

WORKING PAPER

Shall We Try New Methods to Make the EU-27 Work?

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ENHANCED COOPERATION: A “MIRACLE SOLUTION” FOR REVITALIZING EUROPEAN COMMUNITY INTEGRATION?

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Enhanced cooperation, a political panacea for some—and an institutional nightmare for others—is the ongoing focus of European public debate. Recently, plans were made to implement these initiatives in the areas of corporate taxation, anti-terrorism and illegal immigration, as well as in the military. On each occasion, controversy has been flaring up between Member States wishing to strengthen political, economic and legal ties within the European Union for the sake of Community efficacy, and those who believe that strengthening such relations should be done at the same speed for all Member States in the name of the principles of unity, equality and solidarity.

While raising the degree of heterogeneity among Member States, the enlargement of the Union to twelve additional countries (ten of which joined on 1 May 2004, and two more on 1 January 2007) only complicated this issue: how can the principle of “a multi-speed Europe” be upheld when the admission of Central and Eastern European countries to the Union marks the historical reunion of all members of the European family? Conversely, the “no” voiced during the French and Dutch referenda in the Spring of 2005 attested to the expectations of a majority of European citizens who favour a Europe that will provide effective responses to today’s challenges (globalization, immigration, anti-terrorism, sustainable development, etc.). In an ever-changing globalized world, it is no longer possible, nor desirable, for the Union to take several years for all of its members to reach a general consensus: the example of the European Company Statute—whose adoption took twenty years—must not be allowed to happen again.

During the European Council meeting of 21–22 June 2007, the twenty-seven Heads of State or of Government stressed that “Europe is united in its resolve that only by working together can we

represent our interests and goals in the world of tomorrow.”¹ In this perspective, the Reform Treaty now being formulated will result in the Union’s internal reform, the goal of which is to “maintain and develop the European Union’s capacity to act.”² Consequently, the procedural methods of the Council and of the European Commission, as well as the distribution of powers between the Union and Member States, have been updated. Has unity of action thus been made possible despite the diversity of the twenty-seven Member States? The Reform Treaty provides an alternative for those countries who wish to proceed more quickly: the “enhanced cooperation” mechanism created in 1997 by the Treaty of Amsterdam has been maintained and its implementation simplified.

I – FROM DIFFERENTIATED INTEGRATION TO ENHANCED COOPERATION INITIATIVES: A CONCEPTUAL EXPLANATION

Announced as a “miracle solution,” enhanced cooperation constitutes one facet of what is known as “differentiated integration.” This expression refers to the legal status in which “States or groups of States are, or can be, governed by rules other than the general rules—that is to say rules expected to apply to them all.”³

Technically speaking, “differentiation” encompasses two different realities: one substantive and the other institutional. In terms of substantive rules, the differentiation presumes that not all Member States are bound by the same rights and duties. This situation is not new, as shown by the flexibility

1. Presidency Conclusions of the Brussels European Council of 21–22 June 2007. Doc. 11177/1/07.

2. *Ibid.*

3. Generic definition presented by P. Manin and J.-V. Louis in *Vers une Europe différenciée ? Possibilité et limite*, Éditions A. Pédone, Paris, 1996.

mechanisms introduced in the original treaties (the Protocol on Intra-German Commerce, for example), or in the accession treaties. The very principle of harmonization that forms the basis of the policy guidelines relies on a subtle balance between the respect of national legal traditions and the need for uniform respect of Community principles. Defining common standards—particularly in the area of environmental protection, does not prevent Member States from adopting measures that extend beyond Community requirements. The second, or institutional, aspect is more innovative: it lies in the link between the substantive rules that are subject to the differentiation and the institutional rules that govern the Community's decision-making process. Only those Member States that participate in the differentiated regime are entitled to vote on substantive rules; non-participants cannot.

"Enhanced cooperation" on the other hand, constitutes a mechanism designated as such by Community treaties. One of the titles in the 1997 Treaty establishing the European Union (TEU) is devoted to it, as is the case in the Reform Treaty. The presentation of enhanced cooperation mechanisms is modelled on the "Greco-Roman structure" of the Maastricht Treaty: "General principles" are covered in the frontispiece (Articles 43 to 45 of the TEU), while each of the EU three "pillars" contains specific rules: the "European Community," Articles 11 and 11a of the Treaty establishing the European Community (TEC); "Common Foreign and Security Policy" (CFSP), Articles 27a to 27e of the TEU⁴; and "Police and Judicial Cooperation in Criminal Matters," articles 27a to 27e of the TEU). The aim of enhanced cooperation mechanisms is quite specific: to permit the adoption of legislation blocked in the Council because of opposition from one or more Member States.

The expressions "multi-speed Europe," "variable-geometry Europe," and "Europe à la carte" are doctrinal notions related to the results achieved when implementing the enhanced cooperation mechanism, or other methods of differentiated integration (such as belonging to the euro zone). In offering his semantics clarification, Alexander Stubb defines "multi-speed" Europe as "the pursuit of common objectives [...] by a core group of Member States which are both able and willing to go further, the underlying assumption being that the others will follow later."⁵ "Variable-geometry"

Europe corresponds to the existence of unattainable differences within the Community structure resulting from irreversible or permanent separation between the "hard core" and less-integrated countries.⁶ Finally, "Europe à la carte" designates a situation in which Member States can pick and choose, as in a menu, the areas of integration in which they want to participate, while at the same time still pursuing a minimum number of common objectives.⁷

II – ENHANCED COOPERATION MECHANISMS: A REMEDY AND A "MAKESHIFT SOLUTION"

The concept was first raised at the political level by German Chancellor Willy Brandt in November 1974: differentiated integration was to enable economic unification to continue between the most economically developed States (France, Federal Republic of Germany and Benelux), while the more fragile States (United Kingdom, Ireland and Italy) would be required to gradually join the leading group.

Differentiated integration subsequently gained renewed attention given the dual prospect of the pursuit of monetary integration (Léo Tindemans' Report on the European Union, December 1975), and of the ongoing enlargement to absorb new Member States (Greece, Portugal, Spain). Differentiation must make it possible to maintain the momentum of European integration in a context of an ever-growing number of Member States, which are destined to be increasingly heterogeneous on both an economic and social level.

The concept was first implemented when the European monetary system was established, and later with the Schengen Agreements. Despite their ties with the Community integration plan, these initiatives were developed by the Member States outside the framework of Community treaties.

In the 1980s, the prospect of setting up a coordinated immigration and visa control framework, of creating a gigantic market governed by a single currency, as well as of adopting a European social policy, revealed that there were no longer simply objective disparities, but also profound political divergences between the Member States (particularly with respect to the United Kingdom

4. The European Constitution retains the option of a permanent "structured" cooperation in the area of defence (Articles I-41, III-312 and Additional Protocol no. 23 of the European Constitution).

5. A. Stubb, *The Semantic Indigestion of Differentiated*

Integration: The Political Rhetoric of the Pre-1996 IGC Debate, Thesis at the Department of Politics and Administration, College of Europe, Bruges, 1995.

6. *Ibid.*

7. *Ibid.*

and Denmark). Reducing opposition can only be achieved by breaking away from the traditional principles of an integration that would progress at the same speed and at the same amplitude for all Member States. This is what the Maastricht Treaty accomplished by providing that the establishment of the monetary union does not necessarily imply the participation of all Member States. Some of the latter (the United Kingdom and Denmark) have obtained the right not to participate in it, while others must comply with the single-currency criteria.

