

UCLA

Occasional Lecture Series

Title

Closer Co-operation in Tomorrow's European Union

Permalink

<https://escholarship.org/uc/item/7nx917xn>

Author

Deubner, Christian

Publication Date

2006-06-26

Closer Co-operation in Tomorrow's European Union

1. Introduction ¹

We speak about closer co-operation in the EU when fewer than the complete number of member states co-operate politically on a given topic, in the spirit and with the intention of European integration. Closer co-operation exists and marks the integration process since the 1950s.

We should stress from the outset that our understanding of closer co-operation does not include the more or less “accidental” abstention of member states from full participation in agreed policies and full respect of European law, be it newly acceded member states which utilise that option to adapt to membership, or be it old ones which have been granted some additional time to fully adapt to a new European policy. What happens in these cases is a form of derogation. It is not, in the understanding of this article, closer co-operation. As ambiguity and ambivalence are important instruments of politics, there is a zone of uncertainty about certain cases of this kind: Was a possibility of derogation already written into a European legal text with the intention of opening a door for closer co-operation to some member states, fully knowing that not all member states were willing to apply that text? The answer is not always evident. But this uncertainty does not invalidate the importance of the difference.

This point has to be made because certain authors have taken the opposite position, namely that closer co-operation in the sense here analysed, was only a subcategory of a wider and more relevant phenomenon, namely of differentiated integration. If one was to take that approach, closer co-operation as a strategic instrument, worthy of specific analysis, would almost disappear from sight. That is very clearly not the approach of this article. Taking a similar line, Daniel Thym has recently presented a definition of the essential legal and institutional meaning, for the European Union, of enhanced co-operation: explicit territorial limitation of the validity of European law which enhanced co-operation creates, and suspension of their voting right for non-participating member states during adoption and amendment of such European law. This “a-synchronism” (Ungleichzeitigkeit) as he calls it, “has to be distinguished from the manifold examples of simultaneous differentiation in the legal consequences” of European law (Thym, 2004: 381) which constitute large parts of differentiated integration.

¹ This article further develops and widens a number of arguments already discussed in a former article of this author: “Verstärkte Zusammenarbeit in der Verfaßten Europäischen Union, in: *Integration* n° 4/04, december 2004, pp.275-287. It also takes up other recent work of the author, who organised a research project for the French Planning Agency which resulted in five reports, published together in « *Perspectives de la coopération renforcée dans l'union européenne* », Commissariat général du plan; sous les présidences de Bruno Racine, Patrice Buffotot, Guy Canivet et Jean Pisani-Ferry; rapporteurs généraux Benoît Coeuré, Christian Deubner, Antonio Missiroli, Eric Philippart, Jean-Luc Sauron - Paris : la Documentation française, 2004 - 247 p. ; cf. also Christian Deubner, *Harnessing Differentiation in the EU – Flexibility after Amsterdam. A Report on Hearings with Parliamentarians and Government Officials in Seven European Capitals*, 85 p., Working paper of the Forward Studies Unit of the European Commission, Brussels 2000

If “differentiated integration” lies at the one end of the spectrum of interpretations of closer co-operation, at the other end we find those who would interpret it only in a “deterministic vision” as leading to a new kind of dominant structure within the EU: a directorate, a core Europe or an à la carte structure. These are uncertain outcomes one can consider when reflecting on the compatibility of closer co-operation with traditional concepts of European integration. They are certainly not the main concerns of this paper.

We start out from a double assertion, first of the high instrumental value of closer co-operation for the advancement of integration, and second of the relative rareness of its occurrence, especially in its official form of enhanced co-operation (cf. introduction to Commissariat général du Plan, 2004). The questions which ensue ask first for an *explanation* of this apparent contradiction, and secondly for the appropriate *reforms* to render this instrument more attractive and accessible to member states. The Constitutional Convention of 2002-2003 gave a kind of laboratory test as to the kinds of reform which might be acceptable to member states (in the as yet unratified constitutional treaty of 2004). Do the solutions which it proposes, give any indications for the future development of closer co-operation, between its two most important variants?

Closer co-operation is possible in two basically different variants:

- either *inside* the EU Treaty and institutions and according to what the Treaty calls “enhanced co-operation”. This variant of closer co-operation was introduced into the Treaty by its revision in Amsterdam in 1997 and entered into force on 1st may 1999. It has been amended in Nice. It may only address topics which are already covered by the non-exclusive competencies of the European Union. And it has to obey strict rules, first as to the authorisation to start it, and second as to its modus operandi;
- and *outside* the EU Treaty, and according to the independent political will and the rules established between the participants themselves. Closer co-operation outside the EU-Treaty may deal with all questions not already exclusively reserved to the EU, and which the participants want to draw into the context of European integration.

Both types of closer co-operation, in- and outside, have to respect the duties and the limits which are set by membership in the European Union (loyalty, respect of the spirit of integration, single market duties, etc. etc.). “Enhanced co-operation” will not be authorised by the other member states and the Commission, if its members do not formally prove its respect of these important aspects of Union membership.

In the following a few hypotheses will be suggested, as to the past experiences with closer co-operation and as to its future perspectives as they present themselves when one takes constitutional reform of the EU Treaties as an indicator to possible developments. The analysis will address three main aspects:

- the “Feasibility” of closer co-operation, in the sense of being able to start it, be it by autonomous decision of the concerned member states, or by having it authorised by the others, according to the rules,
- the “Usefulness” of closer co-operation in realising the intentions of its initiators,
- the “Compatibility” of closer co-operation with European integration as it takes place according to the procedures and carried on by the institutions established by the Treaties since 1950, and with further Union building within this treaty frame.

We have already alluded to the difficulties of appreciating the concept of “compatibility”, especially because the member states, and even many researchers, have very different preferences as to the kind of Union which they consider the authentic one, or which they want to build. But we can at least choose some basic principles of EU integration against which we may measure the effects of closer co-operation, namely the efficacy of its institutions and procedures and the acceptance enjoyed by them, the multi-level-governance structure of its political system, or the high esteem for the values of cohesion and solidarity between EU member states? How we view compatibility has evident consequences for our appreciation of feasibility and usefulness (cf. further up). We will be back with these questions.

For the moment, and to stay clear of this difficulty, we will just insist on two simple and easily verifiable evidences: (a) Today’s and tomorrow’s Union building by further deepening of integration in many important policies of the EU has become impossible if it is not accompanied by differentiation between member states, as to their degree of participation. Closer co-operation is the generally accepted method of such differentiation. And (b) the Union’s development and deepening in the last two decades has clearly profited from the fact, that closer co-operation enabled the Europeanization of important new policy fields, whereas significant negative consequences for Union building have not come about.

