



FLEXIBILITY AND THE FUTURE OF THE EUROPEAN UNION



**A FEDERAL TRUST REPORT
ON FLEXIBLE INTEGRATION
IN THE EUROPEAN UNION**

About the project

The Federal Trust convened a broadly-based Working Group to examine possible future models of differentiated European integration. The Working Group considered scenarios within two different contexts: ratification of the European Constitutional Treaty by all member states, and non-ratification leading to indefinite suspension of the Treaty's provisions.

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flexible integration
in the European Union

October 2005



enlightening the debate on good governance

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Foreword

Over the past six months, I have been pleased to chair a Working Group of the Federal Trust, which has helped the two rapporteurs, Brendan Donnelly of the Federal Trust and Professor Jo Shaw of Edinburgh University, to produce the following report on institutional flexibility in the European Union. Our goal in the Working Group was to produce a final document which combined intellectual rigour with political realism in its approach to this much-discussed but often elusive subject. I hope and believe that this report's readers will find much food for thought and further discussion in what follows.

The political background to our Group's work has inevitably shifted as the year progressed, particularly after the negative votes in the French and Dutch referendums. Every bit as striking as the final outcome of these referendums were the debates which preceded them. It was obvious that Europe's citizens saw and were looking for radically different things in the Constitutional Treaty. Institutional flexibility for the European Union is seen by some commentators at least as an appropriate response to this diversity. This report is more cautious, stressing both the practical difficulties of a highly differentiated European Union and the impossibility of finding one model of flexible integration applicable to all aspects of the Union's construction.

I should like all the members of the Federal Trust working group for their contributions to this report. Cumulatively their contributions have been enormous. From the staff of the Federal Trust, Ulrike Rüb and Markus Wagner provided invaluable administrative support. I would not claim that this report provides all the answers to all the questions it raises. It definitely provides a good intellectual and political context for the discussion of both pertinent questions and plausible answers.

Sir Stephen Wall
October 2005

Executive summary

This Federal Trust report considers the question of a 'flexible' European Union from a number of differing perspectives, including conceptual, historical, national and regional approaches.

Chapter 1 reviews the different concepts and models under which flexible integration could occur. It distinguishes between a 'multi-speed Europe,' a Europe of 'variable geometry,' a 'core' Europe and an 'a la carte' Europe. The report recognises that these models only form a theoretical background for political and institutional choices preferred by national governments.

Chapter 2 considers these national starting points and reviews the attitudes of different member states towards the concept of flexible integration. It stresses that differing approaches exist even among the original six signatory countries of the Treaty of Rome and questions whether enough untapped policy areas exist to provide the basis of a Franco-German 'core' Europe. It describes as 'ambiguous' Britain's attitude towards flexible European integration and concludes by stressing the tension between the desire of certain neutral states to participate fully in further European integration, but at the same time to preserve their neutrality.

Chapter 3 describes the historical development of flexible integration, specifically the treaty framework set out in the Treaties of Amsterdam and Nice. The Chapter stresses that no policy area has yet been subjected to 'enhanced co-operation' in the European Union and asks whether the setting out beforehand of procedures for flexible integration may not be self-defeating.

Chapter 4, after a brief discussion of the impact the EU Constitution would have made on the workings of flexible integration, considers the possible use of the enhanced co-operation procedures of the Nice Treaty in the fields of External Policy, Justice and Home Affairs and the special case of a 'Social Europe'. It also considers the further scope for flexible integration in the economic governance of the Eurozone.

The report's conclusion is that the European Union is becoming and will become a more differentiated organisation than its original founders hoped or expected. Depending on the policy area concerned, however, differing models and degrees of differentiation may apply. Specifically, the study reaches the following main conclusions:

1. There will not be a European 'core' group in the traditional sense, based on leadership by France and Germany.
2. Enhanced co-operation as foreseen in the Treaty of Nice will only rarely be implemented, due the complexity of the provisions in the Treaty and the lack of a distinct policy goal to be achieved through these arrangements.
3. There is little scope for a 'core Europe' within the single European market, and in particular little scope for a 'social Europe' in that context. The single European market will probably remain a relatively undifferentiated element of the Union's development.
4. A European 'Directoire' for foreign and defence policy is a distinct possibility, with Britain (surprisingly for some observers) a plausible leading contributor in this area.
5. In the area of Justice and Home Affairs flexibility is likely to remain limited to the already established exception of Britain and Ireland remaining outside specific provisions, while the rest of the Union will jointly pursue, although probably at various speeds, long-term goals.
6. The single European currency may well become an important political and economic dividing-line between those countries which belong to the Eurozone and those which do not. If, as is possible, a more sophisticated framework for the economic governance of the euro is put in place while Britain still remains outside the currency, Britain and other countries outside the Eurozone will obviously have little say in the development of this framework. This is a potential recipe not merely for a flexible European Union, but for a fractured one.

Flexibility and the Future of the European Union

Introduction

In what follows, this report of the Federal Trust considers the question of a 'flexible' European Union from a number of differing perspectives, conceptual, historical, national and regional. Its conclusion is that the European Union is becoming and will become a more differentiated organisation than its original founders hoped or expected. Depending on the policy area concerned, however, differing models and degrees of differentiation may apply. The single European market, for instance, will probably remain a relatively undifferentiated element of the Union's development. The single European currency, on the other hand, may well become an important political and economic dividing-line between those countries which belong to the Eurozone and those which do not.

An important consequence of our analysis is that the concept of a 'core Europe' needs to be treated with some reserve. Its geographic and political boundaries would be difficult to predict or define. There are moreover aspects of the Union's development to which this concept can have little application. We see little scope for a 'core Europe' within the single European market, and in particular little scope for a 'social Europe' in that context. A 'core Europe' of foreign and defence policy on the other hand is a distinct possibility, with Britain (surprisingly for some observers) a plausible leading contributor in this area. For the overall development of a more 'flexible' European Union, and indeed for the long-term development of the European Union as a whole, one unanswered question remains of central importance. It is the question of how far the present members of the Eurozone are willing to pool further their economic and political sovereignty in the interests of the single European currency's better functioning. There is a growing consensus among the Eurozone's members that the arrangements governing the European single currency are incomplete, but much less agreement on the precise form to be taken by the revision of these arrangements. Few observers believe today that Britain's

entry into the single currency is any more than a long-term prospect. If, as is possible, a more sophisticated framework for the economic governance of the euro is put in place while Britain still remains outside the currency, Britain and other countries outside the Eurozone will obviously have little say in the development of this framework. This is a potential recipe not merely for a flexible European Union, but for a fractured one. Some will regret, some welcome this possibility. This report may be of interest to representatives of both schools of thought.

Chapter 1: Concepts of flexibility

Over the past fifteen years, two principal factors have stimulated the search for more flexible and differentiated models of European integration than that envisaged in the Treaty of Rome of 1957 and the Single European Act of 1986. They are the realisation in the early 1990s that the member states of the European Union were no longer able to achieve a consensus on the goals, scope and pace of their integration; and more recently the expansion of the Union's membership to countries with widely differing levels of social and political development, differences so great as to form a substantial practical barrier to monolithic integration, even where all the possible participants might desire it. In a sometimes confused and imprecise debate, five main versions of flexible integration for the European Union have been canvassed: a 'multi-speed' Europe, an 'à la carte' Europe, a 'European vanguard', a 'core Europe' and a Europe based on 'variable geometry'. The first two approaches can be regarded as opposite extremes of the argument, with the three other models as a middle ground between them.

Multi-speed Europe

This concept is closest to the original goal set out in the Treaty of Rome of an 'ever closer union' between the peoples of Europe. The element of flexibility relates only to the period of time in which all member states achieve commonly agreed goals. The multi-speed approach generally contends that European integration should be driven forward by sub-groups of member states, allowing those who are initially unable or unwilling to participate to remain outside the adoption of a new policy area or the development of an existing field of integration for the time being. Such deeper integration could well occur simultaneously in more than one policy area, with varying membership of the different sub-groups. Equally, within

the sub-groups themselves, some individual members might well find themselves further advanced towards the shared goal than others.

Crucial to this model of flexible integration is the understanding that no member state will be excluded or wish in the long term to exclude itself from new or developing policy areas. There is not merely a continuing option eventually to join the relevant policy areas, but an expectation that all temporarily excluded member states will strive to do so. This approach would seek at least in theory to preserve the unity of the European project: differentiated integration is allowed to exist temporarily, with the long-term aim that all member states will eventually participate in all European policy areas.

An interesting illustration of this point was provided by the British opt-in/opt-out from the European single currency at the time of the Maastricht Treaty. At the time, it was possible to regard this arrangement as an example of a multi-speed Europe, with Britain leaving the door firmly open for future membership of the euro. Later events, however, have shown that there is little prospect of Britain joining the European single currency in anything other than the long term. Moreover, the British government clearly feels no current desire, let alone obligation, to work actively towards this outcome. It is highly probable that one or more of those ten countries who joined the Union in May, 2004, will adopt the euro before there is any realistic prospect of Britain's doing so.

European Vanguard

A particular and exceptional case of a multi-speed Europe would be a 'vanguard' or 'avant-garde group'. This sub-group of member states, which would pursue their integration over a range of policy areas, would be more unified and coherent than standardly envisaged by the multi-speed Europe concept. The need for unity and coherence would probably initially limit the number of member states able and willing to join the vanguard. The member states involved would need to recognise a high measure of shared strategic and tactical interest. Their advanced degree of integration between themselves would not simply be occasional and opportunistic, but a fundamental and long-term policy choice at which they had consciously arrived.

