

How to unblock the EU's unanimity stalemate



The Lisbon treaty's uncertain fate means that the need for unanimity in large parts of EU decision-making still risks political paralysis. A differentiated approach taking account of member states' different priorities

is a more practical way forward, argue **Thierry Chopin** (far left) and **Jean-François Jamet**

The Irish referendum's "no" to the Lisbon treaty has been a forceful reminder of how the EU is perpetually threatened with paralysis whenever a unanimous decision is needed. Institutional reform is among the most striking examples of this, not least because it would have the effect of expanding the Union's decision-making powers by introducing more qualified majority voting.

The unanimity problem also applies to areas like defence, immigration, energy, taxation, the protection of intellectual property, foreign policy and police and judicial cooperation. In all of these cases, it can often be very hard to reach a consensus between 27 member states, and that inevitably impedes the whole process of European integration. The logical conclusion of all this is that while it is essential to recognise the individual circumstances of any one member state, the time has come to establish a decision-

making framework that will allow progress to be made by those EU states that are able to agree on common actions.

The EU's history clearly shows that differentiated integration – both within and outside the framework of treaties – is a practical proposition. The euro, Schengen, space policy, and inter-governmental cooperation on industrial policy matters, are just a few examples of this. And they are also prime examples of effective European integration; they represent measures that have often enabled the convergence process to proceed because other EU states could eventually join the initial participants. This is an approach that would therefore seem to have proven its value, allowing as it does those EU countries that wish to pursue closer integration the means to do so. It also allows those countries that are more cautious about further integration to opt-out of specific measures.

Differentiation can take different forms, depending on whether it operates within the framework of EU treaties that define the Union's institutions and prerogatives, or outside them. Examples of differentiation outside a treaty framework include the Schengen agreements on visas and identity checks at borders, the Prüm treaty on police cooperation, aeronautics and space industrial projects like Airbus-EADS, the European Space Agency and Arianespace, the Eureka R&D programme, the convention of European patents, and the European Social Charter.

Exemptions or opt-out clauses granted to some member states are also examples of differentiation within the framework of negotiated treaties and include those granted to the UK, Denmark and Sweden in the context of the Maastricht treaty on monetary union, as well as to Ireland, the UK and Denmark in relation to the Amsterdam treaty covering visas, asylum and immigration. Constructive abstention can allow an EU member state to abstain from an action or a decision without constituting an objection to other countries' commitment to it. This strategy only applies in the context of foreign policy and European security and defence policy. There are also provisions in the Amsterdam treaty that strengthen cooperation, but they have never been implemented because of their sheer complexity.

The various forms of differentiation should not, though, be confused with the expressions commonly used in European political discourse to describe the results of the differentiation process; these include "multi-speed Europe" and "Europe à la

carte", ascribed to John Major when he was the UK prime minister, "hard core" used by German interior minister Wolfgang Schäuble, former French premier Edouard Balladur's "concentric circles", "avant-garde" (Jacques Delors), "pioneer group" (Jacques Chirac), and "centre of gravity" (Joschka Fischer).

These expressions reflect three political visions of differentiation. The first, being Anglo-Saxon in origin, sees differentiation as a way of remaining outside of any project that is federal in nature, and more generally that allows a country not to take part in a project. The second is in sharp contrast because it perceives differentiation as the way to create a sub-set based on the Franco-German duo and so to pursue integration more actively. In other words, a form of union within the Union. The third approach is essentially uneasy about the results of either of the first two differentiation concepts reflecting fears, that it could fragment Europe through the creation of an inner club from which other countries would be excluded.

There is inevitably a complex relationship between differentiation and integration. Differentiation implies that some countries go further in terms of integration while others stay on the sidelines, and therefore permits a deepening of the Union. But it can also lead, if used imprudently, to fragmentation of the integration process. And it has to be acknowledged that differentiation creates an additional institutional layer in Europe, and that in turn leads to the criticism that Europe's citizens already have difficulty in understanding how the EU functions so differentiation can make matters worse. It is essential, then, that the processes of differentiation should be as clear as possible.

Differentiation also carries the very real danger that member states can be divided by it; the positions of those nations on the outside of a particular project may harden, not soften. So it's essential that differentiation should not be conceived as a way to form a club whose members can then accept or reject the latecomers. If they were able to do so, club members might be tempted to choose on the basis of their individual interest rather than on the common interest of the group. Differentiated integration therefore has to be an open process with conditions, as in the case of eurozone participation, that are legitimate and transparent.

There are a good many fields where differentiation could be effectively applied. They include economic affairs, defence and social issues, as well as matters relating to freedom, security and justice, especially judicial and police cooperation. And energy would seem especially relevant. In recent years, energy policy has become a key issue in the EU, with Europeans' energy dependence, soaring oil and gas prices, the negotiating clout energy producing countries, environmental and climate change concerns all making the need for a common energy strategy increasingly clear.

But energy policy has remained an essentially national competence, except when competition issues arise concerning power distribution networks. The need for a common EU energy approach was emphasised back in 2005 at the European Council in Hampton Court, and is a familiar

refrain of the European Commission. Energy is also among the French presidency's priorities and, of course, the troubled Lisbon treaty provides for energy policy decisions to be taken by a qualified majority.

But, with the Lisbon treaty yet to be ratified, the unanimity requirement prevails, with energy due to remain a source of political paralysis in the EU. In part this is because of the incompatibility of national energy strategies, which reflect the different technological choices

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of EU member states – most notably on nuclear energy and coal. EU countries' negotiations with the oil and gas producing countries are also still far too bilateral and uncoordinated. And there continues to exist a form of economic patriotism that favours mergers between companies in the same country, but deters more logical

corporate consolidations at a European level. The current energy situation is so critical in Europe that decisions must nevertheless be taken quickly. Differentiation could make it possible to pursue energy-related projects without awaiting the Lisbon treaty's ratification. Avenues to be explored include mutualising strategic oil and gas reserves to strengthen member states' security of supply. And it would also make sense to entrust the Commission with the role of negotiating the supply contracts for all EU states in such a scheme as this would greatly bolster their weight when negotiating with energy exporters. Thought could also be given to a common plan for renewing power stations, to ensure the highest energy outputs for the lowest emissions levels while also investing in greater interconnection capacity. Clarifying and standardising public energy

subsidies in EU member states also has merit.

This is by no means an exhaustive list of areas where differentiation could make a real contribution. European integration in the wider sense has been the result of compromises between national interests and different political visions of Europe. It is natural and inevitable that disagreements arise, and all the more so when decisions' political consequences have a decisive impact on the future of European integration. This is especially so when dealing with energy, defence or taxation policy, so we need to recognise and accept diverging views as an unavoidable reality. This makes differentiation one of the key tools at Europe's disposal for avoiding deadlocks and a more pervasive political paralysis. It's an approach whose advantage is twofold. First, it

opens up the possibility of common action despite diversities of vision and national interest within the EU, and it is effective and politically legitimate. Second, it makes it possible to break with the false vision that total unity across the Union is always attainable, while simultaneously acknowledging that the EU is the most appropriate arena for tackling the major global challenges of energy scarcity, climate change, international security and migration. □

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