But there is no doubt that in all of the important new policies introduced with differentiated participation, the integrated institutional and administrative system of the Fifteen could not be used “tel-quel”. It has had to be adapted to function for smaller groups. Thus, the really relevant question concerns the rules which these adapted systems of closer co-operation have to respect:

- to allow the group to advance in its policy initiative without the others;
- at the same time to remain compatible with Union building, and preserve the essence of its effective and accepted institutions and procedures.

The *enhanced-co-operation*-clauses in the Treaty revision of Amsterdam tried to give the appropriate answer to the procedural demands flowing out of these potentially conflicting objectives. As to this new set of rules, we will see later that it has been in partial use and was inadequate in other respects. As for *co-operation outside the Treaty* it has been in frequent and successful use since the very beginning of European integration in the 1950s.

Let us now compare the results of our two types of closer co-operation more in detail, enhanced co-operation and closer co-operation outside the Treaty, when we test them as to the aspects we mentioned.

2. Strengths and Weaknesses of the Two Types of Closer Co-operation, and the Need for Reform

Enhanced co-operation

First we will turn to “Enhanced co-operation.” The characteristic mark of this type of closer co-operation is that it is implemented in two equally important steps, the first one of getting it authorised and launched (TEU art.43 par.a-j), and the second one of actually conducting policy in such enhanced co-operation groups (TEU art. 44). These two steps demand two different sets of rules, which together constitute the body of law governing enhanced co-operation. In comparing, we quickly see the limits of these rules.

First, as to the launching of enhanced co-operation: Most significantly, not one single project of enhanced co-operation has been authorised according to the rules which the Treaty spells out, for a number of willing member states, against the opposition of unwilling ones. No, every one of them has been proposed to and decided by an Intergovernmental Conference, in consensus: the area of liberty, of justice and of security, the common money, and the first elements of the common security and defence policy. This is a very serious drawback because enhanced co-operation’s instrumental value as to feasibility was to consist very largely in the possibility to start it out of the normal work of EU institutions and procedures.

Certain authors (Philippart, 2003: 6) have suggested that the true political utility of enhanced co-operation might not be so much what it pretends to be, namely to open the way for faster advancement of integration among certain groups of member states. Rather, it consisted in deterring other member states from opposing themselves to such initiatives for the Union altogether, by the threat that they could henceforth be left on the side of the road instead of succeeding to block such initiatives. If this deterrence theory were correct, the big new integrated policies introduced into the Union since 1992 would have been carried through with all member states. But this was not the case. We mentioned already that each of these policies had been created in a first stage as closer co-operation outside the treaty system. When they were transferred into it, in the course of the 90ies, this was only accepted by certain member states, on the condition of not having to participate ! It so turned out that enhanced co-operation was not so

much a threat against, but the instrument to permit their abstention. It is the utility of this legal construction which counts, its deterring function appears rather less important.²

Unfortunate as it is, the feasibility gap of the Treaty's authorising clauses is not astonishing. The clauses are too restrictive to be used (for a presentation of these clauses cf. Andenas/Usher, 2003: 207-238). Articles 43 par. (a) and (b) prescribe an oversized minimum participation of eight member states, plus a qualified majority vote for its authorisation. They demand the respect of competencies, rights and duties of non participating member states, of the single institutional frame and of the Acquis of the Community and the Union. And they demand the enhanced co-operation to be demonstrably a last resort solution for reaching a given objective after all conventional treaty methods of doing so have proven their futility. There is also the interdiction to co-operate in this manner in areas not already inside the field of EU-competencies. New fields can thus not be opened up to EU integration, between interested member states, by this method.

Given this situation, it is easy to understand willing member states' apprehension of failure, or of exposing themselves to legal prosecution by the ECJ, should they press ahead with enhanced co-operation initiatives against the resistance of determined opponents. And for certain topics, co-operation outside of the Treaty remains necessary.

The experience of the years since Amsterdam also suggests another explanation. In spite of the treaty text, the procedure of authorising enhanced co-operation, as we know it today, must in fact be considered as a special kind of Treaty amendment which must wait for a consensus and an IGC to be realised. In other words, it would appear as if the treaty reform of Amsterdam and even more that of Nice, had been premature in renouncing to either one or the other of these preconditions. Even an easing of authorisation conditions might then be impossible to apply.³

Second, as to the *modus operandi*: Only the second one of enhanced co-operation's two sets of rules, the *modus operandi* (TEU art.44) has actually been utilised and proven its practicability. Be it the co-operation in the Schengen space, the "space of liberty, justice and security" (TEC title IV, articles 62-70), or in the Euro-zone, according to the presidency conclusions of the Luxembourg European Council of December 1997, par. 44, and the treaty revision of Nice (TEC title VII, articles 98-130) both of them are in fact being implemented according to the rules of enhanced co-operation.

It is true that utilising enhanced co-operation rules brings a number of substantial advantages to the participants: be it partaking of the full legal and institutional legitimacy and

² This is not to say that such a function does not exist. But in fact, even the above cited text of Eric Philippart only cites two such instances, the negotiations around the statute of the European company, in the year 2000, and about the European arrest warrant. The opposition of Silvio Berlusconi against this last initiative is supposed to have been overcome by the threat of the other member states to advance without him.

³ Prematurity of treaty advances, and resulting factual « spill back » in treaty application have recently been explicitly alluded to in the concluding chapter of the GOVECOR project, 2004

authority of the European Union, the funding of its administrative cost out of the EU budget (TEU art.44, par.a, which even permits full coverage by the EU budget in case that all member states support this), be it full administrative and organisational support by the Union institutions and procedures, or be it its resulting familiarity and transparency for the other.

But insufficiencies and disadvantages remain as well. To begin with, witness the contradiction constituted by a restricted group of member states,

- which decide and carry out certain policies among themselves,
- but which have to conduct the council debates leading up to them, and those determining their further implementation, in full council with participation of non-participating members,
- which have to decide on proposals from the full European Commission,
- and the legal acts of which have to be accepted by a full European parliament.

Secondly there are the procedural restrictions of the Treaty. If it prescribes consensus for a given policy field, even groups wanting to advance towards majority voting, are not permitted to do that. They are thus prevented from exploiting their full integrationist potential and from showing the example to the others.