Once the differentiated integration has been assimilated within the Community's legal order, all that remained was to extend recourse options to the other sectors of Community law. During the two Inter-Governmental Conferences that followed (in 1996 and 2000), the likely difficulty of enlarging to fifteen members—and then again to twenty-five—in new sectors, made the theme of “enhanced cooperation” mechanisms one of the negotiators' key concerns.⁸ The Treaty of Amsterdam (1997) thus introduced a general clause providing for enhanced cooperation mechanisms in the Community (first pillar), and in matters concerning justice and home affairs (third pillar). The Treaty of Nice (2000) extends recourse into the area of common foreign and security policy, while excluding issues having military implications. The Draft Treaty of the European Constitution (2004) created a new mechanism in the area of defence: “permanent structured cooperation.” On each occasion, the terms for implementing the enhanced cooperation mechanisms have, moreover, been relaxed. The Reform Treaty is in line with this trend and expands on the innovations of the European Constitution.

Enhanced cooperation is structured around the following four principles:⁹

- The majority of the States that so wish can strengthen integration by means of enhanced cooperation, calling upon the Union's institutions in order to do so;
- Within the enhanced cooperation framework, only its participants can take part in the decisional process;
- Non-participant States are not legally bound

to abide by measures taken within an enhanced cooperation;

- The latter may ask to join the enhanced cooperation initiative at any time. Their inclusion may be subject to complying with certain conditions (example of the convergence criteria within the framework of adhesion to the euro zone).

The objective sought through enhanced cooperation is threefold. It is a matter of compensating for the inadequacy of Community institutional reforms whose dysfunctions are expected to worsen with upcoming enlargements, of preserving integration momentum and, lastly, of channelling inter-governmental cooperation initiatives into Community structures.

III – ENHANCED COOPERATION: WAVING RED FLAGS IN FRONT OF SCEPTICAL MEMBER STATES?

Grosso modo, all areas combined, enhanced cooperation cannot be initiated without adhering to a series of general and specific terms whose value is as much legal as political, or even technical in the area of defence:

- It aims at furthering the objectives of the Union and of the Community, at protecting and serving their interests and at reinforcing their process of integration;
- It respects the *acquis communautaire*;
- It does not constitute a barrier to or discrimination in trade between the Member States and does not distort competition between them;
- It may neither concern a matter that falls within the exclusive competence of the Community (i.e., monetary policy, trade policy, customs union, agricultural and fishing policy, transport and competitiveness policy), nor, in the area of CFSP, a measure having defence or military implications;
- It must make use of the EU's institutional framework (the measures to be adopted in order to promote cooperation must be adopted within the framework of standard procedures) ;
- It involves a minimum of eight Member States;
- It must be open to any Member State;
- It may be undertaken only as *last resort*, when it is established that the Council cannot adopt a piece of legislation within a reasonable period.

On the institutional level, the launching of a cooperation initiative conforms to a unique model, which is set up in four phases:

- 1) The Member States wishing to go ahead must submit an application to that effect to the Commission (to the Council in matters relating to CFSP);

8. C. de La Malène, “Les coopérations renforcées dans l'Union européenne,” Information Report no. 351 produced on behalf of the French Senate Delegation to the European Union, 22 April 1997.

9. F. Allemand, “Les coopérations renforcées dans la Constitution européenne : vers quel renforcement des moyens d'action et de l'intégration européenne ?” Supplement to the *Robert Schuman Foundation Newsletter*, no. 188, Paris, 15 November 2004.

2) The Commission examines this application and, if it considers that all conditions have been met, it presents a proposal authorizing enhanced cooperation to the Council. If it decides not to introduce a proposal, it must offer the reasons for it to the Member States concerned (in the area of police and judicial cooperation, this refusal entitles the Member States concerned to then submit an initiative to the Council for the purpose of obtaining the said authorization);

3) The authorization to establish enhanced cooperation is granted by the Council acting by a “qualified majority,” on a proposition from the Commission and after consultation with the European Parliament. The Council shall meet with the representatives of all of the Member States, whether or not they are concerned by enhanced cooperation. The assent of the European Parliament is required when the cooperation concerns a matter relating to the co-decision procedure;

4) In the first and third pillars, if a proposal aimed at authorizing an enhanced cooperation initiative has been brought before the Council, a Member State can bring the matter before the European Council. The Council must defer its ruling until the European Council expresses an opinion.

The system’s complexity has been widely criticized. The mechanism as introduced by the Treaty of Amsterdam (1997) provided no way of compensating for the possible institutional dysfunctions, nor of meeting the expectations of Member States wishing to strengthen the integration process. The risk at that time was that inter-governmental cooperation initiatives would multiply that were linked to Community integration but situated outside of the Community framework; i.e., refusing to adhere to the principles of equality and unity among Member States, and beyond the control of the Court of Justice.

Such factors justified introducing flexibilities through the Treaty of Nice (and the European Constitution). The improvements thus contributed seem to have produced some positive results. The idea of having recourse to enhanced cooperation was contemplated in 2000 on the occasion of debates over the Regulation on the European Company Statute (SE) (and during deliberations on its supplementing directive), as well as debates in 2001 over the European Arrest Warrant. In these cases, it appeared that it was less the implementation of an enhanced cooperation than the threat of resorting to one that made it possible to resolve the deadlock situations within the Council.

IV – DIFFERENTIATED INTEGRATION: BETWEEN THREATS AND OPPORTUNITIES

Today the issue is not that of the relevance of the substantive and institutional differentiation. The integration into the Community legal order of the “Schengen area” and of the social protocol, as well as the launching of the euro on 1st January 1999, attested to the drive and efficacy of this concept. The real issue is that of whether or not differentiated integration mechanisms can bring about the gradual participation of the greatest possible number of Member States and thereby prevent the image of a fragmented Europe from developing. This calls for such mechanisms to be designed as “a means to achieve solidarity and cohesion,” and not as an end in themselves.¹⁰

In that respect, existing differentiated integration mechanisms have had mixed results.¹¹ With twelve of the twenty-seven Member States still outside of the euro zone (as from 1 January 2008), the device conceived in 1992 in the area of monetary unification can hardly be considered a success (notwithstanding the creation of the euro on 1st January 1999). Moreover, the enhanced cooperation mechanism set out in the treaties have produced no effective outcome. To the contrary, the complexity of their implementation has been leading to a growing number of cooperation initiatives beyond the framework of the treaties.

The stimulus that enhanced cooperation mechanisms could give to Community integration can scarcely be denied, provided that they are not being used for “anti-integrationist” purposes—in other words, in a way that could cause established cooperation initiatives to permanently crystallize into divergent positions among the Member States, or even make it possible to use enhanced cooperation in a specific area as a means to prevent the Community from ruling on any one particular issue.

One essential aspect of this issue concerns the weakness of the inclusion dimension underlying enhanced cooperation mechanisms. According to the “clubs” theory, developed in political science and economics,¹² the appeal of enhanced cooperation

10. P. Manin and J.-V. Louis, *ibid.*, p. 8.

11. F. Allemand, “The Impact of the EU Enlargement on Economic and Monetary Union: What Lessons Can Be Learnt from the Differentiated Integration Mechanisms in an Enlarged Europe?” *European Law Journal*, Vol. 11, no. 5, September 2005, pp. 586–617.

12. A. Watson, “EMU: Of Clubs and Currencies,” *European Integration*, Vol. no. 26, no. 1, March 2004.

mechanisms is all the stronger in that the conditions of their implementation are simple and the cost/benefit consequences of participation in, as opposed to exclusion from, enhanced cooperation has turned out to be high.

