

EUROPEAN PARLIAMENT

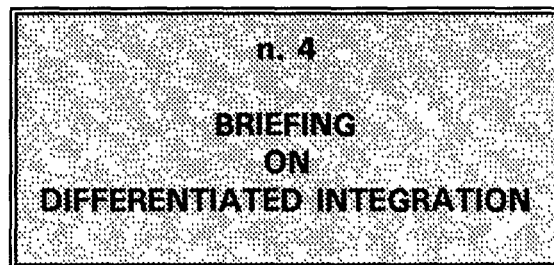


SECRETARIAT WORKING PARTY
TASK-FORCE
ON THE
"INTERGOVERNMENTAL CONFERENCE"

WORKING PARTY SECRETARIAT

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These Briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.

Briefings will be updated as negotiations proceed.

Already out:

- 1 The Court of Justice**
- 2 The Commission**
- 3 The Court of Auditors, ESC and COR**
- 4 Differentiated integration.**

Coming shortly:

- 5 The common foreign and security policy**
- 6 The role of the national parliaments.**

29 May 1995

BRIEFING NO 4
DIFFERENTIATED INTEGRATION

SUMMARY

Differentiated integration is a highly political issue which will shape both the development of the current Union of 15 and the enlargement of the Union to include new countries from the south and east of Europe.

Most of the proposals put forward hitherto agree on the need for forms of differentiated integration based on those already existing in Community practice (for example temporary derogations) or in the Treaty on European Union (for example, EMU and the CFSP).

Attempts to extend the notion and the spheres of application of differentiated integration beyond these preexisting forms will be resisted by certain Member States and certain institutions whose concern is to 'maintain in full the *acquis communautaire*' (see Article B of the TEU).

Moreover, the guarantees or conditions attached to putting differentiated integration into practice will have to be specified where appropriate.

The potential institutional and legal consequences of any extensive application of differentiated integration (for example, the creation of 'cores' of countries) are deemed to be 'major' or 'complex' but until now have not been the subject of any detailed proposal or analysis.

CONFERENCE AGENDA

The question of differentiated integration is not one of the issues due for revision under the provisions of the TEU (Article N(2)). However, the European Council meeting in Brussels (December 1993) and Corfu (June 1994) stated that consideration would be given to measures deemed necessary to guarantee the 'effective operation (of the work of the Institutions) in the perspective of enlargement'. In this context, the question of 'differentiated integration' is likely to arise, encompassing such notions as 'Europe à la carte', 'multi-speed Europe', 'variable geometry', 'a hard core', 'greater solidarity', etc.

SOURCES

The CDU/CSU document on the question of differentiated integration was followed by official statements from the French and British heads of government. The Spanish Government subsequently made its position clear in the overall document published by the Spanish Foreign Ministry. The Commission President, Mr Santer, has expressed his views in public on several occasions.

The Commission report on the operation of the TEU and the Bourlanges/Martin report by the European Parliament also deal with this issue.

Lastly, it would appear useful at this stage to look at the stance taken by the European Movement and at comments on the legal aspects of this question.

POSITIONS

[The following are summaries or extracts of the positions of:

- the European Parliament,
- the Commission,
- the CDU/CSU,
- Mr BALLADUR,
- Mr MAJOR,
- the Spanish Government
- Mr SANTER,
- the European Movement,
- 'Justus Lipsius']

[For any further information on this briefing, contact Mr GIRAUD, Lux. 2556]

Report on the functioning of the TEU (17 May 1995)

(...)

- whereas, in accordance with the procedure referred to in Article N(2) (of the TEU), the Union is to 'maintain in full the acquis communautaire and build on it', in accordance with Article B of the TEU (...)
 - whereas (...) institutional mechanisms designed for a Europe of six members (...) could not simply be transposed to a European Union with more than 20 members without a risk of paralysis and dilution of the European Union (...)
 - whereas it would not be wise to enlarge the Union without making a number of fundamental changes to the Union and to the European Treaties (...)
15. In view of the increasing diversity of the EU, further flexible arrangements may well be required in the future, but these:
- should not undermine the single institutional framework, the 'acquis communautaire' or the principles of solidarity and economic and social cohesion throughout the European Union;
 - should not undermine the principle of equality of all States and citizens of the Union before the Treaty;
 - should not lead to a 'Europe à la carte'.
16. The European Parliament as a whole will be responsible for exercising control over those Union policies which are pursued by a limited number of Member States on a temporary basis.
17. If, at the 1996 Conference, despite broad agreement among a majority of Member States and peoples of the European Union, it proves impossible to reach a positive conclusion owing to failure to reach a unanimous decision, consideration will need to be given to proceeding without the minority and, possibly, providing for instruments to enable a Member State to leave the EU, subject to meeting certain criteria.

