

THE LEGAL COORDINATES OF THE OPERATION OF THE EUROPEAN UNION "WITH MORE SPEED"

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Abstract

"Multi-speed Europe" is the unofficial expression of enhanced cooperation not involving all Member States either because they do not want to opt-out to such cooperation or do not fulfill certain conditions for the envisaged cooperation.

The concept of "enhanced cooperation" was introduced by the provisions of the Treaty of Amsterdam, which amends the original treaties by introducing the concept of flexibility, in the sense of regulating a "closer" or "enhanced" or "intensified" cooperation of a group of states, achieving a higher level of integration, without progress in this area being conditional on coordinated cooperation with other Member States.

Enhanced cooperation is a procedural way in which a group of states can impose a different pace of development than the rest of the Member States in order to achieve the objectives proposed in the Community policies concerned.

Keywords: *enhanced cooperation; enhanced cooperation; flexibility; the future of Europe; scenarios; European Union; legal basis.*

1. Reflections and future scenarios for the European Union

In 2017, on the anniversary, celebrating 60 years, since the six founding member states have agreed on the Treaties of Rome, the European Union has to face challenges of both internal and international nature.

As the European Union evolved, a series of tensions and dysfunctions have been accumulated, whether caused by economic, social, cultural, political differences between Member States, or by external challenges.

Internally, the Union is confronted with economic problems, as well as with some fragmented tendencies expressed by some Member States (eg Brexit - Great Britain, the declaration of independence by Catalonia and the breakup from Spain).

At an international level, the European Union must find solutions for maintaining security and maintaining regional peace.

In this context, the European Commission presented the "White Paper on the future of Europe - Reflections and scenarios for the EU-27 by 2025" [1].

The Introduction states that the Union was built on the backdrop of false crises and debates, for which it found solutions and succeeded in shaping its ascendant evolution. The current situation must not limit the future of Europe. The European Union must find solutions to overcome the challenges it is currently facing.

Europe has the necessary resources, building on its historical achievements: it houses the world's largest single market and holds the second most used currency. It is the largest trading power and the largest donor of humanitarian aid and development. Thanks, in part, to Horizon 2020, the largest multinational research program, Europe is at the forefront of innovation. Its diplomacy has an effective weight and contributes to maintaining the safety and sustainability of the planet. [2]

The White Paper advances five scenarios that will help guide the debate on the future of Europe. Each scenario is based on the premise that the 27 Member States are advancing together as a Union.

The European Union, bringing together the 27 Member States, will jointly decide on the combination of features taken from the five scenarios it considers best able to help bring the joint project forward, in the interest of European citizens.

Scenario 1: Continuing on the same path

According to this scenario, the Union maintains its initial course and focuses on the implementation of the Common Reform Agenda, in line with the guidelines "A New Start for Europe" presented by the Commission in 2014 and the Bratislava Declaration agreed by all 27 Member States in 2016.

Scenario 2: Exclusive focus on the single market

This scenario involves concentrating joint action on the key elements of the Single Market, to the detriment of other policies, as the number of policy areas in which the 27 Member States are unable to reach a common position is growing.

Scenario 3: Those who want more do more

Under this scenario, the Union is working as it has done so far, but allows Member States that want more than others to achieve specific objectives in areas such as defense, internal security or social affairs. One or more "coalition of those who want to do more" is

formed. This scenario implies 'two-speed European Union operation' in various areas such as defense, internal security, taxation or social aspects.

Scenario 4: Less, but more efficient

In this scenario, the European Union is focusing on more and more rapid results in some policy areas, while at the same time doing less in those where there is no perception of added value. Limited attention and resources are concentrated on a number of policy areas.

Scenario 5: Much more together

Member States decide to pool more powers, resources and decision-making powers in all areas. Decisions are being taken more quickly at European level and are implemented in a short time. Cooperation between all Member States is deepened more than ever in all areas.

The way to follow

Regardless of which of the scenarios presented in this White Paper will be the closest to reality, these values and aspirations will still link Europeans. The EU is a unique project in which internal priorities have been correlated and sovereignty has been shared in a voluntary way to better serve national and collective interests.

The united Europe is the guarantee of the effective realization of fundamental human rights, the guarantee of real security for all citizens, and of general welfare. That is why all Member States must strive for restoring confidence, obtaining consensus and creating a sense of union ownership.

