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**DIFFERENTIATED
INTEGRATION
AND THE EU:
A VARIABLE
GEOMETRY
LEGITIMACY**

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DIFFERENTIATED INTEGRATION AND THE EU: A VARIABLE GEOMETRY LEGITIMACY

by Yves Bertoncini*

Abstract: Since the member states and peoples of the EU are “united in diversity”, it seems natural for the European construction to use patterns of differentiated integration, so as to be able to act in an effective manner while taking this diversity into account. However, the promoters of differentiated integration should focus not only on effectiveness, but also on legitimacy issues, which are key for the EU’s functioning and success, at a time when it is confronted by global challenges but also fragmented along several divides between states and peoples. This contribution explores the philosophical, political and institutional conditions which must be met to allow a legitimate deepening of differentiation within the EU, and highlights the importance of a differentiation based on sound political foundations, which is then able to serve the interests of the European peoples, for example as regards collective security issues and the Economic and Monetary Union.

Keywords: EU integration | Democratic legitimacy

Introduction

Since the member states and peoples gathered in the EU are “united in diversity”, it seems natural for the European institutions to use patterns of differentiated integration, so as to be able to act in an effective manner while taking this diversity into account. After all, the Euro and Schengen, two of the most striking and visible European achievements, concern only 19 and 22 of the EU member states respectively and could not have been established if a unanimous commitment had been necessary. And in today’s Europe, where political heterogeneity seems more acute than ever, having more

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· Paper prepared within the context of “EU60: Re-Founding Europe. The Responsibility to Propose”, an initiative launched by the Istituto Affari Internazionali (IAI) and the Italian Ministry of Foreign Affairs and International Cooperation (MAECI), in cooperation with the Centro Studi sul Federalismo (CSF) and in the framework of IAI’s strategic partnership with the Compagnia di San Paolo, on the occasion of the 60th Anniversary of the Treaties of Rome.

differentiated integration appears to be an almost natural way forward for the EU.¹

Differentiated integration is not always possible when the EU areas of authorities cover fields where national differences cannot converge – such as trade policy, single market or competition policy. But even when differentiated integration is possible and desirable, its promoters should focus not only on effectiveness, but also on legitimacy issues, which are key for its functioning and success. It's all the more necessary to focus on these legitimacy issues at a time when the EU is not only criticized for its lack of democracy, but also confronted with global challenges and fragmented along several divides between states and peoples (East/West, centre/periphery, North/South, etc.).

This contribution identifies the philosophical, political and institutional conditions to be met so as to allow a legitimate deepening of differentiation within the EU, or even besides 60 years after the signature of the Rome Treaty.

1. Differentiated integration should be perceived as a “second best” option for today’s Europe

To be successful, differentiated integration should pass a first legitimacy test, linked to the underlying vision of its promoters: is it really a tool used to address common challenges because no general consensus among all the EU member states could be reached? If conceived of in such an instrumental perspective it could present itself as an acceptable “second best” option, provided two additional political conditions are met.

1.1 *An open and inclusive promotion of differentiation*

The starting point for any promotion of European differentiated integration should be both political and wide: do the Europeans, who comprise only 7 percent of the world’s population (6 percent after Brexit), need to be more united or rather more divided? When they look at global challenges such as climate change, Islamic terrorism, unbridled finance or uncontrolled migratory flows, do they need to stand together because unity makes them stronger? Following the Brexit vote and during the Brexit negotiations, do we

¹ On the concept of “differentiation” in the EU, see in particular Gaëtane Ricard-Nihoul, *Pour une Fédération européenne d’États-nations. La vision de Jacques Delors revisitée*, Bruxelles, Larcier, 2012.

need to send signals of unity and cohesion?

On this political basis, it is likely that when dealing with more operational actions, some EU member states could be reluctant to commit, and therefore differentiated integration is needed, for example via the use of enhanced cooperation. But this wide political starting point is key in a fragmented EU where the emergence of several acute internal divides (centre/periphery, North/South, East/West, etc.) warrants a greater focus on unity, in a geopolitical context which is both unstable and shaped by actors who may have an interest in dividing the Europeans even more (especially Putin and Trump).

