

A DIFFERENTIATED VIEW OF DIFFERENTIATED INTEGRATION

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“The drive to combine efficiency and legitimacy must also lead to move to “differentiation” within the EU, as in the past (for instance in connection with Schengen and with the euro) and as the recent crisis impels us.”
Jacques Delors et alii, Tribune, 30 November 2012

EXECUTIVE SUMMARY

We are de facto living in a highly differentiated European Union (EU). Despite this reality, differentiated integration remains subject to political controversy. In recent weeks and months, speculations on a potential „Grexit“ or „Brexit“ have fuelled this controversy. While some advocate a two-speed Europe built on a core of Eurozone members, others are wary of being left out or behind and reject the notion of multiple speeds. Views on the meaning and practical implications of differentiated integration differ. This policy paper aims to clarify the conceptual and empirical boundaries of differentiated integration.

1. FIFTY SHADES OF DIFFERENTIATION

The paper starts by providing an overview of different models and modes of differentiated integration. The existence of over 30 different models mirrors the complex reality of differentiated integration, but also contributes to the conceptual confusion surrounding the term.

2. THE EVOLVING POLITICAL DEBATE

A review of the evolution of the political debate since the 1970s shows that differentiated integration has gradually entered the political mainstream. An increasing number of pragmatic pro-Europeans and moderate Eurosceptics now endorse some form of differentiation, even if their underlying arguments differ.

3. CORE DILEMMAS OF DIFFERENTIATION

Differentiated integration raises important political, legal and institutional dilemmas. The first is the trade-off is between flexible ways out of deadlock and the EU’s political unity. The second dilemma is between flexible (intergovernmental) legal arrangements and the homogeneity of EU law. The third is between the creation of tailor-made institutions or institutional sub-entities and the unity of the EU’s institutional framework and governance.

4. DIFFERENTIATION IN CORE AREAS OF INTEGRATION

The prevalent modes and models of differentiated integration vary depending on the policy area. This is illustrated through a brief overview of the state of the art in four core areas of European integration: the Single Market; the Economic and Monetary Union; the Area of Freedom, Security and Justice; and the Common Foreign and Security Policy.

This policy paper sets the stage for a series of policy papers that will analyse recent developments and future scenarios in core areas of European integration. It thus closes by identifying a number of forward-looking questions. We expect the answers to differ depending on the policy area. However, the overarching question will be how different forms and models of differentiation can be reconciled under the umbrella of a legitimate, functional, and effective European federation of nation states.