"Multi-speed Europe" is the unofficial expression of intensified cooperation, which does not involve all Member States because they do not want to opt-out or do not fulfill certain conditions for the envisaged cooperation. [3]

2. The legal basis for enhanced cooperation

The Treaty of Amsterdam modifies the initial treaties by introducing the concept of flexibility in the sense of regulating a "closer" or "enhanced" or "intensified" cooperation

of a group of states in order to achieve a higher level of integration without progress in this area be conditional on co-ordinated cooperation with the other Member States.

The introduction of Community rules in the treaties on enhanced cooperation between Member States is a real progress in the Community, although it has been considered that this flexibility is rather a change in shape than the substance, since the Treaty on European Union already provided for the same type of cooperation for the Monetary Union, and initiatives such as the social policy or Schengen agreements, even if they were carried out outside the Community framework itself, all had the characteristics of a "closer cooperation". [4]

Enhanced cooperation is not a stand-alone Community policy but a procedural way in which a group of states can impose a pace of development different from the rest of the Member States in order to achieve the objectives set out in the Community policies concerned.

This type of coordination which gives expression to a new principle - the principle of flexibility - in Community law is currently governed by the following provisions:

- Article 20 of the Treaty on European Union (consolidated version) [5], which contains general provisions on enhanced cooperation;
- Article 326-334 TFEU on enhanced cooperation. [6]

The analysis of these provisions of the Treaties shows that enhanced cooperation is allowed at the level of the three Community pillars established by the provisions of the Maastricht Treaty.

Enhanced cooperation requires compliance with the legal legal framework and the possibility of establishing procedures to allow the European integration process to proceed smoothly. The enhanced cooperation obligation justifies any practice based on the Community's tendencies to complement them and to ensure the functioning of the procedures which it establishes.

The changes introduced by the Treaty of Nice made it possible to promote a more cooperative mechanism of cooperation. The Nice meeting of 9-11 December 2000 also envisaged improving the system of enhanced cooperation, specifying the need to create a system of facilities for this form of cooperation.

1. Until then, a majority of Member States needed to establish a reinforced cooperation after the Nice summit, at least eight states could be detached on the basis of such a report, without the risk of their actions being limited by any veto. In the perspective of enlargement, the minimum number of states needed to establish a strengthened cooperation relationship will be one third of all Member States.

2. Enhanced cooperation may cover any area, including the internal market (taxation).

The strengthened cooperation mechanism allows Member States to collaborate and even detach themselves in certain areas in which they are able to move faster than other states.

3. The general conditions and the intensified cooperation procedure

3.1. The conditions for initiating enhanced cooperation

Community rules state that integration should take place at different pace between Member States, establishing the legal framework in which this is possible and the conditions to be met.

According to Article 20 TEU, Member States wishing to establish a form of enhanced cooperation among themselves within the framework of the non-exclusive competences of the Union may resort to the institutions, procedures and mechanisms provided for in the Treaties, provided that such cooperation favors the achievement of the objectives Union, to defend and serve its interests and to consolidate the integration process.

The decision authorizing enhanced cooperation shall be adopted by the Council as a last resort where it determines that the objectives pursued by that cooperation can not be attained within a reasonable period of time by the Union as a whole and provided that at least nine Member States participate in it.

Acts adopted under a strengthened form of cooperation are only binding on the participating Member States. They are not considered as the *acquis* to be accepted by the candidate countries for accession to the Union.

According to the provisions of Article 326 TFEU, enhanced forms of cooperation respect the Treaties and Union law. They can not affect the internal market or economic,

social and territorial cohesion. Forms of enhanced cooperation can not constitute a barrier or discrimination in trade between Member States or promote a distortion of competition between them.

The forms of enhanced cooperation must respect the competences, rights and obligations of non-participating Member States. The latter shall not prevent their implementation by the participating Member States.

From the date of their establishment, enhanced cooperation forms shall be open to all Member States subject to any conditions of participation laid down in the authorization decision. They shall also remain open at any time during their term of operation, subject, in addition to the above-mentioned conditions, to the acts adopted thereunder.

The Commission and the Member States participating in a strengthened form of cooperation shall promote the participation of as many Member States as possible.

Outside the framework of the general conditions established for enhanced cooperation between countries, there are also a number of additional criteria established for co-operation in certain areas.

The Commission and, where appropriate, the High Representative of the Union for Foreign Affairs and Security Policy shall keep the European Parliament and the Council regularly informed of developments in the forms of cooperation. In this area, the Treaty of Lisbon introduces a simplified method for enhancing cooperation between Member States, ie permanent structured cooperation. Thus, Member States with more prominent military capabilities can commit themselves to taking part in the most demanding defense missions. [7]

3.2. Enhanced cooperation procedure

The procedure for the establishment of enhanced cooperation is regulated by the provisions of art. 329-334 TFEU.

