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Discussion Paper

Setting Signals for European Foreign and Security Policy –

Discussing Differentiation and Flexibility

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Setting Signals for European Foreign and Security Policy – Discussing Differentiation and Flexibility

European foreign and security policy might reach a decisive breakthrough. Whereas the 1990s were characterised by a rather hesitant search of the European Union (EU) to define its role as a regional and international security actor, at the beginning of the twenty-first century developments are underway which will have a lasting effect on European and international politics in the final outcome. If the Union succeeds in leading the Common European Security and Defence Policy (CESDP), a constitutive part of the EU's Common Foreign and Security Policy (CFSP), out of the planning stage and putting it into practice, this will have an enduring impact on international politics.

Fundamental decisions concerning the further development of CESDP are deemed necessary. However, it seems most likely that the European Council of Nice in December 2000 will not decide upon any comprehensive changes in the EU Treaty. Nevertheless, far reaching reflections on CFSP which transcend institutional and procedural questions and, in particular, treat the importance of differentiation and flexibility for the future capability of European foreign policy to take action and shape policies seem urgent.

The logic of increasing cooperation in foreign and security policy from the early stages of European Political Cooperation (EPC) in the 1970s to the creation of CFSP at the beginning of the 1990s creates a compulsion from within the system to take action, since foreign and security policy constitutes a basic element of a future Political Union. Due to the shift of power constellations in international politics after 1989/90 and the new potentials for conflict in the vicinity of the (enlarged) EU, an external compulsion to react adequately has arisen, and the Union must address this with suitable institutional, procedural and operative measures. The EU's limited possibilities in the field of security policy and the need to broaden the Union's range of influence manifested themselves at the latest during the Kosovo conflict. In addition, the transatlantic and NATO dimension needs to be clarified. The process of role definition concerning the EU and the United States in international politics has not yet been

resolved. On the contrary, the concept of transatlantic burden-sharing is looming over the debate without yet having been precisely defined.

In reaction to this many-faceted predicament the EU can either choose the familiar policy of small reform steps or it can follow a more differentiated path towards the *finalité* of the integration process. As the issue of enlargement is becoming more and more pressing and as the debate concerning the future of European integration is intensifying, it seems important to link this strategic reform debate with the development of CFSP/CESDP. The conventional understanding of the European integration process has to be overcome for assuring the Union's capability to act, for raising the efficiency of the policy-making process and for promoting the acceptance of European foreign policy amongst EU citizens. Already at this stage, it is no longer adequate to govern the EU along the lines of the Rome Treaties and it will become even more problematic in a Union enlarging to 25 and more member states.

At present, all the different scenarios on the future of the integration process attempt to find new answers to the old twin challenge of enlargement and deepening. In every single one of these scenarios a prominent role was attributed to the issue of differentiated integration. According to the central argument common to all these ideas, a smaller group of member states "staunchly committed to the European ideal" is in a position to push ahead with political integration. Jacques Delors has called for an *avantgarde* of the six founding EC member states; Helmut Schmidt and Giscard d'Estaing have argued for a core Europe consisting of the Euro-11(12); Jacques Chirac and Alain Juppé and Jacques Toubon support the creation of a pioneer group and Joschka Fischer has called for a centre of gravity without specifying the number of member states participating in such an inner group.

Differentiation and flexibility are one way out of the old dilemma of reconciling widening and deepening of the Union. The main reason for a revision of the current Treaty provisions concerning closer cooperation is based on the worries of the majority of EU governments that the enlargement could block attempts to harmonise policies in areas which have not yet been brought within the Union's remit. The major question is: Can the integration process be deepened further by adhering to the existing method of integration, or must this method itself be reconsidered? In an attempt to answer this

