

SOLIDARITY, IDENTITY AND DIFFERENTIATED INTEGRATION IN THE EUROPEAN UNION

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I.

The widening of diversities due to the enlargement and propensity of limited groups of Member States of the European Union to set patterns of closer integration among themselves do not necessarily go with each other. Since its early years the European family has experienced several forms of more advanced internal partnerships and, due to them, diversified relationships between the participating States and the rest of the family. We have gone from the informal role exercised by the Franco-German axis in pre-cooking decisions to be adopted by the whole of the Council, to the separate setting of formal agreements initially undersigned by a few States and eventually transformed into “*acquis communautaire*”, as we call the body of legal rules applicable to all our Member States. The abolition of controls at the internal frontiers for the sake of free movement inside the territory of the Union is the most successful case of this step by step integration. An agreement to such effect was initially signed in 1985 by Belgium, France, Germany, Luxemburg and the Netherlands (the Schengen agreement), it was signed by other countries in the following years and eventually a protocol annexed to the Treaty of Amsterdam (one of the treaties which have amended the initial Treaty of Rome) made it part of the common rules in 1999.

Between these two extremes – the Franco-German axis and the case of Schengen - we have had the *avant garde* as a threat towards laggard States (if you don't come along, we will advance without you), the separate foreign policy initiatives of a few of the major countries, generally France, Germany and the United Kingdom, and the setting of informal groups such as the G6, which gathers the Interior Ministers of six Member States sharing a higher level of cooperation with each other in police matters and anti-terrorism activities.

This wide range of experiences demonstrates how inherent differentiated integration is to an interstate venture such as the European one. Sovereign States always have traditions, previous mutual relations and

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expectations that make them at the same time diverse from each other and ready to bestow upon each other different degrees of trust. Nobody foresees a closer cooperation between Poland and Germany, as long as the memory of the past still affects Polish public opinion. Nor is anybody surprised that whenever initiatives are taken in the area of Security and Defence Policy, the traditionally neutralist Ireland reaffirms its willingness to stay out and not to be affected. For sure, a construction such as the European one presupposes a common level of mutual trust among all the participants, without which some of them either would not apply to accede or would not be accepted. But even the general rules of the overall game reflect variations of the interaction between diversities and mutual trust. Let us look, from this angle, at the difference between an item upon which a majority voting is provided for by the Treaties and an item on which unanimity is required.¹ It is quite clear that in the former case the defence of diversities is lower and mutual trust is higher, while in the latter it is exactly the opposite and mutual trust is not so high as to make a common decision accepted unless it is based on everybody's consensus.

Within this framework, it is quite understandable that there might be smaller groups of States ready to use majority voting among themselves upon items for which they defend unanimity in the overall Council, or equally ready to pool resources among themselves they would not pool with the others.² What makes the difference? Precedents, current interlocutors in the other Member States, predictable behaviours for the future: all factors that may change or that may be looked at with a changing spirit. Thus, the closer cooperation among Ministers of Interior began as a G5 including France, Germany, Italy, Spain and the UK, for in these States standards of training, patterns of action, protection of confidential information and the like were sufficiently similar as to create the mutual trust that is needed to share very delicate matters. Later on it has also included Poland, which has rapidly grown to a compatible level and has gained the confidence of the initial members.

If closer partnerships are natural consequences of inter-state relationships that can neither be ignored nor deleted, the fact that they

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1. According to Article 94 of the Treaty on the European Economic Community, harmonisation of national legislations aimed at integrating the common market can be approved by majority voting, but tax harmonisation needs unanimity. Similarly, in the area of social policies, Article 137 of the same Treaty distinguishes between items to be voted upon by majority voting (improving working conditions, gender equality, fight against social exclusion) and items on which unanimity is needed (social security, protection of fired workers, collective representation and employment of third countries nationals).
 2. The G6 is an example of such a small group.