The natural role of this avant-garde would be to shape and set the agenda for the future direction of the European Union as a whole. Although in the short term the existence of a vanguard might exacerbate the contrast between member states at different levels of integration, its clear underlying goal

would be to accelerate the final realisation of shared integrative objectives. The philosophy of the avant-garde is to some extent reflected in the provisions of the Amsterdam Treaty for 'closer co-operation'. The Nice Treaty, with its acceptance of smaller sub-groups of member states working together in a system of 'enhanced co-operation', marks a further theoretical step along this road.

Core Europe

The concept of a 'core Europe' or 'European hard core' can be seen as an extreme case of a European vanguard in which membership is highly restricted and potentially permanently limited. It is entirely possible that this 'core' would not be open to all member states of the European Union. The European 'hard core' would have made the irreversible decision to pursue among themselves a far-reaching agenda of integration, ideally within the present structures of the European Union, but if necessary without. They would hope and expect that other member states of the Union might follow them in their deeply integrative path. They will work as a highly co-ordinated group within the European Union to pursue its and their further integration. But it is at the heart of the 'core Europe' concept that its members cannot allow themselves to be constrained by the hesitations of others. They will be a 'vanguard' which may or may not be followed by others.

Traditionally, the most likely leaders of this potential 'hard core' have been regarded as France and Germany, and indeed some critics regard the concept as simply a rationale for Franco-German attempts to shape the European Union in their own image. A broader-based 'core' might have included (indeed might still include) all the original six founding members of the European Union, traditionally regarded as those most profoundly committed to the underlying goal of European political and economic integration. Equally, Spain and Austria might well wish to join this new grouping, if it came into being. The negative results of the French and Dutch referendums, together with continuing electoral uncertainty in Germany and France, have at least postponed, and in the view of some observers perhaps destroyed for ever the genesis of a 'hard core.' It is a concept, however, which has been a recurrent theme of the European institutional debate over the past fifteen years.

Variable Geometry

At the end of the spectrum which envisages more permanent levels of variation within European integration lies the model

of a Europe of 'variable geometry'. This option takes as its starting-point that there will inevitably be substantial differences between the integrative capacities and desires of twenty-five or more member states. It would be surprising if even in the long term these capacities and desires could fully converge. Variable geometry therefore envisages a series of different policy areas for the European Union, all of which (apart from the single European market) would have varying membership. This would allow the varying approaches of the EU's member states to such delicate subjects as monetary policy, foreign policy, defence and tax harmonisation to be fully reflected in the policy areas they wished to join. While no country would be excluded from any policy area, it would be fully understood that some countries might never decide to share particular parts of their sovereignty. Variable geometry would allow them that option, without inhibiting those who took a different view.

As a concept, variable geometry is capable of a number of different expressions. One extreme would be the case in which most member states participated in all European policy areas and only a few opted out of one or other policy area for specific national, historic or cultural reasons. The opposite extreme would be that in which almost no member state participated in all policy areas and many member states had opted out of a wide range of policy areas. The first extreme is not very different from the original unified concept of European integration as envisaged by the Treaty of Rome and indeed resembles the current post-Maastricht arrangements. The latter extreme would be very near to the blueprint of Europe 'à la carte'.

Europe à la carte

The 'à la carte' approach is a denial of future European integration rather than a model for further deepening. This approach would thus allow each member state considerable latitude to pick and choose the policy areas in which it wants to participate. All member states would be part of a core common trading zone only and then be allowed to choose the subject areas (such as social policy, monetary policy or defence policy) in which they wished to be represented. In many ways, the establishment of this type of flexible integration would be the most difficult to achieve, as it requires the reduction of the current level of integration to mere economic co-operation and a subsequent re-building of the EU with a 'pick-and-choose' method. The institutional structure of the Union, in particular, would require wholesale recreation.

It is of course possible to regard various opt-in/opt-out arrangements which the Union has permitted itself as limited examples of 'à la carte' integration. For example, the UK and Ireland currently retain their opt-out in the field of asylum and immigration. In practice, they have opted in to almost all proposals related to asylum and illegal migration but opted out of all proposals concerning legal migration, visas and borders. Similarly, the UK and Denmark both negotiated opt-outs from Economic and Monetary Union (EMU) as part of their ratification of the 1992 Maastricht Treaty. Nevertheless, the overall concept of an 'à la carte' Europe poses such technical difficulties and is politically so unattractive to many member states of the Union that it has little likelihood of emerging as the central blueprint for flexible European integration.

Conclusion

Inevitably, the five preceding models are over-schematic. They are tools of analysis rather than descriptions of political goals consciously and consistently pursued by decision-makers within the European Union. They do, however, form an important theoretical background to the political and institutional choices favoured over time by individual national governments. It is rare for a national government as a matter of explicit and articulated policy to pursue any one of the recognised templates for 'flexible integration.' Political choices and negotiating positions within the Union are shifting and sometimes opportunistic, reflecting immediate national interests as well as long-term institutional analyses. But there are undoubtedly differing underlying visions among the member states as to the future development of the Union, differences which are illuminated by the contrasting models discussed above. In the discussion which follows of national starting-points for the debate on European flexibility, we will observe an unceasing interaction between long-term visions and immediate political possibilities. The models of European institutional flexibility sketched out above will help us to understand that interaction.

Chapter 2: National starting-points

Interestingly, support for the various models does not depend on a specific stance on European integration in general. Indeed, there are in all camps both those opposing and those favouring deeper European integration. There are, for instance, integrationists who are in favour of a multi-speed

Europe and want to use enhanced co-operation to accelerate the process of unification, bypassing states that are unwilling or unable to go forward. For them the phrase 'two-speed Europe' implies a common destination which all states will achieve, with some leading the way and others following later. By contrast, other supporters of a multi-speed Europe see it as an opportunity to slow or halt the 'federal' momentum. They are willing to allow other states to move ahead, so long as they do not have to participate in the relevant policy area, at least in the short and probably in the long term.

'Variable geometry' evokes similarly contradictory reactions. Some integrationists fear that it will become a justification for creating a 'hard core' inner circle, from which non-participants will be permanently excluded. Others regard 'variable geometry' as an inevitability which now needs to be accepted. Finally there are at least some eurosceptics who regard any form of differentiated integration as only a temporary pause in the dangerous process of creating a European superstate.

Nor is the debate an exclusively institutional one. On such questions as social policy and foreign affairs, EU member states represent a spectrum of views. . On social policy, member states pursue a variety of economic models, which in their extreme forms may be incompatible between themselves. Views on the welfare state thus extend from the economically liberal approach of the UK to the social-democratic model exemplified by Sweden via the more corporatist approach favoured by, say, Germany. Differences of opinion on foreign policy were also very evident in the run-up to the Iraq war. This variety of political and institutional approaches is fully reflected in the disparate national approaches to models of flexible European integration.

France and Germany

Historically, France and Germany have effectively constituted between themselves a form of European 'vanguard'. The single European market, Economic and Monetary Union and the Schengen Area would all have been impossible without systematic co-ordination of policy between these two countries. There have been over the last decade influential French and German advocates of a Franco-German European 'core', including Valéry Giscard d'Estaing, Joschka Fischer and the authors of the celebrated Schäuble-Lamers paper in 1994. Jacques Chirac has also spoken of the desirability of a European 'pioneer group', an idea with definite echoes of proposals for a European 'vanguard'. More recently, Nicolas

Sarkozy, regarded by many as a possible successor to Mr. Chirac as President, has advocated a 'vanguard' group within the Union of France, Germany, Italy, Britain, Spain and Poland.

The dramatic rejection of the Constitution in the French referendum on 29 May, however, showed that both popular and elite support for such projects may not be that easy to obtain. At the elite level, there are a number of indications that the willingness of the French and German leaders to exercise collaborative leadership may be more apparent than real. Mr. Sarkozy's proposed 'Vanguard' has received a cool reception in France and elsewhere. Despite the high level of (bilateral) co-operation and integration between the two countries, the most striking Franco-German successes in recent years have been defensive and reactive rather than those of setting the European agenda. The ability to force the European Commission into a substantial revision of the European Directive on the Provision of Services is a good recent example of this phenomenon.

In Germany, moreover, interest in the idea of a core Europe no longer enjoys the salience it once had. Joschka Fischer himself suggested in 2004 that the time for this concept had passed. For historical reasons, Germany has traditionally had a more inclusive perspective towards other EU member states than France. In particular, there is a greater desire in Germany to include the UK, if at all possible, in any substantial project of flexible integration, in order to give the project greater political legitimacy and diplomatic standing. Germany today would undoubtedly prefer to be part of a 'vanguard' rather than a 'core'. But there cannot yet be any definite assessment of how solid this preference may be. The ambiguous outcome of the German General Election on 18th September may well herald a period of introspection in Germany which will make unlikely radical initiatives in the European field.

Nor should it be assumed uncritically that French public or elite opinion is genuinely committed to a 'core' or 'vanguard' role for France and Germany in the evolving European Union. There is a distinct sense in France that a combination of European enlargement and increasing self-assertiveness by Germany have destroyed forever the familiar and attractive workings of the European Union, workings to which France made a decisive and generally constructive contribution. No clear alternative has yet commended itself to French opinion, an uncertainty which found some reflection in a negative vote on the European Constitution at the end of May. While in France there are certainly outspoken advocates of a 'core' Europe led by a Franco-German dyarchy, many

commentators have questioned whether the current French political system is capable of generating the political will and determination necessary to resurrect the tradition of French and German leadership within the European Union. Sceptics further doubt whether a sufficient range of untapped policy areas exists in which France and Germany could convincingly demonstrate their role as a European 'vanguard'.