question, the fundamental lack of concrete proposals and concepts needs to be overcome, especially regarding the institutional, procedural and legal implications of closer cooperation in specific policy fields. The potential policy fields subject to closer cooperation which are presently being discussed include justice and home affairs (especially the fight against organised crime), environmental protection, the further development of a European economic and financial policy and, especially, issues related to foreign, security and defence policy (CFSP/CESDP). Furthermore, talking about closer cooperation leads to the term flexibility. Closer cooperation and flexibility are integral parts of differentiated integration. Quite often both terms are used in the debate without clearly distinguishing between their different meanings. This discussion paper attempts to explain how the difference between both terms can be understood and in which way they can be applied. The thoughts that will be developed should be understood as an attempt to sketch out the possibilities of differentiated integration in the sphere of CFSP/CESDP and as such they shall trigger an open and critical debate.

A New Pattern of Integration

In accordance with a policy of small steps, the member states would continue to adhere to the familiar and trusted “Monnet Method” with its step-by-step communitarization, with no blueprint for the final outcome – even under the conditions of an enlarged EU. For the CFSP this would mean to focus on all the possibilities in the EU Treaty already endorsed but not yet applied to their full extent, allowing for the current structures, mechanisms and instruments to be altered and supplemented in compliance with the Treaty. However, since the current Intergovernmental Conference (IGC 2000) will probably offer no major changes for the CFSP in the sense of amending the respective provisions of the Treaty, a comprehensive revision would thus necessitate the renewed invocation of an IGC after the Nice European Council in December 2000.

The pressure on the EU for action and the heterogeneity of interests and possibilities among member states can only be reconciled if it becomes possible for individual states to bind themselves to one another more closely. To achieve this, the regulations concerning closer cooperation need to be reformed as soon as possible. In revising the current provisions, certain basic requirements must be taken into account: (i) preservation of a uniform institutional framework; (ii) compatibility with the overall goals of the European Union; (iii) respect of the legal regulations already agreed upon. Closer cooperation should only be put to use when cooperation of all EU member states seems impossible. In particular, closer cooperation should be designed in an open manner, allowing current as well as future member states the option to join at a later date on the basis of a pre-determined procedure in which the Commission has to be assigned an important role.

Any amendment of the current provisions should explicitly introduce closer cooperation for issues concerning the field of CFSP. Closer cooperation, however, is neither to be understood as a general remedy nor as the final outcome of the integration process. Moreover, the discussion about concrete scenarios of differentiation cannot substitute a debate about further central reform issues, e.g. the future distribution of competencies, the re-organisation of the Treaties or the building of a European constitution. Instead, differentiated integration offers member states willing to act cooperatively the chance

for a community oriented deepening of integration without operating outside the Treaties, as experienced in the case of the Schengen agreement.

Closer cooperation can turn out to be the adequate way to bring further integration steps and the enlargement of the Union into line. Trying to reform the CFSP fundamentally by traditional means through another IGC after Nice, would mean either postponing reform for an unspecified period of time or delaying the enlargement again for years, since the EU's agenda is already tight and always on the verge of being overloaded. By contrast, the instrument of closer cooperation offers those member states willing to cooperate, whose number cannot and should not be determined as of now, the chance to further communitarize certain fields of the CFSP within a confined setting at an earlier date. This would not equal an end to integration in this field, but rather represent a sort of learning phase for the future and a redefinition of integration. The experience gained with EPC has demonstrated that certain measures were implemented for intensifying political cooperation, which were given a legal basis only at a later stage. Closer cooperation in the CFSP could produce a similar effect. In practice, cooperation of willing member states could not only prove that cooperation concerning the non-military aspects of foreign and security policy is possible within a communitarian framework – able to meet the challenges of international politics – but also that it offers an adequate approach under the circumstances of an enlarged EU. If closer cooperation proves successful, hesitant member states might join at a later date.