Unlike what has been done in the monetary area, enhanced cooperation initiatives are not based on the idea that participation is, from a legal perspective, the normal situation and that exclusion is an exception to be eliminated. To the contrary, legally speaking, the exception is being a part of the cooperation: the measures adopted within the framework of enhanced cooperation do not constitute an *acquis communautaire*; and there is no obligation to participate. At most, the Commission, as well as the participating Member States “shall ensure that as many Member States as possible are encouraged to take part” (Article 43b of the TEU). The Draft of the European Constitution strengthened the inducement to take part in an enhanced cooperation effort: Article III-422 authorized the Council to change the voting rules applying to itself and to thereby opt for the qualified majority in situations in which the Constitution required unanimity, or a specific qualified majority. This “clause passerelle” could also be implemented within an enhanced cooperation initiative. It could be expected to give rise to an accelerated integration between participating States and to widen the gap between the latter and those of the States that remained outside of the cooperation initiative, which then would have to make an additional effort were they to later decide to take part in the cooperation initiative. The Reform Treaty is in line with this mechanism.

V – CONCEIVABLE INTEGRATION METHODS

The integration between Member States is likely to progress according to the following four models:

- on the basis of existing Community rules. The EU and EC treaties, as amended by the Reform Treaty, paved the way for a certain number of changes in the area of immigration, defence, and economic governance. The Eurogroup has been officially endowed with a stable presidency for a period of two and one-half years¹³ and is formulating a recommendation concerning the adoption of the euro by any future Member State;

- on the basis of a new reform of the treaties (*i.e.* the Reform treaty), and as a result of the EC being

vest with new powers and/or the amendment of the procedures under which its current powers may be exercised (recourse to the “clause passerelle”);

- on the basis of enhanced cooperation initiatives (limited to the areas covered by the Community treaties);

- on the basis of bilateral or multilateral cooperation initiatives in areas not covered by a Community competency in which the EC has not exercised its competences, or supplementing Community action. When implementing such actions, the States must ensure that they do not hinder the performance of the internal market and/or challenge Community competences.

In view of the considerable overlapping of each level of governance, it appears that every comprehensive plan aimed at strengthening the integration process must be based on a combination of these models and particularly of enhanced cooperation initiatives with those that are established beyond the scope of the treaties. Several sectors might lend themselves to such advances: energy, the environment, R&D.¹⁴ The European Union’s policy on competitiveness¹⁵ or health, as Paul Ribeyre had recommended in 1952.

From an integrationist perspective, the choice of sector must be made by taking into account *the incremental effect that the action will have*, both on the European Union as well as on the other European partners. The meagre growth of the European Atomic Energy Community (EAEC) is significant in this respect of the weak impact of a choice governed by the interests of a single State—in this case, France. Similarly, *all progress must rely on strong Franco-German relations, but without allowing that to constitute the only solution*: any strategy aimed at strengthening and adapting Community integration will be much more likely to succeed if it remains open to other Member States. This is an example of the respect for the principles of generosity, solidarity and mutual confidence that has characterized the European Project from the beginning. Moreover, in those matters for which enhanced cooperation mechanisms are provided by the treaties, any initiative presumes that a majority of the States will be in favour of initiating them (nine, according to the Reform Project). In this matter, the Eurogroup is playing a key role in the pursuit of European integration.

14. On this subject, see J.-P. Fitoussi, « L’énergie pour relancer l’Europe », *Le Monde*, 7 November 2006.

15. See F. Allemand, S. Bell and F. Mer, *Resserrer l’Union entre les Européens*, Fondation for Political Innovation, Studies, Paris, August 2007.

13. Since 1st January 2005, the Eurogroup has been endowed with a President appointed by his peers for a two-year renewable term. His duties are now being performed by Jean-Claude Juncker.

L'EUROPE À LA CARTE ? A CLUB-THEORETICAL VINDICATION

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"I have often been struck by the prevailing view in Community circles that the worst that can happen is any movement towards what is called a Europe à la carte. This is not only somewhat odd for someone who likes to make his own choices, but also illustrates that strange Puritanism, not to say masochism, which underlies much of Community action: Europe has to hurt in order to be good."

Ralf Dahrendorf, 1979

INTRODUCTION

Today, in times of institutional confusion following the French and Dutch rejection of a constitutional treaty, and growing uncertainty about the "finality" and limits of the European project, Lord Dahrendorf's statement seems no less relevant than it may have been during times of widely felt "Eurosclerosis". The recent enlargement of the EU has potential to bring a new dynamic to the European common market. At the same time, the EU-wide *acquis communautaire* menu of uniform laws and regulations is today even more likely to cause "indigestion" as it has been expanded to an almost "unswallowable" amount (estimated 80 000 pages), served to 27 member states regardless of their tastes and "absorption capacities". We believe that this "one-size-fits-all" philosophy, combined with a "take-all-or-leave-it" attitude has been taken too far already and is not sustainable in the future. Instead, actors in European politics ought to focus on preparing and discussing various forms of flexible integration and enlargement.

Flexible integration with different groups engaged in enhanced cooperation among the capable and willing based on voluntary entry (and exit) could also ease further enlargement and enhanced cooperation in the framework of the European

Neighbourhood Policy (ENP). Against this background, the essential question is: *How can a more flexible, economically efficient and politically feasible mode of integration be put into operation that is compatible with the heterogeneity of economic structures as well as political, social and cultural preferences throughout the EU – and its neighbours?*

This chapter is organised as follows: As a point of departure, we introduce a few basic elements of the economic theory of clubs and examine the (in)efficiency of (in)flexible integration in this framework. Next, we discuss some alternative conceptions of flexible integration as they are discussed in political and academic circles and indicate why we tend to favour a club-of-clubs approach as an ideal-type model for a future EU. Finally, we point to some implications of our proposals for improved prospects of the ENP.

I – THE THEORY OF CLUBS AND THE EU AS POLITICAL MULTI-PURPOSE CLUB

1. Club Theory and Club Goods

The economic analysis of club formation started with the contribution of James M. Buchanan (1965). His seminal paper "An Economic Theory of Clubs" initiated an immense club-theoretical literature.

Since then, Buchanan's club theory has been applied to several economic and political issues such as community size, production of local public goods or political coalitions.¹ While Buchanan focused on one club good only, more recent approaches analyze clubs that produce multiple goods.² Moreover, club theory has been applied to international issues and international organizations such as the EU.³

As a simple definition, clubs are voluntary groups formed by individuals to pursue a common goal – the provision of a club good. Originally, the theory of clubs was meant to overcome Samuelson's dichotomy between pure public and pure private goods with club goods ranging somewhere in between (Buchanan 1965: 1f). Accordingly, club goods display two defining attributes (ibid: 2ff): (i) they are *non-rival* in consumption to club members (or only partially rival, i.e. non-rival up to a certain number of members), which means that if one member benefits, this does not reduce the amount of benefits for other members; (ii) the benefits of club goods cannot be enjoyed by non-members, i.e. *exclusion* is possible. As a result, club members have to fund the production of such goods in order to enjoy their benefits. The excludable characteristic of club goods prevents free-riding; if a member does not pay his dues, that member can be deprived of the benefits of club membership.