The most tempting candidate for such a policy area, namely foreign policy is one which it would be extremely difficult plausibly to develop without the participation of the United Kingdom. The united opposition of France and Germany to American military action in Iraq in 2003 strengthened the conviction among some observers in Paris and Berlin that a clearly-defined EU 'core' would be necessary to give the Union one voice for foreign policy on the world stage. The war in Iraq, however, was from another point of view a powerful illustration of the difficulty in creating any such 'core'. The deep divisions created by the war opposed two almost equally-sized camps within the EU, with the UK's position by no means isolated within the Union. Where the European Union is divided on crucial foreign policy choices, it is at least as likely to generate two 'cores' as 'one'.

In the past, the United Kingdom has frequently underestimated the resilience of Franco-German collaboration. The attitudes of both countries towards the future development of the European Union are clearly in a period of transition, the outcome of which it would be rash to predict with any great confidence. France and Germany have in common a definite dissatisfaction with the way in which they see the European Union as developing. They have not yet found an effective response to this dissatisfaction and they are not entirely sure what role their partnership should play in the elaboration of this response.

The other founding members

The other signatories of the Treaty of Rome - Belgium, Italy, Luxembourg and the Netherlands - have in the past generally supported the agenda of deeper integration favoured by France and Germany. Occasional irritation at Franco-German leadership did not prevent these four countries from wishing to participate in all projects leading to further integration. Today, this description of their attitudes needs qualification.

The Benelux countries

The pro-integrationist outlook is still firmly in place in Belgium and Luxembourg. The latter ratified the EU Constitution by referendum in July 2005 even after the negative votes in France and the Netherlands. Both can be seen as natural potential allies of France and Germany in a vanguard group, or even a core Europe. A glimpse of this could be seen in April 2003, when both countries were part of the 'Chocolate Summit' on defence with France and Germany, which was held during the height of tensions over the Iraq war. The two countries also broadly share France and Germany's desire to defend and entrench the European 'social model'.

In the Netherlands however, a more critical attitude towards the European Union has developed over recent years, culminating in the clear rejection of the Constitution in the referendum on 1 June. On a popular level, this opposition to further integration derives mainly from unease with the 2004 enlargement and Turkish accession, unhappiness with the single currency and disquiet at the Dutch position as a major net contributor to the EU. This mild Euroscepticism has been adopted by some minority parties, but the majority in Dutch political circles retain their positive attitude towards European integration. Another important element in the Dutch equation, however, is its traditional Atlanticism, which was reflected in the Dutch refusal to participate in the April 2003 defence summit. Dutch policy-makers are uneasily aware that a more highly integrated European foreign policy could be a cause of friction with the United States, a friction probably more tolerable to some in Washington and Paris than in The Hague. The Netherlands would probably be a follower rather than an initiator of any substantial moves towards a European core or vanguard group.

Italy

Another founding member, Italy has a long pro-European tradition. However, the Berlusconi government has taken Italy's EU policy in a more nationalistic, Atlanticist and, at least in its rhetoric, in a more economically liberal direction. While in the past Italy would have been seen as a natural member of a vanguard or core group, no such presumption can exist under the present government. In contrast to the Netherlands, Italian public and much elite opinion maintains its traditional enthusiastic approach to the European Union. A new government might find it relatively easy to re-establish Italy's historic integration-minded policy within the EU. If Mr Berlusconi's government falls at the next election, due in 2006, a possible successor would be the former President of the

European Commission, Romano Prodi, who could be expected to re-establish Italy's traditionally enthusiastic support for European integration. Recent opinion polls in Italy make bleak reading for Mr. Berlusconi, whose term as Prime Minister seems to be approaching its end. But the political and economic background of Italy has become notably more volatile in recent months, with Italian membership of the single European currency being blamed in some quarters for Italy's declining international competitiveness. These economic problems will loom large on the intellectual and political horizon of whatever government emerges from the next Italian General Election.

Spain

A substantial change in its European policy has recently taken place in Spain. Since its accession to the European Union Spain had been a strong supporter of further European integration, with a very high level of public approval for the European project. This was recently manifested again in the clear majority achieved in the referendum on the EU Constitution. However, under the conservative government of José Maria Aznar, a new and less positive note entered into Spain's European policy and rhetoric. Felipe Gonzalez, Aznar's predecessor, had never shied away from confrontation in his defence of high levels of European structural funds for the Spanish economy. But his underlying political and emotional commitment was to the process of European integration envisaged in the European Treaties. Aznar's approach to this process of European integration was throughout his Premiership demonstrably cooler. An economic liberal and Atlanticist, he was eager that neither of these orientations for Spain should be jeopardised by closer European integration, and often allied himself closely with the UK. His hard-headed approach to the EU was shown particularly clearly in Spain's truculent position during the negotiations in the IGC on the European Constitution, where the Aznar government refused to give up the disproportionately high number of votes in the Council accorded to Spain by the Nice Treaty. The new Socialist government of José Luis Zapatero, when elected in March 2004, reversed this refusal, further distancing itself from its predecessor by withdrawing Spanish troops from Iraq. On a number of occasions over the past year, Spain has very publicly aligned its position with that of France and Germany. Spain, as a medium-sized member state which is already part of both the Schengen area and the euro, might well wish to be an enthusiastic member, perhaps even initiator of any European vanguard group.

The UK

British attitudes towards the possibility of flexible integration well exemplify Britain's defensive and ambiguous attitude towards the European Union. The present British government often proclaims itself as being favourable to a more 'flexible' European Union, but it would regard with considerable unease any flexible development of the European Union which led to the establishment of a vigorous 'core Europe' from which Britain might be excluded. The UK would certainly not take part in any moves towards establishing a 'Social Europe' and would naturally not be included in a strengthening of economic governance within the Eurozone.

Tellingly, there is one policy area where the UK might well be a prime candidate to function as an influential member of a vanguard group, namely foreign and defence policy. The neutral status of some EU member states and the differing military alliances of which they are members have long made foreign and defence policy within the EU a highly plausible area for the application of institutional flexibility. Any such project would be much reduced in its credibility without the UK. The UK has shown itself relatively open to the possibility of European initiatives in the defence field. This has at least partly been a conscious 'counter-balancing' by the British government of its otherwise firmly Atlanticist stance. The knowledge that any European avant-garde in the field of foreign and defence policy (particularly defence policy) would almost certainly be arranged along intergovernmentalist lines is also a distinctly reassuring prospect for Mr. Blair's government, which fully shares the traditional British governmental distrust of the European institutions.

An interesting recent development in the British political debate has been the evolution of Conservative policy towards the European Union. Although official Conservative policy does not advocate British withdrawal from the Union, its clear tendency over recent years has been to favour an 'à la carte' Europe in which the United Kingdom could opt out not merely of future European policies, but also out of European policies which have already been established, such as the Common Fisheries Policy. Hand in hand with this effective demand for a renegotiation of Britain's existing terms of membership in the EU goes, however, an increasingly willing acceptance that other countries may wish to form among themselves much closer integrative arrangements, from which Britain would almost certainly wish to remain aloof. Mr. Blair's government desires a European Union which is flexible enough to accommodate Britain's particular interests, but until now has shown concern at the prospect of an effective refounding of

the Union around an 'inner core'. Contemporary Conservative opinion is indifferent to the latter possibility. In the event that a less Eurosceptic leader of the Conservative Party emerges from the present leadership contest, it is unlikely that he or she would be able or even eager to change substantially Conservative attitudes to this question in the short term.

The new member states

Well into the second year of the newly enlarged EU, it becomes ever clearer that it is misleading to regard the Union's new members as a single bloc. Some plausibility had been given to this over-simplified analysis by the support given in 2003 to American action in Iraq by a number of East European countries which joined the European Union in 2004. Many European commentators assumed at the time that there was more than a grain of truth in Donald Rumsfeld's sneering division of the EU's member states into 'old' and 'new' Europe.

In fact, of the ten new EU member states, there are only two where the continuing process of European integration is regarded with anything other than general enthusiasm or at least acceptance, namely Poland and the Czech Republic. Polish public and political opinion is notably volatile. The clear economic benefits arising from Polish accession to the Union and the leading role Poland has played in shaping the Union's reaction to events in the Ukraine have both shifted Polish public opinion in a direction more favourable to the EU. On a political level, however, the European Union remains a controversial issue, with suspicion focussing particularly on the supposed desire of France and Germany to seek the same dominance in an enlarged European Union as they often exercised before enlargement. The newly elected Polish government has stressed its desire to work closely with the United States, and may well believe that there is a potential tension between the development of the Union and the trans-Atlantic alliance. In the Czech Republic public and political opinion is divided, with widespread suspicion of the Franco-German 'axis' and a pronounced Atlanticism which understandably derives from the past seventy years of Czech history. This division of Czech opinion on European issues is well encapsulated by the wide differences in opinion between the government, generally favourable to further European integration, and the Czech President, Mr. Klaus, who is resolutely opposed to the Union's integrative aspirations. Czech policy towards the European Union is likely to figure largely in the controversies surrounding the General Election of next year.

