

Enhanced cooperation in European Union Law and its effect on the European Integration

Mehlika Özlem Ultan¹

Received Date: 22 / 08 / 2017

Accepted Date: 25 / 10 / 2017

Abstract

In the European Union, a more cooperative cooperation can be made between some member states in order to solve the problems arising from the unanimous rule in the decision-making mechanism. Enhanced cooperation organized for the first time under a separate title with the Amsterdam Treaty. Via this mechanism, the Union, which has increased rapidly in the number of member states since its establishment, can act more quickly and effectively on some issues. Thus, it is aimed to facilitate the decision-making process. Enhanced cooperation is anticipated as a possibility provided by the member states which want to go further in cases where progress cannot be achieved with the participation of all the member states. In the scope of this study, firstly the characteristics of the concept of enhanced cooperation will be explained and later the development of the concept will be examined within the framework of the treaties. Thus, it will be attempted to discuss how this mechanism in European Union law affects the process of European integration by analyzing the decisions which were taken by enhanced cooperation.

Keywords: Enhanced Cooperation, European Integration, European Union Law

1. Introduction

The process of European integration has been constantly changing from the beginning. Many new decisions have been put into force and new ideas have been put forward together in order to enable the integration to be effective and efficient. Enhanced cooperation is a system that has emerged in this direction. However, this method also needs to be analyzed for the negative effects of integration, as it allows countries to integrate into small groups.

It is possible to say that the European Union has considered the subject of differentiated integration since the 1950's. Until the mid-80's, European integration could be explained by a 'unity dogma'. This concept accepted that all of the member states of the EU were supposed to apply the same policies, at the same speed. There was no derogation, unless justified, limited and temporary. During years, the number of members has doubled and member states have become more and more heterogeneous, so differentiation is unavoidable. In addition to differentiation, the EU also needs the flexibility to harmonize the heterogeneity of the countries. In order to integrate increased political and economic diversity, the widening Union should not forget that there is a possibility for some members to going further towards integration. Thus, it is aimed to continue the unification without disturbing the unity of the Union (Dağdemir, 2001, 23). Because of this aim, the other kinds of integration are on the agenda of the EU (Stubb, 2003, 28).

First of the European integration models is "Europe à la carte". It is an idea of European integration which allows European Union countries to choose policies like from a menü (La Serre

¹ Asst. Prof. Dr., Kocaeli University, Kocaeli/Turkey, ozlemultan@gmail.com

and Wallace, 1997, 6). The Eurozone can be given as an example to this integration model. Some EU member countries are being a part of the Eurozone and others not (Europe 'à la carte', 2017). When choosing policy areas for participation, member states behave according to their interests. The reflection of this integration model in European Union law is embodied by the opt-in/opt-out system. The fact that the United Kingdom (UK) and Denmark choose to stay out of certain stages of the Economic and Monetary Union and that the UK is out of social policy can also be shown as an example (Missiroli, 1998, 103).

The second integration model is "variable geometry Europe". It can be used to explain the method of differentiated integration in the European Union. Because of the increased number of members, there can be irreconcilable differences among member countries and there is a need to resolve such stalemates. This method would enable countries wishing to pursue a given goal to do so while allowing those opposed to holding back (Variable-geometry Europe, 2017). The concept of variable geometry is premised on a spatially permanent differentiation. According to the variable geometry, the goal of unified integration is abandoned in some areas, while only smaller groups of member states can move forward together in specific policy fields (Ondarza, 2013, 8). At the center, there is a group of countries that form the basis of cooperation and it is assumed that this cooperation in the center will affect the countries outside as well. This process is also called as a spill-over effect (Stubb, 1996, 285).

The last but not least integration model is "multi-speed Europe". It can also be used to explain the method of a differentiated integration which is related to having pursued common objectives by a number of European Union member countries. They are willing to advance in cooperation, and it is hoped that the other member countries will follow them sooner or later. This view advocates that a method that moves towards common goals within the Union can eventually lead to enlargement of policy areas and can become a common Union purpose with the participation of all members (Multi-Speed Europe, 2017). Even though the concepts of multi-speed Europe and variable geometry Europe are being close to each other, they differ in terms of their degree of having common goals (Missiroli, 1998, 104). In this regard, enhanced cooperation can be an example of a multi-speed Europe integration model.