The purpose of inquiry of the theory of clubs is to identify both the optimal number of club members and the optimal level of club goods to be produced. The optimal club size is reached when marginal benefits for the club members from accepting an additional member are just equal to the marginal costs that are incurred from adding one more member to the club (Buchanan 1965: 5). Traditional club theory often assumes partial rivalry of club good benefits implying that a large number of members will result in "crowding" or "congestion" effects which reduce the quality of the goods and services provided by the club. Moreover, traditional club theory assumes that *per capita* production costs *decrease* with an increase in the number of club members because provision expenses associated with the club good will be shared among more members. These assumptions, certainly appropriate in the case of swimming pools or golf clubs, are not

necessarily adequate in the context of European club goods. As we will argue below, in the case of European club goods, both the benefits they generate as well as their *per capita* production cost vary across different types of goods.

2. The EU as a Club Providing Multiple Integration Club Goods

The idea that the EU and other international trade, monetary and defence arrangements can be conceived as such a club almost suggests itself. But before we can proceed to applying club theory to the European Union, the following questions have to be confronted: (1) Who are the *members* of the EU club? (2) What are the *club goods* produced? (3) What type of *costs* are incurred in providing them, what type of *benefits* in consuming them and what can be said about optimal club size?

(1) We conceptualise the EU as a club of *states*, not individuals. This is not meant to disregard that governments are agents of their population, the principal. We might (with a dose of classical-liberal idealism) as well assume EU member states' national constitutions to be principal-agent-contracts, which would mean that the EU club could be perceived as a club comprising almost 500 Million members represented by 27 agents (the governments of 27 member states).

(2) The EU provides a variety of club goods to its members: these certainly include the guarantee of the "*Four Freedoms*", i.e. the free movement of goods, services, persons and capital through the Internal Market; *external and internal security* through a common foreign and security policy (CFSP) and *police and judicial collaboration* in criminal affairs. Further examples of European club goods are the *definition of environmental and product standards* and (as selective sub-club-services) a *single currency* through membership in the EMU, the *Schengen Agreement and Convention* and the *Western European Union* (WEU).⁴ Additionally, stronger coordination in social, employment, industrial and education policies has been put on the European agenda striving for EU-wide harmonized standards and centrally provided policy instruments. All of the above goods have in common that they are (i) *non-rival* (or only partially rival) in consumption and (ii)

1. The literature on club theory has been surveyed by Sandler/Tschirhart (1997), Cornes/Sandler (1996) and Sandler/Tschirhart (1997).

2. E.g. Brueckner/Lee (1991), Cornes/Sandler (1996: 404ff).

3. E.g. Padoan (2001), Sell (2000), Fratianni (2003), Ohr (2003), Ahrens/Hoen/Ohr (2005).

4. Whether "Common Agricultural Policy" or "access to structural and cohesion funds" can be regarded as European-wide public goods, remains controversial in the literature. Streit and Voigt (1995: 13) argue that they cannot qualify as club goods because the corresponding funds are used in a redistribute way resulting in obvious rivalry in consumption.

that non-subscribers to the respective agreements (be that within-EU-treaties or bilateral treaties of third countries with the EU) are *excluded* from their consumption. Therefore these goods qualify as club goods.

(3) Our basic premise is that integration areas can be conceptually conceived of as distinguishable clubs. In each of these areas, club members take advantage of the *benefits* of integration but have to contribute to the *costs* of financing the provision of the relevant integration club good. As sketched out above, the size of an integrated area is optimal when the marginal benefits of the admission of a new member are just offset by the marginal costs a newly admitted member causes, for instance by making decision procedures more cumbersome. In the following passages we briefly discuss three remarkably different integration areas of the EU in order to demonstrate in which ways *both* benefits *and* costs of regional integration are contingent on the size of the area of integration, i.e. the number of club members.

The Internal Market Club

EU club goods corresponding to the Internal Market include the “peace dividend” derived from mutual gains from trade and enhanced international division of labour and knowledge. All members gain by being in the Internal Market club by benefiting from the “Four Freedoms”, which result both in static and dynamic efficiency gains due to enhanced allocation efficiency. These efficiency gains are larger, the larger the Internal Market is, i.e. the more members the Internal Market club has. As Adam Smith (1776) already knew: “the division of labour is limited by the extent of the market”. With respect to the Internal Market, there is no direct rivalry in club good usage; to the contrary, additional members tend to generate economies of scale resulting in even larger efficiency gains (Ohr 2003: 120). Moreover, new growth theory suggests that economic integration results in intensified competition and tends to lead to a permanent increase in the economic growth rate of the area through a positive interaction between innovation and integration (Fratanni 1995: 11).

If the EU were only a free trade area, the determination of the optimal size of the European club would be relatively easy: from the perspective of trade theory, the optimal size of a trade agreement is the world.⁵ Also, if there were no costs associated

with operating the Internal Market or if the regulatory framework necessary for its functioning was independent from the number of member-countries making up the Internal Market club, it would follow that the Internal Market should be as large as possible – and that substitutes for full membership (such as the ENP) would not need to be created. However, trade theory is of limited use in determining the optimal size of the Union because the EU is much more than a free trade area.

If the EU was a pure disarmament club or a club that merely focused on the prohibition of intervention, the corresponding club costs would tend to be low and hardly rising with club size; accordingly, average costs would decrease as new members join. Respecting and enforcing *negative* liberty rights is barely dependent on scarce resources like money and the consent of the citizens or (control) knowledge of politicians, as Hayek already argued in 1939 (Hayek 1939/80). But *positive* regulation concerning political integration, which can – at least partly – be useful for the functioning of the Internal Market, is a different matter.

With respect to positive regulations such as competition rules, consumer protection rules or production standards within the EU, active collective choices are necessary and political views and capacities diverge. As a consequence, corresponding decision-making costs rise. These costs are kept relatively low by delegation to the Commission. However, the natural centralization and harmonization drive of a central bureaucracy can result in increasing external costs as the EU-club becomes larger, more heterogeneous and more actively interventionist.⁶ A “complete” Internal Market à la Brussels, therefore, can have a finite optimal club size.

The Economic and Monetary Union Club

The club good corresponding to the EMU club is the *single currency*.⁷ Monetary integration yields

has, the stronger would be the incentives for non-member to become members; this reasoning also applies to the WTO and other preferential trade agreements. However, this is not the case for all kinds types of international cooperation clubs: for instance, the more states have committed to and signed the Kyoto Protocol, the better off are the outside free riders (see Wohlgemuth 2003).

6. “External costs” in the sense of Buchanan/Tullock (1962) occur when a participant in a collective decision has to accept a collective choice that does not reflect her preferred alternative. See Wohlgemuth/ Brandi (2006) for a wider application of this concept to European decision-making.

7. Frey (1984: 133) argues that monetary integration corresponds to the characteristics of a club good because money as unit of accounting, medium of exchange and storage of value is

5. In addition, the more members the Internal Market club

several benefits and positive welfare effects to club members such as reduced transaction costs and currency risks which in turn lead to more trade, economies of scale and intensified competition and thus general welfare gains. Hence, it seems reasonable to assume that each additional member of the currency club will generate benefits for the common currency region. However, the EMU club also results in organisation, information and decision-making costs. Moreover, EMU members are deprived of an independent monetary and exchange rate policy and thereby suffer the loss of two important national economic policy instruments. The more heterogeneous the economic structures of the EMU member countries are, the more their economic policy objectives diverge and the more divergent the endogenous and exogenous economic shocks affecting EMU member states are, the less will the common inflation goal, the uniform interest rate policy and the common external currency value be consistent with the optimal strategy of the respective individual member state (Ohr 2003: 123).⁸ As a result, the costs of expanding the currency union are higher the more current members the union has and the more heterogeneous these member states are.

