Implementation of the Treaty provisions concerning enhanced cooperation

2018/2112(INI) - 29/01/2019 - Committee report tabled for plenary, single reading

The Committee on Constitutional Affairs adopted the own-initiative report by Alain LAMASSOURE (EPP, FR) on the implementation of the Treaty provisions concerning enhanced cooperation.

As a reminder, according to the Treaties, enhanced cooperation can be initiated by at least nine Member States under the framework of European policies, except for the areas of exclusive EU competences. It enables participating States to organise greater cooperation than that initially provided for by the Treaties under the policy concerned.

The Union has a particular interest in implementing enhanced cooperation in certain areas of non-exclusive EU competences in order to move forward the European project and to facilitate the life of citizens. It allows those participating Member States to achieve a common goal or initiative and to overcome paralysis in negotiations or a blockage by another Member State or Member States when unanimity is required.

Main observations

Members expressed concern by the fact that even though enhanced cooperation offers a solution to a common problem, by taking advantage of the Union institutional structure and thereby reducing the administrative costs for the participating Member States, it has not completely eliminated the need to resort to forms of intergovernmental subgrouping solutions outside the Treaties, which have a negative impact on how consistently the EU legal framework is applied and therefore lead to a lack of appropriate democratic scrutiny.

The EU’s single institutional framework should be preserved in order to achieve its common objectives and guarantee the principle of equality of all citizens. The Community or Union method should be upheld.

Even though enhanced cooperation, due to its nature as a last resort measure, has not been used extensively since its inception in the Treaty of Amsterdam, it seems to be gaining importance and delivers tangible results. It often arises in areas governed by a special legislative procedure requiring unanimity, and has predominantly been used in the area of justice and home affairs.

Members recommended:

- the special ‘passerelle clause’ to be activated to switch from unanimity to QMV, and from a special to the ordinary legislative procedure, immediately after an agreement on the start of enhanced cooperation is approved by the Council, in order to avoid new blockages if the number of participating Member States is significant;

- the Commission play an active role in all stages of enhanced cooperation from the proposal through the deliberations to the implementation of enhanced cooperation;

- Parliament to play a stronger role in enhanced cooperation by suggesting to the Commission new forms of cooperation and by monitoring proposals or existing cooperation;

- Parliament to improve its internal organisation in relation to enhanced cooperation and for ad-hoc subcommittees to be set up in which full membership is primarily given to those Members elected in the Member States that are participating in such enhanced cooperation.

Budget

Members stated that operating expenditure linked to enhanced cooperation should be borne by the participating Member States, and if this cost is borne by the EU budget, the non-participating Member States should be reimbursed, unless the Council, after consulting Parliament, decides that such cooperation is to be funded by the EU budget, thereby making such expenditure part of the latter and therefore subject to the annual budgetary procedure.

If the activity regulated by enhanced cooperation generates revenue, this revenue should be assigned to cover the operating expenditure linked to the enhanced cooperation.

Jurisdiction

Members considered that enhanced cooperation should fall under the direct jurisdiction of the Court of Justice of the European Union (CJEU), without prejudice to the possibility of establishing an arbitration procedure or a dispute settlement court of first instance that could be required for the functioning of a particular case of enhanced cooperation, unless the Treaty provides otherwise, which should be specified in the legal act establishing such enhanced cooperation.

Adjustments and the future evolution of enhanced cooperation

The report proposed the creation of a special enhanced cooperation unit in the Commission, under the leadership of the Commissioner responsible for inter-institutional relations, to coordinate and streamline the institutional setting up of enhanced cooperation initiatives.

Members considered it necessary to devise a procedure for the fast-track authorisation of enhanced cooperation in fields of high political salience to be accomplished within a shorter timeframe than the duration of two consecutive Council presidencies.

They called on the Commission to propose a regulation in order to simplify and unify the relevant legal framework for enhanced cooperation (for example, the guiding principles on the applicable law for common institutions or a Member’s withdrawal), thereby facilitating the conclusion of such cooperation.