With a growing number of members, the Union must establish and harmonize both external and internal balances. Whatever the method used in the European integration, one of the most important problems is that constantly growing differences within the Union can threaten the stable situation. The differences within the Union can grow and threaten the structure of the Union. It is expected that there should be some conditions in order to eliminate this problem and to provide the flexibility easily. These conditions are; determination of a certain number of contributions, openness, existence of a reason to begin, harmonization to a sole institutional framework, harmonization with the *Acquis Communautaire*, conformity to the aims of the treaties, adequate time, financial solidarity and determination of the roles of the Commission and the Court of Justice for a flexible area (Stubb, 1997, s. 48). An integration model that fits these conditions can contribute to the success of the Union. In this context, the concept of close cooperation has been included in the EU law with the Amsterdam Treaty, as a solution for the success of the integration process. With Nice Treaty and Lisbon Treaty, the close cooperation was improved and it maintained its existence in the name of enhanced cooperation. Enhanced cooperation, which presented as a solution to the controversial debate in the integration process, aims for all states to reach the common goals of the Union, but the periods of time may differ in terms of the member states while

achieving these goals. This is an indication that the enhanced cooperation can be accepted as an example of a multi-speed Europe model.

2. The enhanced cooperation

The Enhanced cooperation is a procedure where a number of EU member countries is allowed to establish a close or an advanced cooperation in some of the EU policies but without the other EU countries being involved. If all of the member countries cannot reach to a consensus, enhanced cooperation can allow countries to implement some measures. Thus, the members can move at different speeds and towards different goals than members which are outside the enhanced cooperation areas. Other member countries have still the right to join when they want. The enhanced cooperation has aimed to solve the problem that if a proposal is rejected by one or more member countries who do not wish to be part of the policy area. It does not, however, allow for an extension of powers outside those under the EU Treaties (Enhanced Cooperation, Already a Reality in the EU, 2017).

2.1. The enhanced cooperation before the Amsterdam Treaty

At the beginning, it is known that there is no provision in the founding treaties about the enhanced cooperation. However, in the following periods, some member states can cooperate more tightly at the level of the government especially in some issues in order to solve the problems arising from the unanimous rule. Some writers think that there are always differences in some issues between the member states and this actually leads to a closer cooperation between the other countries. The examples of that situation include transitional periods given to new member states, Schengen agreements, economic and monetary union, Eureka which is a scientific research program with no obligation to participate in all member states, and social protocol system.

From the mid 80's, a significant part of the legislation to establish the single market was adopted. And the European Union changed its fields of action, which did not necessarily require a single rule and a single speed for all members. Despite of that, it was not easy to abandon the unity dogma (Piris, 2014). The European Single Act, which was signed in 1986, did not have a clear provision on enhanced cooperation. However, some provisions, including exceptional rules in the environmental and research areas, as well as the articles 100A and 100B that contain protection provisions within the scope of the realization of the domestic market together with the European Single Act, can be interpreted as enhanced cooperation.

A permanent differentiated integration model came officially with the Maastricht Treaty. During the treaty negotiations, the UK opposed to the other members and refused to accept both the provisions of social policy and adopting the future currency. In order to be able to progress, the other members were obliged to give the UK a permanent opt-out on these issues, and also on some aspects of judicial and police cooperation, (Piris, 2014). Moreover, in Denmark, the non-acceptance of the Maastricht Treaty in the referendum resulted with a special status given to this country at the Edinburgh Summit in December 1992. With this summit, Denmark gained exceptions in some policy areas such as economic and monetary union, defence policy, and citizenship of the Union (Edinburg Summit, 1992).

It is stated for the first time in the Maastricht Treaty that two or more governments could go to close cooperation according to the third pillar's rules (Maastricht Antlaşması, 2007, Article K7). But this provision was not so descriptive, nor did it imply any procedure. It was also clearly stated in Article J4/5 of the Maastricht Treaty that two or more member states could establish a

close cooperation with the Western European Union without harming the common foreign and security policy (Maastricht Antlaşması, 2007, Article J4/5).