The Common Agricultural Policy Club

Harmful policies, for instance the Common Agricultural Policy (CAP), have an optimal club size of zero. There is no economic mutual benefit of a policy that deliberately raises consumer prices and generates overproduction as well as administrative costs. Because the enormous costs of the CAP are likely to exceed any potential benefits by far, the optimal number of members of the CAP club is zero (or one if a large majority of citizens in one country wants to satisfy redistributive preferences of a minority, they can be allowed to tax *themselves* accordingly).

3. Club Size, Club Intensity, and “Interdependence Costs”

Based on Buchanan’s (1965) original theory of clubs, several authors have come forward with rather technical models that *simultaneously* determine optimal club size *and* optimal degree of

integration in the European Union.⁹ These models arrive at the conclusion that different policy clubs require different optimal membership sizes, which in turn suggests that the formation of various smaller, differently sized sub-clubs within the EU club is a more efficient future integration strategy for the European Union than the currently dominating one-size-fits-all approach. As outlined above, the optimal club size will vary from one club good to another contingent on respective policy fields and degrees of integration. In other words, different policy areas would require different membership sizes in order to be able to account for the needs and capacities of potential members. Inversely, it follows that one *single* overall EU-club providing *numerous* club goods to *all* its members at one *single* degree of integration will be comparably sub-optimal from a theoretical point of view.

Hence, applying the economic theory of clubs to the question of EU integration, we draw the conclusion that the future European integration process will be more efficient if it is partly based on differentiation rather than pure harmonization: In the case of the EU, providing various separable club goods and comprising 27 heterogeneous club members having different preferences concerning their provision, it will be welfare-enhancing to allow for the creation of various smaller sub-clubs within the overall EU-club, each with an endogenously determined size.

II – ALTERNATIVE MODELS OF FLEXIBLE INTEGRATION

More flexibility is often feared because of its seeming potential to undermine the substantial gains European integration. Constitutional commitment, as prerequisite to stable expectations, is needed to protect the existing benefits from cooperation, in particular those attributable to the Internal Market. The difficult task ahead is to introduce more flexibility into the system without completely emasculating the *acquis communautaire* and to find a constitutional framework with a proper balance of flexibility and commitment that meets this challenge. With this task in mind, we now discuss alternative strategies that are (or should be) currently discussed.

1. “Multi-Speed Europe”

The usefulness of multi-speed integration as a reaction to a larger and more heterogeneous EU and to the non-availability of the treaty formerly

an excludable public good without rivalry to all members of the monetary union.

8. The inability to vary the exchange rate represents a cost, which is higher the more unevenly distributed shocks in the EMU area are. Moreover, the more inflation preferences differ among members states, the more expensive will be the denial of an autonomous currency policy for each individual country which has to surrender to one common policy for the entire currency club.

9. See Ohr (2003), Cornes/ Sandler (1996), Ahrens/Hoen (2002).

known as “constitution” is limited. Since ultimate integration objectives stay the same for all members and therefore have to be debated and agreed upon by every single country, the problem of increased decision-making costs remains more or less as before: 27 plus x member states have to agree on common objectives and when they are to be reached by which countries. Since member states are allowed to proceed with integration at different speeds according to their capability, external costs due to heterogeneous needs and capabilities can be postponed, that is, *temporarily* reduced. But because the multi-speed approach does not permit member states to opt-out through choice rather than incapacity and because of the obligatory common integration goal for *all* members, the multi-speed approach does not yield adequate flexibility. Moreover, the common integration goal for all member states across all policy realms is inconsistent with the club-theoretical intuition derived above and – again – implies the disadvantages of an equal integration “menu” across the EU regardless of “taste” or “willingness and ability to pay”, even though in the multiple-speed case, member countries can at least take some more time to adapt to the new “cuisine”. A further risk is that the pioneer-groups might set ambitious and costly regulation standards (e.g. social, environmental, consumer-protection) and thereby raise costs for their economic rivals within the Internal Market, thus producing “*faits accomplis*” that the late-comers would have to accept without having been able to shape these standards according to their needs and capabilities. In sum, the concept of multi-speed integration does not resolve the problems caused by a larger and more heterogeneous Union.¹⁰

2. “Concentric Circles”

The concentric circles approach has some advantages over the multi-speed approach in that it allows countries to choose *permanent* different degrees of membership without requiring member states to achieve one common endpoint of integration. The main weakness of the concentric circles proposal lies in identifying a centre and peripheries in terms of *countries* rather than in terms of *policy areas* by differentiating between a centre of countries that want to cooperate on virtually all aspects of integration and peripheries of countries that desire limited cooperation instead. Imposing clear and enduring boundaries between the groups of member states in the centre and in the peripheries, instead of

allowing for flexibility in terms of policy fields as recommended by the club-theoretic model outlined above, implies a danger of pre-defined geographical divisions within the EU. In addition, the concentric circles approach rules out the formation of competing functional areas or clubs. By requiring countries to choose between core membership or membership in one of the peripheries, some countries would have to commit themselves to certain forms of integration (for example, monetary union), which they do not regard as in their best interest, in order to benefit from other forms (for example, a common defence policy), which *are* in their interest. Conversely, some governments might decide to stand aside from forms of integration they regard as desirable in order to avoid those they could not accept.¹¹

3. “Enhanced Cooperation”

“Enhanced cooperation” is today’s legally detailed flexibility-provision which would be even more detailed by the future Treaty which shall be signed in December 2007. In principle, we argue, easing the criteria for “enhanced cooperation” and permitting the establishment of coexisting integration clubs in addition to the *acquis*, would be a suitable and politically feasible possibility to cope with current and future integration challenges. The formation of multiple “enhanced cooperation” clubs would be an appropriate way to realize the approach recommended by the club-theoretical framework presented above. Moreover, admitting numerous “enhanced cooperation” arrangements among smaller and more homogeneous subsets of countries would lead to considerable reductions in external and decision-making costs. However, as we argue in more detail in Wohlgemuth/Brandi (2006), even the provisions for “enhanced cooperation” as proposed by the Constitutional Treaty are too restrictive to realize flexible integration of this sort. Without modifying the requirements for “enhanced cooperation”, external and decision-making costs will remain high and the “enhanced cooperation” provisions will not be able to resolve the problem of integration in a heterogeneous Union comprising 27 and more member countries.

10. See Warleigh (2002: 83ff) for an assessment of the shortcomings of multi-speed models.

11. For a discussion of the insufficiency of the concentric circles approach, see also Warleigh (2002: 86f). The reason why – despite their inadequacy – both the multi-speed and the concentric circles approach have influenced the political debates, may be that both models match the interests of certain key players in the European integration process, for multi-speed, for instance, the Commission, the Parliament and more federally minded member states and for concentric circles, certain German and French politicians.

4. Minimal Union and Clubs for “Enhanced Cooperation”

Allowing for the formation of various “enhanced cooperation” clubs around an obligatory *acquis communautaire* can be regarded as a suitable way to make future integration more flexible (and ease enlargement and enhanced cooperation in the framework of the ENP). However, contrary to the previous option, the common base does not necessarily have to include *all* of the current *acquis*. As suggested by many observers,¹² the extent of current policy harmonization in the *acquis* is too extensive because it includes policy fields in which the benefits resulting from the exploitation of scale economies and the internalization of externalities are overshadowed by external costs caused by policy centralisation. This in turn implies that sticking to the *status quo* may not be optimal from a theoretical point of view. Rather, it suggests that the number of integration domains currently included in the *acquis communautaire* ought to be reduced and thus transformed into a core-*acquis* comprising only those policy fields for which harmonization is considered to be efficient and essential.