intervene among Member States of a wider Union does have its own implications. Should the joining States be in all cases committed to keep the door open to the others? Should the door be open to any Member State, which asks to join, or only to those which have certain qualifications and are accepted by the initial members? These are very sensitive issues we will have to discuss later. Undeniably, the most successful experiences of closer cooperation have been initiated by a few states through separate but open agreements and the others eventually shared in the form of unanimously accepted *acquis communautaire* (an *acquis* that has admitted some limited exceptions): free cross border movements according to the Schengen agreement and cross border police cooperation according to the Prum agreement are the two cases in point. They have to be noticed not only for their success, but also because it would have been quite unlikely for the ordinary procedures to bring about the same results, or, initially to raise the same spirit of emulation in catching up with the required standards. If the necessary measures to abolish passport control can only be enforced after you reach consensus on the basis of the ordinary procedures, you take your time. If your neighbouring States have already enforced such measures and passport control has been actually abolished in their airports on the basis of an agreement among them such as Schengen, your citizens feel excluded and you are under pressure to join the others.

II.

In the early 90's, a proposal of *geometrie variable* (variable geometry) was advanced by Edouard Balladur,³ the scope of which remains unclear especially with regard to openness. When Valery Giscard D'Estaing faced a wide criticism when he went even further, effecting a distinction between a group of Member States that should embody the *puissance politique*, the political power of the European Union, while all the others were expected to be its *space economique*,⁴ since Europe already was in the process of accession of the Eastern European States and that distinction seemed to assign them to a preventive sentence to a second class role. A similar reaction was raised first of all by Italy against the paper presented by the CDU-CSU fraction of the Bundestag (not by the German government), in which the idea was advanced of a "core Europe" (the founding countries minus Italy), adopting a single currency and common economic policies.⁵

3. E. Balladour, "Pour un nouveau Traité de l'Elysee", in *Le Monde, Point de vue*, 30 November, 1994.

4. V. Giscard D'Estaing, "Manifeste pour une nouvelle Europe federative", in *Le Figaro*, 11 January 1995.

5. CDU/CSU Parliamentary Group in the Bundestag, *Reflections on European Policy*, published by the Group on 7 September 1994. On the debates of the time see B. De Witte, *Future Paths of Flexibility: Enhanced Cooperation, Partial Agreements and Pioneer Groups*, in J.W. DE ZWANN, J.H. JAUS AND FRANS A.

It is a fact that when the Amsterdam Treaty in 1996 introduced the first general mechanism for closer co-operation, its clauses seemed to be aimed more at discouraging than at promoting its use. According to Art. K.15 of this Treaty, closer co-operation could be resorted to only as a “last resort” when the same objectives could not be attained by applying the ordinary procedures (but there were no clear deadlines for such an assessment). Furthermore the majority of the Member States had to join in closer co-operation (a much higher threshold than a pioneer group is expected to have) and the principle of openness was adopted. The Nice Treaty in 2001 made these conditions less tight, along the lines of the “flexible integration by open partnerships”, suggested by a group of scholars in a very successful volume dealing with the issue.⁶ According to Article 43 of the Nice Treaty, the “enhanced co-operation” is admitted in all fields of non-exclusive competence with the exception of defence (an exception requested by Ireland). It has to be authorized by the Council under proposal by the Commission, it still can be authorized only “as a last resort”, but Article 43 adds whenever the assessment of the Council is that the same objectives cannot be achieved by the ordinary procedures within “a reasonable period of time” and eight States are sufficient for the purpose.

Despite these improvements, the Prüm Agreement, stipulated five years after the Nice Treaty, is clear evidence of the preference given by the *avant garde* which signed it, to the higher simplicity of the Schengen precedent. The Prüm Agreement, which enhances police co-operation among the participant States, was signed in 2005 by Austria, Belgium, France, Germany, Luxemburg and the Netherlands, it was extended to other Member States in the following year and already by the end of 2007 the Council decided to transfer it into the *acquis communautaire*.

For the future, Article 10 of the Lisbon Treaty, which should be hopefully ratified, will introduce further incentives for those States, which want to set up an ordinary enhanced co-operation, allowing their restricted “sub Council” to act by qualified majority even where the Treaty provides for unanimity. The same article of the Treaty also admits an *ad hoc* regulated “structured co-operation” for defence, not as a “last resort”, but on the basis of “higher criteria” and binding commitments undertaken by the participant States.