2.2. The enhanced cooperation in the Amsterdam Treaty

The concept of enhanced cooperation has been firstly organized under a separate title within the Amsterdam Treaty and under the name of 'Close Cooperation'. There are 3 articles in this title which are expressed as "Provisions on Close Cooperation". The 43rd article in the Title VII of the Amsterdam Treaty considers the principles of close cooperation, the 44th article explains the functioning of the decision-making mechanism in close cooperation and the 45th article indicates that the Parliament will be informed about close cooperation. When the content of Article 43 is analyzed, it can be seen that close cooperation can only be used as a last resort, close cooperation does not have effects on the *Acquis Communautaire* and it concerns the majority of the member countries. It is also stated that the close cooperation does not have effects on the competences, rights, obligations, and interests of member states that do not participate in the procedure (Amsterdam Antlaşması, 2010, s. 108-109).

In accordance with the close cooperation, some member countries are allowed to work jointly in an area where the other member states cannot attend or do not wish to participate, provided that it is accepted by a majority vote in the Council (Keukeleire and MacNaughtan, 2008, p.108-109). When the Treaty of Amsterdam entered into force, it was only possible to establish close cooperation within the rules of the first and third pillars. However, the close cooperation in these two pillars and the subsequent involvement in the close cooperation have been subjected to different procedures. (For the first pillar 11th article of the Treaty of European Communities and for the third pillar 40th article of the Treaty on the European Union). For example, in decisions under the first pillar, there will be no vote if a Council member indicates that it is against the authorization. This suggests that countries with a close cooperation are entitled to veto right (Amsterdam Antlaşması, 2010, s. 5, 107).

The Schengen arrangements were integrated into the Treaties by the Amsterdam Treaty and it introduced provisions on close cooperation on a case basis. Both the Commission and a number of member countries were resisted to these provisions. And countries worried about the creation of a first-class, to which they might not be able to belong (Piris, 2014). Thus, there has been no attempt at close cooperation since the Amsterdam Treaty, so the close cooperation has been on the agenda of the Feira Summit in June 2000. At the intergovernmental conference convened prior to the Nice Treaty, this summit was re-discussed because of the request of the Benelux countries (Cantore, 2011, 4).

2.3. The enhanced cooperation in the Nice Treaty

The term close cooperation which had been used in the Amsterdam Treaty began to be expressed as enhanced cooperation by the Nice Treaty. Provision of enhanced cooperation with the Nice Treaty, which was signed on 26 February 2001 and entered into force in February 2003, has become more flexible and the second pillar has been included in the field of enhanced cooperation except the military issues. In addition, the veto right granted to the member states which are opposed to enhanced cooperation has been abolished and the minimum number of member countries which needed for enhanced cooperation has been decided as eight (Nice Treaty, Article 11/2, 40A/2, and 43/g) After the Nice Treaty, there has been an increase in the competence of the Commission and the European Parliament in enhanced cooperation. (Nice Treaty, Article 11/2, 40A/2)

The Nice Treaty has added a new condition to the article 43 of the Treaty on European Union. According to this article, the enhanced cooperation must not threaten the economic and social coherence of the European Union. And also, it should not undermine the single market, trade and competition between member states (Enhanced Cooperation, 2017). Under the Nice Treaty, the process of the enhanced cooperation rule needs to be explained in all three pillars.

2.3.1. Enhanced cooperation procedure in the first pillar

The European Community Treaty describes the procedures which are explained in the first pillar of the creation of and participation in the enhanced cooperation within the articles 11 and 11A. According to the first paragraph of Article 11 of the Nice Treaty, if some member states aim to create an enhanced cooperation between themselves in one of the policy areas, they should make a request to the Commission. Then the Commission can address a proposal to the Council. If it refuses to submit the proposal, it should inform the member states about the reasons of rejecting (Nice Treaty, Article 11/1). The Council decides the authorization of establishing an enhanced cooperation. When the proposal from the Commission is submitted, the Council should act by a qualified majority after taking the consultation of the European Parliament. If enhanced cooperation will be applied to an area which referred to in Article 251 of Nice Treaty, there is a requirement of the European Parliament assent (Nice Treaty, Article 11/2). Any of the member states may want to participate in an established enhanced cooperation, but firstly it should notify its purpose of participation both to the Council and to the Commission. The Commission should state its opinion to the Council within three months, and the Council should take a decision within four months from taking the notification of the opinion (Nice Treaty, Article 11A).