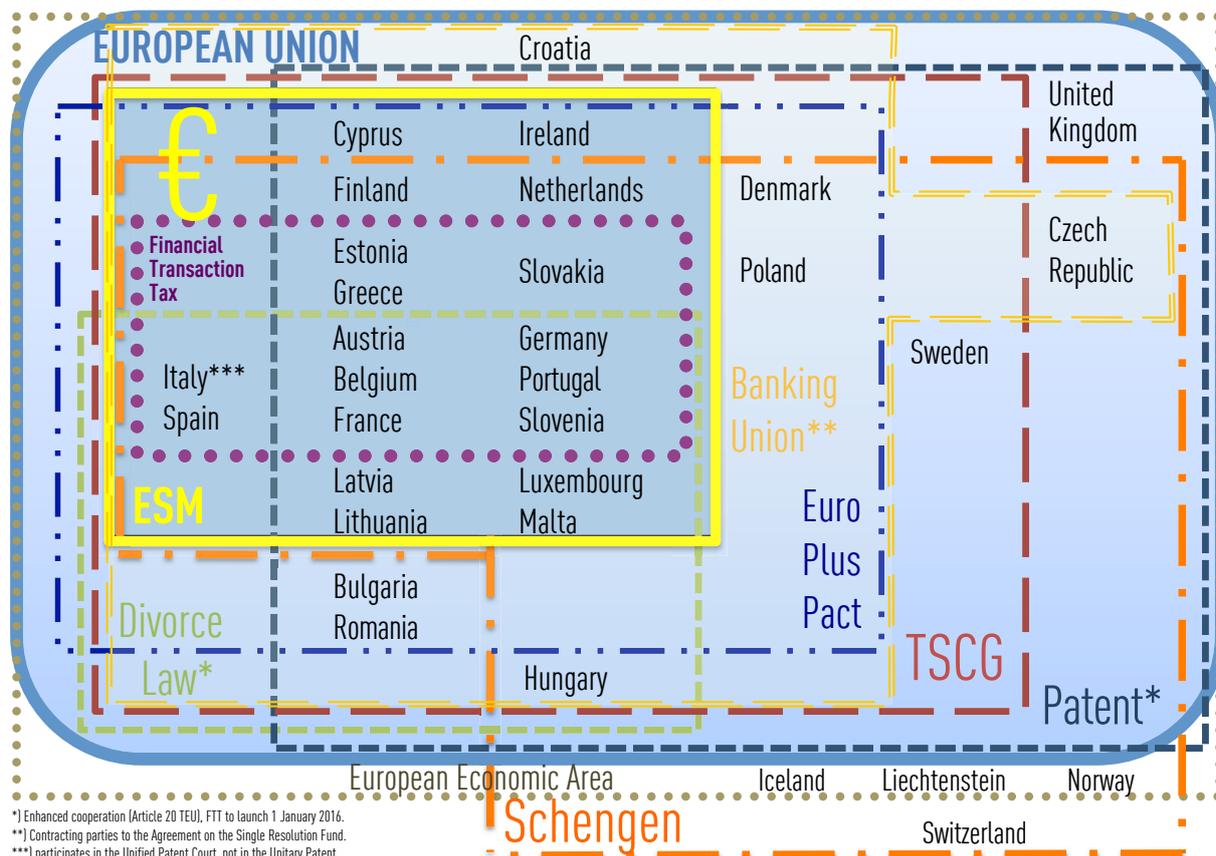
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INTRODUCTION: A HIGHLY DIFFERENTIATED EUROPEAN REALITY

We are de facto living in a highly differentiated European Union (EU). A prime example is the Schengen agreement, which five out of the then ten EU member states signed three decades ago. Now it has legal status and comprises 26 countries, 22 of which are EU members. Since the 1990s most of the Union's core policy areas underwent some form of differentiation¹. More recently, the financial and sovereign debt crises fuelled deeper integration within the Eurozone and led to the emergence of new forms of differentiation within and outside of the Union's legal and institutional framework. A stable core of six EU member states participates in most differentiated integration projects while groups of 'outsiders' vary on a case-by-case basis (see Figure 1).

Figure 1 ► A highly differentiated European reality



Source: Valentin Kreilinger, April 2015

At a European Council meeting on 27 June 2014, the EU's Heads of State or Government politically endorsed this differentiated reality. They noted that the commitment to an "ever closer Union", enshrined in the Treaty on European Union, "allows for different paths of integration for different countries, allowing those that want to deepen integration to move ahead, while respecting the wish of those who do not want to deepen any further"².

1. See Dirk Leuffen, Berthold Rittberger and Frank Schimmelfennig, *Differentiated Integration: Explaining Variation in the European Union*, Palgrave Macmillan, 2013.
2. European Council, „Conclusions“, Brussels, 27 June 2014.

Nonetheless, differentiation remains subject to political controversy. The debate accelerated in early 2015 due to the renegotiation of Britain's EU membership conditions and speculations on Greece's Eurozone future. The British Prime Minister, David Cameron, clearly framed the negotiation in terms of differentiated integration. Opposed to the principled commitment to an "ever closer Union", he has implicitly advocated a "two-speed" Europe³. His Foreign Secretary, Philip Hammond, was more explicit in his call for a "two-pillar Europe" with a properly defined relationship between Eurozone and non-Eurozone members, modelled on the architecture for Schengen or the Banking Union⁴. Meanwhile, the Greek Prime Minister Alexis Tsipras spoke out against the development of a two-speed Eurozone, in which a core of powerful Eurozone members would impose austerity and adjustment measures to others⁵. These two examples do not only demonstrate the conceptual confusion surrounding differentiation; they also show to what extent views on its practical implications diverge. The discussion on differentiation has become highly politicised, as the 'exit threats' inherent in the British and Greek debates illustrate.