But what does closer cooperation mean? It has been argued elsewhere that initially, closer cooperation means nothing more than increased intergovernmentalization under pressure from the facts and the shortcomings of the “Monnet Method.” But why must closer cooperation be an intergovernmental exercise? Could it not constitute a new method for integration rather than a method for – at least temporarily – increasing intergovernmentalism. If differentiated integration is to be understood as a preliminary stage towards a Political Union, communitarian elements or even strengthened communitarian elements must find themselves in the respective field of cooperation – thereby creating a “model of community oriented closer cooperation.”

At the present stage, community oriented closer cooperation should be limited to non-military aspects. Taking into account the experience with cooperation in foreign policy

during the past decades and the primacy of intergovernmentalism concerning hard security questions, its application in the military field of CFSP does not seem very realistic for the time being. Military cooperation within the framework of CESDP, now only in its beginning stage, should be handled very carefully. Long-term experience with this kind of cooperation has not yet been gained, and the mutual trust required between the states concerned still has to develop. Instead, the main focus of attention must be on building sufficient capabilities and putting the decisions from the EU summits of Cologne, Helsinki and Feira into action. The delicate and challenging task of military security cooperation amongst EU member states should not be put at risk by overly ambitious experiments of institutional or procedural nature. Rather, flexible security cooperation should be the predominant motto.

But what does community oriented closer cooperation concerning the non-military aspects of CFSP/CESDP mean in concrete terms? If differentiated integration is to be understood as a preliminary stage towards a Political Union and as an overarching principle, the non-military part of the CFSP has to incorporate communitarian or even strengthened communitarian elements through closer cooperation. Correspondingly, this will affect the role of the EU institutions and the adjustment of procedural processes.

Community Oriented Non-Military Closer Cooperation¹

Commission

Developing a model of community oriented non-military closer cooperation has to consider the European Commission as an actor of central importance, whose influence has grown steadily in the course of the development of CFSP. While the Treaty of Maastricht accorded the Commission a very restricted status compared to the Council, the Treaty of Amsterdam already provided for improvement. Due to the results of the European Council of Helsinki, the Commission has been further upgraded. While the Council was assigned new committees to plan and coordinate military crisis management of CFSP/CESDP (Political and Security Committee (PSC), Military Committee), the Commission has pledged itself to non-military crisis management. This

¹ See annex: "Differentiated Integration in the Field of CFSP/CESDP."

seems to be reasonable and in accordance with the logic of EU external relations. But if the coherence of military and non-military measures should be ensured and the non-military capabilities and capacities put comprehensively to use, the Commission must be granted an even stronger role within the framework of a community oriented closer cooperation. The competencies of the Commissioner responsible for external relations would have to be increased accordingly and cooperation between his office and the office of the High Representative for the CFSP would have to be linked more closely in order to create synergetic effects and to counteract an emerging institutional competition. This includes an intensified and regular process of coordination as well as joint appearances of both representatives of EU foreign policy. The views presented by

Chris Patten, the Commissioner in charge of external relations, confirm that the Commission no longer views itself as an accomplice of the Council in CFSP but instead is developing into an independent actor striving for further competencies in the respective policy fields.

High Representative

In spite of the rising expectations voiced in regard to the High Representative for the CFSP, the member states are still keeping his range of competencies limited. In search of a face and voice for EU foreign policy, however, it will prove imperative that third states can recognise a continuously present and active representative who is able to rely on the support of the member states. In his function as Secretary General of both the Council and the Western European Union (WEU), the High Representative occupies a position of strategic importance in the process of formulating policy. By contrast, in an enlarged EU rotating presidencies are not adequate for enhancing the profile of the Union in foreign policy matters. In addition, this system of external representation is completely unsatisfactory in respect to crisis management. It therefore seems urgent to strengthen simultaneously both the High Representative as well as the Commission within the framework of closer cooperation.