2.3.2. Enhanced cooperation procedure in the second pillar

With the Nice Treaty, it has become possible to establish an enhanced cooperation within the second pillar, which is related to the common foreign and security policy (CFSP). Articles 27A to 27E have been added to the EU Treaty as new provisions which shows the important rules of application in the CFSP area (Enhanced Cooperation, 2017). The enhanced cooperation in the second pillar was described on the 23rd and the 27th articles of the Nice Treaty. According to the article 27A of the Nice Treaty, “The Enhanced cooperation shall respect: the principles, objectives, general guidelines and consistency of the common foreign and security policy and the decisions taken within the framework of that policy; the powers of the European Community, and consistency between all the Union's policies and its external activities.” (Nice Treaty, Article 27A) According to the article 27B, the enhanced cooperation can be established in order to the practice a joint action or a common position within the second pillar (Nice Treaty, Article 27B). Within the framework of the second pillar, the member states which want to establish enhanced cooperation among them should apply to the Council. This application is submitted to the Commission and to the European Parliament for taking information. The Commission is obliged to give its opinion. The permission for enhanced cooperation is granted by the Council with a qualified majority. A member state which wishes to oppose enhanced cooperation due to its significant national interests may wish to take it to the Council, which is formed by the heads of state or government, even though the veto right has been abolished with the Nice Treaty. At this point, it appears that the right of veto is kept hidden. As a result, the Council is discussed and voted on the subject unanimously (Nice Treaty, Article 23/2)

Any of the member states can participate in an established enhanced cooperation, but firstly it should notify its purpose of participation to the Council and also inform the Commission. After

the notification, the Commission can give an opinion to the Council within three months. Within four months of taking the notification, the Council should take a decision by a qualified majority. The Council can decide to hold the decision in abeyance but should explain the reasons for holding it (Nice Treaty, Article 27E).

2.3.3. Enhanced cooperation procedure in the third pillar

The third pillar of the Treaty describes police and judicial cooperation. With the Article 40, enhanced cooperation have been amended to Nice Treaty. And also, the Nice Treaty has broadened the content of the Court of Justice's powers in this area (Enhanced Cooperation, 2017). This article explains generally the procedure for establishing an enhanced cooperation. According to this article, the enhanced cooperation should aim to enable the Union to integrate more rapidly into an area of freedom, security, and justice. But it should not be forgotten that there should be respect for the powers of the European Community and the objectives of the title (Nice Treaty, Article 40/1). Member states which want to create an enhanced cooperation among them should make a request to the Commission. So that it can submit a proposal to the Council. If the Commission rejects to submit, it should give information to the member states about the causes of the rejection. After that information, member states can submit an initiative which designed to obtain authorization for the concerned enhanced cooperation to the Council. Authorization should be granted by the Council by a qualified majority (Nice Treaty, Article 40A/1-2). The procedures to join an enhanced cooperation later are the same as the procedures which have applied in the second pillar (For detailed information: Nice Treaty, Article 40B).

If it is needed to analyze the decision making procedure of the enhanced cooperation, it can be said that with the Nice Treaty, it is mandatory to take the positive opinion of the Parliament on issues which are decided according to the co-decision procedure. However, in matters such as taxation, industrial policy, and agricultural policy, the Parliament only acts as an advisor in the context of the consultation procedure. In some cases, consultation is compulsory in the legal process and it is not possible to enact laws without the Parliament's opinion (Nice Treaty, Article 44). As it is seen, despite the simplification of the Nice Treaty, there are three different types of enhanced cooperation procedures, and each procedure has its own rules through the articles.