In 2015, the topic of debate is no longer whether there should be differentiated integration. The question is rather how different forms of differentiation could be managed to allow for efficient, effective and legitimate EU multi-level governance. The present paper aims to address this question by clarifying the meaning of different forms and models of differentiation. It identifies some key advantages and trade-offs and distils core questions that will need to be addressed in the future. This paper thereby sets the stage for a series of policy papers that will analyse recent developments and scenarios in core areas of European integration.

1. Fifty shades of differentiation

Differentiated integration is commonly defined as "a model of integration strategies that try to reconcile heterogeneity within the European Union and allow different groupings of Member States to pursue an array of public policies with different procedural and institutional arrangements"⁶. Scholars distinguish external and internal differentiation⁷. The former refers to a situation where EU rules apply uniformly to all member states and selected third states. The latter describes a case where rules cease to apply uniformly to all EU member states because some of them opt out from a given policy area or integration project. In some cases, we find a combination of both modes of differentiation.

In addition, there are over 30 models of differentiated integration⁸. One of the most common categorisations distinguishes between time, space, and matter. A differentiation model that is temporally limited and where a core group of member states moves forward is usually referred to as 'multi-speed Europe'. This contrasts with space-related differentiation – or 'variable geometry' – which accommodates diversity through geographically circumscribed tiers with different levels of integration. Closely linked to the concepts of concentric circles or two-pillar Europe, variable geometry presupposes a permanent character of differentiation. It thus conflicts with the commitment to an "ever closer Union". The same goes for the third category, which is commonly referred to as 'à la carte Europe'. It allows for flexible integration depending on the issue area while adhering to a set of common EU objectives. In reality, these models often overlap.

From a macro-level perspective, differentiated integration usually occurs when two conditions coincide: a high degree of political or economic interdependence combined with high and asymmetric politicisation⁹. Interdependence creates a demand for deeper integration and fuels centripetal dynamics. Meanwhile, the asymmetric politicisation of policy issues across member states tends to have centrifugal effects. From a member state perspective, differentiated integration can be seen as a function of the objective capacity and subjective political will to integrate.

3. Tony Paterson and Nigel Morris, „David Cameron gets Angela Merkel's backing on two speed-EU and Treaty changes", *The Independent*, 29 May 2015.

4. Philip Hammond, „We need to make EU more democratic and able to deliver jobs", *The Irish Times*, 10 June 2015.

5. Alexis Tsipras, „Non à une zone euro à deux vitesses", 31 May 2015.

6. Alexander Stubb, „A categorisation of differentiated integration", *Journal of Common Market Studies*, vol. 2, 1996: 283.

7. Leuffen et. al., *Differentiated Integration*, op. cit.

8. For a list, see: Stubb, „A categorisation of differentiated integration", op. cit.

9. Dirk Leuffen, Berthold Rittberger and Frank Schimmelfennig, „The European Union as a System of Differentiated Integration", *Political Science Series*, Working paper no. 137, 2014.

2. The evolving political debate

In the Union's early days, there was a lot of resistance to differentiated integration as it contrasted with the ideal of a uniform European integration process. Resistance started to crumble in the 1970s when prominent political figures started to speak out in favour of differentiated integration (see Table 1). The debate accelerated in the course of the 1990s with the preparations for the Eastern enlargement, the Maastricht Treaty (1993) and in light of the gradual evolution of the Economic and Monetary Union (EMU) as prime example for differentiation.