Resolution on a multi-speed Europe (28 September 1994)

The European Parliament

- having regard to the Council's statement on a multi-speed Europe and the various points of view expressed on the subject,
- 1. reaffirms its vision of a European Union in which all Member States concerned with proceeding towards integration have equal rights and duties;
- 2. reaffirms that it would be inconceivable to exclude *a priori* Member States which are ready and willing to pursue their efforts to achieve European integration;
- (...)
- 4. Calls on the Member States to commit themselves at the future Intergovernmental Conference to strengthening and democratizing the general institutional structure of the Union;
- (...)
- 6. Rejects an 'à la carte' Europe in which each Member State is entitled to dissociate itself from any Community policy;
- 7. Considers that, if a small minority of states attempted to block all progress during the 1996 intergovernmental conference, ways would have to be found of allowing states which want to pursue their efforts to achieve European integration still to do so;
- 8. Considers that, in view of the major challenges to stability in Central and Eastern Europe and the Mediterranean basin, the Union should be able to call on the resources it requires to play its role as a stable and unifying force, mindful of the need to be effective and to consolidate democracy;
- 9. Recognizes that the derogations secured in the Maastricht Treaty by certain Member States have given rise to dangerous speculation about an 'à la carte' Europe; (...)
- (...)

Report on the operation of the TEU (10 May 1995)Preface

(...) 'At tremendous cost, the new democracies in Central and Eastern Europe have confirmed their attachment to the values that are at the very basis of the Union. The Union, for its part, has committed itself to accepting these countries.

Herein lies the second challenge. How are these countries to be welcomed into the Union without striking at the foundations of all that has been achieved in 40 years of European integration? How, in other words, can we ensure that enlargement will not multiply our weaknesses but unite our strengths? How can we enhance our capacity to take decisions and to act, when our diversity becomes more pronounced? Enlargement must represent a new arrangement worked out with our eyes open. We have to be aware of its implications for the institutions and policies of the Union. The Commission is convinced that there is an answer to these questions. There is no compelling reason why an endeavour based on openness and solidarity should mean weakness and dilution: enlargement and deepening are perfectly compatible'.

(...) 'Further enlargement will not only require the Union to strengthen its decision-making capacity, but also force us to look more closely at the possibility of different speeds of integration. This concept already exists both in the context of economic and monetary union and in the system set up under the Schengen Agreement - although the latter regrettably remains outside the Community framework. There is nothing unusual in allowing some Member States a longer period to adjust to certain policies. In the Commission's view, however, this must be done within a single institutional framework and must centre on a common objective. Those states concerned must play their part by not blocking any of their partners who wish to move ahead more quickly.

Permanent exemptions such as that now applying to social policy, which in the last analysis have had the regrettable effect of excluding the Social Charter from the Treaty, create a problem as they raise the prospect of an 'à la carte' Europe, to which the Commission is utterly opposed. Allowing each country the freedom to pick and choose the policies it takes part in would inevitably lead to a negation of Europe'.

Conclusion

(...) 'The agreement on social policy between 14 Member States is a dangerous precedent for the operation and cohesion of the Union in that all the Member States do not share the same objective'.

(...) 'The Commission therefore has to express two concerns - first, the less-than-convincing experience with intergovernmental cooperation under the second and third pillars suggests that there can be no question of trying to accommodate further enlargements with the present arrangements for their operation'. (...)

1. There is a danger that the (enlarged) Union will become a looser grouping limited to certain economic aspects and made up of various sub-groups. An improved free trade area of this kind would not enable European societies to face up to external challenges.
2. The tensions inherent in a Community stretching from the North Cape to Gibraltar require sufficient flexibility and differentiation to take account of the differing capacity (and desire) of the various countries to move towards integration.

Despite the considerable legal and practical difficulties involved, the idea of 'variable geometry' and a 'multi-speed Europe' must be institutionalized in the Treaty on European Union.

It is essential that no country should be able to veto and thereby block the efforts of other countries which are more able and willing to step up cooperation and move at a faster pace towards integration (for example, monetary union and Schengen).