All new EU member states are obliged under the terms of their accession to become members of the euro and the Schengen area. Different views exist among the ten member states as to how quickly they wish or will seek to enter into these arrangements. Some at least of them, however, will probably participate in the foreseeable future considerably more fully than the United Kingdom in the major projects of European integration. This fact alone would suffice to contradict a prevalent misconception in the United Kingdom that the generally unenthusiastic approach of the British government to the process of European integration is widely shared among the new member states of the European Union. There is, however, one policy area in which Britain has gained a range of new allies through the Union's recent enlargement. There is little sympathy in Eastern Europe for any proposals, current or likely to come, envisaging tax harmonisation at relatively high levels within the Union. The competitive advantage that the UK sees from its own relatively low levels of taxation is one also widely seen in Eastern Europe as an essential component of enhanced economic development.

Neutral member states

The traditionally neutral member states form a distinct and important sub-category within the European Union. Their particular significance lies in the fact that among their number are to be found a group of states (notably Austria, Finland and Ireland) which are generally enthusiastic participants in projects for further European integration, but which would find it difficult or impossible to join in collaborative defence arrangements with other EU members. Since many of the theoretical discussions about the possibility of a European 'core' or 'vanguard' have seen defence co-operation as a highly promising vehicle for accelerated European integration, the reluctance of a number of otherwise integrationist-minded countries to join in such co-operation marks a considerable potential barrier to the realisation of any systematic integration within a restricted European grouping. The existence within the European Union of member states generally eager to participate fully in the process of European integration, but unable to do so for specific historic reasons of their own is an illuminating reminder of the intrinsic difficulties associated with the construction of any European 'core'. As such, it constitutes an appropriate note on which to conclude this chapter.

Chapter 3: The development of flexible integration: a historical and institutional review

Flexible integration within the EU has already broken the bounds of purely theoretical discussion and become an observable reality. Only twelve EU member states, for instance, are part of the single currency and the UK, Ireland and Denmark have special arrangements concerning the Schengen Area. Significantly, both these important examples of flexibility pre-date the formal inclusion in the European treaties of the concept of differentiated integration. It was only with the Amsterdam Treaty in 1997 that a clear process for setting up flexible integrative arrangements ('closer co-operation') was agreed. Since the entry into force of the Treaty in 1999, groups of member states have had the opportunity to use the institutions of the European Union to integrate further among themselves in selected policy areas. The procedure instituted by the Amsterdam Treaty was in its turn substantially amended in the Treaty of Nice, which came into force in 2003. Ironically, until now no use has been made of the flexibility provisions contained either in the Treaty of Amsterdam or that of Nice.

Flexible integration before the Treaties of Nice and Amsterdam

Before the Treaty of Amsterdam in 1997, the two most striking experiments of the European Union with integrative flexibility were the agreement on the Schengen Area in 1990 and the Treaty of Maastricht, which allowed Britain to opt out of the new decision-making structures for certain areas of social policy adopted by its partners and to postpone its decision on joining EMU. The Schengen Accord was originally created outside the framework of the European Communities in an international agreement between France, Germany, Belgium, Luxembourg and the Netherlands. It was only incorporated into the EU system by the Treaty of Amsterdam in 1997. Two of the fifteen member states at the time chose to stay outside the Schengen framework, the UK and Ireland. Denmark, although it applies the Schengen agreement, treats it as an international and not an EU arrangement. The UK and Ireland (the latter because of its passport union with the former) remain outside the Schengen area although they can join if they wish at a later date. They can decide to opt in to individual elements of the Schengen system on a piecemeal basis.

The Maastricht Treaty followed a different route from that set out by the Schengen agreement. All the (then) twelve member states signed the Treaty, but the United Kingdom received an opt-out from two of the Treaty's central provisions (the single currency and certain aspects of social policy) and Denmark from one of them (the single currency). The UK has since abandoned its special position in the social policy field, but its opt-out from the euro remains, as does that of Denmark. Sweden, which has no formal opt-out from the single currency, is not being pressed to join the EMU after its failed referendum in 2003. In addition, none of the ten new member states that joined in 2004 have so far adopted the single currency. Under the current arrangements, only Eurozone countries are allowed to vote on a number of Council decisions related to the single currency. They also form the Eurogroup, which excludes non-euro countries and has its own chairman, Luxembourg president Jean-Claude Juncker. The most important decisions within the European Central Bank (ECB) and the European System of Central Banks (ESCB) are also restricted to Eurozone countries.

It was therefore clearly possible for the EU to achieve different levels of integration prior to the introduction of 'closer co-operation' in the Treaty of Amsterdam albeit on an ad-hoc basis. The majority of member states nevertheless concluded in 1997 that, before enlargement took place, the Union needed to equip itself with a mechanism to allow those states who wanted to press ahead with further integration to do so, using the Union's structures and bypassing the national vetoes implicit in the Union's traditional search for consensus. Initially, the British government was suspicious of any such developments. In general terms, it recognised the legitimacy of the desire from other member states to proceed further and faster in their integration. It was, however, concerned that it might find itself entirely marginalised if recourse to 'closer co-operation' was made too easy.

A compromise on this issue was reached in the Treaty of Amsterdam of 1997. Closer co-operation would be set up by a Council vote by qualified majority, but a member state could force the decision to be taken by unanimity by heads of state and government if it believed it had 'important and stated reasons of national policy' for doing so (Article 40 (2) TEU, Article 11 TEC). Title VII of the Treaty on European Union set out the general conditions for establishing closer co-operation and the broad institutional and financial rules of this process. Under the Amsterdam Treaty closer co-operation could only be set up in the first pillar - the European Community - and in police and judicial co-operation in criminal matters, and not in foreign and security policy. The conditions in Title VII were

also restrictive. For example, a majority of member states were needed to begin the process, and closer co-operation could only ever be used as a 'last resort' and if the principles of the Treaties and existing policies and programmes would not be affected.

Enhanced co-operation in the Treaty of Nice

The high thresholds set for 'closer co-operation' by the Amsterdam Treaty were never met, and they were revised in the 2000 Nice Treaty. Particularly influential in leading to these changes was the famous 'Humboldt speech' by Joschka Fischer in 2000, which argued that 'the consistent use of enhanced co-operation by several member states could form 'a centre of gravity' out of which a European federation could evolve'. The Treaty of Nice went some way to meeting these aspirations, replacing the Amsterdam Treaty's terminology of 'closer co-operation' by the vocabulary of 'enhanced co-operation'. With the entry into force of the European Constitutional Treaty now indefinitely postponed, it seems likely that the provisions of the Nice Treaty on flexible integration will continue to set the terms of the debate for the foreseeable future. As with 'closer co-operation', the arrangements for flexible integration included in the Nice Treaty have so far remained unused since its entry into force in 2003.

Under the Nice Treaty, 'enhanced co-operation' is possible in all three pillars (major areas) of the European Union's activities: the European Community (single market), Common Foreign and Security Policy and Police and Judicial Co-operation. The co-operation must involve at least eight member states (not the majority demanded by the Amsterdam Treaty) and be open to all other members. Flexibility can only be introduced if it does not affect negatively the internal market, internal trade, the Schengen area and existing policies and programmes. Enhanced co-operation also needs to respect the competences, rights and obligations of the non-participating states and must further the objectives of the EU, while maintaining the treaties and the institutional framework of the Union. Furthermore, enhanced co-operation can only take place in areas of shared - and not exclusive - EU competence. Following the example of the Amsterdam Treaty, the Nice Treaty stipulates that 'enhanced co-operation' can only be established as a 'last resort', when the Council has established 'that the objectives of such co-operation cannot be attained within a reasonable period by relevant provisions of the Treaties' (Article 43a TEU). These conditions, taken as a whole, are a little less stringent than those of the Amsterdam

Treaty. They are, however, far from an open door to differentiated integration within the Union's structure.

Once the decision to launch an area of enhanced co-operation is taken, concrete measures are adopted based on existing EU provisions and institutions, including the relevant voting rules. As a result, the participating member states cannot change their voting procedure from the one used in the EU as a whole. Moreover, non-participating states can take part in the deliberations (but not the decisions) taken by the enhanced co-operation group. The costs created by enhanced co-operation are to be borne only by participating states unless the Council unanimously decides otherwise. Finally, the Council and the Commission jointly ensure that the activities of the co-operating group are consistent with both the provisions on enhanced co-operation and the general policies of the EU.

Beyond these general provisions, each of the three pillars has separate articles dealing with the process of setting up enhanced co-operation. In first-pillar European Community matters, the member states concerned need to address a request to the Commission, which can decide to further this request to the Council. Thus, the Commission is granted an effective veto over the creation of enhanced co-operation. The decision to establish enhanced co-operation is taken by qualified majority by the Council. The European Parliament is associated with the process: in matters decided by co-decision, prior EP assent is required; otherwise, it need only be consulted. There is only a weak national veto, as a dissenting member state can only force the decision to be taken by heads of state and government at the European Council. This would strictly only delay rather than impede flexibility, although it is doubtful whether member states would proceed with enhanced co-operation despite the opposition of an obviously aggrieved fellow EU member. Finally, if a member state wishes to join an already established co-operating group, it needs to notify the Council and the Commission. The latter will then decide which conditions the member state needs to meet in order to join the group.

The process for establishing enhanced co-operation in Police and Judicial Co-operation in Criminal Matters is broadly identical to the one described above. A statement is added that enhanced co-operation must further the aim of 'enabling the Union to develop more rapidly into an area of freedom, security and justice' (Article 40 (1) TEU). Furthermore, the member states concerned can over-ride the Commission veto, and the EP is only consulted.