Table 1 ► Prominent proponents of differentiation

DATE	PERSONALITY	MODEL OF DIFFERENTIATED INTEGRATION
1973	Willy Brandt ¹	"Functional" rather than constitutional approach to EU integration
1975	Leo Tindemans ²	"Multiple speeds" with regard to EMU
1979	Ralf Dahrendorf ³	"Europe à la carte" to pursue common interests
1994	Wolfgang Schäuble and Karl Lamers ⁴	"Hard core" of willing and able member states that pursues further integration in specific policy areas
1994	Édouard Balladur	"Concentric circles" – three tiers: a hard core; a politically and economically less integrated middle tier; an outer circle of non-member countries with economic and security ties
2000	Joschka Fischer ⁵	"Centre of gravity": avant-garde heading towards a European Federation with own Treaty, government and parliament
2000	Jacques Delors ⁶	"Avant-garde" with minimal institutional arrangements, leading to a Federation of nation states
2001	Jacques Chirac ⁷	"Pioneer group" using enhanced cooperation for economic coordination, security and defence and combatting crime
2011	Nicolas Sarkozy ⁸	"Two-speed Europe": a "federal" core of Eurozone members with a looser "confederal" outer band of non-members.
2012	Angela Merkel ⁹	"Political Union": two-speed Europe with deeper integration in the Eurozone
2013	David Cameron ¹⁰	Flexible integration: closer economic and political integration among some, repatriation of competences for others (e.g. UK)
2013	Mark Rutte and Jeroen Dijsselbloem ¹¹	"Flexible Europe": Treaty change to include exit clause from Schengen and Eurozone
2013	François Hollande ¹²	Differentiated Europe with a focus on enhanced cooperation
2013/4	Glienicker Group ¹³ / Eiffel Group ¹⁴	"Euro-Union": Two-speed Europe with deeper integration in the Eurozone (Euro Treaty, economic government, Euro parliament)
2015	Enrico Letta ¹⁵	"Two-speed Europe": need to concentrate deeper integration on Eurozone to keep UK in the EU

Source: own compilation

1. Willy Brandt, [speech](#), European Parliament, 13 November 1973
2. Leo Tindemans, „European Union“, Bulletin of the European Communities, 29 December 1975
3. Ralf Dahrendorf, „A Third Europe?“, Jean Monnet Lecture, 26 November 1979
4. Schäuble, Wolfgang and Lamers, Karl, „Überlegungen zur europäischen Politik“, CDU/CSU, 1 September 1994
5. Joschka Fischer, „From Confederacy to Federation - Thoughts on the finality of European integration“, speech, Humboldt University, Berlin, 12 May 2000
6. Jacques Delors, „Europe needs an avant-garde, but...“, Centre for European Reform, issue 14, 2 October 2000
7. Jacques Chirac, „Our Europe“, speech, Berlin, 27 June 2000
8. Nicolas Sarkozy, „Speech“, Strasbourg, 8 November 2011
9. Angela Merkel in: „Arbeitspläne für ein geteiltes Europa“, Euractiv.de, 12 June 2012
10. David Cameron, „EU Speech“, in The Guardian, 23 January 2013
11. Mark Rutte and Jeroen Dijsselbloem, „Response to member Schouten on exit from Eurozone“, 31 January 2013
12. François Hollande, [speech at the European Parliament](#), Le Figaro, 5 February 2013
13. Glienicker Group, „Aufbruch in die Euro-Union“, Die Zeit, 17 October 2013
14. Eiffel Group, „Pour une Communauté politique de l'Euro“, 2014
15. Enrico Letta, „Keynote speech“, Hertie School of Governance, 14 April 2015

Jacques Delors was one amongst a range of prominent political figures advocating the creation of “avant-garde” that moves forward with integration to “maintain the momentum of building Europe”¹⁰. His understanding of differentiation was based on the vision of a “European federation of nation states”, which reconciles the emergence of a supranational political entity with the central principles of subsidiarity and national sovereignty¹¹.

He thus captured one of the main advantages of differentiated integration, namely the possibility of bridging the divide between supranationalists and intergovernmentalists with their respective preferences for ‘deepening’ (closer economic and political integration) or ‘widening’ (enlargement)¹². Differentiated integration spoke to those anxious of being dragged into an “ever closer Union”¹³. At the same time it appeased fears that ‘widening’ would gradually dilute the Union’s political core. Beyond this macro-debate, differentiation has frequently contributed to overcoming deadlocks.

