Differentiated Integrations

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The first and second generations of supporters of Europeanism would not have liked the "differentiated integrations" spoken of in Europe today. They too conceived, and practiced, more advanced forms of integration for limited groups of Member States, but the meaning was different, and always a function of that "ever closer integration" that from the time of the Treaty of Rome indicated an immanent goal not for some, but for all members of the Community. It is no coincidence that while partial integrations were planned, the groups that sought to realize them were called avant-garde, with the transparent premise that they increased the speed, but everyone was to make it to the finishing line. The doors had to remain open for the others.

The best-known and most successful example of this process of multi-stage integration is offered by the Schengen area, born thanks to an agreement between some, which others gradually joined, until the structure became acquis communitaire. And while not everyone (fully) took part, this was due not to its original partiality, but to that peculiar institution of "opting out" from regulations and common structures.

In these terms, differentiated integration was codified first by the Treaty of Amsterdam, then by the Treaty of Nice, and ultimately made its way into the Lisbon Treaty. The mechanism is allowed only after the Council has determined that the opposition of some makes it impossible to proceed together ("within a reasonable period", as we read in Art. 20 of the current Treaty on the European Union). A request is required from the Member States that intend to establish the integration (at least nine) and in any event the Commission must propose it and obtain the green light from both the Council and the Parliament. The doors must be open and the common aims must be respected, along with the competences of the non-participating Member States.

Much more could be said, especially about cooperation relating to the most delicate issues –security and defense– for which the regulation of the procedure is also much

more complex. But we will limit ourselves here to recalling that these are the areas for cooperation that have remained on paper, while the ones that have actually been implemented are few, in sectors that are important but not crucial, such as cooperation on the "law applicable to divorce and legal separation", launched with a decision of the Council of 12 July 2010. It is also useful to stress that the euro zone is not an example of enhanced cooperation (although it looks like one, more and more). The euro has in fact always been considered the Union's currency, with the consequence that those who were not initially a part of it, were outside because they lacked the requisites to join. The situation has changed since some States were allowed to opt out, but not to the point of denying the euro's nature as part of the commonEuropean order.

Opting out, by itself, signals that the union has changed, that "ever closer integration" has remained a goal for some, but not for everyone (we should recall that, when the United Kingdom was still negotiating its membership, one of the requests was the disappearance of this formula, at least for itself). We now have difficulty staying together, we even have difficulty due to the divarications that have arisen between us on fundamental questions such as the rule of law. And while the outcome of Brexit has discouraged additional attempts at secession, it certainly has not facilitated the process of integration. There are those who think that the pandemic has facilitated the process, as demonstrated by the Recovery Fund, with the assumption by the Union, for the first time, of a large common debt to finance the plan. This was a new and fruitful moment of common solidarity, but I would wait to conclude that it has become an institution, namely that has inaugurated a new common fiscal policy, destined to remain in the future.

Rather, I would take it as a demonstration of the efficacy, certainly, of steps towards further integration, but as a stimulus for prospects of integration that will most likely be differentiated, for sure destined not to please the old pro-Europeans, because they will be shared only by those who implement them, and thus no longer personified by the avant-garde, but by groups of States more integrated than others in a system no longer located on a single axis.

Some time ago, there was the idea –and perhaps some still think this way– that there could be a maximum of two axes in a two speeds Union. The expectation was founded on the hypothesis that the euro area, that already has forms of more advanced integration in accordance with Art. 136 of the Treaty on the Functioning of the European Union, could also aggregatethe additional forms of integration that appeared useful. But the expectation lacks realism entirely. Being together to create new common mechanisms for the stability of the euro is something, doing it to manage immigration, or military commitments, terrorism, or network infrastructure aimed at combatting climate change is something else. In these respects differences emerge, true distances, even between euro countries, that make their common commitment improbable, to say the least; apart from the fact that, on military matters, from the beginning enhanced cooperation has been defined as necessarily involving only the countries having the necessary capabilities (although, here as well, with the doors open to those who may have them in the future).

An inevitable consequence emerges: the more single Member States perceive as necessary common regulations and decisions in specific areas, the more likely it is that the need will be shared among different States each time. The result will be to give rise to a multi-cluster Europe, that in part –we have seen– already exists today,

but that tomorrow could affect particularly important areas of governance, like those recalled above. At that point, though, would the common fabric hold? Might not distances arise that would be lacerating over the long term?

There can certainly be various responses, as always when we speak of the future. It will be useful to take into account the fact that what everyone would still share would not only be the common market (which, in any event, is anything but insignificant), but also the many things that have grown outside of it (from personal data protection to the process that is giving life to the European Public Prosecutor's Office). It would be just as important if even a limited number of States participated in all of the cooperations that arise, becoming a sort of common fabric. And in any event, there is the fact that the common decision-making bodies would always and only be those of the Union, perhaps with internal voting rights adapted to the different situations each time.

Ultimately, the scenario is open before us. We must decide what the worst risk to avoid is: that of a Union grappling with increasingly urgent challenges, that it is unable to face because the differences among its Member States paralyze the European Council; or a Union in which clusters are formed that accept those challenges, organize responses that are certainly more effective than what each could do alone, but in doing so generate tension for the common framework.

Those who choose the first path merely have to hope in the future, from meeting to meeting. Those who choose the second must promote it, find partners and set into motion procedures, that fortunately exist. With all of the necessary adaptations, in this case a dose of avant-garde is still needed.