In the Treaty of Nice, enhanced co-operation in CFSP was made possible. Restricted to non-defence matters,

enhanced co-operation in CFSP must also respect the overall values and interests of the EU and further the presence of the EU as a 'coherent force on the international scene' (Article 27a (1) TEU). A request to set up enhanced co-operation is made to the Council only. The EP is informed, while the Commission is required to assess whether the proposed co-operation is consistent with existing EU policies. Enhanced co-operation is set up by a vote by qualified majority. However, if a member state opposes this move, no vote is taken, but the matter can be referred to the European Council for a vote by unanimity. The accession of new members to the group is organised in a broadly similar fashion as for European Community and Police and Judicial Co-operation in Criminal Matters.

The institutions under flexible integration

Central to the traditional workings of the European Community and European Union has been the role of the European institutions. Their workings in a flexible Union are worthy of separate consideration.

The European Commission

The Nice Treaty gives the European Commission two important roles in the procedure triggering and governing 'enhanced co-operation'. It can decide (although it has to be able to justify its decision publicly) not to pass on to the Council a request from a group of member states to set up an 'enhanced co-operation' sub-group; and it vets any later applications to join a sub-group which has already been formed. It is an open question whether the Commission would ever be inclined to use these potential powers of veto. Although the Commission may originally have been sceptical about the whole concept of 'flexible' integration, it now seems to believe 'vanguards' of one kind or another have a positive role to play in encouraging the overall process of European unification.

Despite this change of heart, the Commission is nevertheless uneasily aware that any deviation from the traditional 'Community method' contains dangers for itself. The Commission, with its specific powers and responsibilities, is very much a creature of the legislative and political system created by the European Treaties. In theory, its role within the sub-groups of 'enhance integration' is precisely comparable to that which it plays within the whole plenum of the Union's twenty-five member states. Its grounded fear is that the shifting coalitions of a European Union characterised by overlapping

sub-groups will undermine its traditional role as the motor of European integration. Any conception of the Commission as simply the secretariat for sub-groups of differing composition is deeply repugnant to the traditional self-image of the Commission's officials, even if certain Commissioners may today be more willing to see their role in that light.

The European Parliament

The Nice Treaty only gives the European Parliament a limited stake in 'enhanced co-operation'. Its assent to 'enhanced co-operation' is necessary only for policy areas governed by co-decision, with consultation rights for the Parliament in other areas. In CFSP, the EP is indeed only informed of the request to establish enhanced co-operation. At least in those areas governed by co-decision, this arrangement could give rise to the anomalous situation whereby the Parliament blocked enhanced co-operation with a majority arising from the votes of MEPs from member states which do not intend to participate in the project.

This latter possibility highlights the fundamental danger posed for the European Parliament by any consistent and serious move towards patterns of 'flexible integration' within the European Union over the coming years. The Nice Treaty envisages that the Parliament will exercise its role as co-legislator in the decision-making procedure of the 'enhanced co-operation' sub-groups. The Parliament has been able to accept on a temporary and occasional basis a divergence between the voting rights of MEPs and the legal situation of the countries from which they came. British MEPs, for instance, were able to vote on European social legislation during the British opt-out from the Social Chapter. But the widespread use of 'enhanced co-operation' could create recurrent uncertainty about which MEPs possessed the political legitimacy to vote on what legislation. This could easily become a divisive factor in the workings of the Parliament and undermine the credibility of a body not widely regarded in the way that it would wish to be regarded, namely as the authentic Parliamentary representation of the European electorate as a whole. The 'West Lothian' question might well end up finding itself transported from Scotland to Strasbourg.

European Court of Justice

Like the European Parliament, the European Court of Justice is a potential victim of a substantially more flexible European institutional structure, both in its day-to-day work and its underlying legitimacy. Because most of the 'enhanced co-

operation' sub-groups would be adopting legislation in areas where a corpus of EU legislation already existed binding on all member states, the interaction between the sub-group's adopted legislation and that valid for the Union as a whole would be an extremely complicated one. Presumably the Court would always attempt to reconcile the differing streams of legislation, deciding where necessary to uphold its interpretation of the whole Union's law against the legislation of any sub-group.

No doubt technically the Court will do a good job of solving the legal riddles arising from widespread application of the 'enhanced co-operation' procedure. But given the piecemeal and case-by-case nature of the Court's working methods, legal certainty would inevitably suffer as a result, with a corresponding diminution of the Court's prestige and authority. Until now, the Court has been able to treat the Union as a uniform legal order, with certain limited and clearly defined exceptions. Arguably, the Nice Treaty destroys that framework, through its explicit acceptance of differing levels of European integration. The Court's position as mediator between those levels would not be a comfortable one.

The Council of Ministers

Of all the European institutions, the Council is the least likely to be adversely affected by 'enhanced co-operation'. It is only at the moment of voting that non-participants in any sub-groups will be at a tangible disadvantage. Until that point they will have been able to express their views, views which may well be taken seriously if they come from countries which in the foreseeable future wish to become members of the relevant sub-group. The weighting of votes within sub-groups will mirror the appropriate allocations for the European Union as a whole, a calculation which represents another level of complication in the anyway complicated weighted voting system of the Nice Treaty. Since formal voting only rarely takes place in the Council anyway, the work of the Council meeting in its formation as an 'enhanced co-operation' sub-group, should not greatly suffer as a result.

The Council already provides one illuminating example of flexible integration in practice. The Eurogroup of finance ministers meets separately, in advance of the routine meetings of the economics and finance ministers of the EU, and has had its own permanent chairman since 2004. Before this arrangement, in 1998, the composition of the Executive Board of the ECB was decided by the Council during the UK presidency but with Austria as chair of the meeting. In 2001, Belgium chaired the meetings of the Eurogroup during the

Swedish presidency, Sweden not being a member of the single currency. Failing any collapse of the Eurozone, it is difficult to believe that the Eurogroup will not grow in importance and scope over the coming years.

Conclusion

Since 1999, when the Treaty of Amsterdam entered into force, neither its provisions on 'closer co-operation' nor those of its successor Nice Treaty on 'enhanced co-operation' have been applied. More importantly, there has been no occasion on which either 'closer co-operation' or 'enhanced co-operation' was under serious discussion for a designated policy area. The preceding discussion may go some way to explain the disproportion, at least until now, between the time and effort spent on evolving mechanisms for flexible integration and the absence of any use made of these provisions.

A powerful disincentive for the use of the Treaty provisions on flexible integration has been their complexity, not merely for the establishment, but also for the running of flexible 'sub-groups' within the Union. Nor has it usually been clear what might be the benefits for the 'sub-groups' of their initiatives, given the extreme difficulty of integrating their activities within the legal and institutional structure of the existing and developing European Union, even assuming that in a particular policy area enough shared political will existed to go substantially beyond the present and likely future depth of European integration achievable through the Union's normal structures. The reward for the likely effort and administrative complication has simply not appeared sufficiently enticing.

But there may also be a deeper level of explanation for the failure to use until now the existing Treaty provisions on flexibility. In the past, developments in the flexible integration of the European Union have occurred because there was a specific policy goal which most of the Union's members wished to attain, but could not do so within the existing structures of the Union. Institutional arrangements were then put in place to meet this perceived difficulty. Schengen, EMU and the Social Chapter all followed this pattern. The Amsterdam and Nice Treaties, however, attempted to reverse this process, creating institutional structures which could then be applied in cases where member states wished to use them. This may have been over-ambitious. Perhaps by their nature new institutional structures for the European Union need to reflect an antecedent political impasse, from which the Union seeks to emerge on a new and ad hoc institutional basis for every occasion. We shall conclude the study by considering a

number of policy areas in which there might be over the coming years a critical mass of political will to seek new European institutional structures, and place possible developments in these areas in the new context provided by the indefinite suspension of the European Constitutional Treaty's entry into force.

Chapter 4: European flexibility without the Constitutional Treaty

For many commentators, a centrally important aspect of the European Constitutional Treaty was the modified framework it created for the setting up and running of sub-groups within the European Union, using the Union's institutions to further their integration in specific policy areas. In the enlarged Union, there are arguably greater differences than before between the member states as to the pace, nature and scope of the integration they wish to seek among themselves. It was the hope of the Constitutional Treaty's drafters that its arrangements for 'enhanced co-operation' might act as a safety valve for these differences. The arrangements would allow those who wished to proceed more broadly and speedily in their integration to do so without involving the rest of the Union, at least initially, in the process.

The European Constitution and flexible integration

Many of the Constitution's provisions on 'enhanced co-operation' remained unchanged from the arrangements under the Treaty of Nice. Some proposed changes envisaged in the Constitution are, however, worth highlighting, since they could have significantly affected the evolution of differential integration in the Union. They are changes which the Union may well wish to reconsider in any future revised version of the Constitution's proposals.

In general, the European Constitution sought to facilitate and deepen the process of 'enhanced co-operation.' It stipulated that with the exception of Common and Foreign Security Policy, the decision to set up sub-groups could be taken by majority vote in the Council. It also allowed sub-groups in policy areas for which the Constitution normally prescribes unanimous decision to decide unanimously between themselves to move to qualified majority voting.

Moreover, the Constitution also contained an 'accelerator clause' for judicial co-operation in criminal matters

(Article III-270 (4)). If a member state used its veto to prevent the adoption of a European framework law, a group of at least one third of member states were permitted under the Constitution's proposals to move to enhanced co-operation based on that law after the lapse of a certain period of time. Given the increasing interest in this area of European integration generated by terrorist activity in Western Europe, it is entirely possible that this provision could have been frequently invoked after the Constitution's ratification.