The advantages of differentiated integration explain why it has increasingly entered the political mainstream. Pro-Europeans as well as Eurosceptics now endorse differentiation, as it can be interpreted as entailing more or less integration. At least four groups with diverse positions can be identified:

1. The first group includes Europhiles who reject differentiation as contradicting a uniform path towards the ‘United States of Europe’. Federalist groupings such as the Spinelli Group or the Union of European Federalists traditionally form part of this first group.
2. The second group comprises more pragmatic pro-Europeans that favour differentiation as a means to move on with further deepening. They thus advocate multi-speed Europe with core or avant-garde groups of member states that lead the way towards deeper integration and compel the ‘laggards’ to join at a later stage. This position is increasingly found among politicians at the centre-left or centre-right.
3. The third group is moderately Eurosceptic and advocates differentiated integration in the sense of a Europe à la carte. This group includes, for instance, the European Parliament’s European Conservatives and Reformists (ECR) Group. The latter presents itself as euro-realist and favours a more flexible EU that respects national sovereignty and diversity.
4. The fourth group includes Europhobes who reject the principle of integration altogether. Differentiated integration is viewed as integration ‘through the backdoor’. Europhobe parties such as the United Kingdom Independence Party or the French National Front can be located within this last group.

Table 2 ► Diverse positions on differentiation

	PRO-DIFFERENTIATION	CON-DIFFERENTIATION
Pro-European	Euro-pragmatists; functionalists; multi-speed; core Europe; avant-garde	Traditional Europhiles; federalists; “United States of Europe”
Euro-critical	Moderate Eurosceptics; Euro-realists; Europe à la carte; opt-outs; opposed to federation	Europhobes; differentiation as integration through backdoor

Source: own compilation

10. Delors, „Europe needs an avant-garde, but...”, op. cit.

11. See also: Gaëtane Ricard-Nihoul, *Pour une Fédération européenne d’Etats-nations. La vision de Jacques Delors revisitée*, Larcier, 2011.

12. Ibid.

13. See Art. 1 TEU.

3. Core dilemmas of differentiation

Despite advantages, differentiation entails a number of important political, legal and institutional dilemmas. The core political dilemma is that between flexibility and unity. It is particularly pronounced when differentiation has an exclusive character due to strict accession criteria. The fear is that differentiation can spur further heterogeneity, undermine the fragile sense of a common European identity and trigger tendencies of disintegration.

An example for (temporary) exclusiveness is the Eurozone where access is contingent on compliance with the Maastricht or convergence criteria. The so-called “pre-ins”, member states that are legally committed to joining the Eurozone, are affected by developments within it and will be bound by the rules elaborated by the in-group. However, they are excluded from rule elaboration and can lose influence on related policy areas. Some of them, such as Poland, vocally complained that they are relegated to ‘second-class’ EU members¹⁴. This phenomenon was particularly visible during the sovereign debt crisis where consequential decisions on economic governance tended to be formulated within Eurozone structures and were often presented to temporary and permanent outsiders as *faits accomplis*¹⁵. Among the permanent outsiders, the UK has been particularly vocal. In fact, London made the call for safeguards against a Eurozone caucus a key element of its agenda for the renegotiation of its EU membership.

The key legal question is whether differentiated integration should be organised within or outside of the EU Treaties. The latter contain over 50 provisions or protocols allowing for some form of flexibility or differentiation¹⁶. Therein, two general logics can be distinguished: constitutional differentiation that developed in subsequent Treaty revisions and is often permanent; and instrumental differentiation that resulted from enlargement and is usually temporary¹⁷.

The advantage of instrumental differentiation is that it is usually open to other member states, takes place within the EU’s institutional structure and is subject to established rules and procedures. The downside is that it tends to be subject to high procedural and political barriers. A prime example is enhanced cooperation, whereby a minimum of nine member states can establish advanced integration or cooperation amongst themselves but within the EU framework. The range of procedural and political preconditions listed in Box 1 may explain why the mechanism, already introduced by the Treaty of Amsterdam in 1998, has only been used three times so far.