In this context, the Union would act as “guard” of the core-*acquis* on the one hand, on the other hand as “broker”, “monitor” and “arbiter” of a variable structure of open, flexible, competing integration clubs. According to this approach, all members of the EU are members of the core; membership in the various sub-clubs is optional. Thereby, the club-of-clubs approach allows for different intensities of membership in the EU; yet, in contrast to the concentric circles model, the focus is on policies, not on countries. In other words, contrary to the concentric circles approach, the concept of creating different policy field clubs around a core-*acquis* is *functional* rather than geographical.¹³

It may be argued that the difference between concentric circles and our club-of-clubs approach is only a matter of semantics. However, the concentric circle approach is much more rigid than the club-of-clubs strategy. According to the concentric circles approach, flexibility is implemented only through negative choices by a system of derogations and opt-outs and the integration sequence is fixed in advance. Our approach would be more flexible by giving member states complete freedom to create new forms of cooperation or deepen existing ones

and by keeping no member from leaving any sphere of integration. Our model pictures Europe to consist of member countries as members of different clubs rather than as one single club with different classes. This difference is fundamental. The concentric circles approach requires countries to choose between one sort of membership class or another which entails the risk of missing out on opportunities of cooperation of a sort that is in the interest of all parties involved. Accounting for every single opportunity of collaboration that is in each party's interest and exploiting mutual gains from cooperation is exactly what the club-of-clubs approach aims at.

Flexible integration according to the clubs-within-the-club strategy, a process by which all member states agree to disagree about their priorities but permit their members to go ahead with objectives which they share as a sub-group, caters both to the legitimately divergent needs of individual member states and to the disparities of economic and political structures in a heterogeneous group of 27 and more countries. At the same time, the clubs-within-the-club approach breaks down one high integration hurdle – the *acquis* – into a lower one – the core-*acquis* – and various optional hurdles. In addition, previous experiences with flexibility, which were aimed at fostering deeper integration, have been quite successful and in many cases have had centripetal effects. Thus, flexibility has not always been the end stage but often a stepping stone towards further integration of all member states.¹⁴

According to the clubs-within-the-club model, members would be free to enter and exit existing integration clubs and establish new ones. Since no member is required to accept any common policy that it dislikes, external costs (inadequate collective decisions) would be significantly reduced. Moreover, decision-making costs would be considerably lower for decisions made in various smaller and more homogeneous clubs than for decisions made in the overall Union. The core of the Union should not consist of a group of countries but rather of a set of *issues* on which all members genuinely agree, for example, the need to preserve and extend the Internal Market. Apart from the

12. See Wohlgemuth/Brandi (2006); Ahrens/Hoen (2002); Siedentop (2000); Alesina *et. al.* (2001).

13. For a more radical exposition of this rationale, see Frey/Eichenberger (1999).

14. Pointing to the fact that some of the most significant steps towards deeper integration in the 1990s were linked with to flexible arrangements either within or outside the framework of EU law, Kölliker (2001: 30f) and Grieser (2003: 256) arrive at the conclusion that flexibility has resulted in resolving national reluctance and lead to significant integration progress.

core, there should be room for choice; however, not country by country in an all-or-nothing way, but issue by issue, according to national needs and interests.

5. Obligatory and Optional Policy Fields

In our model, the *core-acquis* would have to be observed by each and every member of the EU; it would be the minimum requirement for participation in the EU and, at the same time, the largest common denominator of the Union. It should contain well-defined integration areas for which integration is regarded as essential, the most important of which are the basic, “universalisable” provisions of the Internal Market.¹⁵ With the exception of the Internal Market there is no theoretically unchallenged consensus about which policy fields should be in the core (Harrop 2000: 308; Warleigh 2002: 64).¹⁶ This hard core should also be politically unchallenged. However, past and present relapses into economic nationalism even within the EU (e.g. fending off free trade in services, protecting “national champions” from EU-takeovers) show that national governments and members of the European Parliament are often enough caught in a Prisoners’ Dilemma situation in which only a credible constitutional commitment or the power of independent authorities in the Commission can be trusted to ensure the viability of long-term common interests. In addition to the Internal Market with the guarantee of the “Four Freedoms”, the *core-acquis*, as proposed by the analysis conducted by Alesina et al. (2001), should also include international trade policy and competition policy preserving competitive markets. Moreover, it may also contain the guaranteed convertibility of currencies, the Common Foreign and Security Policy (CFSP) as well as police and judicial cooperation of all EU members in those criminal matters that show cross-country externalities.¹⁷

15. Wohlgemuth and Sideras (2004: 20f) argue that the provisions of the Internal Market contain key elements of an universalisable order resembling Hayek’s (1939/80) vision of “Interstate Federalism”.

16. For example, Dahrendorf’s list of core policies in his discussion of *Europe à la carte* includes foreign policy, trade, monetary policy and overseas development; Ahrens/Hoen (2002: 35) suggest the Internal Market, indirect taxation policies, the CFSP as well as police and judicial cooperation in cross-country criminal matters to be in the core.

17. For instance, the clubs-within-the-club approach may be a useful means to strengthen the operational side of cooperation in the field of security policy via trans-national police forces, border guards, a European judicial area and intelligence cooperation. See also Feld (2003: 308) on judicial cooperation in cross-country criminal matters like protection against terrorism and Persson et al. (1997: 26) on political economy reflections on why there is reluctance to centralize defence policy.

The main reason to have a common core with certain obligatory policy fields is that in those policy fields the benefits of scale economies and of internalizing externalities will exceed the costs that result from common policies and regulations when national needs and preferences are heterogeneous. Another advantage of the existence of a *core-acquis* is that European integration would otherwise potentially be at risk to fall apart. The existence of an obligatory core will prevent flexibility to be “an impulse towards fragmentation which will ultimately tear the Union apart” (Weatherill 2000: 2).

While participation in the *core-acquis* is mandatory, in the remaining policy fields, member countries can freely choose to participate in those clubs from which they hope to benefit. In contrast to the obligatory common base of the overall EU-club, the EU sub-clubs are voluntary arrangements for cooperation in the policy fields outside the core. Not every country must participate in every sub-club, and members can, under certain conditions, set up new sub-clubs or close existing ones. The clubs-within-the-club approach allows for multiple overlapping and non-overlapping clubs.¹⁸ The number of overlapping and non-overlapping integration areas depends on the number of club goods for which the EU citizens, according to their preferences, have a demand (Schäfer 1995: 56). For instance, there may be three environmental clubs to protect the water quality of the Mediterranean, the Baltic Sea and the North Sea, respectively (Dewatripont et al. 1995). Given its location and ambitions, a country may prefer to join none, one or more than one of these clubs. In essence, voluntary sub-clubs introduce the flexibility needed to adapt the Union to the heterogeneity of its members. Moreover, sub-clubs within the EU create opportunities for experimenting with new forms of cooperation.

It is in fact not only the idle product of ideal-type economic reasoning to imagine several different-sized EU-sub-clubs with various members across different policy fields instead of one single overall EU-club comprising 27 and more heterogeneous members. Even though they are still exceptions, there already are a number of different-sized “sub-clubs” within the EU. While, for instance, the Internal Market covers all EU members, some of the by now existing clubs comprise only a subgroup of EU-members, such as the EMU, and some embrace several EU-members as well as non-EU-members, such as the WEU.