2.4. The Enhanced cooperation in the Constitutional Treaty

The European Union leaders signed the Constitutional Treaty in 2004, but with the negative votes of France and the Netherlands, the ratification was stalled in 2005. While the Constitutional Treaty was being drafted, the enhanced cooperation was included in the treaty. The Constitutional Treaty has not made a fundamental change in principle in terms of enhanced cooperation. However, the Constitutional Treaty revised the minimum number of member states that required to create an enhanced cooperation and set it to 1/3 of the total number of member states. Decisions on this framework can only be taken by the member states that participating in enhanced cooperation and cannot be considered as a part of the *Acquis Communautaire*. Decisions can be applied only by the participating member states. In addition to this, the Constitutional Treaty has opened the way for enhanced cooperation in military issues, so a new system called 'Permanent Structured Cooperation' is introduced in this regard. The operating rules of this system are unique. The Constitutional Treaty has organized enhanced cooperation under two different procedures. When the permanent structural cooperation procedure is added to these, it is possible to say that there are three different procedures for enhanced cooperation. These include enhanced cooperation in

matters except the common foreign and security policy, enhanced cooperation in the CFSP framework and permanent structural cooperation in military issues (Groenendijk, 2011, 8). Since the decisions on enhanced cooperation in the Constitutional Treaty are the same as those of the Lisbon Treaty, the developments in the Constitutional Treaty and the developments in Lisbon Treaty will be considered together.

2.5. The enhanced cooperation in the Lisbon Treaty

The Lisbon Treaty is an amending Treaty which amends the existing Treaty on European Union (TEU) and European Community Treaty. It renames the European Community Treaty as the Treaty on the Functioning of the EU (TFEU) (Cremona, 2009, 7). There is no important change in the Lisbon Treaty compared to the Constitutional Treaty. The article 20 of the Treaty on European Union and the articles 326-334 of the Treaty on the Functioning of the European Union are related to the enhanced cooperation. The article 20 of the Treaty on European Union is the re-arrangement of the articles 27A to 27 E, 40 to 40B and 43 to 45 of the Nice Treaty and articles 11 and 11A of the Treaty on European Communities. According to the article 20, member states, which want to create an enhanced cooperation among them, should do it according to the framework of non-exclusive competences of the European Union. And all of the member states can be a part of this cooperation whenever they want (Lisbon Treaty, TEU, Article 20/1). Authorization for enhanced cooperation is being last resort, so there should be a period of time that all of the members cannot be attained to the objective (Lisbon Treaty, TEU, Article 20/1). This provision can be interpreted as a great legal significance in determining how high the bar is set for the Council to resort to enhanced cooperation. This is also politically important in determining the strength of any threat to use enhanced cooperation as a means of breaking deadlock.

The Lisbon Treaty has redefined the minimum number of member states which required to create an enhanced cooperation on the proposal of Belgium and has stated that a minimum of nine countries can create an enhanced cooperation. The number of nine member states has been continuously determined. This number is, in fact, the same as 1/3 of the total number of member states brought by the Constitutional Treaty. However, the rate is now expressed in numbers instead (Lisbon Treaty, TEU, Article 20/2). Through the Lisbon Treaty, the pillar system has been abolished so that the enhanced cooperation procedure will be evaluated according to its impacts on matters.

2.5.1. Enhanced cooperation procedure on issues except the CFSP

The articles 326 to 328 of Treaty on the Functioning of the EU have determined the general principles of enhanced cooperation. Engagement procedures for enhanced cooperation have been explained in the article 329 of the TEU. And it is also the first type of the enhanced cooperation under the Lisbon Treaty. This procedure is related to all enhanced cooperation types except the enhanced cooperations which created according to the common foreign and security policy rules. In this type of enhanced cooperation, member states which want to create an enhanced cooperation should give a request to the Commission. Then the Commission can submit a proposal to the

Council. After taking the positive consent of the Parliament, the Council can authorize the creation of the enhanced cooperation (Lisbon Treaty, TFEU, Article 329/1).

2.5.2. *Enhanced cooperation procedure on issues about CFSP*

As it is seen through all of the procedures, enhanced cooperation procedure on issues about CFSP does not begin with the Commission proposal or positive consent of the European Parliament. The Council has right to establish this kind of cooperation. The Council should forward the proposal to the High Representative of the Union for Foreign Affairs and Security Policy. He or she should give his/her opinion on whether the proposal of the cooperation is appropriate with the common foreign and security policy rules of the Union or not. Except the High Representative, the Council should also forward the proposal to the Commission. It should give its opinion on whether the proposal is suitable for the other Union policies or not. The European Parliament is only informed about the request, there is no need to take its positive consent. Authorization to proceed should be granted by a decision of the Council which acting unanimously (Lisbon Treaty, TFEU, Article 329/2).