The European institutions and leaders should take the time needed to shape the European agenda by demonstrating the benefit of common actions and attempting to convince all member states to participate in such actions – any eventual differentiated integration agreed upon is therefore a second best option, and not a strategic priority. This is particularly important for countries like France, where many politicians and experts perceive the EU 28 as a “lost cause” and are tempted to make “Europe small again” and “France great again”, as it was during the “good old times” of the European Economic Community.² Should such a divisive perspective be adopted, it would clearly show that differentiated integration actually represents the will to exclude some EU countries from the new phases of European construction – it could fuel negative reactions and more fragmentation within our continent and between the peoples of Europe.

1.2 The need for several European positive agendas

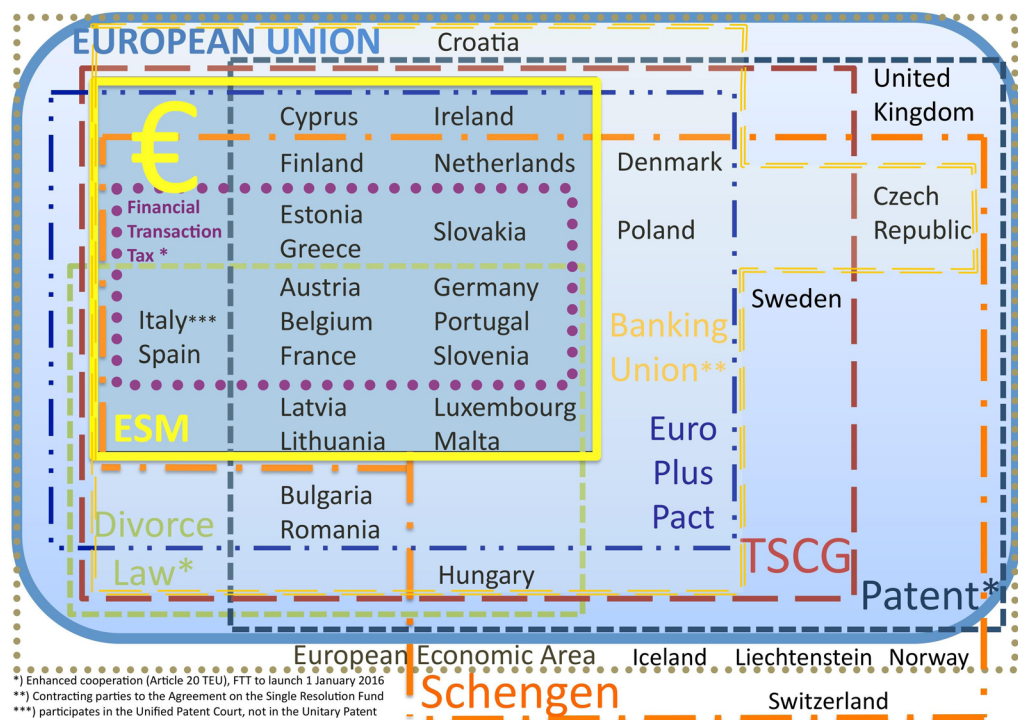
The fact that differentiated integration is already a political reality (see Figure 1) offers a genuine legitimate basis for those wishing to promote further advances in this manner. For example, new integration efforts at the Euro Area level and pledges for the creation of a Eurozone budget as well as for a specific institutional set up are welcome.³ However, it is crucial not to focus only on this “restricted” political agenda, in order not to alienate the other member states, creating a feeling of separation and that their concerns are not at the top of the EU agenda.

² On this temptation to recreate a smaller Europe, see for example Valéry Giscard D’Estaing, *Europa. La dernière chance de l’Europe*, Paris, XO Editions, 2014.

³ On this topic, see Yves Bertoncini and António Vitorino, “Reforming Europe’s Governance. For a More Legitimate and Effective Federation of Nation States”, in *Jacques Delors Institute Studies & Reports*, No. 105 (September 2014), <http://www.delorsinstitute.eu/011-20081>.

When dealing with the Euro Area budget, it is therefore necessary also to produce analyses and proposals devoted to the EU budget at large – the same is true for any initiative around Schengen, which should be made in parallel with EU wide proposals covering common policies and priorities, for example in the fields of asylum and economic migration. In short, the EU needs at least a twofold positive agenda⁴ so as to involve all its member states in any developments in European construction and prevent some from feeling excluded.

