

# CHALLENGE EUROPE

## Challenges and new beginnings: Priorities for the EU's new leadership

September 2014



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## Differentiated Europe needs strong institutions

*Alexander Stubb*

A dear child has many names. Multispeed Europe, Europe *à la carte*, variable geometry, avant-garde, flexibility, multi-tier governance and enhanced cooperation – all dealing with the concept of differentiated Europe. I wrote my doctoral thesis at the London School of Economics in 1999 on Flexible integration and the Amsterdam Treaty. The subject seemed academic at that time, but the issue is very concrete for the Union.

A simple definition of differentiated Europe could be that it consists of any institutionalised cooperation between EU members at smaller configurations than the totality of its membership in the pursuit of EU objectives.

Differentiated Europe is reality. The most prominent forms of differentiated Europe are the Economic and Monetary Union – with the euro area having 18 members at present – and the passport free Schengen area. But other examples are abound – the banking union, the fiscal compact, enhanced cooperation in community patents, divorce law etc.

Differentiated Europe has become more relevant because of growing EU membership and the extension of the Union's policy reach. There was hardly any need for differentiation at six. Differentiation is not an objective in its own right, but a tool for effective enlarging and deepening of the Union. In academic terms, differentiation is a form of functionalism. Politicians talk about pragmatism.

Prominent examples of differentiation surfaced with the Maastricht Treaty as a reaction to domestic political pressures and led to Britain abstaining from social policies, Denmark opting out of justice and home affairs cooperation and the common security and defence policy, and both gaining a legal opt-out from the euro.

Later new layers have been added to differentiation as the EU has broadened its scope. With a larger and more heterogenic membership, the probability for differentiating Europe increases. A 28 member union is a completely different story than a community of six, nine, ten or even 12.

Differentiated Europe can be analysed in terms of the three meta-challenges outlined in this publication – stagnation, fragmentation and legitimacy. My argument is simple: stagnation or the prospect of it has been a catalyst for differentiation, fragmentation poses a risk of differentiation gone too far and legitimacy of differentiation is embedded on institutional cohesion and good results.

**Stagnation** is an obvious factor in terms of differentiated Europe. Differentiated Europe can be a solution to political stagnation – the inability to decide on a policy that would include all members, but is still seen as a necessity for a broad majority of Member States. This is one of the reasons why recent treaty amendments have codified rules for reinforced cooperation, Euro-speak for differentiation.

This is in essence the philosophy of the avant-garde – a smaller group takes the lead, and the rest will follow later. The Treaty puts it well concerning enhanced cooperation, *"Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States (...)"*.

Economic stagnation – or be it any other policy frustration – can be a major motivator for differentiation. Economic stagnation and the euro crisis definitely presented a clear case for deepening integration in the euro area. At the same time, major treaty changes were not an option. The six pack, the two pack and the fiscal compact were born complementing the European Semester. Economic policy coordination as a result lies somewhere in between intergovernmental decision making and the community method, the key words being coordination, consolidation, peer pressure, and guidance.

The European patent, another example, was a reaction to the fact that a more integrated patent system was deemed important for competitiveness, but no solution was found between all Member States because of fundamental differences on the language regime.

Stagnation is a typical cause for differentiated Europe – a motive, a driver – but fragmentation can be the main negative consequence of differentiation – a cost, a risk to be avoided.

In theory, any policy not aimed at all Member States can already be labelled as EU **fragmentation**, but for analytical purposes it is useful to define fragmentation in terms of differentiation gone too far, producing an overall negative impact on the Union – more or less as the dark side of differentiation. Therefore, the central issue in terms of fragmentation is how to ensure that functional differentiation does not degenerate into dysfunctional fragmentation.

This is perhaps the key issue for differentiation. An outline of the political and institutional elements that can prevent EU fragmentation would act as crucial guidelines for future policy. So far all the evolutions within differentiated Europe still involve a unity of direction, of purpose. The idea being that there is a common goal, but a number of Member States will either join later or even remain behind.

There are different levels of participation, but with the idea that non-participants can, and many will, join at a later stage – usually when they will have attained the ability to do so. Same direction, but different speeds. For example, the United Kingdom and Denmark have a legal derogation from the euro, but they have the right to opt-in if they so decide, and for the Union at large Economic and Monetary Union constitutes a central element of EU integration, not some irrelevant side-show.

Until now, differentiation in the EU has never meant that the Union would split in different directions on any policy. Different levels of participation, but never as groups that would assume exclusive or competing aims from each other. I would argue that differentiation within the European Union should never be allowed to develop in this direction, because it would mean that differentiation would degenerate into fragmentation.