BOX 2 ► Enhanced cooperation - procedural, political and legal barriers (Art. 20 TEU; 326-334 TFEU):

Procedural

- Can be established by a minimum of nine member states
- Member States which wish to establish enhanced cooperation shall address a request to the Commission, specifying its scope and objectives
- Authorisation to proceed with the enhanced cooperation shall be granted by the Council after obtaining the consent of the European Parliament
- Council should adopt the decision as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole

Political and legal

- Shall aim to further the objectives of the Union, protect its interests and reinforce its integration process
 - Shall comply with the Treaties and the law of the Union
 - Shall not undermine the internal market or economic, social and territorial cohesion
 - Shall not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them
 - Shall respect the competences, rights and obligations of those Member States which do not participate in it
 - Shall be open to all Member States, subject to compliance with any conditions of participation laid down by the authorising decision.
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14. Agata Gotynska and Nicolai von Ondarza „Bridging a Differentiated Union: The Polish-German Tandem in Euro-Plus Governance”, PISM, Policy Paper no. 48, December 2012.

15. Nicolai v. Ondarza, „Strengthening the Core or Splitting Europe? Prospects and Pitfalls of a Strategy of Differentiated Integration”, SWP Research Paper 2, 2013.

16. Funda Tekin, *Differentiated Integration at Work: The Institutionalisation and Implementation of Opt-Outs from European Integration in the Area of Freedom, Security and Justice*, Nomos, Baden-Baden, 2012.

17. Frank Schimmelfennig and Thomas Winzen, „Instrumental and Constitutional Differentiation in the European Union”, *Journal of Common Market Studies*, vol. 52 no. 2, 2014: 354-370.

“INTERGOVERNMENTAL DIFFERENTIATION CAN THREATEN THE HOMOGENEITY OF EU LAW AND INCREASE COMPLEXITY”

Limited EU legal competence, divergent member state positions or time pressure may propel cooperation outside of the EU’s legal framework. The Bologna Process is a pertinent example. In the field of education, the Union only has supporting competences and is excluded from harmonising national laws and regulations¹⁸. In 1999, 29 EU and non-EU countries thus resorted to an intergovernmental declaration to create a European Higher Education Area, which now extends to 49 countries.

Intergovernmental differentiation projects that originate from irreconcilable preferences or time pressure are more problematic. They could be seen in terms of an intergovernmental avant-garde if they are later incorporated into the EU’s legal framework. However, this requires Treaty revision, which is often lengthy and controversial, and does not guarantee that all member states will eventually adhere. Intergovernmental differentiation can thus threaten the homogeneity of EU law and increase its multi-level complexity.

Differentiated integration also raises institutional dilemmas. Three general options exist: the use of existing institutions in their full composition, existing institutions with a modified composition, or parallel governance structures. The first option, which currently applies to the Eurozone and Schengen Area, raises legitimacy and accountability issues due to the misfit between decision-makers and decision-takers. The question is, for instance, why British or Danish MEPs should have a say in Eurozone matters in light of their countries’ EMU opt-outs. The use of existing institutions in a reduced composition, as seen with the Eurogroup, can remedy this misfit. But while this may be acceptable for the European Council and Council, the Commission and the European Parliament remain opposed to institutional fragmentation. They argue that separate Eurozone bodies would cater to the interests of a specific group of member states and thus undermine their supranational character and role as representatives of all EU citizens¹⁹. The creation of tailor-made institutions may be seen as an attractive third option. However, it also raises issues of democratic legitimacy and can lead to costly duplication.

Table 3 ▶ Three dilemmas of differentiated integration

Political dilemma	Flexibility vs. unity
Legal dilemma	Flexibility vs. legal homogeneity
Institutional dilemma	Flexibility vs. institutional unity

Source: own compilation

4. Differentiation in core areas of integration

Despite controversy and well-known trade-offs differentiation has become an established mode of EU integration. It stretches across policy areas and comes in different shapes and forms. The question is which models or forms of differentiation prevail in which policy areas? In the following we will briefly describe the state of affairs while focusing on four core areas of European integration: the Single Market, the EMU, the Area of Freedom, Security and Justice (AFSJ), and the Common Foreign and Security Policy (CFSP), including the Common Security and Defence Policy (CSDP).