2.5.3. *Enhanced cooperation procedure in defence matters*

The Lisbon Treaty has established three different types of enhanced cooperation which are special to the defence area. First of them is to establish a 'permanent structured cooperation'. Member states which want to be a part of a permanent structured cooperation must fulfill the criteria which described in the Protocol on permanent structured cooperation. Then it should apply to the Council and to the High Representative of the Union for Foreign Affairs and Security Policy (Lisbon Treaty, TEU, Article 46/1). Within three months following the application, the Council should give a decision whether a permanent structured cooperation is established or not. It should also determine the list of member states which will participate in the cooperation and it should act by a qualified majority after consulting the High Representative (Lisbon Treaty, TEU, Article 46/2). The rules of a qualified majority will be applied according to the Article 238/3 (a) of the TFEU. According to this article, for a qualified majority there is a need "at least 55 % of the members of the Council representing the participating member states, at least 65 % of the population of these states and the blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating member states" (Lisbon Treaty, TFEU, Article 238/3(a)).

According to the Protocol (No.10), "On Permanent Structured Cooperation Established by Article 42 of the Treaty on European Union", there are some preconditions for member countries that want to establish enhanced cooperation in this framework. These are (Lisbon Treaty, Protocol No.10, Article 1/a-b):

- "To proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programs, and in the activity of the Agency in the field of defence capabilities development, research, acquisition, and armaments."
- "To have the capacity to supply by 2010 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of

carrying out the tasks referred to in Article 43 of the Treaty on European Union, within a period of five to 30 days.”

The second type of cooperation is to be a part of missions which are related to the common security and defence policies. These missions are explained in the Article 43 of the TEU. According to this article, “these missions can concern joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilization”. All of these missions can help to prevent from terrorism (Lisbon Treaty, TEU, Article 43/1). The decision of this kind of cooperation must be given by the Council which acting unanimously (Lisbon Treaty, TEU, Article 44).

The third and the last type of enhanced cooperation matters are relating to the European Defence Agency. This type of cooperation provides a framework to Union members which wish to improve their military capacity. Every member state can participate in the agency. The tasks of the European Defence Agency are determined in the article 45 of the TEU (Lisbon Treaty, TEU, Article 45).

There is an important difference in the application of enhanced cooperation procedure in defence matters. For example, with the Lisbon Treaty, it is possible for the Council to apply a decision that suspending the participation of a member state by a qualified majority, if the state is not able to do the commitments of the protocol (Lisbon Treaty, TEU, Article 46/4). And contrary to the other enhanced cooperation procedures, there is now a withdrawal procedure from permanent structured cooperation. Any member state which wants to withdraw from the cooperation can apply to the Council (Lisbon Treaty, TEU, Article 46/5).

Most of the provisions in the Constitutional Treaty maintain their positions in the Lisbon Treaty with minor changes. The Lisbon Treaty makes it easier the use and application of the enhanced cooperation in the judicial cooperation field in criminal matters. The Lisbon Treaty also envisages a method of enhanced cooperation in the freedom, security, and justice area. When the enhanced cooperation is examined within the context of treaties, it seems that the method has become both more practicable and increasingly important. Via this method, it is aimed to ensure the progress of the Union during the integration process.

3. The application of the enhanced cooperation

Enhanced cooperation is one of the important examples of the differentiation of the European integration process. In order to examine its effect on integration, it should be explained in which areas the enhanced cooperation procedure is used. As it is said before, the Lisbon Treaty has allowed more flexibility in the application of the procedure. Since the Lisbon Treaty has entered into force, the provisions on enhanced cooperation have been used, both in the area of the law on trans-border divorce and for the creation of a European patent. It is also used for the creation of a tax on international financial transactions (Piris, 2014).