Thirdly, the method of permitting and controlling access to such enhanced co-operation by other willing member states remains subject to justified criticism. The groups of enhanced co-operation are in principle open to all other member states, provided these last can credibly demonstrate willingness and ability to fully participate. It is the Commission which decides about their accession (TEC, art.11 par.3). But the criteria laid down in the Treaty, and their experience with control by the Commission do not inspire full confidence in the ability of the institutions to protect and support the potential of such groups to advance.

The same is true, fourthly, of performance control as to the respect by all group members, of mutually accepted engagements. This is a topic where the need for improvement is especially high. Given the multi-level character of the EU's governance, performance control is not a problem specific to closer co-operation. It marks EU integration from the beginning. But the objective of closer co-operation being to enter into more ambitious active policies than those traditionally included in EU integration, and doing it to 'prove' their suitability for integration, performance control does constitute a more sensitive and important issue for it.

At the same time, performance control is especially difficult in these fields. Witness the widespread lack of mutual trust in the field of police co-operation, or – since 2003 – in the mutual respect of the stability criteria of the stability and growth pact. Nevertheless, it appears indispensable for such groups to master these problems, if they really want to progress. What to do?⁴ In consequence, even the utility of “enhanced co-operation” according to Treaty rules remains clearly limited.

⁴ Jean Pisani-Ferry, président de l'atelier et Benoît Cœuré, *Autour de l'Euro et au-delà : L'UEM et les coopérations renforcées*. For the stability criteria the challenge is difficult. Respect of the stability criteria is to enhance an exclusive public good, stable money and low interest rates, the benefit of which is recognised by everybody, but of

The *strength* of enhanced co-operation lies in *utility*, in supplying useful operational rules for realising closer co-operation within the Treaty system, even taking these drawbacks in account. Its most visible *weakness* concerns *feasibility*, the absence of a credible procedure for launching it out of the normal EU policy making process, and without having to wait for an Intergovernmental conference. But improving its utility may also prove to become an intractable problem.

Closer co-operation outside of the Treaty

Turning now to closer co-operation outside of the Treaty (and established between the parties according to international law), we can see that in contrast its feasibility is very high, many initiatives of closer co-operation could be started in that manner, and the participants have found different methods to exploit their willingness to co-operate. Co-operation outside the Treaty is in use since the very beginning of European integration in the 1950ies. Since then, it has also proved to be an exceedingly useful instrument of European integration politics. All important new policies of the European Union since the 1980ies, from the co-operation in the Schengen space, via exchange rate co-operation and the common money, up to the European security and defence policy, have had to take off by utilising this method. It was only later that the first two were welcomed inside the Treaty frame where they could continue as enhanced co-operation, with the third assuming a kind of “bastard” position, between “in” and “out”.

In spite of this success story the feasibility of closer co-operation outside of the Treaty frame has been intentionally diminished by trying to replace it by enhanced co-operation, in Amsterdam. Since then, an unofficial taboo unnecessarily discredits and impedes all initiatives of advancing outside of the Treaty. Not being mentioned in the Treaty also prevents the explicit introduction of certain improvements of this procedure.

But the usefulness of closer co-operation outside of the Treaty frame has its limits as well, especially in the longer term and if intergovernmental methods continue to be utilised:

- when the number of participants becomes very large,
- when the subject matter of the policy becomes very complex and technical,
- when the topics get very close to the actual fields of exercise of competencies of the Union.

In all of these cases the intergovernmental co-operation method may prove to be too awkward or even self-blocking. In its relation to the Union and to the Union’s expansion into additional competencies the group may lead its members into difficult conflicts of loyalty and limit the space for the Union’s development. A later transfer into the Union may be impeded.

which free riding permits also to partake. As for home affairs, Sauron counsels draconian controls and sanctions among the group members, to be implemented on their behalf, by the Commission and the ECJ, cf. Sauron, p.46

And finally, “outside of the treaty” also implies the absence of parliamentary democratic legitimisation of closer co-operation policies. In consequence, and under the conditions just mentioned, the advantages of closer co-operation outside of the Treaty become smaller, the attraction of enhanced co-operation inside relatively larger.

The *strength* of this variant is to be found in it giving a tool for launching closer co-operation and getting its work started. On the other hand, it is not – in its intergovernmental form - a convincing model for its long-term functioning and for stabilising its relationship with the European Union.

Needs for Reform

In consequence there was a need for reform, already at the Nice Intergovernmental Conference, a need which was only very insufficiently satisfied. Important additional problems remained to be addressed by the Convention and the following Intergovernmental Conferences.

As to enhanced co-operation, what is needed is:

- a reform of its authorisation procedure (TEU art.43), with a reduction of the minimum number of member states required, of the conditions attached, and of the council majority needed,
- a reform of its application procedures (TEU art.44), especially more autonomy for the group: give it a separate Council, let it determine its own decision procedures, let it set criteria for the accession of new members (pay more attention to true capabilities), and as to the rigour of its performance control, reinforce and circumscribe the role of the Commission.

as to closer co-operation outside the Treaty,

- recognition as legitimate form of co-operation of member states, for furthering European integration;
- improvement and institutionalisation of its contact and liaison – from outside - with the normal integration processes, especially in neighbouring subject matters and as to the facilitation of an eventual transfer into the normal Treaty system.

We might also take seriously the hypothesis that the treaty changes of Amsterdam and Nice were premature as to the authorisation-rules of enhanced co-operation. Then all further treaty reform expectations would have to privilege the formal introduction of closer co-operation outside of the treaty, into the treaty text, rather than facilitating enhanced co-operation !

There is an additional option for members of closer co-operation outside of the Treaty, but which must remain in the independent decision of these member states: They could chose to reduce its weaknesses of application, by moving away from inter-governmentalism and introducing supranational structures among themselves.

3. Compatibility, and the Consequences of Eventual Reform

In debating the needs of more far-reaching reform for closer co-operation in- and outside of the Treaty, the issue of compatibility becomes important. We have seen that in 2004 this issue is one of the *optimal form* of closer co-operation, the principle of it already being applied in the extension of Union competency over new policy fields and in policy making in them, and recognised as indispensable in Union building.

We pointed to some basic principles of EU integration against which we might measure the effects of closer co-operation, namely as concerns the efficacy of its institutions and procedures and the acceptance enjoyed by them, or the cohesion and solidarity between EU member states, as the preconditions of accepting equal obligations.

A first finding would seem to be that the more reforms tend to increase closer co-operation's feasibility, autonomy and efficacy, the more tension is liable to build up between the realisation of these objectives for the co-operation group, on the one hand, and the basic principles of EU integration for the EU altogether, on the other.