Finally, the Constitution contained special provisions for security and defence policy, whereas the Nice Treaty excluded flexible integration in this field. Under the Constitutional Treaty, deeper integration can be pursued under the new mechanism of 'structured co-operation' by those member states 'fulfilling higher military capabilities who wish to make more binding commitments to one another'. The conditions for fulfilling these capabilities are spelt out in a Protocol to the Constitutional Treaty and refer to member states undertaking to develop their defence capabilities and achieving, within a specific time limit, a certain level of capacity. Somewhat surprisingly, the decision to set up a 'structured co-operation' group is taken by the Council with a qualified majority vote. The decision on a further member state's joining the group at a later stage is taken with qualified majority only by those members who are participating in 'structured co-operation'. There is no role for the European Commission or the European Parliament foreseen in the setting-up of 'structured co-operation'. Although all membership decisions are subject to majority voting the envisaged internal decision-making procedure of the 'structured co-operation' group is unanimity.

No European Constitution, no European flexibility?

The double rejection of the Constitutional Treaty in France and the Netherlands has postponed, probably indefinitely, the introduction of the specific procedures it envisaged for sub-groups within the Union. But individual member states and groups of member states still have widely differing aspirations for the Union and their place within it, a gap well illustrated by the varying and contradictory analyses which commentators throughout Europe have given of the referendum results. Broadly, there are after the demise of the Constitutional Treaty three possible avenues the member states may explore in the short term for a more flexible European Union: the setting up of a European 'hard core' among a limited number of member states, greater use of 'enhanced co-operation' along the lines already permitted by the Nice Treaty and the

development of a more integrative system of political and economic governance for the Eurozone.

‘Core Europe’

Much of the debate over the past fifteen years about flexible instruments of European integration has had as its implicit background the threat or fear that a limited number of the Union’s member states, probably led by France and Germany, would react in frustration to the slow pace of integration dictated by membership in a union of twelve or fifteen states, and declare among themselves an ‘inner core’. This ‘inner core’ would then rapidly proceed to a wide-ranging political union. This was a fear particularly prominent in the mind of British politicians, many of whom saw a crucial advantage of Britain’s membership in the Union as being the capacity to prevent from within the Union the setting-up of any such tightly-knit European arrangement potentially hostile to the United Kingdom. Fear that France, Germany and its closest allies might in the early 1990s simply set up a single European currency outside the Union’s structures, was a powerful motive leading the United Kingdom to acquiesce in the signing of the Maastricht Treaty. Without this treaty, and its opt-outs for Britain and Denmark, it would not have been possible for the then twelve members of the Union to institute the Eurozone as a project of the European Union.

The passage of time and the further enlargement of the Union have, however, made much less plausible fears or hopes of a ‘hard core,’ particularly one based around France and Germany. In Germany, the then Foreign Minister Joschka Fischer specifically disavowed the idea, and the new German government is unlikely to make the furthering of European integration and the establishment of a ‘core Europe’ one of its most pressing priorities. In France, the weakness of President Chirac on both the national and the European stages after the May referendum make him an unlikely motor of a new ‘hard core’. However, important echoes of the idea could be heard in the first speech to the French Parliament in June 2005 of the new French Prime Minister, Dominique de Villepin. Moreover, on 25 September 2005, Nicolas Sarkozy, a strong contender for the French presidency in 2007, declared that he would be in favour of a ‘core Europe’ consisting of a ‘G6’ - France, Germany, the UK, Italy, Spain and Poland. This position was supported by the Foreign Minister Philippe Douste-Blazy, who said that this core group should move ahead in a broad range of policies but leave the door open for other members to join later.

As already noted earlier in this study, Mr. Sarkozy’s remarks have not been enthusiastically received. Given that Britain and Poland are not members of the Eurozone and that one task foreseen for this ‘Core Europe’ was precisely the management of the Eurozone, Mr. Sarkozy’s proposal does not seem likely to attract many supporters in its current form. In general it is clear that France and Germany have not yet adapted their strategic analysis to the changes arising from a European Union of twenty-five member states. A small but significant example of this anachronistic thinking was Chancellor Schröder’s attempt to call after the Dutch referendum a meeting of the six original signatories of the Treaty of Rome, an attempt which was rebuffed by the Dutch themselves and the Italians. Such division even among the founding member states of the Union is a highly implausible backdrop for anything that could be depicted as a ‘core Europe’ in any traditional sense of that term. Nor have French or German representatives shown themselves adept at winning new friends in, for instance, Eastern Europe, to replace uncertain partners in European integration like Mr. Berlusconi. It may be that waning enthusiasm in Eastern and Central Europe for Britain as a long-term diplomatic ally (largely, but not exclusively arising from Britain’s attitude to the maintenance of its budgetary rebate) will give new opportunities for France and Germany to regain influence in ‘New Europe’. There is, however, much ground still to be made up. The long-term interest of the Central and East Europeans in close transatlantic relations and in liberal markets will continue to make these countries on at least some issues natural allies of the United Kingdom. Overall, European diplomatic constellations can certainly be imagined which in the medium term might once again make plausible the prospect of a European ‘inner core.’ But for the immediate future any such prospect seems in the highest degree unlikely.

Enhanced Co-operation under the Nice Treaty

Although it is on balance true that the European Constitutional Treaty would have made, if adopted, the overall workings of ‘enhanced co-operation’ sub-groups easier and more effective, the already existing Treaty of Nice sets out a general framework for such sub-groups. Indeed, on the specific question of the initial setting-up of sub-groups for ‘enhanced co-operation’, the Treaty of Nice is more permissive than the Constitutional Treaty, demanding only that eight member states agree to enter such an arrangement, compared to the nine stipulated by the Constitutional Treaty. Those who doubt the general viability of the concept of ‘enhanced co-operation’ reasonably point out that the present provisions of the Nice

Treaty in this area have never been implemented, nor even come near to being so. It is an open question whether after the negative votes in France and the Netherlands, 'enhanced co-operation' as foreseen by the Nice Treaty will now become a reality.

At one end of the spectrum of views on the appropriate pace and extent of integration, the hope is sometimes expressed that 'enhanced co-operation' could usher in an era of accelerating integration, circumventing vetoes and allowing the formation of 'vanguard' groups. Such a development could perhaps overcome the current perception of deadlock arising from the rejection of the Constitution. However, it is far from clear that a range of identifiable policy areas exist upon which any significant and coherent body of the Union's member states could be expected to wish to enhance their co-operation within the framework of the European Union. Moreover, if any such body did emerge, pursuing among themselves a closely-knit pattern of enhanced co-operation, then - as we have seen - that of itself would create substantial problems for the working of the existing European Union, particularly for some of its central institutions. Ironically, the high degree of economic and social integration which the European Union has already achieved for its present members makes it practically extremely difficult for any integrative sub-groups to form themselves on other than an occasional or sporadic basis.

If 'enhanced co-operation' is ever to be other than a marginal and occasional phenomenon, it seems likely that a number of preconditions will need to be met. The arrangement(s) must apply to an important policy area or important policy areas; they must affect significant numbers of European citizens; the sub-group must be able through its activities to add to (without endangering) the existing Union acquis; and above all, there must exist the political will of a significant number of national governments to deepen their integration through the 'enhanced co-operation' procedure. A number of potential areas for the procedure have been suggested. Not all of them meet the necessary preconditions.

External Policy

External policy within the European Union falls into two categories, those areas where the Union acts on behalf of its member states, and those where it does not. Because of its highly developed internal market, the Union already negotiates on behalf of its members international agreements in such fields as trade policy, agriculture and the environment.

The unity of the internal market would obviously be threatened if twenty-five or more member states attempted to negotiate individually with third parties agreements in these areas. Thus the Union and its institutions have and will continue to have a major stake in the external, particularly multilateral, relations of the European Union's member states.

The role of the European Union, however, in the bilateral external relations of its member states ('classical' foreign policy) is much less pronounced. 'Classical' foreign policy is the purest expression of executive discretion and the member states of the Union (particularly the larger states) have always been extremely reluctant to envisage any generalised sharing of sovereignty in this area.

This underlying reluctance has co-existed with the widespread understanding among European governments that their influence in the world is greatly enhanced if Europe can speak with one voice and pool its military, diplomatic and external economic resources in support of its common interests. Over the past fifteen years, successive European Treaties have sought to establish an equilibrium between these two contrasting approaches.

The result has been a series of mechanisms which allow varying categories of co-operation between some or all member states on specific areas of foreign policy. Moreover, foreign policy remains unusual within the EU in that decisions arise largely in reaction to events and are not made as part of a broader set of formal and fixed guidelines, the general legal instruments in which the Union's decisions are enshrined. Although the Constitutional Treaty proposed potentially important changes to the representation and formation of the European Union's foreign policy, it did not greatly change the well-established avenues for 'flexibility' in this area already open to the member states.

The nearest that the European Union has hitherto come to a sub-group of 'enhanced co-operation' has been the close and growing co-ordination in this field between the three largest and diplomatically most active members of the Union, the United Kingdom, France and Germany. This co-operation has been particularly marked in the common policy and diplomacy which the three governments have pursued towards Iran, marking out a specifically European approach to Iran which at least initially was in contrast to that of the United States. Some commentators have seen the Iranian policy of the French, British and German 'Directoire' as a hopeful augury for a developing European foreign policy, which will build on the existing arrangements for 'flexibility' within European foreign policy-making. While this optimism may

be justified in the long term, there remain for the Union a number of unresolved political and institutional issues in the field of foreign policy.