NELISSEN, (EDS.), *THE EUROPEAN UNION. AN ONGOING PROCESS OF INTEGRATION*, (T.M.C. Asser Press, 2004), p. 141; A. PIPPERS, *ON CORES AND COALITIONS IN THE EUROPEAN UNION*, (Clingendael Institute, 2000); M. Wind, *The European Union as a Polycentric Polity*, in J.H.H. WEILER AND M. WIND (EDS.), *EUROPEAN CONSTITUTIONALISM BEYOND THE STATE*, (Cambridge University Press, 2003), p.103.

6. CENTER FOR ECONOMIC POLICY RESEARCH, LONDON (ED.), *FLEXIBLE INTEGRATION TOWARDS A MORE EFFECTIVE AND DEMOCRATIC EUROPE*, 1995.

What can we expect in regard to this from an ever-enlarging Europe? The widening of diversities – as we have seen - is not a pre-condition for special partnerships, but it can be an incentive, for it makes the variation of mutual trust more intense and therefore the coalitions of similar parties more likely. It is a context of undisputable opportunities, but it also raises the serious and pandemic risk of anti-European and nationalistic reactions in a wide range of Member States, whenever a special partnership may be perceived as excluding the others and paving the way to a Union with first class and second-class members. Let us never forget that especially in central and eastern European countries, historically subject first to Empires and later to communist regimes, there is the highest sensitivity for the respect of national dignity, national identity and equal treatment. It is not unrealistic to believe that even the common European identity would be at risk, should these principles be considered at risk in those countries.

Why do I think that even our common identity might be called into question? We all know that the sources and the substance of it are disputed. Jurgens Habermas has written that a common European identity can only be built upon the missions we expect to fulfil together, while relying on “pre-political” factors such as traditions, culture and values can only be divisive.⁷ Others, and Bronislaw Geremek was one of them, have partially challenged this view, highlighting the cultural traditions and the values all of us have in common (also the European Court of Justice and, after it, the Treaties themselves have explicitly taken note of them), but adding an important caveat: assessing what we already have in common is not a fact, is a task.⁸ In other words, only if we are willing to do it, we recognize what we already have in common. Otherwise we stress our diversities, our national prerogatives and our unsatisfied demands, with the consequence of deleting the common features (which is not at all unlikely in some of our new eastern States).

Personally I give credit to this opinion. But it is precisely this opinion that leads me to think that having a common mission for the future, as Habermas suggests, is an essential pre-requisite for our sharing also the past. This is why enhanced cooperations and other forms of special partnership have to be handled very carefully, never spreading around the feeling that they are “for them” and not “for us”.

7. J. Habermas, *Ist die Herausbildung einer Europäischen Identität notwendig und ist sie möglich?*, in *Der gesplittene Westen, Kleine politische Schriften*, X, Frankfurt, 2004, p.68.

8. K. Bildenkopf, B. Geremek, K. Michalski and M. Rochard, *What Holds Europe Together*, in K. MICHALSKI (ED.), *WHAT HOLDS EUROPE TOGETHER?*, (Central European University Press, 2006).

III.

One might argue that it is worth running the risk, also because it is not an unacceptable risk. Isn't a smaller and more homogeneous Europe better than a wide and too diversified one? My firm opinion is that it is not. In a multipolar world of giants even a Europe of 500 million inhabitants might be an inferior player. Therefore succeeding in the task of strengthening what we have in common and giving it the necessary priority upon our diversities responds to a vital interest of all of us. Nor is the already intervened widening of such diversities an insurmountable obstacle to the accomplishment of the task. I will touch upon the issue of the "absorption capacity" of the Union and of the limits of enlargement later. For sure, looking at diversities through the glasses of the cultural paradigms we have inherited from our societies of a century ago is a fatal mistake. The notion of a "homogeneous" Europe reflects the "homogeneous" European societies we lived in before the great inflows and movements of people of our times. These are times of multi-cultural and multi-ethnic communities called upon to build their common lives in our neighbourhoods, schools and villages. We make the effort of giving these lives the imprint of common principles and visions based on our national cultures and at the same time respectful of the principles and visions of the newcomers, that interact with our own. Religious habits, family life, community life, education, health care and labour organisation are just some of the areas where this interaction takes place. We meet obstacles, but we know it has to be done and it can be done. Where does the insurmountable obstacle lie when the less demanding unity of the Union is at stake? All of us are aware of the even too frequently quoted example of India, where a federal State (something more than our Union) has been built upon many more diversities and is keeping them together ("Scotland is more like Spain than Bengal is like Punjab", Neil McCormick, a Scottish professor and parliamentarian, said to me a year ago). Looking at the future, and not at the past, we find all the reasons to do the same with ours.