Figure 1 | The various forms of differentiated integration in the EU



Source: Nicole Koenig, "A Differentiated View of Differentiated Integration", in *Jacques Delors Institute Policy Papers*, No. 140 (23 July 2015), p. 3, <http://www.delorsinstitute.eu/011-21785>.

The negotiations leading to Brexit and the future partnership status of the UK forces the EU to define a third political agenda vis-à-vis countries which are not members of the EU but have very close links with it – especially

⁴ See in particular Jacques Delors, "Rethinking the EMU and Making Greater Europe Positive Again", in *Jacques Delors Institute Tribune*, 28 June 2013, <http://www.delorsinstitute.eu/011-16329>.

the members of the European Economic Area and the members of the EU Customs Union. The existence of this twofold or threefold positive agenda is key in underlining that the European strategy is wide, inclusive and aims to involve all European member states, provided they have the will and the capacity to participate in the new developments (see Section 2).

For the same reason, it would be highly preferable to avoid using the concept of a "multispeed Europe": not only because it could give some states the feeling of being left behind by slower movement, but also because what is actually needed in Europe is to move faster at different levels, for example at the Euro Area level to foster economic coordination, at the Schengen one to better control our external borders and also at the EU-wide level (e.g. to deal with energy and climate challenges).

The use of the correct concepts can also contribute to creating the philosophical (and almost psychological) conditions to promote differentiated integration as an agreed resolution rather than an undesired exclusion, as an option rather than a punishment – in short: as a consensual solution rather than a political problem weakening the very foundations of the EU architecture. It is therefore preferable to use the concept of a "variable geometry Europe", that corresponds better to the idea that the EU does not work on the basis of a "one size fits all" principle but can actually adopt tailor made initiatives consistent with the legitimate needs and wishes of all its member states and peoples.

2. Differentiated integration is legitimate in cases of heterogeneous national wills or capacities

A more classical legitimacy test for differentiated integration relies on the criteria used to decide whether the member states should participate in a particular initiative or not. On this point, the experience of the past few decades should help pave the way for a legitimate use of such differentiation in the near future, while founding it on two complementary foundations: the respect of national democratic will on the one hand, and the assessment of member states' capacities to participate in an effective manner on the other.⁵

⁵ The differentiated status of member states in the implementation of common EU actions (e.g. the different national contributions to the reduction of CO₂ emissions) is not covered by this analysis.

2.1 Differentiation as a result of different political and democratic wills

If it is promoted on the basis of a wide and open discussion (see Section 1), differentiation can easily be presented as a tool aiming at serving the interests of peoples and member states of the EU while fully respecting their wills and sovereignties. The “exemption clauses” granted to the UK and Denmark when the monetary union was launched at the beginning of the 1990’s are a typical example of the possibility of reconciling all the national interests at stake: those member states willing to move forward and able to do so, and those member states reluctant to follow them and preferring the status *quo ante*.

There is no conceptual or political difficulty in allowing member states to have a different status within the EU on all the issues on which flexibility is possible, such as being member of the monetary union or of the Schengen area, or participating in an enhanced cooperation on divorce law (see Table 1). There is no difficulty either if a country wants to remain apart from a differentiated integration process, such as when Denmark decided in a 2016 referendum to remain with an opt-out position rather than the ability to opt-in on a case-by-case basis, with the consequence that it could no longer participate in Europol.

Table 1 | Enhanced cooperation procedures already launched in the EU

Measure	Number of MSs	Authorized by Council	Entry into force
Divorce law	16	December 2010	June 2012
European patent with unitary effect	25	March 2011	January 2013
Financial transaction tax	11	January 2013	?

Source: Adapted from Nicole Koenig, “A Differentiated View of Differentiated Integration”, cit., p. 9.

Any national abstention should be considered as natural and legitimate in today’s Europe, where many member states or peoples may react negatively to what they perceive as Brussels’ constraints – even if they actually derive from their own national commitments. It is thus key to present differentiated integration as a way to respect our “unity in diversity”, the functioning of our 28 democracies and the heterogeneity of national collective preferences on many issues, for example border controls, defence and military interventions or economic, social and fiscal integration. Hence, the implementation of the three “building blocks” identified by the Bratislava Summit Roadmap in

September 2016⁶ could lead to further differentiation if some member states are reluctant to accept more sovereignty sharing, without preventing those willing upon request of their citizens to move forward.

