Differentiated integration

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The Committee on Constitutional Affairs adopted the own-initiative report by Pascal DURAND (Greens /EFA, FR) on differentiated integration.

The Committee recalled its conclusions that intergovernmental decision-making structures and processes increase complexity of institutional responsibility, reduce transparency and democratic accountability and that the **Community method is best** for the functioning of the Union. It considered that differentiated integration should reflect the idea that Europe does not work to a **one-size-fits-all** approach and should adapt to the needs and wishes of its citizens. Members believed that differentiation:

- may sometimes be required for the purposes of **embarking on new European projects** and **overcoming the deadlock arising from national political circumstances** unrelated to the common project;
- should be **used pragmatically** as a constitutional tool to **ensure flexibility without undermining the general interest of the EU** and the **equal rights and opportunities of its citizens;**
- should only be conceived of as a **temporary step** on the path towards more effective and integrated policymaking.

The committee reiterated its conviction that differentiated integration must remain, as provided for under **Articles 20 and 46 TEU**, open to all Member States and must continue to serve as an example of deeper European integration where no Member State remains excluded from a policy in the long run, and should not be seen as a means to facilitate *à la carte* solutions that threaten to undermine the Union method and the EU's institutional system.

It affirmed that any form of differentiation initiative that leads to the creation of first- and second-class Member States of the Union, or to a perception thereof, would be a major political failure with detrimental consequences for the EU project. Any **future model** of differentiated integration should be **designed to provide incentives for and fully support** Member States aspiring to 'opt in' in their efforts of economic development and conversion aimed at meeting the necessary criteria in a reasonable timeframe.

Members considered that one appropriate answer to the need for flexible tools is to tackle one of the roots of the problem. They called therefore, for a further shift in Council voting procedures away from unanimity and towards qualified majority voting, by making use of the "passerelle clause" (**Article 48(7) TEU**).

The committee believed that differentiated integration should always take place within the Treaty provisions, should maintain the unity of EU institutions and should not lead to the creation of parallel institutional arrangements or arrangements that indirectly contravene the spirit and the fundamental principles of EU law, but should instead **enable specific bodies to be established where appropriate**, without prejudice to the competences and role of the EU institutions.

It emphasised that differentiated integration should not lead to more complex decision-making processes that would undermine the **democratic accountability** of the EU institutions.

It considered Brexit an opportunity to move away from models of "opting out" towards non-discriminatory and supportive models of "opting in". Members stressed that these "opting in" models

would not limit progress towards “ever closer union” to the lowest common denominator of a one-size-fits-all solution but would allow the necessary flexibility to progress while leaving the door open to Member States that are both willing and able to fulfil the necessary criteria.

The committee calls for the next revision of the Treaties to bring order to the current process of differentiation by ending the practice of permanent opt-outs and exceptions from primary EU law for individual Member States, as they lead to negative differentiation in primary EU law, distort the homogeneity of EU law in general and endanger the social cohesion of the EU.

It acknowledged, however, that some **transitional periods** may be necessary for new members on a strictly exceptional, temporary and case-by-case basis but insisted that certain clear and enforceable legal provisions be introduced to prevent the perpetuation of these periods.

EU membership would therefore require full compliance with primary EU law in all policy areas, while those countries desiring a close relationship with the EU without being willing to commit to full compliance with primary law and which either will not or cannot join the EU should be offered some **form of partnership**. Members considered that this relationship should be accompanied by **obligations corresponding to the respective rights**, such as a contribution to the EU budget, and should be **contingent on** adherence with the **EU’s fundamental values, the rule of law** and, when it comes to internal market participation, the **four freedoms**.

The committee stressed that differentiation should not be possible in policy areas where non-participating Member States could create **negative externalities**, such as economic and social dumping. It demanded that the Commission carefully examine the potential centrifugal effects, including in the long term, when it submits its proposal for enhanced cooperation.

It suggested the establishment of a **special procedure** that would allow, after a certain number of years, when enhanced cooperation is launched by a number of states representing a qualified majority in the Council and after Parliament’s consent has been obtained, the integration of the provisions of enhanced cooperation into the EU *acquis*.

Lastly, it underlined the fact that flexibility and differentiation should go hand in hand with reinforcing common rules in core areas to ensure that differentiation does not lead to political fragmentation; considers, therefore, that a future European institutional framework should include ineluctable European Pillars on political, economic, social and environmental rights.