This tension is likely to be strongest for the case of closer co-operation outside the Treaty (competition with EU, in-transparent, non controllable and inaccessible). But because this tension builds up *outside of the Treaty institutions and procedures*, it does not directly affect inside relationships and policy making mechanisms between member states and institutions. And all past experience with closer co-operation outside the Treaty disproves the fears about external groups sapping the vitality and the integrative dynamics of the EU.⁵ Even so, as debates about the necessity of opening the Union for still more closer co-operation began to be considered at member states' government level, after Maastricht (1992), this possibility of an outside challenge to the Union was more than many member states were prepared to countenance for the future. It was why they wanted to replace it with the much more controllable enhanced co-operation inside the Treaty.

In consequence, there is much less space left, for new co-operation projects of a dimension apt to compete with the Union. True, important fields have even today not been Europeanised, in spite of substantial advances: security and defence policy, and justice and home affairs. But with institutions and framework competencies in place, even these are clearly less open to simple and complete pre-emption by an external co-operation group (cf. further down for fields of possible closer co-operation).

⁵ With the exception perhaps of the creation of the original three European communities from 1950 – 1957. Heinrich Schneider has recently recalled that six member states of the Council of Europe, unhappy with the narrow competence limits of this organisation, created a closer co-operation “hard core Europe” with much further reaching competences and supranational institutions, among themselves and outside of the Council. (Schneider 2004, p.264).

On the other hand, in pulling closer co-operation into the Treaty system as happened in 1997 via enhanced co-operation, the aforementioned tension was also introduced to the *internal mechanisms and institutions*, with potentially more harmful effects for the most basic principles of EU's integration logic. In a vicious circle, the evident answer to this danger were the numerous conditions and limits to which the authorisation, and to which the modus operandi of enhanced co-operation has up to now been subjected by the Treaty, and which prevented the first from coming about, and rendered the second unnecessarily cumbersome and rigid.

After an initial debate on the risks of a "Europe of bits and pieces" which enhanced co-operation might bring (Curtin, 1993:17), it was thus not astonishing that most experts have later concurred in finding this extremely prudent treaty and partly in-applicable procedure largely compatible with the EU's legal order and its basic principles, one of the most recent contributions in this vein coming from Daniel Thym (2004). In consequence, a turnaround toward feasibility for the authorisation and towards more efficacy in the modus operandi might put this consensus at risk again.

In looking closer at the constitutional treaty and at the amendments which it intended for enhanced co-operation, we will have occasion to confirm the political force of these considerations, and to come back to them in more detail.

In spite of all the justified sensitivity surrounding the compatibility issue, closer co-operation remains highly necessary, and that is why this debate about its institutional form is worth our while. This necessity is amply demonstrated by the constitutional project itself:

- First one is struck by the manifest inability of the Convention and the ensuing Intergovernmental Conferences to widen the competencies of the EU into additional fields (with the most notable exceptions of development aid, security and defence). If the Convention was not able to bring this about, in fields where the necessity is widely recognised, then closer co-operation remains indispensable.
- Secondly there is the inefficacy of its new amendment procedures (ECT art.IV-443 -- 445) which reflect, after over five decades of integration, the continuing international Treaty nature of the Union Treaties, and which would put an additional brake on common advances.

In consequence the opening of new fields to future integration continues to depend on closer co-operation. Good institutional instruments are important for this. Excessive fears as to the compatibility issue appear unwarranted. All experience up to now demonstrates that successful closer co-operation ventures outside the Treaty tend to migrate into it later on. A powerful pro-integrative centripetal logic prevails.

4. The Draft Constitutional Treaty: Testing the Reform Potential for Closer Co-operation

The constitutional reform effort of the years 2002 to 2004 has shown the political limits to easing and improving EU rules on closer co-operation between European Union member states, at the moment that the large Eastern enlargement almost doubled membership of the Union and appeared to many to make closer co-operation even more urgent than before. In the logic of our analysis, its results can be seen as a valuable indicator of just which increases of the feasibility, the utility and the compatibility of closer co-operation still appear possible in the coming years.

General rules

Enhanced co-operation

The principal weakness of the rules for enhanced co-operation itself, concerning *feasibility*, resulting out of the difficulties of authorisation, could not be cured, it has rather been aggravated even more:

- Minimal participation has been increased to one third of member states (ECT I-44 par.2, from eight in Nice, cf. TEU art.43 par.g). Already in 2005, eight member states would not suffice any more to found an enhanced co-operation.
- And assent from the European Parliament has been made obligatory across the board, instead of only in fields where co-decision holds sway (ECT art.III-419 par.1 as compared to TEC art.11, par.2).
- Qualified (and not simple) majority continued to be demanded for launching enhanced co-operation.
- Finally, the conditions limiting the field of its application have not been eased either (ECT art.I-44 par.1+2, and III-416+417, as compared to TEU art. 43 + 43 par.a; as to the authorisation procedure ECT art.III-44 par.2 + art.III-419 par.1, as compared to TEC art.11 par.1-3).
- As to controlling the accession of other member states, enhanced co-operation groups had already lost this power to the Commission in the field of the common market; the constitutional treaty subjects them to the same wardship for home affairs and justice. Only in the field of ESDP was co-optation still permitted.

On the other hand, *utility* could indeed be improved,

- by at last increasing group autonomy as to its procedures. The groups were empowered to adopt the qualified majority decision making procedure for their topical field, even if the Treaty demands consensus for it, or to adopt the standard legislation procedure in the place of a specific one demanded by the Treaty (ECT art.I-44 par.3; III-422, par.1+2; this corresponds

- to an analogous opening for the Union altogether, according to ECT art.IV-444). But significantly, this improvement did not apply to defence and military missions;
- by allowing its utilisation, in the same principal manner, in all three pillars.
 - But on the other hand, it is true that group ministerial councils were still not authorised to officially discuss and act on their own. They were to remain bound up in the full council formations, and in the community procedure with the full supranational institutions. This last rule would appear to have only little chance to survive in the reality of closer co-operation as shown by the Euro-group in the EMU, and structured co-operation in the ESDP.
 - And no solutions are offered for the issue of performance control.

The principal advance written into the constitutional project concerned, in consequence, two aspects: first the generalised uniformisation of the procedures of enhanced co-operation in a large part of EU policy areas. Secondly as to the *modus operandi*, it has included true improvements for the potential utility of enhanced co-operation, without addressing performance control. As to authorisation, reducing enhanced co-operation's feasibility even more.