3. Franco-German cooperation must be at the heart of a 'hard core' of five Member States (Germany, France, Belgium, the Netherlands and Luxembourg) which:
 - take part in all joint actions,
 - launch new initiatives,
 - focus in particular on the new spheres of cooperation added by the Maastricht Treaty,
 - form a monetary union between themselves which itself will form the 'hard core' of the political union.
4. The 'hard core' group must convince all the other Member States to join this core group as soon as they are able and willing.
5. The formation of the hard core is not an end in itself but a means of reconciling contradictory objectives - namely, the deepening and widening of the Union.
6. The countries of Eastern Europe - Poland, the Czech Republic, Slovakia, Hungary (and Slovenia) should join the Union around the year 2000¹; provision will have to be made for very long differentiated transition periods which will amount to application of the concept of variable geometry².

BALLADUR
(France)

¹ 'Admission (of the Eastern European countries) to the European Union is linked to the four (following) measures: institutional development of the Union, strengthening of the hard-core, stepping up of Franco-German relations and strengthening of the CFSP; it is dependent on the achievement of and is also the ultimate goal of those measures'.

² CDU/CSU September 94

1. The more Europe expands, the more diversified it will become, at least transitionally. A multi-speed Europe (as is already the case for monetary and social affairs in the Maastricht Treaty) must be accepted as a transitional stage.

However, it is necessary to preserve an effective, homogenous central core centred around France and Germany.

2. Europe must be structured around three circles:
 - (a) the common system of law circle consisting of all the EU countries and possibly extending to include all the countries of Europe (with the exception of Russia, Ukraine and Belarus): this consists of the single market plus the common policies plus the CFSP according to the Maastricht Treaty (whose institutions will have to be simplified in 1996 to make them more effective, representative and transparent);
 - (b) smaller circles involving certain EU Member States, allowing for closer and better structured cooperation: a monetary circle and a military circle which would have different members.

These circles would be open to all the EU countries, which would join them when they were able to do so.

At institutional level, the monetary circle would operate in accordance with the rules set by the Maastricht Treaty and the military circle would be based on the rules of the WEU, although in both cases these rules would have to be made more specific;

- (c) a larger circle with the countries remaining outside the Union (for example, the USSR and the Mediterranean area) with which the Union must form a diplomatic and security organization and sign economic and trade agreements (such as the Stability Pact and the Partnership for Peace initiative)¹

¹ Articles appearing in Le Figaro on 30 August 1994 and Le Monde on 30 November 1994.

MAJOR
(United Kingdom)

1. Cohesion within a Community consisting of between 12 and 16 countries requires flexibility. Greater flexibility is the only way of building a Union consisting of up to 20 or more states.

Diversity is not a weakness to be suppressed but a strength to be controlled.

2. The way in which the Union develops must be acceptable to all Member States, which can accept that some countries will integrate more closely/rapidly in certain areas.

This is the principle of the economic and monetary union and the defence union as accepted by the Maastricht Treaty.

3. However, no Member State must be excluded from a sector in which it is able and willing to take part; there must be no exclusive 'hard core' of countries and policies.

4. The Union encompasses a vast range of common policies and areas of close cooperation; conformity is necessary in some areas (for example, the single market or the environment) but this cannot be an automatic principle¹.

¹ Speech made in Leiden on 7 September 1994

SPAIN

1. No country must be able to exclude another from the most advanced process of European integration; no country must prevent those which so wish to make further progress in this process;
2. The concept of variable geometry exists in the Community system. The intention is to enable those which cannot or do not wish to proceed to remain outside certain policies (for example, the United Kingdom in the case of the Social Protocol, the United Kingdom and Denmark in the case of the third phase of EMU, the CFSP 'opt-out', etc);
3. The concept of 'greater solidarity' enables the problem of enlargement to be solved by allowing those which so wish to proceed more rapidly in certain areas (for example, EMU and CFSP);
4. The best way of breaking the vicious circle of deepening and widening is to resort to the concepts of variable geometry and greater solidarity - subject to the following conditions:
 - (a) using this concept as an exception to the rule and as a last resort;
 - (b) the 'hard core' must remain open to all those which wish to join and which fulfil the conditions set unanimously by the Member States (and not by the members of the hard core alone);
 - (c) flanking policies (for example, cohesion) will be necessary to ensure that an ever-widening gap does not open-up between the hard core countries and the others;
 - (d) all the acquis communautaire must be maintained and a common core encompassing all Community policies must be defined;
 - (e) a single institutional framework is needed to ensure that the Community does not become divided up into groups of the strong and the weak;
 - (f) the actual composition of the hard core must guarantee political balance and stability in Europe'.

¹ Spanish Government, Ministry of Foreign Affairs (2 March 1995)

SANTER
(Commission)

1. Pressure for a multi-speed approach grows with every enlargement. This approach already exists and has enabled the Union to move forward.
2. However, the aim is neither exclusion nor a Europe 'à la carte'.