18. On overlapping clubs, see Casella/Frey (1992), Schäfer (1995) as well as Frey/Eichenberger (1999).

III – EVALUATION OF THE CLUBS-WITHIN-THE-CLUB APPROACH

1. Problems

The economically (or otherwise) reasonable is unsettlingly often in conflict with the politically or legally feasible. Defenders of the existing *acquis* and the prevailing integration mode of “uniform deepening for all” tend to point at the following problems with our proposal:

Complexity and management challenges

Possibly the most apparent disadvantage of the clubs-within-the-club approach – and flexibility in general – is that it would aggravate the already striking complexity of the EU system and would cause considerable challenges of manageability. On the other hand, one could argue that the member states will be more likely to confer the additional necessary management and administrative capacities to the EU if the rules and regulations correspond more closely to their national preferences, interests and needs (Warleigh 2002: 88). Still, management and administrative costs are likely to increase in total, partially offsetting some benefits of the more efficient club-of-clubs solution outlined above.

Flexibility and the principle of uniformity

One of the cornerstones upon which the Treaties of Paris and Rome have based the three European Communities was the principle of equal rights and obligations for all member states.¹⁹ The introduction of more and more elements of flexibility and legal differentiation has challenged the orthodox doctrine of legal uniformity. It can be argued, however, that the differentiation of law is a necessary consequence of the increase in heterogeneity among the EU member states (Grieser 2003: 176). According to this view, uniform rules cannot, sad as it may be in terms of coherence and transparency of the Union’s legal framework, do justice to these differences; differentiation is therefore inevitable. Among others, Becker (1998: 42) argues that the attempt to impose uniformity for its own sake is undesirable because legal uniformity is not intended to be an end in itself but rather a *tool for integration*. Therefore, since in the course of fostering flexibility, the principle of uniformity will only be weakened *in order to enhance integration*, from this perspective, the principle of

legal uniformity does not prohibit the differentiation of the European legal framework.

Separability and uncertainty problems

Flexible integration according to the club-of-clubs approach may also lead to problems of separability because the disentanglement of European club goods and their separate provision in different clubs may be problematic in some cases due to interdependencies between certain policy fields. A further problem is that flexibility might possibly cause legal uncertainties, which, then again, would have to be weighed against the current legal uncertainties in the EU. Another potential danger is that the various integration-clubs could evolve into fortresses within the “Fortress Europe” and degenerate into political cartels.

2. The Need for Rule-Based Flexibility

It cannot be denied that flexibility creates risks and challenges, for instance administrative challenges in terms of assuring that the more flexible Union is “policied” effectively or legal challenges in terms of how to cope with a more differentiated legal framework. Flexibility can be seen as the key to resolving the “widening or deepening” debate, since it promises both, albeit at the now seemingly inevitable price of abandoning all-embracing uniformity. Nevertheless, one can also argue that the greatest risk is that, much like in the case of subsidiarity, flexibility will turn out to be still one more potentially valuable principle of EU governance which falls short of becoming adequately operationalized because European integration is to a large extent characterized by a process of “muddling through” and the ad-hoc reaction to pressing needs rather than the elaboration of a detailed strategy for action over the medium to long term (Warleigh 2002: 57).

However, if flexibility, even though it is likely to increase complexity, is in fact inevitable, then it should – at least – not be applied in an ad-hoc manner but rather in a systematic and rule-based way. Conversely, most flexibility realized so far has generally not been attained according to certain transparent rules, rather it has been realized by granting exceptions as the often unintentional outcome of the bargaining hassle of day-to-day politics. Accordingly, many of the various existing forms of flexible integration, namely the exceptions and opt-outs regarding, for example, the Monetary Union and Schengen, are incoherent, non-transparent, unsystematic, ambiguous, confusing and unclear (Grieser 2003: 255).

19. This principle and the idea that EU institutions and rules had to be accepted by all member countries and that EC law should be a means of harmonization was a good working principle so long as countries had common objectives and the economies had similar structures (Fratianne 2003: 20f).

This lack of transparency with respect to flexible integration may in turn cause a lack of citizens' acceptance due to incomprehensibility (Martenczuk 2000: 359). Moreover, the decision to grant a country an exception with respect to uniform integration and allow for opt-outs has so far been essentially contingent on the bargaining power of the respective member state (Grieser 2003: 255). Concerning the goal of a "Europe of citizens", the tendency to cope with differences by making exceptions and granting certain – most likely more powerful – countries a special status is precarious. If – as is the growing consensus – more flexibility is inescapable, then it is preferable to attain flexibility according to a conscious and transparent strategy instead of accepting it as an unintended consequence arising from an accumulation of pressures within the Union. The crucial issue is to provide flexibility without ad-hoc arrangements and without creating so many exceptions and special cases that ultimately it distorts and discredits the whole Union (Harrop 2000: 307). As is intended by the combination of graduated and differentiated integration in the club-of-clubs approach, flexible integration should instead be rule-based and predictable and offer transparent and systematic choices,

In Wohlgemuth/Brandt (2006) we discuss basic elements of "a competitive order and meta-institutions for club competition". These include, e.g. the Commission's role to ensure a non-discriminatory use of the sub-clubs' entry- and exit rules or the European Court of Justice's role to ensure legal consistency between sub-clubs' legislation and the core-*aquis*, conflict-settlement procedures and further support for the subsidiarity principle.

3. Advantages

Conceiving the EU as a club of clubs is not only consistent with neo-classical economic theory; rather, it is also compatible with the basic "mutual gains" notion of the contractarian constitutional paradigm and is a suitable strategy in light of the constitutional economics approach. According to Vanberg, one of the most important messages of the contractarian constitutional paradigm is that, "compared to its feasible alternatives, seeking to explore potential gains from cooperation" is "the socially more productive strategy" (Vanberg 2003: 18). In view of this paradigm, we can identify various additional advantages of a "socially productive strategy" of club formation within the EU and show that there are good reasons to view flexible instead of one-size-fits-all integration, not only as inevitable but also as desirable.

Commitment - flexibility combination

First of all, the advantage of the club-of-clubs procedure is that it allows for greater variety and diversity without endangering the great achievements of European integration, namely the Internal Market and the "Four Freedoms". Defining obligatory core policies and allowing for the formation of optional clubs in the remaining policy realms introduces more flexibility to accommodate the heterogeneous interests and needs in Europe without risking the undisputed gains attained through past integration. Thus, our model yields a combination of commitment and flexibility that is superior both to the *status quo* and to other proposals for flexible integration like multi-speed or concentric circles.

Reduction of integration costs

Although, as discussed above, administrative costs might increase as a consequence of transforming the EU into a club of clubs, our model may in sum turn out to be relatively cost efficient and may even result in a reduction of overall costs. By permitting the formation of overlapping, competing clubs, the costs of future integration could be reduced for the following reasons:

(1.) Competition among the various integration clubs does not only imply higher allocative but also larger dynamic efficiency gains, which eventually lead to a cutback in costs for providing European club goods and to welfare improvements in the EU member states (Ahrens/Meurers 2004: 31).

(2.) With voluntary club-formation amongst the capable and willing, the costs of finding consensus will decrease due to the more homogeneous population within the smaller sub-clubs.

