1. Structured Cooperation

Enhanced cooperation was a phrase much used during the Nice Treaty. It is a

mechanism allowing a group of States to forge ahead in an aspect of EU development

that not all Member States may be ready or willing to join in. Critics of enhanced

cooperation point to the fact that it could lead to a two-tier, two-speed Europe, with an

elite corps moving to closer integration while others were left outside, in a lesser status.

The Irish Government made much of the fact, during the Nice debate, that enhanced

cooperation – while applying to some aspects of EU foreign policy – did not apply to

defence matters.

The Lisbon Treaty has changed all that. In addition to the fact that the current

exclusion of enhanced cooperation in the field of defence in Article 27b (Treaty of

European Union) will be dropped, Member States may establish ‘Structured

Cooperation’ among themselves on military matters.

Article 28 A (6)

.: ***“ThoseMember States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework.”*** This cooperation is governed by several provisions and a Protocol on Structured Cooperation.

Those Member States with ‘more binding commitments’ are now allowed to set up

permanent military structures within the EU institutions. Those wishing to

***establish such mini-alliances*** must inform the European Council and the foreign

affairs/security High Representative, and the Council will approve the Structured

Cooperation and the list of participating Member States by qualified majority vote.

Admission of new members to the Structured Cooperation shall also be determined

by QMV but only the Member States already participating in Structured

Cooperation can vote.

(Article 28 E)

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In other words, Ireland could be opposed to the establishment of Structured

Cooperation by a group of States but not be able to veto it. In addition,

Article 28 E 6 states:

“The decisions and recommendations of the Council within the framework

of permanent structured cooperation, other than those provided for in paragraphs

2 to 5 [dealing with admission, suspension or withdrawal of membership] shall be

adopted by unanimity. For the purposes of this paragraph, unanimity shall be

constituted by the votes of the representatives of the participating Member States

only”

, i.e. the functioning of Structured Cooperation is subject to unanimity but

only the states taking part in the Structured Cooperation can vote. There is a lack of

clarity as to what this section means in practice. What sort of ‘decisions’ and

‘recommendations’ are to be decided upon exclusively by this vanguard EU military

grouping/

Furthermore, Article 28 C allows the Council to ***‘entrust the implementation of a***

***[Petersberg] task to a group of MemberStates which are willing and have the***

***necessary capability for such a task’***. The ‘management of the task’ shall be agreed

among themselves and the High Representative. Klaus Heeger, legal adviser to the

Independence/Democracy group in the European Parliament and an expert on the

EU treaties, sent PANA the following analysis: “According to the Treaty of Lisbon, the

implementation of Common Security and Defence Policy by a group of Member

States is to be distinguished from Structured Cooperation. Therefore, structured

cooperation can be considered as more far-reaching”. He goes on to say that

because the treaty provisions and the specific Protocol on Structured Cooperation

“don’t clarify this point, it remains unclear to what extent the member states

having established structured cooperation can define their own defence policies

and commitments within the ‘Union framework’.” There must also be questions

raised about control and accountability for what could be military actions carried

out in the EU’s name.

Structured Cooperation is also subject to a ***Protocol*** in the Treaty.. It states that the

EU’s Petersberg Tasks shall be undertaken using capabilities of the member States

“in accordance with the ***principle of a single set of forces***”. It would be very difficult for the Irish Government to argue that the Structured Cooperation forces are not ***in***

***fact an EU army.***

Expanding the Petersberg Tasks

***PANA has always argued that the Petersberg Tasks are already broad enough to***

***include every military mission up to and including waging war***. The original tasks of

humanitarian, rescue and peace-keeping and peace-enforcement missions have now

been expanded into ‘joint disarmament operations, military advice and assistance

tasks and post-conflict stabilisation. “All these tasks may contribute to the fight

against terrorism, including by supporting Third Countries in combating terrorism in

their territories” [Article 28 B (1). ***In its European Security Review (July 23, 2004), the***

***Brussels –based International Security Information Service (ISIS) stated that ‘joint***

***disarmament operations’ “could include anything from providing personal security***

***to UN inspectors to full scale invasions á la Iraq”.***

The Government however will make great play of the following paragraph in the

Protocol on Permanent Structured Cooperation. This wording has been contained in

every EU Treaty since Maastricht:

***“the common security and defence policy of the Union does not prejudice the specific character of the security and defence policy of certain Member States”. This is taken to refer to the Neutrals. However, the next two paragraphs say the following: “Recalling that the common security and defence policy of the Union respects the obligations under the North Atlantic Treaty of those Member States which see their common defence realised in the North Atlantic***

***Treaty Organisation, which remains the foundation of the collective defence of it***

***members, and is compatible with the common security and defence policy***

***established within that framework; Convinced that a more assertive Union role in***

***security and defence matters will contribute to the vitality of a renewed Atlantic***

***Alliance, in accordance with the Berlin Plus arrangements [sharing EU/NATO***

***assets]”.***

***Contributing to the “vitality of a renewed” NATO and stating that the EU’s common security and defence policy is compatible with NATO’s should hardly be the goal of a neutral state.***

The Protocol goes on to state that the EU may assist the UN if requested in

peacekeeping and peace-enforcement missions but no where does it state that a UN

mandate would be a pre-requisite for any Structured Cooperation operation. ***Any***

***Member State wishing to participate in permanent Structured Cooperation must***

***“intensively develop its defence capacities”; “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,...”; and shall undertake to cooperate on the “level of investment***

***expenditure on defence equipment”, “bring their defence apparatus in line with***

***each other as far as possible”, increase interoperability, cooperate on capability***

***development...”without prejudice to undertakings in this regard within NATO”, and develop major joint equipment programmes in the framework of the new European Defence Agency.***