2.2 Differentiation as a consequence of heterogeneous national capacities

The negative perceptions and reactions to the working meetings organized by the six founding countries to mark the 60th anniversary of the Rome Treaty are a reminder that it is never pleasant to feel excluded from a European initiative, even if on a factual basis – there were indeed six countries willing and able to sign the Rome Treaty in 1957. This symbolic example confirms the necessity of adopting legitimate criteria to decide whether a member state should participate in a European initiative or not, even when it is not willing to do so.

At least two famous sets of European criteria were defined at the beginning of the 1990's and accepted as legitimate by the countries concerned: the "Copenhagen criteria" on the one hand, be they political, economic or legal, used to determine under what conditions a country could join the EU; the so called "Maastricht criteria", provided ceilings and targets to be met to join the monetary union (for example in terms of deficit on GDP ratio).

In these two cases, the legitimacy tests can only be criticized if the implementation of these criteria is perceived as unequal and unfair. This was the case when the three Baltic countries were asked to comply very strictly with the Maastricht criteria so as to adopt the Euro, when other countries like Greece had been accepted more easily in the past. The same feeling of discrimination could be expressed by countries like Romania and Bulgaria as regards their non-accession to the Schengen area. This feeling of discrimination can only be reduced by noting the lessons of the past and pointing out that compliance with the criteria as they are currently interpreted is necessary to guarantee the good functioning of the EU, including in the own interest of the applicant countries.

⁶ European Council, *Bratislava Declaration and Roadmap*, Bratislava, 16 September 2016, <http://europa.eu/!Mh74Fg>.

3. Differentiated integration should be implemented through legitimate European procedures and set ups

The third legitimacy test differentiated integration should pass refers to the inherent complexity it introduces in the architecture and functioning of the European construction. Seen by EU citizens, differentiation could indeed mean effectiveness and respect of national democracies as regards its founding principles, but also lack of transparency and accountability as far as its implementation is concerned.

These transparency and accountability deficits are fuelled by the multiplication of differentiated integration processes, both within and outside the EU institutional architecture, and can be worsen by the effective functioning of differentiated integration which should be as legitimate as possible.⁷

3.1 EU internal differentiation should be preferred whenever possible

The heterogeneity of national preferences and/or member states capacities can be so substantial that integrated differentiation appears as both an unavoidable and useful mechanism within the EU. Several options (see Table 2) are then offered to reconcile national specificities and European actions within the EU political and institutional framework.

Table 2 | Main EU mechanisms of “internal” differentiated integration

EU mechanisms	Examples
Opting out	Euro, defence, citizenship, asylum, Charter of fundamental rights, etc.
Enhanced cooperation (at least 9 out of 28 countries)	Divorce law, financial transaction tax, EU patent
Permanent structured cooperation	Defence (not used yet)
Constructive abstention (1/3 MS and 1/3 of the EU population)	Common Foreign and Security Policy
Inter-governmental agreement finally/to be integrated in the EU framework	Schengen agreement; Fiscal Compact (to be integrated by 2017)

Source: EU treaties.

⁷ For an in depth analysis of this challenge in the EMU field, see Janis A. Emmanouilidis, *The Future of a More Differentiated E(M)U – Necessities, Options, Choices*, Rome, Istituto Affari Internazionali, February 2017, <http://www.iai.it/en/node/7294>.

Table 3 | Non EU differentiated integration: some examples

Organization	Areas of intervention	Date established	Total number of MSs
Economic and Monetary Union			
European Stability Mechanism	Financial stability and bailing out	2012	19
Fiscal Compact	Economic coordination	2013	25
Banking Union (Single Supervisory Mechanism and Single Resolution Mechanism)	Banking supervision and resolution	2013/2015	19
Research and development (R&D)			
European Space Agency (ESA)	Space research	1975	22 (20 belonging to the EU)
European Southern Observatory (ESO)	Astronomical research	1962	16 (14 belonging to the EU)
European Organization for Nuclear Research (CERN)	Nuclear research	1954	22 (19 belonging to the EU)
European Organization for the Exploitation of Meteorological Satellites (EUMETSAT)	Meteorology and climatology research	1986	30 (26 belonging to the EU)
Partnership for Advanced Computing in Europe (PRACE)	High-performance computing infrastructures	2010	24 (20 belonging to the EU)
Eureka	Applied R&D and innovation	1985	41 (28 belonging to the EU)
Security/defence/external aid			
European Defence Agency (EDA)	Defence	2004	27
European Union Satellite Centre (EUSC)		2002	26
EU Institute for Security Studies (EU ISS)		2002	26
Organization for Joint Armament Cooperation (OCCAR)		1996	6/12
Athena mechanism		2004	26
Eurocorps	Security/defence	1992	6
European Gendarmerie Force (EuroGendFor)		2004	7
European Maritime Force (EuroMarFor)		1995	4
European Air Group (EAG)		1995	7
European Air Transport Command (EATC)		2010	7
European Development Fund	Public development aid	1958	28