It appears that in that sense the pre-maturity hypothesis is confirmed by the Constitutional treaty. That is why it appears highly improbable that the improved *modus operandi* will encourage member states to attack the barriers to authorisation more courageously, in future. Big as the improvements may be, their effect would remain limited to enhanced co-operation projects which would be permitted by Intergovernmental conferences beforehand. As to more ambitious policies, even these improvements would appear insufficient.

Closer co-operation

The constitutional text has neither opened the access to this method in a general manner, nor has it improved its legitimacy. But this is not the whole truth.

The true winners of the Constitutional Treaty project: closer co-operation methods outside the Treaty, for EMU and ESDP

In fact, the Constitutional Treaty's most important improvements for the feasibility and the utility of closer co-operation have not come in changing general rules. They are incorporated in specific changes in the two sectoral areas which are considered of the greatest strategic importance for future Union building, the Economic and Monetary Union, and the European Security and Defence Policy.

EMU

Authorisation not being necessary in this field any more, changes can only concern the *modus operandi* and the accession of new members. Many experts had asked for improvements in the

system put into place in Amsterdam and slightly amended in Nice (Pisani-Ferry and Coeuré, 2003). The constitutional treaty takes up almost none of them: the Euro-group remains informal, its competencies are not enlarged, it does not get any operational tasks inside the Eurozone and its composition is not changed either. Even so, other reform steps are included and worth to be highlighted: The constitutional treaty formalises, in its protocol no.12, the status and the tasks of the Eurogroup. This task is to contribute to the development of an ever closer co-ordination of national economic policies in the Eurozone and to support an intensified dialogue between its member states. This is an important treaty confirmation of the policy line already put into place by the Helsinki summit of 1999. Institutionally, the most important improvement written into the constitutional text, came with the new two-and-a-half-years' presidency of the Eurogroup, to be elected among its members.

These two changes would permit the group and its president at long last to attain quasi official status in the European Union. The Intergovernmental Conference added one more formal point, even though this one would not bring any advance in reality: the European Commission is to take part in the sessions of the Eurogroup and in their preparation, this last together with the ministers of finance. The Convention had only proposed to invite the Commission to the sessions, whereas it had left preparation in the hands of the finance ministers alone. Even so, the Commission has in the past already participated in this preparatory process, via its contributions to the financial and economic committee, and it regularly took part in the Eurogroup's sessions. The important aspect of the new treaty clauses would thus appear to be the formal upgrading of the Eurogroup, together with the effective strengthening of its internal leadership.

In consequence the Eurogroup would factually resemble ever more a specially privileged enhanced co-operation. This is a remarkable development when thinking back of the beginning. A number of its initiators had in fact wanted to create the Eurogroup as a closed forum of enhanced inside co-operation of Euro-group member states. This was exactly what the treaty forbade, by keeping enhanced group debates open to other member states. Thus its initiators in Luxemburg, 1997, only reached the status of an informal discussion group for the Eurogroup. The constitutional treaty clearly carries it beyond these institutional limits.

Security-Defence

Let us briefly recall that the Intergovernmental Conference has opened European defence including military missions for the first time to the procedure of enhanced co-operation, an advance which the Convention itself had not been able to bring about. But the IGC has not brought it over itself to let enhanced co-operation be authorised by qualified majority, the Constitutional text continues to require unanimity (ECT art.III-419 par.2). Constructive abstention is not any more authorised.

These limits of the feasibility of enhanced co-operation in ESDP being what they are, the importance of the new models of closer co-operation for this field, contained in the constitutional

treaty becomes all the more evident. The central one among them is the so-called “Permanent structured Co-operation”(ECT art.I-41 par.6). Different from the procedure of enhanced co-operation in the defence field, the permanent structured variant may be launched by a Council decision with qualified majority (ECT art.III-312 par.2). Even if a foreign minister of the Union were created, he could not block such a decision; the constitutional text only concedes him the right to be heard, on this occasion. The creation of the group by the Council would appear to include the act of naming its members; but a minimum number is not imposed by the constitutional treaty, an exceedingly important peculiarity compared with enhanced co-operation.

Further, the constitutional treaty preserves the proposal of the Convention that only group members decide about the accession of other member states. They thus control its future composition. Additional peculiarities of this structured co-operation are first the possibility of holding ministerial councils without the other member states.⁶ And secondly, for the first time since the creation of the Euro an element of control and sanctions is included into the modus operandi of closer co-operation. If a member does not fulfil its obligation under the structured co-operation treaty, he risks a stronger sanction than he would for non-compliance with the Stability and Growth Pact: The other members may go as far as to suspend its participation (ECT art. III-213 par.4). The European defence agency is to serve as the members’ “policeman” in monitoring the respect of mutual armaments obligations and ringing the alarm bell (ECT protocol 23). Could this really lead to a stricter regime as in the UEM? That is less than certain; but the probability appears a bit higher, the ESDP remaining an intergovernmental co-operation field, where the sanctioning of a non co-operative Member state is easier and less formalised than inside the Union.

It is a serious drawback of the final treaty text compared to the Convention’s copy, that decision making of the permanent structured co-operation is only permitted in consensus (ECT art.III-312 par.6). The opening of standard enhanced co-operation for adopting the majority voting mode (ECT art.I-44 par.3, III 422 par 1 + 2) does not apply here. Even a mutation of permanent structured co-operation into enhanced co-operation, theoretically possible under the constitutional text, would not lift this restriction.

It is only in operative missions outside of the Union according to ECT art.I-41 par.1 and art.III-309 and 310 that the participants may decide among themselves in which manner they conduct them and which procedures they chose. But this is a highly constrained mode of co-operation, commissioned and closely conditioned by preceding, consensual, decisions of the Council which define the end, the means and the reach of these missions (ECT art.309 par.2). Insofar they do not, in reality, constitute cases of enhanced co-operation (Philippart, 2003: 34).

The constitutional treaty has not given a substantial role to the European Commission, neither in the permanent structured co-operation nor in the operative missions according to ECT

⁶ At least the ECT text does not explicitly demand their participation in council sessions about group topics, as it does for the other cases, of ‘normal’ enhanced co-operation.

art.I-40. This withholds a potentially very useful support from the participants. But it enhances the role of the strongest military powers among the EU member states in ESDP.

No minimum participation, authorisation by qualified majority, group control over access, ‘closed group sessions’ possible (this author’s reading of the Constitutional Treaty’s text), explicit joint control of participants’ efforts and possibility of sanctions, this constitutes an ensemble of clear institutional advantages of the permanent structured co-operation compared to normal enhanced co-operation, especially in ESDP. The absence of the Commission might count as an additional advantage for the big member states.

