



# Preface

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Under a variety of names and concepts, differentiated integration has always been part of the genetic program of the European Community, and today of the European Union. The earliest example of differentiation *embedded* in the treaties is article 233 of the Rome treaty which allows the completion of regional unions between Belgium, Luxemburg and the Netherlands. The earliest example of differentiation *outside* the treaty framework is probably to be found in the initial Schengen agreements which in 1985 sought the gradual abolition of border controls between five Member States. By the early nineties the existence of “sub systems” in and around the European Community was an accepted fact, confirmed by academic analysis, as a contribution to the dynamics of European integration.<sup>1</sup>

In 1992, the Maastricht Treaty allowed the United Kingdom and Denmark to opt out from what was a central and fundamental new policy: Economic and Monetary Union. Five years later “enhanced cooperation” became an important negotiating point in drafting the Amsterdam treaty: the Schengen agreements were introduced in the Union framework (with the usual opt outs) and the new treaty formally acknowledged and organized the existence of some forms of variable geometry.

However if these concepts were acknowledged as an unavoidable part of political reality in the European Union, also because of the Union’s successive

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<sup>1</sup> Wallace, W. 1990. *The Dynamics of European integration*. London: Royal Institute of International Affairs. See my chapter 6.

enlargements, they still remained in the eyes of many an unorthodox, and somewhat suspicious, deviation from the norm. The image of core and periphery came to mind, and it was rejected by those who, for whatever reason, thought they might not be part of the core. In 1995, the working group chaired by Carlos Westendorp, the Spanish minister for European affairs, was preparing what was to become the Amsterdam treaty: it studiously avoided any mention of enhanced cooperation. Spanish authorities, and they were not alone, clearly wanted, as much as possible, to avoid this sensitive debating point. Central and Eastern European countries, after their accession to the Union, shared the same reluctance, and critical views, about the articles in the Amsterdam treaty allowing differentiation in the first and third pillar: they remained *lettre morte*.

The creation of the euro obviously created a multi-level system within the Union, and the Lisbon treaty (art. 136 TFEU) instituted a specific decision making procedure for those Member States whose currency was the euro. Moreover, when the Lisbon treaty entered into force on 1 December 2009 the world financial crisis was having a considerable impact on mental attitudes and practical decisions. The euro was becoming the central piece of each and every top level discussion; its survival was an overarching concern, shared also by countries which did not (or not yet) belong to the eurozone.

Institutional consequences followed. In a relatively short period of time, procedures which had been considered as unorthodox in 2008 (e.g. separate meetings of eurozone heads of government) became part of accepted rules. Pressing need gave birth to a great variety of legal texts some of which were applicable only to eurozone countries (e.g. European Stability Mechanism), others were to apply to all member states (European Semester), or to some of them (Fiscal Compact: 25 members). When the Community method was blocked, intergovernmental agreement could be sought (e.g. Fiscal Compact). These texts specifically recognize the primacy of European law and indicate a desire to repatriate them, at some time, in the treaty framework. This bewildering array of legal arrangements around Economic and Monetary Union are described in the following pages by Stijn Verhelst.

Future historians may well underline that, in a relatively short period of time and under the high pressure of a major economic and financial crisis, the European integration process accepted its internal differentiation as normal procedure. It is no longer part of a somewhat distasteful political reality, it is business as usual. Speaking in London on March this year, President van

Rompuy spoke about “Europe’s two hearts: the single market and the single currency.” Nothing is more essential to life than the heart. The fact of having two may be an advantage, but it is also true that they are “differentiated” hearts!

The present issue of *Studia Diplomatica* addresses differentiation in or around the European Union under its varied aspects. In the initial article, Stijn Verhelst makes an exercise in typology which underlines the high complexity of differentiation, the variety of shapes, objectives and decision making procedures we know today. Later the same author describes EMU as the first major step in differentiated European integration, resulting in a layered structure. He describes it as an experimental cocktail in search of a new recipe, and that the recipe has had to change under the impact of the crisis.

Justice and Home Affairs are considered by Thérèse Blanchet as a laboratory for testing different forms of variable geometry. The long history of Schengen is a classic example of differentiation, and the description of the variety of opt-outs and opt-ins which have been accepted over the years, both in Schengen and judicial cooperation, gives food for thought.

Common Foreign and Security Policy is addressed by Steven Blockmans, and Defence by Sven Biscop. Neither of these policies can be counted as European success stories in recent years. Differentiation too frequently takes the form of inconsistent coalitions and ad-hoc cooperation. Treaty texts, by themselves, cannot compensate the absence of the “able and willing.” I tend to believe that the real commitment to these external policies by many, if not most, Member States is weaker today than it was ten or twenty years ago. Perhaps because we have been obsessed by the financial crisis? We can only hope that this will change, and that then, under whatever name, differentiation will come useful.

Institutional aspects within the treaty framework are dealt with by Bernd Martenczuk. He notes that, after initial reticence, the EU has begun to make an active use of enhanced cooperation to overcome difficulties on a small number of important files. But they are in no way a panacea for the difficulties in decision making in the EU.

The practice, and the problems, of recent examples of variable geometry in the intergovernmental mode are described by Alberto de Gregorio Merino. He rightly notes that they are one of the most successful experiences of this type, throughout the history of the Union. He considers an important legal point, namely the conditions under which intergovernmental agreements may use the

institutions of the Union for their own benefit, and notes that we are, in fact, using these agreements as an alternative to substantive treaty changes.

*Studia Diplomatica* is well inspired to review and describe the different forms, and various fields, in which we practice diversity in the European context. Differentiation will not go away: it will stay with us!