No Member State can be excluded from the vanguard; those which wish and are able to accept the additional obligations may not be rejected.

Similarly, the vanguard is not closed; those Member States 'lagging behind' must be able to join it as soon as they fulfil the necessary conditions.

Chinese walls must not be built around those in the vanguard group; the aim is to move forward and not to exclude.
3. This approach must in no case serve as a pretext for calling into question the acquis communautaire or weakening the Community institutions.
4. Any differentiation must occur within a single framework and around a common objective - given that a common objective is being pursued, this can be done at different speeds.
5. An 'à la carte' Europe would lead to the negation of Europe.
6. 'Opt-outs', if viewed as permanent derogations, would lead to an 'à la carte' Europe. The issue must therefore be raised during the IGC¹.

¹ Speech to the European Parliament on 17 January 1995 - Agence Europe Bulletin of 28 and 30 January 1995 and 11 May 1995.

EUROPEAN MOVEMENT¹

(...)

'It is inadmissible that achievement of the goals of the European Union agreed to by a large majority of the Member States depends on the goodwill of one of their partners'.

'It is essential - as was, moreover, recognized in the conclusions of the Copenhagen European Council - that the accession countries should accept the acquis communautaire and, in particular, the objectives defined in the Treaty on European Union, albeit with transition periods which should not be excessively long'.

'It is inadmissible that the opt-out clauses allowed under the Maastricht Treaty or the agreements which followed it should be extended as such opt-outs can only be justified if they are temporary'.

'The Member States do not only disagree on the essential objectives of the Union - currency, security and defence policy - but also on the fundamental aspects of institutional reform with regard to democratic legitimacy, transparency and the effectiveness of the decision-making process. Progress in this sphere is essential in order to bring Europe closer to its citizens and enable it to face the challenges of EU enlargement'.

'These differentiation formulae may lead to the setting up of specialist bodies for particular spheres of responsibility. They may also allow for the European core to use existing institutions wherever possible'.

'However, there is no doubt that the formalization of specific procedures for a group of states - even if these are in the majority - and the use of institutions by such a bloc poses considerable problems. The Community institutional system is not very flexible. This is particularly true of the institutions in which the states are not represented as such'.

'Differentiation and the various formulae put forward for implementing it are certainly a last resort, but pressure must be put on those Member States which view the European Union merely as a body of activities amongst which each Member State may pick and choose depending on its interests. Integration means a shared destiny for the peoples of the Union and gives specific form to the (necessary) solidarity between those peoples. These requirements are incompatible with notions which limit European integration to a vast free trade area with a few common policies'.

¹ International European Movement - Policy Committee on institutional questions (5/95)

'The near-doubling of the number of Member States and their widely differing levels of development will clearly require a reform of the Union's structures and procedures with the aim of ensuring that the effectiveness of the decision-making process is not jeopardized while at the same time allowing certain Member States to proceed towards greater integration without being prevented from doing so by the other Member States which are unable or unwilling'.

'The only interesting idea appears to be that known as 'variable geometry' - despite its limits and the problems it will involve, it will nevertheless be necessary'.

'All Member States are involved together in a number of policies or actions; for other policies or specific actions, some Member States are allowed to go further or deeper, while other Member States are allowed to refrain, partially or wholly, from participating'.

'A single institutional framework, even if the functioning of a given institution will have to be changed because not all Member States will take part in a particular policy'.

'A wide, deep, strong common basis, which should include all policies in the conduct of which differences between the Member States could give rise to considerable distortion of competition. These would still allow for long transition periods for a particular Member State so as to take account of its level of economic development'.

'A minimum level of rules should be compulsory even for 'optional policies'. Derogations should never be total and/or absolute. Moreover, the Treaty should provide for the possibility of adopting compensatory measures in the event of distortion of competition'.

'One of the main principles should be the rule of 'non-interference' - particular types of cooperation must not jeopardize common policies and those Member States which do not take part in a given action should not be able to place obstacles in the way of action decided on by other Member States on the basis of the Treaty'.

'Particular problems would arise in the sphere of foreign policy'.

'Too many opt-out clauses in the sphere of the foreign common and security policy (CFSP) could undermine the European Union's ambitions to play an important role on the international stage'.

'The possibility of cooperation outside the Treaty could be authorized or even encouraged by an extension of Article 233 of the EC Treaty, but this would be damaging to the unity of the European Union'.

¹ Quarterly review of European law No. 2/95