Source: Adapted from Amélie Barbier-Gauchard, "Non-Community European Spending: A Little Known Yet Substantial Reality", in *Jacques Delors Institute Policy Papers*, No. 95 (September 2013), p. 8, <http://www.delorsinstitute.eu/011-16515>.

The heterogeneity of national preferences and/or capacities can often be so striking that a number of common initiatives can even be launched out of the normal EU system (see Table 3). Apart from the emblematic economic and monetary sphere, two fields are particularly concerned by the use of such "external differentiation": diplomatic and defence issues on the one hand (Eurocorps, Athena, etc.), and research and development initiatives on the other hand (CERN, Eureka, etc.).

In this context, it is worth underlining that the implementation of differentiated integration within the EU framework (and not outside) should be considered as the best option in terms of legitimacy, as it offers sound guarantees in terms of transparency and accountability. It implies the full involvement of EU institutions, then the collective interventions of national ministers or heads of state and government and the participation of the college of Commissioners, under the control of the members of the European Parliament. This set up seems all the more preferable in terms of democratic transparency and control because it can perfectly coexist with an adequate control of the national governments by their respective parliaments, which is the main accountability channel left in the case of non EU/external differentiated integration.

It is naturally worth noting that the use of external differentiated integration can appear to be only temporary: either because a future integration within the EU set up after a defined period is planned, via the insertion of "repatriation clauses" (e.g. as with the Fiscal Compact); or because the evolution of the political context and European consensus has made integration in the EU framework possible (e.g. the Schengen agreement provisions). In a sense, external differentiation can then be perceived as a useful device to pave the way for a future EU intervention which would not have been conceivable in the short term. Nevertheless, the multiplication of these external initiatives could put at risk not only the democratic accountability and transparency of the EU but also its overall political cohesion.

3.2 The challenge of the relations with non-participating EU member states

Differentiated integration processes can be launched either on a procedural basis (e.g. the enhanced cooperation or the Athena mechanism) or on a more organic basis, via the creation of a dedicated agency or institution (e.g. the ESA and EDA). Each of these options offers a trade off in terms of political acceptability/ transparency.

Procedural differentiation can be decided in a forum where all member states are represented: their feeling of exclusion will then be lower, as they have been given the possibility to join in; but the European citizens may perceive these procedure-based initiatives less clearly and think they contribute to the complexity of the European architecture. Organic differentiation offers the advantage of being clearly personified by a body or an institution, whose existence and functioning can be put under scrutiny, even if they constitute a kind of European institutional "constellation"; nevertheless, it creates a more rigid separation between the countries participating and those left outside.

It's up to the European and national authorities to decide which option they choose, depending on the more pressing issue at stake, not only in technical and operational terms, but also as regards the political perception of differentiated integration by EU member states and citizens. The temptation to consider the Euro Area as the core of a genuine political union⁸ can then be justified when the focus is put on the overall context and the fact that such a membership means something very specific in terms of rights, duties and a desire to be united, including via an *ad hoc* institutional set up.⁹ However it is worth recalling that such evolution or the creation of a "*Kerneuropa*"¹⁰ would have inevitable side effects for the member states not willing or not able to join, and on the European construction at large.

In any case, the potential consequences and adverse effects of non-participation in a differentiated integration initiative should be carefully assessed and addressed. Formal or informal communication and coordination mechanisms are in particular essential (e.g. the links established between the Eurogroup and the Ecofin Council), as well as the participation of the Commission in non-EU organizations (e.g. the ESA) or, when necessary and possible, the sharing of decision making powers between participating and non-participating countries (e.g. the Banking Union). It's only when meeting this final political condition that differentiated integration could pass all the legitimacy tests and thus be perceived as a fruitful and decisive contribution to the deepening of the EU without weakening its architecture.