The foreign policy assets of the European Union are disproportionately concentrated in the hands of three states, France, UK and Germany. Of these, the first two (both members of the UN Security Council) have traditionally favoured an approach to the European Union which emphasises the intergovernmental aspect of the Union generally, and particularly so in matters of foreign policy. Where, as on Iran, France, the United Kingdom and Germany agree, they will act on their agreement and will usually expect to be able to persuade most of the rest of the European Union to agree with them. When they disagree, there will be little chance of an effective external European policy on the issue in question. France and the UK in particular, and increasingly Germany, appear unwilling to envisage any reinforcement of European mechanisms which would force the 'Directoire' to agree on matters which divide them. This political reality must form the backdrop to any realistic discussion of institutional proposals or indeed existing institutional arrangements designed to facilitate the emergence of a genuinely European foreign policy.

None of this is to deny that in coming years the 'Directoire' may more often find itself of one mind on controversial foreign policy issues and that this consensus may often find its expression in a common European approach to these issues. Provided that the three countries of the 'Directoire' do not provoke by heavy-handed exploitation of their leading position a negative reaction from the smaller countries, this will obviously be a positive development for Europe. But other than the intergovernmental 'Directoire', it is difficult to imagine any coherent sub-group of the European Union emerging in any significant field of 'classical' foreign policy. Such a sub-group would be ineffectual if the 'Directoire' were divided and redundant if it were not.

Arguably, such an analysis applies with even greater force in the military sphere. Here, the Constitutional Treaty sought to introduce the concept of 'structured co-operation' for security and defence policy. This would have marked a first, tentative step towards the integration of military matters (the supreme expression of 'hard power') into the European Union's institutional structures. The probable demise of the Treaty marks a setback for this process of European institutionalisation. Nevertheless, defence and security policy is a field in which momentum has apparently been maintained, both in preparations for a European Defence Procurement

Agency and the establishment in 2004 of EU 'battle groups', multinational mobile combat units for use in crisis situations. It may well be that as the desire of the Union's major military powers to accelerate their military integration increased, so this desire will generate the appropriate institutional structures, the precise form of which cannot yet be predicted.

Justice and Home Affairs

Despite the at least temporary disappearance of the European Constitution, Justice and Home Affairs is an area of the Union's activities in which important developments seem likely over the coming years, and in which two models of differentiated integration are likely to play a significant role.

Under the Amsterdam Treaty of 1997, the United Kingdom and Ireland obtained the right to remain outside a major component of the Justice and Home Affairs agenda, namely the Schengen Accord, which was incorporated into the EU structure by the Amsterdam Treaty. The UK and Ireland did, however, maintain the right to opt into individual elements of the system on a piecemeal basis, an opportunity of which they have since made use on a number of occasions. This arrangement was to have been maintained in the European Constitution. It will now be for the United Kingdom and Ireland to decide over the coming years how far they wish to make use of the possibility offered them to participate in the further development of the Schengen system. The insular geography of the United Kingdom and Ireland is widely accepted by their partners as creating for these two countries objective circumstances that justify a specific border regime. The choices of the British and Irish governments to opt in or opt out of new Schengen-based legislation are unlikely to cause fundamental divisions within the Union.

More likely to cause controversy and even bitterness within the Union may be attempts to use the 'enhanced co-operation' procedures of the Nice Treaty to create sub-groups co-operating intensively among themselves on matters of internal security, the fight against organised crime and judicial reciprocity. These are comparatively underdeveloped areas of European law, and might well be attractive fields in which to reinforce their integration for the more 'federalist-minded' of the member states. For example, in May 2005, seven EU members (Germany, France, Spain, Austria, Belgium, Netherlands and Luxembourg) signed the Schengen III agreement in the German town of Prüm, which establishes closer co-operation on issues such as sharing of fingerprint and DNA data. The treaty falls outside of the EU Treaty

framework, but could in the future develop into a formal 'enhanced co-operation' group. It cannot be excluded that the United Kingdom might wish to participate in this or other 'enhanced co-operation' sub-groups. The 'war against terror' has powerfully reinforced the British government's interest in shared repressive mechanisms, be they at the European or international level. It is interesting, for instance, to see the British government fully co-operating with the G5 Group on issues of illegal immigration.

There is, however, a danger that 'enhanced co-operation' in the field of Justice and Home Affairs might create, or be seen as creating, a new dividing-line within the European Union, that between the administratively more advanced states and those less so. At both the public and the political level in 'old' Europe, there are fears that the police and other security forces of Central and Eastern Europe are not wholly reliable partners in delicate questions of internal security. There are already first indications that some member states are in no hurry to extend the functioning of the Schengen Accord completely to all the states that joined the Union in May 2004. The European Commission will no doubt wish to satisfy itself that any sub-groups which are set up within the sphere of Justice and Home Affairs genuinely do help to realise the underlying objectives of the Union and that the sub-groups remain open in the longer term to all who may wish to join. There is a parallel danger within the 'third pillar' to that potentially posed by the concept of a 'social Europe,' namely the postponement or even obstruction of the full integration of new member states into the Union's policies and workings.

'Social Europe'

When the European Constitutional Treaty was signed, Mr. Chirac in particular expressed the hope that its provisions would help those countries that wished to deepen their 'social integration'. He seems particularly to have had in mind that element of the Treaty which permitted sub-groups established under 'enhanced co-operation' to choose for their internal decision-making majority voting rather than the unanimity still prescribed for a number of important policy areas by the European Treaties. Majority voting in a sub-group dedicated to constructing a 'social Europe' would have been, in Mr. Chirac's analysis, a way of circumventing the successful British insistence that unanimous voting should remain the norm for matters important for Mr. Chirac's 'social' agenda, such as taxation. Indeed, it is worth remembering that the UK's original opt-out from some social policy competences in 1992 was a way of circumventing the problem of the national veto and

introduce majority voting for a limited number of member states.

The probable disappearance of the Constitutional Treaty, at least in its present form, will certainly limit the scope for majority voting within a sub-group 'social Europe'. But it is far from clear that Mr. Chirac's original analysis of the potential impact of the Treaty was in any case correct. Many aspects of what usually figures on the 'social Europe' agenda can just as well be realised under the Nice Treaty as under the Constitutional Treaty. Those aspects which are problematic under the former would not have become less so under the latter.

If, among themselves, ten or twelve member states including France and Germany wish to agree that they will observe more demanding standards of employment and social protection for their citizens than the present state of EU law prescribes, both the Nice Treaty and the Constitutional Treaty would allow them to do so. Both the Nice Treaty and the Constitutional Treaty would also allow them to form a sub-group which renounced fiscal or social 'dumping,' although the Constitutional Treaty would have allowed this sub-group to proceed by majority voting on fiscal matters, an approach excluded by the Nice Treaty. But it is difficult to see what interest members of such a potential sub-group might see in this 'enhanced co-operation'.

Those who believe that the economic and social equilibrium of the European single market is threatened by what they characterise as social or fiscal 'dumping' normally regard the United Kingdom, and more particularly the countries of Eastern and Central Europe who have recently joined the European Union, as the source of this perceived problem. These countries, it is argued, are able to compete 'unfairly' within the European single market by the less developed and therefore less expensive social and fiscal regimes which national governments impose upon local employers. But, ironically, the nearer this analysis is to being correct, the less incentive there is for countries which do practice such 'dumping' to join a sub-group which might make their current social and fiscal arrangements more burdensome for employers. By doing so, they would simply deprive themselves of the competitive advantage which, fairly or unfairly, they now enjoy.

In effect, a 'Social Europe' sub-group could only succeed in its probable goals if it either embraced the vast majority of the Union's member states, which is highly unlikely; or if it were able somehow to isolate itself from the 'non-social' member states of the Union unless the goods and services

they provided met the sub-group's social and fiscal standards. Any serious moves in this latter direction would inevitably severely challenge the European single market and the Eurozone. Whatever the frustrations felt in some member states at the 'unfair' competition offered by Polish plumbers to their French or German counterparts, it is difficult to imagine that any member state government would run that risk. If seriously pursued, 'Social Europe' along those lines would be a potentially divisive force within the European Union.

Economic Governance in the Eurozone

Of all the current activities of the European Union in which flexible integration plays or may play a role, the single European currency is undoubtedly the most important. Even before the Union's enlargement last year, three member states remained outside this central plank of the Union's economic and political integration. Now, more than half the Union's membership are outside the Euro, with differing dates envisaged for their joining the single currency, although all have the right to do so when they meet the 'convergence' criteria. The probable disappearance of the Constitution in its present form will not lessen the need for the Union to resolve the questions of economic and political governance which the evolution of the single European currency increasingly poses. These questions and their resolution are inevitably made more complex by the need to balance the interests of the current members of the Eurozone, those of future members of the Eurozone and those of EU members such as the United Kingdom which are unlikely to join the euro for many years to come, if ever.

The main provision of the Constitutional Treaty regarding the European single currency was the setting up of a Eurozone Council made up of Finance Ministers from the member countries of the currency bloc. In anticipation of the Treaty's adoption, such a Council has already been instituted, under the Chairmanship of Jean-Claude Juncker. It shows no sign of disappearing after the unsuccessful referendums in France and the Netherlands. A number of converging political and economic arguments now strongly suggest that the Eurozone Council will wish in the near future to review the Euro's workings in such a way as to refine the relatively crude system of governance established for the European single currency when it was set up by the Maastricht Treaty.