Doing the same with our Union also means to find the right balance between the useful role of smaller groups of our States going forward and the need for the others not to feel excluded. The experience we have had clearly indicates that the advantages of new solutions more easily prevail on doubts and oppositions when new solutions are not just projects, but facts that everybody can see and touch. In this sense *avant gardes* may turn out as essential factors of innovation under conditions that are more likely to occur within a widened membership. What has to be done to prevent the others from perceiving them as exclusive?

Accepting the principle of openness, surely, seems mandatory to this effect, not only for the forms of enhanced cooperation entered into on the basis of the Treaty, but also for partnerships stipulated by separate agreements. It might not be so simple, however, as long as both arrangements may be devised in areas where only a few Member States feel qualified to pool their capabilities and resources. It is the case of the structured cooperation in defence, where the Lisbon Treaty itself is quite rigid in connecting membership to well defined military capabilities. It is also the case of advanced research, where only some States may be qualified in specific areas (the Commission reserves special funding to regional clusters of research, which is quite revealing). In such cases, even if we pay our tribute to the principle of openness, actual membership can be conceived only for the benefit of those who have the necessary capabilities.

The specific features of these partnerships highlight a difference clear in principle, but not equally clear in reality. When a partnership takes place in the Union, it is not necessarily an *avant garde* making steps forward - all of the others are reasonably expected to follow. It may also happen that by joining with each other some Member States amplify the output of specialties enjoyed only by them and not by the others (defence is again the clearest example of all). This too is a welcome development, for a wide Union of diversities, besides creating new tracks on which sooner or later all its members will run, may also generate clusters where resources not evenly allocated among the members are more efficiently organised.

What if, then, the reasons to build a cluster are more subjective than objective and reflect preferences more than standards? What if, on the basis of allegedly objective standards, all of the existing clusters share the same membership, namely only the big States or only the western ones? In some instances drawing the line might not be easy, but an unquestionable antidote to disputes and resentment is giving birth to different clusters, the ensemble of which covers all the relevant variables (West and East, North and South, big and small). This is certainly the case of those common interests that can be served by our Member States more by forming clusters than by common action of all. The protection of external borders against illegal immigration or criminal and terrorist activities is one of them. Here common standards are needed, but we should mostly rely on southern countries for the Mediterranean Sea, on eastern countries for the terrestrial eastern borders and on northern countries for northern seas. Each of these clusters might also enjoy the participation of other countries, but responsibility and direct interest go together in forming their core membership. Take the example of

Frontex, the new agency for the external border control. As long as the Mediterranean and the Spanish seas were the almost exclusive theatres of its action, Frontex, though formally belonging to the Union, was a *de facto* southern agency, for it had means and equipment supplied by the Southern countries, along with a German contribution.⁹

In the different case of a genuine *avant garde*, it is first of all for the Member States which promote it to also protect it from the risk of becoming counterproductive. Whenever possible, the initial membership should include both Western and Eastern States, both big and small. When the *avant garde* is necessarily limited to those States which share pre-defined capabilities, the willingness of the promoters to accept all the others as soon as they reach the same level should be manifest and credibly argued. In this case, if the Member States are acting under the discipline of the enhanced cooperation, a detailed procedure is established for the Commission and the Council to assess whether other Member States, willing to participate, meet the necessary conditions (a procedure the Lisbon Treaty will also extend to the structured cooperation in defence). In any case and whatever the discipline, the mission the *avant garde* is pursuing has to be perceived by the others as a common mission, not as a divisive one.

To conclude on this point: if the necessary countermeasures are taken to preserve our unity, our future will be a better one with an institutional framework enriched by *avant gardes*, special partnerships on the basis of specific capabilities and regional clusters pursuing common interests. All these arrangements would draw the utmost possible value from our own diversities to the benefit of the entire Union. United in our diversities would be something more than a motto.

IV.