⁸ See Jacques Delors et al., "The Euro Zone, Core of a Political Union", in *Jacques Delors Institute Tribune*, 29 November 2012, <http://www.delorsinstitute.eu/011-14629>.

⁹ On this topic, see Eiffel Group, *For a Euro Community*, 14 February 2014, <http://bruegel.org/2014/08/for-a-euro-community>.

¹⁰ Wolfgang Schäuble and Karl Lamers, *Überlegungen zur europäischen Politik*, Bonn, CDU/CSU, 1 September 1994, <https://www.cducsu.de/upload/schaeublelamers94.pdf>.

Conclusion: Some institutional ways forward

Differentiated integration is a good way to comply with the very political nature of the “European Federation of nation states” mentioned by Jacques Delors and symbolized by the motto “unity in diversity”, provided it can take up a triple political challenge for the legitimacy of its architecture and cohesion. Against this background and given the external and internal contexts faced by the EU member states and citizens, we may identify at least three sets of desirable and feasible initiatives that could be completed or launched in the near future:

- In the security and defence field: the launch of a permanent structured cooperation (PESCO)¹¹ able to gather a significant group of member states determined to strengthen the European pillar of NATO, building on existing initiatives (Eurocorps, EuroMarFor, EATC, etc.) and creating “European defence core groups” combining operational and capability outputs (equipment, air and naval assets, etc.), defence planning output and collaborative procurement output (with the interventions of EDA and OCCAR);¹²
- In the Home and Judicial Affairs field: full completion and effective functioning and interventions of the EU Border and Coast Guard Agency, which constitutes a real “federal leap” for the EU, and creation of a “European Prosecutor’s Office” in charge of anti-terrorism via the use of an enhanced cooperation procedure;
- In the Economic and Monetary Union field: full completion of the Banking Union (based on three pillars, including the deposit guarantee scheme) and creation of a “Euro Area subcommittee” within the European Parliament, acting in connection with the interparliamentary chamber laid down on the basis of the Treaty on Stability, Coordination and Governance (TSCG) article 13.¹³

¹¹ On this topic, see in particular Sven Biscop, *Differentiated Integration in Defence: A Plea for PESCO*, Rome, Istituto Affari Internazionali, February 2017, <http://www.iai.it/en/node/7265>.

¹² For more detailed proposals on this topic, see Anne Bakker, Margriet Drent and Dick Zandee, “European Defence Core Groups. The Why, What & How of Permanent Structured Cooperation”, in *Clingendael Policy Briefs*, November 2016, <https://www.clingendael.nl/publication/european-defence-core-groups>.

¹³ For more details on this proposal, see in particular Yves Bertoincini, “The Parliaments of the EU and the EMU Governance. What Parliamentary Dimension for the ‘Political Union’?”, in *Jacques Delors Institute Tribune*, 11 April 2013, <http://www.delorsinstitute.eu/011-15837>.

The examples of differentiated integration processes launched during recent decades are numerous enough to draw political lessons allowing new measures to pass the three “input legitimacy” tests analysed in this contribution, and to pave the way for successful new initiatives. It goes without saying that it would help the EU to produce tangible actions and results and then to pass an “output legitimacy” test which should be considered as paramount – no doubt the celebration of the signature of the Rome Treaty will offer opportunities to see if all these substantial lessons have been learnt.

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2017 is set to be a crucial year for the European Union (EU) and its Member States. Multiple crises, key electoral appointments and the celebrations of the 60th anniversary of the signing of the Treaties of Rome are among the most important events in the EU agenda. Against this backdrop, the Istituto Affari Internazionali (IAI) and the Italian Ministry of Foreign Affairs and International Cooperation (MAECI), in cooperation with the Centro Studi sul Federalismo (CSF) and in the framework of IAI's strategic partnership with the Compagnia di San Paolo, have launched a new research project: EU60: Re-founding Europe. The Responsibility to Propose. The initiative seeks to re-launch the EU's integration process, and will involve researchers from leading European think tanks who will contribute policy papers analysing specific political or institutional dimensions of the EU.



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