European Council / Council

Principles and overall guidelines for closer cooperation concerning the non-military aspects of CFSP must be defined by the Heads of State and Government of the participating EU countries. However, it also has to be taken into consideration that an ineffective shift of the institutional balance in favour of the Heads of State and Government has taken place within the triangle of Council, Commission and European Council throughout the past years. Following the emergence of CFSP, the foreign ministers have increasingly focused their attention on their own inherent field of administration instead of fulfilling their co-ordinating role as originally intended. In order for the General Council to regain its initial position within the institutional structure, the manifold demands placed upon it need to be reduced. This could be achieved without affecting the coherence of foreign and security policy by strengthening the High Representative and the Commission as mentioned above.

European Parliament

The question of legitimisation is of central importance for promoting acceptance of the CFSP among EU citizens. In addition to the primary role accorded to the national parliaments it is therefore necessary to involve the European Parliament (EP) in all non-military aspects, thus providing for double legitimisation. Its participation should be guaranteed not only by the EP's right of its view to be taken into consideration and its right to be regularly informed (Art. 21, TEU), but it ultimately requires the EP's parliamentary assent. Within the framework of community oriented closer cooperation in the non-military field of CFSP not only the Members of the European Parliament (MEPs) of the states participating in closer cooperation should be involved, but all MEPs – for the EP, like the Commission, is to be understood as a supranational institution.

Procedural Process

Institutional changes entail adjustments in procedural processes. Within the framework of closer cooperation in the non-military field of CFSP all EU states can participate in the discussions, but only those who have joined closer cooperation should be allowed to vote – thus creating a Council within the Council. In general, it is worth striving for qualified majority voting, but during a limited phase of transition the Council within the Council should continue to take decisions by consensus on the basis of proposals of the Commission or on initiative of a member state and after having heard the European Parliament. After an initial period, the Council within the Council could unanimously pass a resolution (having heard the EP) according to which the principle of decision-taking on the basis of qualified majority voting is to be applied to all fields of closer cooperation concerning the non-military aspects of CFSP – decisions concerning possible protective clauses would have to be decided upon at the appropriate time.

In an early phase the right of initiative of the participating member states would be retained by the Council. However, it could also be bestowed upon the High Representative. In a next step, the Council within the Council would take decisions solely on the basis of propositions by the Commission or the High Representative. Should the member states' right of initiative be abolished, the Commission or respectively the High Representative would nevertheless be obliged to examine every proposal by a member state. The requirement of unanimity and the member states' co-right of initiative during the first years of closer cooperation constitute a special protective device taking into account the sensitivity of the policy field for EU member states.

Flexible Military Security Cooperation

Apart from this non-military dimension, what can be said about the development of the military aspects of CFSP/CESDP and why does the term flexibility become relevant in this context? The medium-term goal of the integration concept concerning CFSP should consist in assigning only those tasks of the Union regarding military aspects to the intergovernmental oriented second pillar of the Treaty, while all other fields should be subject to communitarization. Commitment to the CESDP should not only result in EU appropriation of WEU tasks, but the Western European Union itself should be dissolved. The corresponding WEU functions, tasks and instruments should be fully assumed by the EU. Article V of the WEU Treaty should be included in the EU Treaty as a solidarity article or attached to it as a protocol.

The NATO Dimension

At this point in time, it seems premature to speak of a defence union. Nevertheless, the attainments as of now clearly indicate that, in terms of an extended definition of security, the EU is developing into a security union. At present, however, defence questions are still to be classified within the context of NATO. Regarding the organisation of transatlantic relations, it will become necessary to develop binding patterns of interaction between the EU and NATO. Consultations and cooperation between both must hereby fully respect the autonomy of EU decision-making processes. Instead of creating a competitive situation between the Union and NATO, the deepening of military cooperation between EU member states within the framework of the CESDP and the transfer of WEU tasks to the EU would rather offer the possibility for clearly defined cooperation. For this, the creation of adequate European capabilities is of crucial importance. This includes an exact evaluation of the military capabilities and resources of each of the member states and the exploitation of relevant synergies.

A Model of Regulated Flexibility²

² See annex: "Differentiated Integration in the Field of CFSP/CESDP."