(3.) A decentralized, competitive process of club formation with more homogeneous populations would also lower external costs because countries, and possibly sub-national units, can search for cooperation regarding those functions in which they have a real demand for cooperation, and they are not forced into cooperation with respect to functions for which there is no such demand.

(4.) Our model should drastically reduce political transaction costs. Voluntary club formation (entry and exit) reduces the risk of blackmailing by veto-players and decreases the necessity for mutual haggling over privileges via log-rolling against the common interests of citizens; it also reduces the threat of inefficient package deals and discriminatory rules benefiting some and harming others (Wohlgemuth/ Sideras 2004: 23).

Responsiveness to citizens' preferences

The freedom of citizens to choose between the institutional arrangements of numerous clubs that involve different costs and benefits corresponding to diverse needs and tastes, alongside the freedom of clubs to modify and differentiate their institutional supply, generates institutional competition among the various integration clubs. Such competition can help to enhance *citizen sovereignty*, that is, make self-interested politicians and government bureaucrats more responsive to citizens' interest (Vanberg 2000: 363). The key incentive to increase responsiveness to citizens' preferences is the "exit" option (Hirschman 1970), that is, the possibility for citizens to express their preferences by "voting with their feet" (Tiebout 1956) and leave the club ("institutional arbitrage"). For politicians, the threat of dissatisfied citizens' opting out – thereby foregoing their net contribution to the club good – provides an incentive to take individual preferences into account and to provide the respective club good efficiently.

In addition to the choice for individual citizens to enter or exit a club, club competition generates the possibility for entire jurisdictions to collectively join or exit one club or another or to establish a new club of nation states. Thereby, competition between integration clubs can cause inefficient clubs to be crowded out and new efficient clubs to be formed (Schäfer 1995: 57). Moreover, since the club-of-clubs approach increases both the governments' incentives and possibilities to satisfy individual preferences, policies will be better directed at and take account of heterogeneous preferences at national and possibly sub-national levels.

A further advantage in this context is that the focus of the club-of-clubs approach is on *functions* or *policy areas*. Due to the concentration of clubs on one functional area, the citizens of that particular club are likely to have better information on its activity and are in a better position to compare its performance to other clubs (Frey / Eichenberger 2000: 12). This in turn further increases club competition, which will promote politicians' responsiveness to citizen's preferences even more.²⁰

20. As Schäfer (1995: 61) argues, politicians' appeal to endorse a uniform EU potentially disregards that emotional ties are more likely to be cultivated in smaller clubs rather than in large centralized structures, and that supposedly they are stronger in clubs that are organised functionally "from bottom up" than they are in political structures that are imposed on citizens "from above".

Flexible Integration as an evolutionary "discovery procedure"

The club-of-clubs concept is *process-oriented*: while it specifies the process of club formation (for example, how new clubs may be established), it does *not* determine the club-of-clubs *outcome* (for instance, what functions are to be provided by which club). The procedural nature of the concept implies an important advantage with respect to knowledge. This is crucial because it is not always apparent where the common interests of the citizens lie or how to serve them in the most efficient manner. In this context, competition among the various clubs can, by stimulating experimentation, serve as a knowledge-creating "discovery procedure" of such political preferences and problem solutions "as, without resort to it, would not be known to anyone, or at least would not be utilized" (Hayek 1968/78: 179).²¹

By allowing the formation of various competing clubs, our model promotes decentralised competition between different forms and practices of cooperation allowing citizens and politicians to learn about their advantages and disadvantages. Without competition between voluntary, flexible modes of integration, the different and fluctuating opportunity costs of European policies would remain unknown and the different and fluctuating integration capacities of individual regions would not be used. In other words, "since the discovery of common citizens' interests and the best methods of advancing them depends on the initiative of political entrepreneurs and the ability of citizens to assess relevant alternatives", system competition among clubs can, "apart from its motivating force, play a useful role in generating information to help political entrepreneurs solve the problem, and to facilitate citizens' evaluation of political performances by providing them with standards of comparison" (Vanberg 1999: 8).

Which integration alternatives exist and which steps towards integration are desired, suitable and feasible for which states and which regions has to be discovered by parallel experimentation. Thus, compared to its realistic alternative, club

21. The role of competition among jurisdictions as a "discovery procedure" is also discussed, for example, by Kerber/Vanberg (1995: 42ff) and Wohlgemuth (2007). Institutional competition among clubs can be expected to assist, in its role as a discovery procedure, "governments and citizens in solving the by no means trivial problem of ascertaining precisely" which club "characteristics and services best serve the common interests of citizens", and how they "can be provided most efficiently" (Vanberg 1999: 36).

competition appears to be a more promising and less risky procedure to identify and correct political mistakes and to react to a continuously changing variety of preferences and problems. Without competition among different forms of integration, inaptly “harmonized” or centralized “policy-hypotheses” are – for lack of observable and selectable alternatives – hard to identify. Moreover, without competition among policy-clubs, the existence of irreversible path dependence is more likely because – due to complex logrolling agreements – mistakes, even if they are detected, can hardly be revised in “integrated”, interwoven policy cartels.

CONCLUSION WITH SPECIAL REFERENCE TO THE ENP

Today, there is an increasing concern with the Union’s “finality”, its “borders” or its “absorption capacity”. Puzzled by the popular rejection of its “constitution”-project, overwhelmed by the recent enlargements, and motivated by a more or less hidden uneasiness with a potential accession of Turkey, most leaders see the EU “at the crossroads” with no clear “roadmap” at hand. All this metaphoric talk, accompanied by an escape to symbolic politics (e.g. “Lisbon agenda”), sounds at times rather esoteric to a more pragmatic economist. But these concerns do seem justified as long as both the given integration status and traditional integration strategies are taken for granted. With a heavily inflated *acquis*, an intransparent and often inefficient use of a large portion of the EU’s budget, cumbersome decision-making procedures à la Nicoise and growing popular disenchantment with “Brussels”, further enlargement and deepening must almost necessarily be regarded as contradictory purposes of the Union.

“Finality”, “borders” or “absorption capacity” owe their dramatic and gloomy clout to the traditional combination of two unnecessarily holistic and constructivist ideologies: “one-size-fits-all” (for full-member-states) and “all-or-nothing” (for would-be member-states). Both fronts seem now slowly to relax. But a more radical relaxation, as proposed in our club-model, seems to offer a much more adequate solution to many concerns troubling European governments and citizens. Both deepening and widening could be achieved simultaneously, if they were based on integration of the capable and willing in specific policy areas where consent can be found without the traditional resort to power politics, bundling special interests from diverging policy fields.

Our model of a Union of clubs in addition to a common *acquis* reduced to an undisputed and reasonable core of universalisable policies also has implications for the ENP. Current ENP-strategies have noble causes, to be sure. At the same time, they seem to be aimed at calming and comforting both EU neighbours (potentially want-to-be-members) and existing EU members by offering cooperation (and financial support) without full membership – which would indeed pose grave problems of absorption capacity of the EU and adoption capacities of our neighbours. Our model offers much more immediate and flexible comfort. Full membership would be reduced to such core-areas where mutual gains from joint commitment can be offered to both the existing and to many new members. Hence, it would be comparatively easy to turn “neighbours” into “members”, e.g. of a core Union based on free trade or political coordination in fields such as common defence and security. For the rest, one could very well imagine some of the now “neighbouring” countries to become members in several European “sub-clubs” as long as they are willing and capable to adhere to the rules of the game offered by these policy-area clubs. Europe does not have to hurt to be good. She has much to offer!

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