Are we being too daring in putting the future at risk, perhaps even the present, if we keep enlarging the Union and therefore absorb more diversities than our capacity of preserving unity can manage? An enlargement fatigue has taken place in our countries, at least in the western ones and the solidarity that is needed between old members and new entrants is actually decreasing. Should the political leadership of Europe acquiesce to such fatigue or should it be encouraged to promote a more open and positive mood of our public opinions?

9. For the working and the composition of Frontex, see EC Regulation n. 2007/2004, in Official Journal of the European Union, 25 November 2004.

I have already stated the reasons supporting a wider and demographically heavier Europe. Furthermore, I am also convinced that, within limits, having a wider Europe aware of its unity and therefore not doomed to becoming Babel depends more on us than on objective reasons. Of course limits do exist; these are both geographical and historical. We well know that not only Vietnam and Korea, but also Iraq and Iran will never be members of the European Union. But what about Ukraine and Turkey? These are countries as to which not only it is for us to decide whether it is better to have them in or out. It is also for us to assess whether they are “European” or not. Assessing what we have in common is not a fact but a task, we have said; and it is a task we face not only within the existing Union, but also in looking at the neighbouring countries that have applied or may apply for accession.

Not all of us are aware that according to the existing Union Treaty, eligibility for accession is recognized to the “European States” which comply with the principles and values stated in Article 6 of the Treaty itself. Therefore being “European” for a State does not depend on its compliance with such principles and values, but seems to be a pre-existing condition. The Union Treaty does not agree with Habermas and assumes that there is something in the historical heritage of each of us that concurs to our common European identity. But this part of the heritage has to be accepted and has to prevail upon the reasons of diversities.

Quite understandably, acknowledging others as Europeans is an exercise that presents different degrees of uncertainty. There were no doubts when we consider the Eastern European States that entered in 2004, the long-lost brothers who were coming back home, nor should there be doubts for the remaining western Balkan States still out of our door (the historical trouble makers in the family are, nevertheless, members of it). On the contrary, in the cases of Ukraine and Turkey, the voluntary nature of the necessary assessment is clearer than ever, for arguments exist to support both their European identity and their belonging to Asia. It is a matter of prevalence, one could dare to conclude. But also in these terms there would be room for disputes, differently solved in different countries (in France Turkey would turn out Asian, in the UK and in Italy more likely European). What does this mean? It means that the assessment of the identity is explicitly or implicitly intertwined with other arguments, namely the arguments that respond to the question if we want them in or out.

When the views on further enlargements are becoming restrictive, the notion of absorption capacity is brought back to the front stage. The notion

has a rational background in the context of migratory movements, where it means that a country with few and decreasing jobs and with limited housing and services cannot decently host many more inhabitants. It is perfectly understandable, even though some reasonable flexibility is always necessary, for more immigrants might also mean more activities, more growth and therefore more jobs, more housing and more services. In any event, what the absorption capacity refers to when speaking of enlargement is less clear to me. Is there a limit to the diversities to be absorbed without endangering our unity? It solely depends on us and on the organisation of our common activities, as we have just seen. Does having too much of the outside world inside the Union make it more difficult for us to defend ourselves from the risks inherent to it? My experience tells me that the opposite is true, for fighting trafficking in drugs and human beings and any other form of criminality is much easier inside the framework of the Union than in the relationships with third States. As to immigration, turning the illegal inflows into legal ones is just a net gain (also reducing the impact of criminality).

Other reasons may play a more credible role: accepting Ukraine in the Union while our difficult relationship with Russia still is unsettled, might be inconsistent with the overall goals of a sound foreign policy. Leaving Turkey out for it is too big a Muslim country, should be assessed against the role Turkey plays in the Middle East and the risk for the Union of having such a big country not as one of its members, but as an influential member, simultaneously, of a not necessarily friendly front of Asian States.

V.

In conclusion: enlargement can only be conceived and carried out as a component of a vision Europe must have and pursue of the wider context it is a part of. More than the limits of our absorption capacity, it is the lack of a sufficiently farsighted strategy of regional and international policy that may lead us to make the wrong moves with the pending enlargements. *Tout se tien, Avant gardes*, special partnerships, different clusters of States pursuing the same common mission and enlargements may concur to a better or to a worse Europe, depending on the political vision that supports them and, ultimately, on the quality of the political leadership embodying and expressing such vision.