of which should not be decided by the whole “office”.

### Final Considerations

The current state of affairs is that enlargements will endorse the EU with a completely reconfigured geopolitical context, quartered by different and sharpened economic pressures and characterised by tensions among the member states. The enlargements will, consequently, aggravate diversity, a fact that will redesign the political balances and economic lines of the EU and with which it is impossible to cope with only one cooperative framework. This situation calls into action the enhanced cooperation mechanism.

Obviously, there are no simple answers and miraculous solutions for the issue of managing diversity in Europe. Nonetheless, it is misleading and deceitful to insist on complete harmony and unity as the exclusively guiding principles of European integration. A large dose of honesty and openness must be urgently introduced into political speech, admitting that member states have, and can pursue, different goals within the same set of objectives; admitting that Europe can allow, to some extent, a certain degree of division and fragmentation; admitting that the internal market can

be “positively undermined”; admitting that articulated speeches and refined statements are not enough and that concrete steps have to be taken in order to effectively accommodate the objective differences among member states, as well as the divergences of their political approaches.

Enhanced cooperation and the perspectives adopted on the integration process fight the “clichés” of European integration – the sanctity of the *acquis communautaire*, the holiness of the pursuit of common goals, the uniformity of EC Law and the inviolability of the internal market. In fact, it is impossible to have an enhanced cooperation respecting all these “dogmas”. Enhanced cooperation entails division, fragmentation, conflicts of sources, tensions among member states and different goals (which is not the same as conflicting goals). Words such as segmentation, fragmentation and division should not be considered a “taboo” in the EU vocabulary, which it is feared to pronounce. These terms will become reality and the longer we take to acknowledge them, the more difficult it will be to work with them. Enhanced cooperation does create fragmentation and does divide European countries into formally distinct groups. The question is to assert whether this fragmentation is positive or negative. The answer lies in how the EU deals with the phenomenon. Therefore, taking into account that this fragmentation (the formation of different groups) is inevitable (in the sense of necessary to the continuity of the process of integration), one should, in the first place, accept it (and not deny it or hide it behind utopian and inadequate legal provisions and political speeches) and, in the second place, make the best of it – regulating the phenomenon within a legal framework that admits distortions in the integration process, allowing its development and progress.

In this respect, an important clarification should be made: having and pursuing different goals is not the same as having and pursuing conflicting ones – the former is at the basis of enhanced cooperation, while the latter should immediately be prohibited. The difference lies in the fact that it is possible to pursue different goals within a general set of common objectives (the “trick” is to perceive this common framework as less strict and more relaxed), while it is impossible to have conflicting goals inside the general set of objectives.

Therefore, a common dimension of shared objectives should always accompany the enhanced cooperation mechanism. This set of common and untouchable objectives consists, in simple terms, in

<sup>35</sup> Ibid., p. 5.



the development of the European integration process, the route of which should be drawn up according to a permanent and unbreakable framework. Now, inside such a framework, member states can pursue different goals, adopting more or less intensive approaches to the general European integration process, being free to choose between undertaking longer or quicker paths to the optimal integration. The permanent framework represents the common guidelines that should orient the behaviour of all member states, stipulating its rules and boundaries – and these, fundamentally, concern the continuous development of the European integration process, with all its implications: internal market, economic union, socio-economic cohesion, geo-political stabilisation (leading to common security and defence) and, eventually, a political union – the “*finalité politique*”. These common objectives and the will to keep the integration process moving forward, climbing the ladder of a more competitive common market to a more entrenched political union, should be presented in any enhanced cooperation, “keeping the EU spiritually united”.

A perfect example of a common set of objectives is the Lisbon strategy, which aims to make the European Union the world’s most competitive and dynamic economy by 2010. In order to achieve this purpose and acting within a common framework in which the enhanced cooperation mechanism is contemplated, why should a group of countries have any kind of constraints in taking a bolder and more integrationist path, adopting a number of directives or regulations in a certain policy that other member states do not want to touch upon? If the point of the exercise consists in achieving the Lisbon objectives, shouldn’t we take advantage of this integration-enabling device called enhanced cooperation? This reasoning demonstrates that is perfectly possible and legitimate to pursue different goals, i.e. different perspectives, actions and levels of intensity in dealing with the integration process, within the same set of objectives (in this case the Lisbon Agenda).

In this sense, every political measure and project that enhances the process of integration, such as the examples given in the field of environment and taxation policies – in the sense of “upgrading” this process, raising the standards – should not be abandoned if the “peloton” refuses to pursue those political proposals. The “breakaway enhanced cooperation group” should always have the possibility to depart and “escape”. All provided that the general framework of common goals (internal market construction, upgrading of the economic union and drive towards a political union)

is respected and observed and a constant bridge between those that stay behind is preserved – the logic of inclusiveness and economic cohesion.

Nonetheless, one important remark should be made: the classical mode of integration (known as the “Community method”, which lies in the homogeneity of conditions and preferences of all member states, departing from the assumption of the indivisibility of Community membership) is not obsolete or redundant, having exhausted all its energies and purposes. On the contrary, the classical integration process should continue to be the general rule. Nevertheless, some new ingredients of flexibility should not only be introduced (which was done with the enhanced cooperation mechanism) but also applied in practice. The fact is that the traditional model is sometimes ineffective, blocking the entire process. In these particular situations, enhanced cooperation should be called upon. Taking this into account, the enhanced cooperation mechanism is an exceptional instrument – to be used on specific occasions when integration seems to be at an impasse, blocked by a number of states that pass their own lack of initiative on to the whole group. It does not envisage becoming the general rule, the principal tool of integration. In this sense, it is a “surgical tool”, conceived to operate on the patient when the disease is of extreme gravity and not to drive a majority of member states onto an integration path that clearly exceeds their preferences.

Integration should not be condemned to proceed at the pace of the slower or of the less enthusiastic member states – this is clearly undesirable and hazardous to the continuation of the European project.

Enhanced cooperation is a “painful process”, as any breakthrough is – and controversy, polemics and disagreements will always accompany it. Nevertheless, it will eventually become the most suitable method of efficiently proceeding with the integration process, representing the strategy of differentiated integration that the EU needs in order to reorganise itself in the coming years. The interesting point is to see how this reorganisation will be conducted in practice.

Turning back to the “bicycling metaphor”, European integration is in fact a bicycle that must be moved forward or otherwise it will fall to the ground.<sup>36</sup> This article has intended to prove that the enhanced cooperation mechanism will constitute the necessary “spin” to keep this bicycle moving.

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<sup>36</sup> H. Siebert: Europe – quo vadis?, in: The World Economy, Vol. 25, No. 1, 2002, pp. 1-32, here p. 1.