In the sensitive field of military affairs, to which states attribute the high value of national sovereignty, it is especially important to avoid creating non-intentional outcomes. This is why military issues must not be linked with the term “communitarization.” Instead, matters of joint concern should be handled by means of intergovernmentalism. It will be most important to avoid irritating Great Britain, whose participation is of key importance for any effective and functional military cooperation, by speaking of taking steps in the direction of “communitarization” in the field of military security. And it is also important that no EU member state be excluded in the present situation, for consent concerning a flexible CFSP, capable of applying military measures, is dependant upon consensus or at least upon the abstaining states’ willingness to accept decisions made by those willing to take action.

Flexibility in the military part of CESDP does not require differentiation. Instead, it comprises flexible procedures and ways of conduct which are based on existing structures and, at the same time, extend these – creating a “model of regulated flexibility.” Should a concrete crisis arise, it would be possible for a certain number of willing and capable states to take military measures. The mechanisms of flexible security cooperation should ensure that each EU state is given the opportunity to make its own specific contribution. If procedures and ways of conduct do not follow a regulated flexible approach, those states willing to take action will develop their own initiatives outside the framework of the EU, thus eroding the Union’s credibility as a coherent international security actor.

It seems probable that the group of EU countries willing to take action will consist of a certain, constantly recurring constellation, analogous to the EU member states part of the contact group – but not exclusively. Other states willing to take action, including NATO states which are not members of the Union and EU accession states, would be able to participate in variable constellations. The number of constructive proposals made by the Portuguese and French Presidencies concerning this issue (e.g. the phase-oriented model for the participation of non-EU member states) as well as the question of EU and NATO cooperation (creation of EU-NATO working groups) lead in the right direction. With regard to Russia, intensified cooperation between the EU and Moscow, following the example of the NATO-Russia-Council, should be sought after even further.

Conclusions

Differentiated integration will function as a catalyst for European integration in manifold ways. The prospect that some countries will move further ahead might cause sceptical EU members to rethink their position and help get their agreement to further deepen integration after Nice. Differentiated integration put into practice by means of closer cooperation, will not contribute to more transparency, on the contrary, it will increase the already high degree of complexity of the EU's institutional and procedural system even more. However, for a result oriented approach further integration by means of differentiation and flexibility is necessary. If it is understood as a means of paving the way to a Political Union, it might prove essential for a continuation of the integration process and at the same time hinder an uncontrolled spreading of ad-hoc coalitions outside the Treaty framework.

The quality of closer cooperation will affect the path towards any form of *finalité*. For this reason, it is important to go beyond the general ideas on differentiated integration currently so much *en vogue* and elaborate on the details of closer cooperation in particular policy fields. Should increased intergovernmentalism – even if applied only for a limited period of time – prove to be the only way for closer cooperation, then this will most probably affect the future of the EU as a whole, since communitarian elements, especially concerning the future role of supranational institutions like the Commission or the Parliament might end up on the political scrap heap. A community oriented approach, on the other hand, offers member states willing to cooperate the chance to further deepen integration, by strengthening communitarian institutional and procedural elements.

Closer cooperation in the non-military part of CFSP has far-reaching consequences and raises a lot of questions. The argument presented by the Portuguese Presidency, stating that the need for closer cooperation in the field of CFSP is not as pressing as in other fields of the EU, should be taken seriously. But if the European Union does not embrace a new pattern of integration, the policy of small steps will be continued. In consequence, combining the enlargement of the EU with the reform of CFSP could only be achieved with great difficulty and delay. If the Union does not succeed in putting CFSP into the core context of a differentiated integration concept, it will not fulfil expectations

regarding its role in international politics. Undertaking action concerning the non-military aspects of CFSP by means of community oriented enhanced cooperation and orienting the military dimension according to a model of regulated flexibility, however, would lead to a re-evaluation of the constellations in international politics.

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