3.1. Enhanced cooperation in marriage and divorce

With the removal of internal borders in the EU, people are increasingly enjoying the right of free movement among member states. As the circulation of people increases, marriages and divorces also increase among the citizens of different member states. Member state legislation on these issues varies from one another. The proposal in 2008 that the Council could not achieve the

unanimity requirement to enact the statutory proposal for the civil law would not be achieved in a reasonable period of time, suggesting that the enhanced cooperation planned for this area is the last resort. The fact that the unanimity clause is valid in the treaties concerning the civil law also influenced the fact that the negotiations were inconclusive. In addition, the rule of participation of at least 9 member states is provided by the request of 14 member states for the enhanced cooperation in the area of the law on trans-border divorce (Council Decision, 2010/405/EU). According to this enhanced cooperation matter, international couples can decide which law should be applied to their divorce. In case of disagreement, judges can use a common procedure for deciding which country's law will be applied. This enhanced cooperation is being used by 17 member states of the EU which are Austria, Belgium, Bulgaria, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Romania, Slovenia and Spain (Enhanced Cooperation, Already a Reality in the EU, 2017).

3.2. *European unitary patent*

The patent concept, in the field of intellectual and industrial rights, refers to the monopoly rights on inventions, which provide some privileges and legal protection to anyone who owns it. The patent provides protection and rights to those who own it in the country in which it is registered. Today, with 28 members, the concept of subsidiarity leads to a negative obstacle to the domestic market. The slowing of trade within the Union can affect the economic integration of the EU. For this reason, it is necessary to harmonize the issues related to the patent to avoid different applications in member countries. The first amendment to this issue in Europe was the European Patent Convention, which signed in 1973. However, even though such a long time has passed, the failure of the member states to compromise, especially in the language preference to be used in the patent, necessitated the implementation of the enhanced cooperation rule as a last resort. In addition, the rule of participation of at least 9 member states is provided by the request of 12 member states for the enhanced cooperation in the area of the European Unitary Patent (Council Decision, 2011/167/EU). A unified court means that parties do not have to litigate in parallel in different countries which incurring high costs (Enhanced Cooperation, Already a Reality in the EU, 2017). This enhanced cooperation is being used by 26 member states of the EU which are Austria, Belgium, Bulgaria, the Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Greece, Germany, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, and the United Kingdom.

3.3. *Financial transaction tax*

Tax is monetary values that the state collects from private or legal entities in order to meet public expenditure. There is the power of sovereignty of states in collecting taxes. For this reason, each country chooses and implements the most appropriate tax system for itself. However, problems that may arise in this area may affect the economic integration of the EU. In 2010, the proposal for the financial transaction tax made by the Commission has failed because of the lack of agreement in the Council. Since the matter needs to be unanimously decided, the fact that the negotiations are inconclusive requires a referral to necessarily enhanced cooperation. After the failure of the Commission's proposal, the rule of participation of at least 9 member states is provided by the request of 11 member states for the enhanced cooperation in the area of the financial transaction tax (Council Decision, 2013/52/EU). A financial transaction tax can help the strengthening of the Single Market. Because it can reduce the number of different national approaches to

financial transaction tax. And it can also ensure that the financial sector can make a fair contribution to public revenues (Enhanced Cooperation, Already a Reality in the EU, 2017). This enhanced cooperation is being used by 10 member states of the EU which are Austria, Belgium, Germany, Spain, Greece, France, Italy, Portugal, Slovenia, and Slovakia.

4. Conclusion

Enhanced cooperation is a procedure which organized by at least nine member states of the European Union which will be related to the framework of European policies. It makes it possible to establish a cooperation for member states which want to organize under a more close cooperation than initially provided by the treaties. Enhanced cooperation rules are determined by the treaties and through the European institutions. The aim of the enhanced cooperation is to accelerate the European integration for the most ambitious member states. However, if they want, the other member states can also participate in the cooperation whenever they want.

Enhanced cooperation has become increasingly used by the European Union, which wants to provide faster and more harmonized integration in some policy areas. Given the rapid increase in the number of member states in the European Union, it is becoming increasingly difficult for all member states to participate in each policy area. In this context, in terms of the functioning of the decision-making mechanism, it is possible to say that the enhanced cooperation rule emerges as an important solution. However, the unity of European Union law is deteriorating due to the fact that some member countries won't participate in the integration under the enhanced cooperation. This leads to the introduction of a new model for the integration of the European Union, which is called as multi-speed Europe. The term of 'multi-speed Europe' can be found in a range of European Union policy fields from the single currency to EU criminal law. The examples of enhanced cooperation have become a familiar because the European integration has deepened while allowing individual states to avoid being bound by measures adopted in a new field of cooperation. According to the enhanced cooperation method, the other EU member countries can later join to the already established enhanced cooperation. Thus, it is possible that all member states can be involved in the cooperation.