The introduction and functioning of the euro over the past five years has been a remarkable technical success. Occasional speculation about its likely demise has rarely been

other than wishful thinking. But it has not been the demonstrable economic success that many of its advocates hoped. In the mind of many Europeans, the single currency has been associated with the difficult budgetary adjustments necessary for some countries to join the euro in the first place, the alleged price rises which accompanied the Euro's introduction and continuing mediocre economic performance, for which the European Central Bank and national politicians try to blame each other. In the Dutch referendum in particular, the single European currency contributed to the Treaty's rejection, with questions being raised about whether the Netherlands entered the euro at the appropriate rate of exchange and universal criticism being voiced of France and Germany's failures to observe the provisions of the Stability and Growth Pact.

There seems throughout the Eurozone little or no appetite for the abandonment of the Euro. Even the occasional Italian voices raised in this sense reflect purely internal political skirmishing having little to do with real political or economic choices open to the Italian government. But national governments and political elites are increasingly asking themselves whether the economic benefits and political profile of the euro cannot be improved by a more coherent and visible collaboration between the political component of the Eurozone's governance (the national ministers) and their technical equivalents in the European Central Bank.

The setting up of the Eurozone Council and recent proposals from the Luxembourg and French governments for a structured dialogue between the Council and the European Central Bank reflect this new, more co-ordinated approach. With the passage of time, the unconstrained independence given to the Central Bank in the Treaty of Maastricht is increasingly seen within the Eurozone as a historical anomaly, which may well have generated in recent years a sub-optimal mix of monetary and fiscal policies and certainly failed to provide a transparent structure of political responsibility for the Zone's economic management. It is clear that the coming years will see a lively discussion within the Eurozone to produce a more sophisticated political and economic infrastructure for it, whether by greater discretionary spending at the European level, more effective co-ordination of national fiscal policies, greater co-operation between the ECB and the Council of Ministers or other similar measures. It would be very surprising if the recent disappointing (indeed retrograde) reform of the Stability and Growth Pact has stanchied the flow of debate and proposed reform on this subject. While the UK will clearly have no position in this continuing controversy, the role of such countries as Slovenia, which firmly

intends to join the euro in 2007, may be less clear-cut. There may well be a temptation for the existing members of the Eurozone themselves to agree on new governance structures for the zone (perhaps reflecting elements of the 'social Europe' agenda, widely defined) and then to present aspiring members with a *fait accompli*. The possibility cannot even be ruled out that the need to revise the Euro's governance structures will be seen by some member states as an argument or pretext for postponing entry into the single currency of new members beyond the existing twelve. Once again, 'flexibility' is accompanied by the risk of division.

Conclusions

This report began with an analysis of differing models discussed over the past decade for flexible European integration. If the analysis contained in the preceding chapter is correct, then it will not be possible to describe any of these models as being the generalised model for what in future will be a more differentiated European Union. Depending upon the area of European policy under discussion, there will be some elements within the European Union of a multi-speed Europe, some of a vanguard or core, some of 'variable geometry' and even a few of Europe 'à la carte'. The four central areas of the Union's development identified in Chapter 4 need separate discussion.

The European Community (single market)

The European single market seems that element of the European Union least apt for flexible integration. It is not by chance that in the past eight years no use has been made in this central area of the Union's activities of the possibilities for 'closer' or 'enhanced' co-operation offered by the Amsterdam and Nice Treaties. Many areas of the European Community's single market are relatively uncontroversial between the member states, and many decisions can anyway already be taken by majority voting, thus nullifying national vetoes. In the specific area of social policy, there are clear differences of approach between the member states, in such a way that certain observers have foreseen the setting up of 'enhanced co-operation' between some member states favouring a more 'social' and less 'liberal' economic approach to European integration. It is, however, difficult to construct a legislative agenda for such 'enhanced co-operation' which would not threaten the coherence of the European single market, an achievement of the Union to the maintenance of which all

member state governments are committed. It is possible to envisage discrete areas of policy-making (for instance the environment, transport and education) where sub-groups might wish to enhance their integration within the Union's structures. But these areas would be marginal and occasional. They might well in the event be best regarded as examples of a 'multi-speed' Europe, which if successful would attract a wider membership in time.

Justice and Home Affairs

There is a strong likelihood that this will be over the coming decade a growing area of European integration, but the legal and institutional structure underpinning it may be in the short term a complicated one. Britain for example will enjoy in this area something very like an 'à la carte' relationship with its partners, remaining outside the Schengen system, but having the right to opt in or opt out of most other European legislation under this pillar. Until now, Britain has on the whole preferred to 'opt in' to such legislation, and it may well be that this will be the pattern for future developments, with 'flexibility' in this regard being the exception rather than the rule.

It is certainly true that 'enhanced co-operation' in the sphere of Justice and Home Affairs would have been facilitated by the provisions of the European Constitution, but it would not be surprising if some attempt at least were made by the 'old' members of the European Union to invoke in this sphere the provisions of the Nice Treaty, which would allow them to accelerate their integration without at first embracing all the 'new' member states of the Union. Once again, this would probably in effect be an example of a 'multi-speed' Europe in action. There can be little doubt that almost all current members of the European Union (with the possible exception of the United Kingdom and Ireland) would wish fully to participate in the integrative agenda of Justice and Home Affairs. Given the Europeanisation of trade and movement implicit in the development of the European single market, there are obvious attractions for all continental European member states to 'Europeanise' the judicial and policing questions arising from the single European market. In the long run, Justice and Home Affairs may not turn out to be an area in which the European Union needs to exhibit a high degree of institutional 'flexibility'. Provision has already been made for possible British and Irish exceptionalism. Apart from this possible exceptionalism, there is widespread agreement within the Union on the long-term goals to be achieved in this field.

Foreign and Defence Policy

It is apparent that for the foreseeable future the European Union will not be able to adopt the traditional Community methodology for much of its foreign and defence policy, not least because of the disinclination of France and the United Kingdom to pursue this route. Without these two permanent members of the United Nations Security Council any European foreign or defence policy would inevitably lack coherence, substance and credibility. There have been, however, substantial indications that France, Britain and Germany are willing to co-ordinate more than they have in the past their foreign policy and (possibly) their defence-related co-operation, an approach for which their shared negotiations with Iran are an illuminating example. If this pattern generalises itself, it could well be that France, Germany and the United Kingdom constitute over the coming years a de facto 'core' for the European Union's foreign and defence policy. This 'core' will not be one acting primarily within the ambit of the European institutions, but rather one co-ordinating intergovernmentally its policy positions on a regular but unconstrained basis. In terms of the models discussed in Chapter 1, the 'core' will act on an 'à la carte' basis.

The single currency

The European single currency was the first major project of the European Union to be set up without the initial participation of all its members. It was then seen by many commentators as heralding an era of European flexibility, in which the consensual and universalist philosophy of the Treaty of Rome was replaced by varied and differentiated forms of integration. It is therefore appropriate that precisely the single European currency now seems likely to pose in its most acute form the problems arising from differentiated integration for the European Union. There is a real possibility that the evolution of the European single currency will usher in a fractured rather than flexible European Union.

If, as seems possible (although by no means certain) the members of the Eurozone conclude that for both political and economic reasons the better functioning of the single European currency requires a greater pooling of their national sovereignties then the implications of that decision for the Union as a whole will be profound. In the case of the United Kingdom this enhanced degree of sovereignty-sharing within the Eurozone could well act as a further barrier to British membership of the euro. The UK's long-term estrangement from the single European currency could in its turn make it

more likely that others such as Sweden, Denmark, Poland and the Czech Republic would also wish to remain outside the Eurozone. It is difficult to believe that such a fissure could remain indefinitely without consequences for the institutional integrity of the Union. The roles of the European Parliament, the European Commission and even the European Court of Justice could not but be affected by a European Union in which there was such an asymmetry between the level of political and economic integration achieved between (probably) a majority of its members and that achieved by (probably) the minority. The great unresolved question for the future of the European Union is whether in twenty years time the euro can most appropriately be seen as part of a 'multi-speed Europe' in which all member states, including Britain, eventually participate; as a 'core' or 'vanguard' which constantly exercises increasing pressure on those states not yet members to join; or as the final parting of the ways between those member states willing to share large and probably increasing measures of their national sovereignty and those unwilling to do so. The answer to that question will emerge in fits and starts over the coming decades. There are powerful objective arguments, both economic and political, for reviewing substantially the workings of the European single currency in a more integrative direction. Until now, however, the Union's national governments have not been able to translate these arguments into effective action. Whether they will be able to do so in the coming decade is incomparably the most important piece in the jigsaw of the European Union's future development.

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'Flexibility and the future of the European Union' is a major new study by the Federal Trust, based on the findings of an expert working group under the chairmanship of Sir Stephen Wall. It considers the question of a 'flexible' European Union from a number of differing perspectives, including conceptual, historical, national and regional approaches. The report's conclusion is that the European Union is becoming and will become a more differentiated organisation than its original founders hoped or expected. A 'core Europe' based on France and Germany is however not a realistic possibility for the foreseeable future. Depending on the policy area concerned differing models and degrees of differentiation within the Union may apply instead. The study concludes that the as yet unanswered question for the future of 'flexible integration' in the European Union is that of the governance of the Eurozone. Will those countries in the Eurozone be willing to pool further sovereignty to make the Eurozone more politically attractive and economically efficient?

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