18. See Art. 6, TFEU

19. Gotynska and von Ondarza „Bridging a Differentiated Union”, op. cit.

4.1. Single Market: ‘ever closer Union’, but...

The Single Market lies at the heart of the European integration process and comes closest to a model of uniform integration in the sense of an ‘ever closer Union’. Notwithstanding, several forms of differentiation exist. Enhanced cooperation has been invoked twice in the realm of the Single Market (see Table 4). The first case concerned the introduction of a unitary patent against the resistance of Italy and Spain for linguistic reasons. The second, ongoing case is the introduction of a financial transaction tax²⁰. The Council approved enhanced cooperation in 2013. At the time of writing, the participating member states were still struggling to agree on the details of the taxes’ scope and rate. Differentiation in the realm of the Single Market also occurs somewhat less prominently through non-compliance, delays in the transposition of EU legislation, temporary derogations, and opt-outs on secondary legislation²¹.

Table 4 ► Enhanced cooperation to date

MEASURE	NUMBER OF PARTICIPATING MEMBER STATES	REQUEST FOR ENHANCED COOPERATION	AUTHORISED BY COUNCIL	ENTRY INTO FORCE
Divorce law	16	July 2008	December 2010	June 2012
European patent with unitary effect	25	December 2010	March 2011	January 2013
Financial transaction tax	11	October 2012	January 2013	First step anticipated in January 2016

Source: own compilation

Another neglected area of differentiation in the realm of the Single Market is intergovernmental cooperation in the field of research, technological development and space. Examples include the European Organisation for Nuclear Research (18 EU members out of 21) or the European Space Agency (20 EU members out of 22). In both cases, there are contributions from the EU budget, but the bulk of resources fall into the category of non-Community European spending²².

4.2. EMU: two-speed Europe accelerated

The EMU is a classic example of two-speed Europe. The membership of the Eurozone has gradually increased from 11 to 19 member states. All EU member states are legally committed to join, except the UK and Denmark that have a permanent opt-out. Sweden has a de facto opt-out²³. It is legally bound to join, but intentionally avoids the fulfilment of the convergence criteria. Differentiation has taken place within and outside of the EU framework. Chapter 4 of the TFEU outlines “provisions specific to the member states whose currency is the Euro”. Article 136 therein explicitly foresees that they adopt measures that “strengthen coordination and surveillance of their budgetary discipline”, to set out economic policy guidelines, and to establish a stability mechanism.

In the context of the financial and sovereign debt crises, the Eurozone members have increasingly resorted to informal cooperation platforms and intergovernmental agreements. Many of these measures also include non-Eurozone EU members. A prominent example is the Treaty on Stability, Cooperation and Governance (TSCG) or ‘Fiscal Compact’, which was signed by all EU member states except for the UK and the Czech Republic. The intergovernmentalisation of EMU governance might be a temporary trend if the measures are

20. The proposal for a common financial transaction tax was issued by the Commission DG for Taxation and Customs Union. The measure can be seen as being at the interface of the Single Market and the EMU.

21. David Howarth and Tal Sadeh, „The ever incomplete single market: differentiation and the evolving frontier of integration”, *Journal of European Public Policy*, vol. 17 no. 7, 2010: 922-935.

22. See: Amélie Barbier-Gauchard, „Non-Community European spending: a little known yet substantial reality”, Policy Paper, Notre Europe – Jacques Delors Institute, September 2013.

23. Sweden is a special case. It is legally bound to join, but intentionally avoids the fulfilment of the convergence criteria.

later incorporated into the Treaties. In the meantime, it raises important questions with regard to legitimacy and the relationship amongst new patterns of ‘ins’ and ‘outs’. In fact, a formal clarification of this relationship is part of Britain’s renegotiation agenda.