The evolution within Economic and Monetary Union is a good example – members of the euro area have worked on closer economic policy coordination, fiscal rules, banking union, and there is a good case for further cooperation on issues like taxation. This core remains open to non-euro members as we have seen with banking union and the fiscal compact. The fiscal compact is outside the EU framework – because of UK insistence – but it still serves EU aims.

Existing and foreseeable differentiation within the Union revolves around a central core. The euro area is the political and economic core of the European Union, but does not present an exclusive institutional core. In fact, various forms of differentiation involve different groups of Member States.

In practice the difference between differentiation and fragmentation is a thin line. And this thin line is best guarded by strong common institutions. At this stage we have differentiation, but all within a single institutional structure. The European Commission remains the executive body for all EU policy – at 28 or less. The European Parliament covers all policies. Decision making resides in the Council with the Eurogroup firmly embedded to Council structures. The President of the European Council also serves as the President of the euro area summit. The European Central Bank is a European institution, well defined by common EU Treaties.

We have unitary institutions, even though policy is differentiated in some areas. We could call this the singularity principle. European institutional singularity serves differentiated European policies and at the same time ensures overall coherence. After all, more simplicity, more continuity and more stability were the guiding principles in the constitutional process leading to the Lisbon treaty. Duplication, overlapping and complexity would not serve institutional coherence.

As this institutional unity is crucial for policy coherence, all attempts to break this singularity should be resisted. There have been proposals for endowing the euro area with its own institutions – an own secretariat separate from the Commission, a separate President of the euro area summit. The break-up of the existing institutional singularity would risk degenerating what is now pragmatic and functional differentiation into detrimental fragmentation.

**Legitimacy** – and especially the risk of reduced legitimacy – is an important issue for any public policy and differentiated Europe is no exception. Legitimacy can either be approached through process or outputs. With process you need to assess the procedures legitimate as such, do they inspire public confidence, and are there enough checks and balances. In terms of outputs it should be asked whether policies produce outputs that are beneficial to society, to EU citizens, to the Union's purposes.

Looking at the legitimacy of differentiated Europe in terms of process, the same rules apply as to any EU policy – democratic accountability, openness, subject to rule of law etc. The fact that the Union's common institutions are in charge of differentiated Europe provide a fair degree of accountability.

Fortunately differentiated Europe is mainly channelled within EU structures. Despite the euro crisis leading to several intergovernmental solutions, the role of the Commission has in fact been strengthened. Working outside the Treaties poses challenges in terms of legitimacy through process, which is often tackled by *de facto* involvement by the European Parliament in the negotiation process. For example, the negotiations on the Single Resolution Fund were packaged with the Single Resolution Mechanism with European Parliament taking part.

In addition, the role of national parliaments providing the negotiation mandates for their governments should not be neglected either – despite different levels of their involvement in the negotiation processes.

European political parties presenting top candidates in the elections this spring for leading EU positions has been an attempt to further politicise European politics and this way to strengthen accountability and legitimacy without the burden of treaty change.

Unfortunately, the turnout of the elections was similar to previous rounds at just around 43% and therefore the impact of top candidates in this respect was not as strong as envisaged. Despite this, the precedent is there and I would expect European political parties to have top candidates in future elections, too.

Looking at legitimacy in terms of outputs, it is logical to assume that differentiated Europe tends to perform well. After all, it is typically a solution to policy problems where progress by all member states was not an option.

To put it in very simple terms – you either have some progress by means of differentiated Europe or you have no progress at all. Choosing on more or less differentiation is often choosing between results or no results.

As a synthesis on differentiated Europe as seen from the perspective of stagnation, fragmentation and legitimacy, the **conclusion** is that fragmentation is the most pertinent dimension, and the risk of fragmentation is best avoided by ensuring that the EU continues to be endowed by strong institutions that include all aspects of EU policy, including any items that would belong to the scope of differentiated Europe. At the same time, this institutional approach tackles questions on legitimacy through process. Similarly, differentiation at best provides legitimacy by output, by results, by solutions to stagnation.

What does the future hold in terms of differentiated Europe? A safe assumption is that differentiation will probably increase, because the euro area needs to build a firm economic core. The fact that treaty change is not an option for the time being will mean that differentiated Europe can be a useful instrument in deepening integration.

At the same time we need to recognise the limits of differentiation. There are no-go areas for differentiation, policies that include all members are an absolute must. These are areas where the essence of European value added lies: in the fact that there are no divisions among Member States so that all are included.

An exhaustive list of the no-go areas for differentiation would be long, but the essential elements are obvious. The internal market needs to work as a coherent entity, competition policy needs to include all members, trade policy cannot be divided, values are indivisible, external action is all the more stronger as the whole union participates.

In general, areas with strong Union competence have very limited scope for differentiation. When taking that path, this should be coupled with strong institutions.

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