It appears that the enhanced cooperation mechanism has facilitated the Union's decision-making mechanism and integration. But according to the investigated facts, it is thought that the new policies and integration models among the smaller country groups actually led the Union to move away from the idea of 'unity'. As a result, it seems that enhanced cooperation, which is expressed that has a positive contribution to the integration process, results in more separating consequences than unifying, in fact, by integrating the countries together within different policies.

References

- (2003). Nice Antlaşması, İktisadi Kalkınma Vakfı Yayınları, No:174.
- (2007). Maastricht Antlaşması, İktisadi Kalkınma Vakfı Yayınları, No:118.
- (2010). Amsterdam Antlaşması, İktisadi Kalkınma Vakfı Yayınları, No:162.
- 'Multi-speed'Europe, (2017, August 10). Retrived from http://eur-lex.europa.eu/summary/glossary/multi-speed_europe.html.
- Cantore, C. M. (2011). We're one, but we're not the same: Enhanced Cooperation and the tension between unity and asymmetry in the EU. *Perspectives on Federalism*, 3(3), 1-21.
- Council Decision, 2010/405/EU.

Council Decision, 2011/167/EU.

Council Decision, 2013/52/EU.

Cremona, M. (2009). Enhanced cooperation and the common foreign and security and defence policies of the EU. *EUI Working Paper Law*, 21,1-17.

Dağdemir, E. (2001). Avrupa Birliği'nin bütünleşme sürecinde esneklik kavramı: Amsterdam Antlaşması çerçevesinde bir değerlendirme, *Ankara Üniversitesi SBF Dergisi*, 56(2), 21-41.

Edinburg Summit, Conclusions of the Presidency, Edinburg, No.456/1/92, 12 December 1992.

Enhanced Cooperation, (2017, August 11). Retrived from http://eur-lex.europa.eu/summary/glossary/enhanced_cooperation.html.

Enhanced Cooperation, (2017, August 20). Retrived from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:xy0015>.

Enhanced Cooperation, Already a Reality in the EU, (2017, August 11). Retrived from https://ec.europa.eu/commission/sites/beta-political/files/enhanced_cooperation_-_already_a_reality_in_the_eu_1.pdf.

Europe 'à la carte', (2017, August 10). Retrived from http://eur-lex.europa.eu/summary/glossary/europe_a_la_carte.html.

Groenendijk, N. (2011). Enhanced cooperation under the Lisbon Treaty. Paper presented at the research meeting on European & International Affairs, Aalborg University.

Keukeleire, S. and MacNaughtan, J. (2008). *The foreign policy of the European Union*. New York: Palgrave Macmillan.

La Serre, F. & Wallace, H. (1997). Flexibility and enhanced cooperation in the European Union: Placebo rather than Panacea?. *Research and Policy*, Paper no.2, 1-27.

Missiroli, A. (1998). Flexibility and enhanced cooperation after Amsterdam-prospects for CFSP and the WEU, *The International Spectator*, 33(3), 101-118.

Ondarza, N. (2013). Strengthening the core or splitting Europe?. *Stiftung Wissenschaft und Politik*, 2, 1-34.

Piris, J.C. (2014). The acceleration of differentiated integration and enhanced cooperation, *Schuman, European Issue* no.328, (2017, August 19) Retrived from <http://www.robert-schuman.eu/en/european-issues/0328-the-acceleration-of-differentiated-integration-and-enhanced-cooperation>.

Stubb, A. (1996). A categorization of differentiated integration, *Journal of Common Market Studies*, 34(2), 283-295.

Stubb, A. (1997). The 1996 intergovernmental conference and the management of flexible integration, *Journal of European Public Policy*, 4(1), 37-55.

Stubb, A. (2003). *Negotiating flexibility in the European Union: Amsterdam, Nice, and beyond*, New York: Palgrave Macmillan.

Variable-geometry Europe, (2017, August 10). Retrived from http://eur-lex.europa.eu/summary/glossary/variable_geometry_europe.html.