4.3. AFSJ: a dynamic laboratory for differentiation

The AFSJ represents another example of two-speed Europe with a combination of internal and external differentiation. The UK, Ireland and Denmark resisted the gradual communitarisation of the policy area and negotiated patterns of flexible integration in an à la Carte fashion. The two former have a flexible opt-out/opt-in arrangement for AFSJ legislation. In July 2013, London exercised a block-opt-out from 130 “ex-third pillar” acts, but has since opted back into 36 of them. Denmark has a more rigid AFSJ opt-out, but is planning to hold a referendum in 2016 on converting it into a flexible arrangement modelled on the Irish and British ones.

The situation slightly differs when it comes to the Schengen Area where the UK and Ireland have full opt-outs whereas Denmark is bound by Schengen rules under international (not EU) law. Schengen was initially based on an intergovernmental agreement among five member states and later incorporated into the Treaties²⁴. Nowadays, it has 22 full participants including four non-EU states. Bulgaria, Romania, Cyprus and Croatia are still waiting to join.

4.4. CFSP: temporary and ad hoc differentiation

Differentiated integration in the area of the CFSP/CSDP does not resemble any of the aforementioned models. There is only one formal opt-out, namely Denmark’s non-participation in measures with defence implications. Although Treaty revisions gradually extended flexibility clauses to the CFSP, they have hardly been put into practice. A prominent example is the yet unused clause authorising Permanent Structured Defence Cooperation among a group of willing and able member states²⁵.

Patterns of differentiation in CFSP tended to be ad hoc, informal and located outside of the EU framework. Examples include bi- or multilateral defence Treaties or varying groups of diplomatic frontrunners that speak on behalf of the EU. Recent examples include the prominent roles of the ‘Weimar Triangle’ or ‘Normandy’ Group in negotiations surrounding the conflict in Eastern Ukraine. In the 2015 Strategic Review of the EU’s global environment the Council endorsed these more flexible formats and depicted them as complementary to the CFSP: “Variable actions and formats can only strengthen the EU’s global role, and reflect the complexity of our times”²⁶.

24. See Protocol N° 19.

25. See Art. 42.6 and 46 TEU, Protocol N° 10.

26. Council of the European Union, „The EU in a Changing Global Environment - a more connected, contested and complex world”, Brussels, 18 May 2015, <http://www.statewatch.org/news/2015/may/eu-eas-connected-world-8956-15.pdf>.

CONCLUSION: THE CHALLENGE OF MANAGING DIFFERENTIATION

The bottom line is that we are already living in an EU of multiple speeds and tiers. In this paper, we have shown that differentiated integration comes in various shapes and that the prevalent models vary according to the policy or issue area. The number of legal provisions allowing for flexible cooperation has increased over the years, but they are only rarely invoked. Instead, we have recently seen more informal types of differentiation within the Treaties or formal agreements outside of them.

The discussion on the finality of the European integration process has regained traction. The political mainstream increasingly converges on the necessity to allow for a degree of flexibility and differentiation to accommodate intra-European diversity. However, more concrete visions of differentiation still differ whilst more destructive, Europhobe forces continue to be on the rise.

The focus should now be on managing the political, legal and institutional trade-offs of differentiated integration. In this regard, several questions remain to be addressed:

1. Which options or scenarios are politically desirable in a given policy area?
2. To what extent could the negotiations with the UK affect differentiated integration in a given policy area?
3. Can changes be implemented within the EU's legal framework or do we need some form of Treaty change?
4. Do we need new or better institutional arrangements to ensure effective and legitimate governance?
5. Which key member states are in favour or opposed to differentiation in a given policy area, and why?
6. Should 'core groups' of EU member states go ahead with deeper integration, and if so, which member states could be part of them?
7. How can temporary or permanent outsiders be integrated to avoid the creation of exclusive and divisive 'clubs'?

We expect the answers to differ depending on the policy area. In the years to come, the overarching question will thus be how different forms and models of differentiation can be reconciled under the umbrella of a legitimate, functional, and effective European federation of nation states.

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