Justice and Home Affairs

The special procedural aspects of justice and home affairs have been levelled out by the constitutional treaty. The “common law” for enhanced co-operation has been extended to this policy field as well. In addition the constitutional treaty brings two special solutions for the authorisation of enhanced co-operation in this field which do not really belong into this category. They can be found in ECT art.III-270 and art.III-271, both of them concerning the mutual recognition, or introduction, of common norms in penal law cases. In both of these fields the constitutional treaty permits member states to block the passage of such norms, on grounds of their internal legislation, by applying to the European Council. This blocking option will be reduced. The supporting member states, when numbering at least one third of total members, will get the possibility to create an enhanced co-operation for the application of these norms, in short-circuiting the normal authorisation procedure. This would appear to be the wrong solution to a problem of incompatibility where a limited derogation from the application of an EU norm appears to be the better answer. The concluding chapters of this article will therefore not take this new case of enhanced co-operation into consideration.

5. Conclusion: Towards Intermediary Solutions

Does this result of the most recent reform efforts tell us something about the perspectives of closer co-operation in tomorrow’s European Union, even for the probable scenario that the Constitutional treaty does not enter into force?

In institutional terms, it appears highly significant that these strategic strengthening measures have come to enhance what might be called “bastard solutions” of closer co-operation outside of the Treaty, but were to be governed by treaty rules and fitted with important elements of enhanced co-operation. If this reflects lessons learned on utility and feasibility, it also sheds a revealing light on what *all* member states consider as compatible in the cohabitation of the Union, with more feasible and efficacious co-operation groups. Closer co-operation of this kind,

in *strategic fields* with vital interests implied for actual or potential participants, especially big member states, will not be entrusted to, or allowed into, “enhanced co-operation”, inside the Union Treaty.

The difficult issue of compatibility

When trying an explanation of this result, one has to pursue the question of compatibility somewhat further, especially as to the tension that is liable to build up between trying to increase the feasibility, and the efficacy and utility, of closer co-operation for the participating member states, on the one hand, and the basic principles of EU integration for the EU altogether.⁷ This issue gets more serious, the more the Union advances into more ambitious policies as in economic and monetary affairs, in judicial and home affairs, or lastly in foreign, security and defence policy.

The basic problem would appear to be the predominant multi-level governance structure of the Union’s political system, in conjunction with the high legitimacy attributed to openness, cohesion and solidarity as constitutive traditional values of the Union. In the policies in question, which concern sensitive and sometimes very divisive issues, and which often require difficult choices and decided and united executive action, this structure touches the limits of its utility. In spite of this, the member states are not yet prepared to abandon that structure, in favour of federal authorities with the necessary resources at their own disposal. Even the constitutional convention has shrunk back from taking the full measure of this challenge and from the necessary reforms.

Active integration-deepening EU members are confronted with one aspect of this problem: Accepting standard enhanced co-operation in the policies in question, they would introduce them fully into the institutional and legal frame of the Union, from which they could not remove them again at will. And they would have to accept other member states as participants whom they did not choose themselves. But the success of their policies would depend on each other’s leaders, public authorities and agencies acting in loyalty to declared aims, in good faith and with full technical competence. Many governments do not consider all others of the Fifteen and even less of the Twenty-five, trustworthy enough and capable to carry out ambitious group objectives. They are afraid of getting stuck with other member states hindering (or free-riding on) their own efforts, by demanding full information and a voice in choosing policies, and at the same time a right to abstain from joining in their implementation or to do so only half-heartedly, or by partaking of a given policy without investing in equal manner. And in a community built on solidarity and cohesion there would be little chance for introducing strict performance control or even sanctioning procedures.

⁷ This has also been an important question of the mission on coopération renforcée which the French Planning Agency carried on in 2002/3

In judicial and home affairs, and in foreign, security and defence issues, for instance, the hesitations to enter into further reaching EU-integration –and be it in smaller groups– clearly have one of their principal causes in these concerns.

Many slower moving and more status-quo-oriented member states find themselves up to the opposite, mirror-image aspect of the same basic problem: That is their strong unease at letting a more motivated co-operation group perhaps counting a few big member states among their participants, ‘take over’ the lead inside the official EU institutions, for a strategic area of integration policy, and define the tempo and the orientation of political advances by its superior dynamism. They are concerned that the official EU policy line, to which they themselves might one day want to adhere, could thus in their absence be pre-determined in ways to which they might not want to subscribe later.

In the Union of today, both sentiments together have been strong enough to hinder advances in enhanced co-operation in the two fields which we spoke about: In security and defence it was more the interest of a dynamic group wanting to protect its potential of action from being watered down and blocked by opening up to the EU and its rules. In EMU the totality of the members did not want to have the principle of an economic government installed as official EMU line, by the action, and the weight, of certain Euro-group members acting under the official label of the European Union.

Towards intermediate solutions of closer co-operation: outside, but also a bit inside

That “bastard solutions” could nevertheless be strengthened in these two fields, given the weight of the sentiments just mentioned, this reflects both the willingness and need to strengthen the efficacy of closer co-operation in strategic fields, but – in a solidarity-oriented and multi-level-governance Union – also the resistance against doing this inside the treaty and under its discipline. As the chances dwindle for this constitutional text to enter into power, the fact of having been kept somewhat aside of the reformation projects of the EU institutions and procedures proper, aids these “bastard solutions” to be already implemented, in spite of the threat to the bigger undertaking.

In a wider sense, these solutions could be applied in other areas of comparable importance: organise a stealthy exit out of the over-regulated “enhanced co-operation” method for the authorisation, and simultaneously reinforce its capacity of assuring proper application and preventing free riding. This would very likely be the direction for which other strategic groups would also opt, to the degree that their co-operation concerns strategic and highly consequential decisions. Enhanced co-operation, on the other hand, remains an improbable option: Even the third attempt since 1997, to render its authorisation procedure more feasible, did not succeed. The result may well be that closer co-operation, even if headed for later EU integration, will continue to be initiated outside of the treaty frame.

Postscript: A List of Co-operation Options, and the Role of Closer Co-operation in Case of Ratification Failure

The fields of potential closer co-operation options

In spite of their feasibility problems, the utility potential of projects of closer co-operation is considerable. It is frequently underestimated, contributing to its under-exploitation. But in fact, there is an important number of fields, in part explicitly recognised by member states, where closer co-operation inside the treaty, or outside of it, would appear possible and even advisable (Deubner, 2000: cf. for instance 50 f. for the first pillar; Commissariat Général du Plan, 2004: 245 f.). A number of options will be named without any claim for completeness.