□ In accordance with the provisions of Article 329 TFEU, Member States which propose the establishment of enhanced cooperation in the fields covered by the Treaty, except for areas of exclusive competence and common foreign and security policy, submit

to the Commission a request on the scope and objectives pursued through the form of enhanced cooperation envisaged. The Commission may submit a proposal to the Council to this effect. If it does not submit such a proposal, the Commission shall inform the Member States concerned of the reasons for doing so.

□ The authorization to cooperate more closely is granted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

□ Any Member State wishing to take part in a form of enhanced cooperation in one of the areas covered by the Treaties (with the exception of areas of exclusive competence and the common foreign and security policy) shall notify its intention to the Council or the Commission.

Within four months of receipt of the notification, the Commission shall confirm the participation of the Member State concerned. Where appropriate, it shall ascertain whether the conditions for participation have been fulfilled and shall adopt any necessary transitional measures for the application of the acts already adopted in the form of enhanced cooperation.

However, if it considers that the conditions for participation are not fulfilled, the Commission shall indicate the provisions to be adopted for their fulfillment and shall set a deadline for re-examining the request for participation. Upon expiry of that period, the Commission shall re-examine the application in accordance with the procedure laid down in the second subparagraph. If the Commission considers that the conditions for participation are still not met, the Member State concerned may refer the matter to the Council, which shall decide on the application. The Council shall act in accordance with Article 330. It may also adopt, on a proposal from the Commission, the transitional measures.

□ The request of the Member States wishing to establish enhanced cooperation between themselves in the framework of the common foreign and security policy is addressed to the Council. It shall be forwarded to the High Representative of the Union for Foreign Affairs and Security Policy, who shall give its opinion on the coherent form of enhanced cooperation envisaged with the Union's common foreign and security policy

and on the Commission, which shall give its opinion in particular on the consistency of the form enhanced cooperation envisaged with the other policies of the Union. The request shall also be forwarded to the European Parliament for information.

□ The authorization to use a form of enhanced cooperation in this area is granted by a decision of the Council acting unanimously. All members of the Council may participate in the deliberations, but only the members of the Council representing the Member States participating in a form of enhanced cooperation participate in voting. Unanimity is made only through the votes of the representatives of the participating States.

□ Any Member State wishing to take part in enhanced cooperation under the common foreign and security policy shall notify its intention to the Council, the High Representative of the Union for Foreign Affairs and Security Policy and to the Commission. The Council shall confirm the participation of the Member State concerned, after consulting the High Representative of the Union for Foreign Affairs and Security Policy and after having determined, as appropriate, the fulfillment of any conditions of participation. The Council, on a proposal from the High Representative, may also adopt any necessary transitional measures for the application of the acts already adopted in the form of enhanced cooperation. However, if it considers that the conditions for participation are not fulfilled, the Council shall indicate the provisions to be adopted in order to fulfill those conditions and shall set a time limit for the re-examination of the request to participate.

□ Expenditure resulting from the implementation of a form of enhanced cooperation other than the administrative costs necessary for the institutions shall be borne by the participating Member States, unless the Council, acting unanimously after consulting the European Parliament, decides otherwise.

The Council and the Commission shall ensure the consistency of the actions undertaken under enhanced cooperation and the consistency of these actions with the policies of the Union and shall cooperate to that end.

References:

[1] COM(2017) 2025, 1.03. 2017

[2]https://ec.europa.eu/commission/sites/betapolitical/files/cartealba_privind_viitorul_europei_ro.pdf, p.8

[3] For example, exempting some countries (Great Britain, Ireland, Denmark) from implementing decisions in the field of Justice and Home Affairs (JHA), or integrating others into the Schengen area or the euro area.

[4] Theodor Tudoroiu, Introduction to the Treaty of the European Union, Lucretius Publishing House, Bucharest 1997, p. 15

[5] Modifying Articles 27A-27E, 40-40B, 43-45 TUE and ex.art.11 and 11A-TCE.

[6] In the contents of which they are taken over and modified art.27A-27E, 40-40B, 43-45 TUE și ex.art.11 și 11A –TCE.

[7] Dragomir Eduard, Niță Dan, "The Treaty of Lisbon", Nomina Publishing House, 2009, p.60.

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