Inside the former first pillar certain subject matter would be inaccessible to such co-operation as it belongs to the exclusive competencies of the Union. But the rest would be open for it either inside or outside of the treaty structures. If one just mentions topics which are discussed in more than one Member State, this would be fiscal harmonisation in certain fields, as for instance capital gains, it would be certain parts of environment legislation and likewise company and enterprise legislation, or employment policy. Budget structure co-ordination and budget stabilisation could equally be pushed further ahead in a grouped advance. Last but not least, the full mobility of acquired rights under national social regimes could also be realised among a limited number of member states.

In judicial and home affairs a wide field of options exists, where co-operation would help advance integration in a more general way. A number of member states could name a public prosecutor to launch penal proceedings in criminal cases with a trans-border dimension. A co-ordinating judge could be equally named among them for such cases. Such member states could also authorise the creation of common police teams with authority of investigation in their national territories. They could extend such authority to Europol investigators. They could also advance in the harmonisation of certain parts of their criminal or civil law codes. Other possibilities certainly exist.

As to foreign security and defence policy, the constitutional treaty has shown the new possibilities in the most important fields where such co-operation had been already suggested in the past (Commissariat Général du Plan, 2004: 247 f.)

Ratification failure and closer co-operation

At the end of this article, it will not be possible to shirk the issue of closer co-operation's instrumental value in the case that the constitutional project definitely foundered on the rocks of ratification. This option has become more probable in the year since the lost referenda in France

and the Netherlands. Could closer co-operation in one of its two forms aid to either “save” the Constitution or at least certain parts of it, among a number of member states?

It is true that the refusal of France and of the Netherlands, both of them among the first traditional candidates always to be considered for closer co-operation ventures, to ratify the constitutional treaty, has rendered reflection on this kind of venture even more speculative than it was formerly. In fact, it has become much more difficult to imagine France and the Netherlands working confidently together with the ratifying member states, and against other non-ratifiers. The same difficulty prevails as to consensus areas, in important policy fields, around which deepening initiatives could rally and succeed.⁸ Even so, this article will be ended by speculating on the principal institutional options left to member states, just assuming the case that sufficient policy consensus for closer co-operation would come about among a sufficient number of member states at least some of them.

Three options are being discussed for that case. Before considering them more closely, a look backward may be instructive. Heinrich Schneider recently published a paper on the creation of the original European integration treaties of the 1950ies (ECSC, EAC and EEC) by six member states of the Council of Europe, underlining the obvious analogy with a successful closer co-operation initiative (Schneider 2004). But in fact, given the very large differences between the two situations, there is no realistic perspective at all, of something like this happening to the EU of the year 2006.

What, then, are the three options just mentioned? *The first and most radical option* would consist in having the ratifying member states quit the Nice Treaty and conclude a new Treaty among themselves which would resemble the constitutional treaty. The non-ratifiers would preserve the treaty of Nice in power between them. Quitting the treaty would not invalidate the important legal obligations which the member states have created between themselves in acting under this treaty, in the most diverse fields, from free trade, over the agricultural subsidy system, down to free movement of persons. Both sides would have to conclude a long series of agreements, which would have to insure the continued mutual respect of these obligations. This solution might appear simple and straightforward, but only at the first glance. In fact it gives rise to such a number of difficulties, uncertainties and expenses that it is very hard to take it seriously. The uncertainties are evident in the multiple new treaty negotiations and national ratifications becoming necessary, as well as in the complicated and complex rewriting of contractual obligations. The whole approach would appear fraught with political and legal risks.

The real objective of this first option would thus seem to be, to deter politicians and parliaments tempted by the option of non ratification, by making them believe that a rough and ready solution of the ensuing crisis lies in the drawer and is ready for use.

⁸ Entering into this question at depth, is impossible within the limits set to this article. But especially the whole monetary, economic and social issue field looks even less consensual than it did before, between member states like France, Germany, the UK and the Benelux countries

The *second and third option* would both provide for the ratifiers to stay inside the Nice treaty and continue to apply it. In doing so, they could utilise the instruments of closer co-operation around specific topics, but in two very different manners.

In the *second option*, the ratifiers would thus constitute themselves as a permanent caucus in which all decisions coming on the agenda of the Council of the 25 would be pre-discussed and a common line of conduct decided. We will not go into the details of such a procedure.⁹ This solution could be applied to all questions already subject to the exclusive competence of the European Union and thus excluded from the application of enhanced co-operation. The Council of the 25 would remain the uncontested forum of legislation and legally binding decisions for all these issues. Again this might appear simple, especially if compared to the first option. But even so it is very ambitious as well. All caucus member states would have to be able to forego systematically and for all issues, the potential political advantages to be had from separate alliances with non-ratifiers in Council. As long as they would have to accept the decision of the 25, and cannot among themselves choose other options, the emergence of such a permanent coalition of ratifiers appears highly improbable.

The *third option* becomes available if this group were to turn to those topics which may be taken up by enhanced co-operation, because they are not already in the exclusive competence of the Union. Closer co-operation in, but also outside of the treaty system and according to the different models discussed earlier, opens up to them in that case. In those topics, indeed, they would not depend on the 25 and could even create permanent decision-making structures among themselves. Since the signature of the constitutional treaty in 2004, a number of advances have been made in that direction. Also the French government and its main opposition party have made it very clear that they saw the principal chances of further progress in the coming years, in exploiting this possibility.¹⁰ In the Eurogroup, such an advance has come about since January 2005, with its Members inspiring themselves by the constitutional treaty text to act on their own, proceeding to the first-time election of a president for two years.¹¹ In defence matters, flexibility

⁹ Deubner 1995, last chapter, contains some detailed proposals

¹⁰ For the government, cf. http://www.premier-ministre.gouv.fr/acteurs/interventions_premier_ministre_9/dans_les_medias_497/interview_premier_ministre_sur_53718.html with the text of a radio interview of the prime minister on 2 August 2005; for the majority party UMP cf. speech of its president Nicolas Sarkozy on September 24, 2005, on the occasion of a meeting on European policy in Paris : "Une vision, de l'action, des frontières : notre projet pour l'Europe"

¹¹ At the informal "Ecofin" meeting in Scheveningen on 10 September 2004, Prime Minister and Minister of Finance Jean-Claude Juncker was elected President of the Eurogroup, the informal meeting of the Ministers of Finance of the Euro area. Mr Juncker thus became the first elected and permanent President of the Eurogroup. His mandate starts on 1 January 2005 and ends on 31 December 2006. It is renewable once. Cf.: <http://www.eu2005.lu/en/presidence/membres/juncker/index.html>

and closer co-operation are the key-words of the advances taking place since 2004.¹²

The more limited, the better defined and circumscribed the topics, the easier and more successful such co-operation would probably be. But the less consequential it would be likely to become, for the construction of a group of ratifiers aiming to deepen integration among themselves. For a group to advance further, it would want to extend its co-operation to multiple topics. An obvious first extension of such co-operation could concern policies in functionally related fields. Other fields are open to such co-operation (cf. above) and could be strategically chosen and added.

Of the numerous problems which such a strategy would have to overcome, one appears to be the most significant: Again, it would be how to assure the cohesion of the ratifiers' group in co-operation in every case, over a prolonged period of time, precluding specific alliances with other member states. To be sure, permanent decision-making structures established among themselves, would much facilitate the task of group members. Even so, within a larger Union push and pull from other member states would remain and exert strong centrifugal pressures on the group. These pressures would be all the stronger, as many member states of the ratifying group might well now and then consider the optimal co-operation partners for important co-operation issues to be among the non-ratifiers.¹³ The preceding analyses lead us rather to expect a scenario in which different topical groups, of different composition, manage to unite around certain policies. Eventually, one might imagine with Mario Dehove and Jean-Louis Quermonne, that the member states participating in all such different circles could over time coalesce to one multifunctional group (Quermonne, 1999).

The Federal Trust has published a European policy brief in 2004 which addressed this question.¹⁴ The author rightly pointed to the possibilities which "collective action of member states" offers outside and inside the EU Treaties, to introduce "institutional or policy innovations" for the member states which are frustrated by non-ratification, in their willingness to advance in European integration. But one must also agree with the author when she warns against illusions about the dimensions of such co-operations. Certain policies could be further integrated, perhaps in highly important fields, in the manners sketched out in this article. But the "Constitution"

¹² Cf. for instance "Closing ranks. What future for European defence?", report of a debate between the French and the British defence ministers, and the EU High Representative for the Common Foreign and Security Policy, in : on 21 November 2005, http://www.consilium.europa.eu/uedocs/cmsUpload/Europeandefence21_11_05.pdf. Cf. also the two-nation EU mission in Congo, supported by 17 others, for summer-fall 2006, AFP of 7 June 2006

¹³ An obvious candidate is security and defence, in which the UK always was considered an indispensable partner even though it stood aloof of more general integration deepening initiatives

¹⁴ Jo Shaw, What happens if the Constitutional Treaty is not ratified? Federal Trust, European Policy Brief, September 2004, par. 16 and 17

could assuredly not be “saved” among the willing member states, by such a procedure, after the 29th May even less than before.¹⁵

¹⁵ Professor Shaw did not explore the first of our three options, namely to “save the Constitution” among the ratifying states, which sees these last quitting the present Treaty and setting up a new and different one (the Constitutional Treaty) amongst themselves. Compared to this one, her option (in par. 19) would appear like a mirror-image, which would have the *non-ratifiers* voluntarily leave the Union. In fact, the “ratifiers” leaving the old Treaty sounds more logical than the “non-ratifiers”; after all the first ones want to start with a new Treaty anyhow. But the problems which professor Shaw sketches out for the realisation of her option would appear to be big enough to make both of them highly unattractive for ratifiers as well as non-ratifiers.

Bibliography

Andenas M. and Usher J.A.(Eds.) (2003) *The Treaty of Nice and Beyond. Enlargement and Constitutional Reform.* Oxford

Commissariat général du Plan (Ed.) (2004) *Perspectives de la Coopération Renforcée dans l'Union Européenne*, sous les présidences de Bruno Racine, Patrice Buffotot, Guy Canivet et Jean Pisani-Ferry; rapporteurs généraux et rapporteurs, Florence Chaltiel, Benoît Coeuré, Christian Deubner... [et al.]. - Paris : la Documentation française, - 247 p.

Deubner C. (1995) *Deutsche Europapolitik : Von Maastricht nach Kerneuropa?* Baden-Baden : Nomos,

Deubner C. (2000) *Harnessing Differentiation in the EU – Flexibility after Amsterdam. A Report on Hearings with Parliamentarians and Government Officials in Seven European Capitals*, 85 p., Working paper of the Forward Studies Unit of the European Commission. Brussels

Deubner C. (2004) *Verstärkte Zusammenarbeit in der Verfaßten Europäischen Union, Integration*, December 2004, No. 4/04, pp.274-287

Linsenmann I., Meyer C., Wessels W., et al (2005) *GOVECOR project, EU Gouvernance by Self-Co-ordination: Towards a Collective “Gouvernement Économique” ?*, a multinational research project within the 5th framework programme of the European Union, Online available at: www.govecor.org/dokumente/dokumente.asp?

Philippart E. (2003) *Un nouveau mécanisme de coopération renforcée pour l'UE élargie, Notre Europe. Etudes et Recherches No 22*, Paris : mars

Pisani-Ferry J. and Coeuré B. (2004) *Autour de l'Euro et au-delà : L'UEM et les coopérations renforcées. Rapport de l'atelier sur les coopérations renforcées dans les domaines économique et monétaire*, Jean Pisani-Ferry, président de l'atelier et Benoît Coeuré, rapporteur général, in: *Commissariat Général du Plan 2004*

Quermonne, J.-L., Andréani, G., Dehove, M. (1999), *L'Union européenne en quête d'institutions légitimes et efficaces : rapport du groupe de réflexion sur "la réforme des institutions européennes" présidé par* Paris : La Documentation française

Jean-Luc Sauron (2004) Les coopérations renforcées en matière de justice et affaires intérieures : un outil d'intégration, rapport de l'atelier Police/Justice, sous la présidence de Guy Canivet, premier président de la Cour de Cassation, Paris, in : Commissariat Général du Plan, pp.37-52

Heinrich Schneider (2004) Die Zukunft der differenzierten Integration in der Perspektive des Verfassungsvertrags und der Erweiterung, Integration, December, No. 4/04, pp.259-273

Jo Shaw (2004) What happens if the Constitutional Treaty is not ratified? Federal Trust, European Policy Brief, September

Thym D. (2004) Ungleichzeitigkeit und europäisches Verfassungsrecht. Baden-Baden : Nomos-Verlag

Treaty establishing a Constitution for Europe (European Constitutional Treaty), version of december 16, 2004, Official Journal no. C 310

Abbreviations

TEU: Treaty of the European Union as amended by the Nice Intergovernmental Conference

TEC: Treaty of the European Community as amended by the Nice Intergovernmental Conference

ECT: European Constitutional Treaty