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**Research Report**

## Strengthening the core or splitting Europe? Prospects and pitfalls of a strategy of differentiated integration

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# SWP Research Paper

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and Security Affairs

*Nicolai von Ondarza*

## Strengthening the Core or Splitting Europe?

Prospects and Pitfalls of a Strategy of  
Differentiated Integration

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**Strengthening the Core or Splitting Europe?  
Prospects and Pitfalls of a Strategy of  
Differentiated Integration**

“United in Diversity” is the motto of the European Union (EU). Indeed, the diversity in the EU has risen to a level requiring an ever wider array of special arrangements for individual Member States. In many areas of EU policy making, including the common currency, justice and home affairs, the Fiscal Compact, the banking union, and the EU Patent, agreements could only be reached between Member States if smaller coalitions of them moved forward while others remained outside. During the recent European debt crisis, this differentiation reached a new scope that will permanently change the governance, balance of power, and cohesion of the EU. For this, EU Member States used a wide range of instruments for differentiated integration: enhanced cooperation under the EU Treaty, intergovernmental coordination with or without the use of EU structures, and cooperation outside the EU based on international law. Some Member States also made use of negative differentiation by insisting on the opt-out rights enshrined in the EU Treaty in specific policy areas. The idea of a “multi-speed Europe” has therefore been a reality for some time.

Differentiated forms of cooperation were originally intended only as a strategy of “last resort” for European integration. Yet in an EU that will soon grow to 28 Member States, its use has expanded considerably. On the level of primary law, the Treaty of Lisbon established several new opt-outs, including a protocol partially excepting the United Kingdom and Poland from the Charter of Fundamental Rights. The formal instrument of enhanced cooperation was expanded in scope, and special new forms of flexible cooperation were introduced both in the Common Security and Defence Policy (CSDP) and in justice and home affairs. With the Euro Plus Pact, the Fiscal Compact, the use of enhanced cooperation in trans-European divorce law, and the introduction of the new EU patent, differentiation now extends into core areas of EU integration.

This increasing differentiation presents an enormous challenge to the further development of the EU. As the Member States are moving to deepen the Economic and Monetary Union (EMU) by the primary means of differentiated integration (DI), it is impera-

tive to analyse the positive and negative effects of this approach in the contexts of Schengen, the introduction of the euro, and the recent use cases of enhanced cooperation. Here, the analysis shows, first, that the EU has been able to minimise the potential negative effects of DI so far. The feared splitting of Europe has been prevented through the use of informal forums, an inclusive personnel policy and most importantly through the involvement of “DI outsiders”—that is, non-participants in specific DI projects—as observers in decision-making processes. Second, differentiation has proven to be an effective means of overcoming political impasses. Nevertheless, with the exception of the European Social Charter, no DI project to date has succeeded in bringing all of the EU Member States together again. Third, the analysis clearly reveals that the measures introduced during the European debt crisis have brought differentiated integration to a new level—one that requires a new strategy for the future development of the EU.

Both the Member States that are embarking on a deepening of the EMU and those that have decided to remain outside for the time being should therefore critically examine the consequences of differentiated integration and identify possible strategies for its continued use. The debate should start with the understanding that differentiated integration is the only means of achieving the deeper integration proposed to overcome the European debt crisis. However, this instrument should be used carefully and purposefully. To do so, in particular Germany as one of the main drivers of Eurozone reform should work together with its partners both within and outside the common currency zone to design differentiation in a way that empowers the EMU countries to move forward, retains the possibility for pre-ins to join at a later day, and safeguards the integrity of the EU as a whole. In addition, the aim of the UK to add new opt-outs will further intensify the momentum towards increased differentiation in the EU. If these developments are not embedded in an overall strategy for the development of the EU, the increasing differentiation will risk unravelling the foundations of the Union.

In the future, three guidelines should therefore be followed when using the instrument of differentiated integration. First, current and future DI initiatives should guarantee *permeability*. That is, even non-participating Member States should be informed and involved through EU institutions. This would minimise the potential for impasses within the EU-27 and ensure the opportunity for non-participants to join at

a later date. Second, the pro-integration Member States should agree to the *limitation* of using DI instruments only within the EU framework. While mechanisms such as enhanced cooperation or Treaty opt-outs may be less flexible than intergovernmental agreements outside of EU law, they nonetheless make it possible to fully involve EU institutions. This would safeguard not only the integrity of the EU as a whole, but its core achievements, such as the single market and the cooperation in foreign policy. DI instruments within EU law also ensure greater transparency and involve fewer risks to democratic legitimacy. Third, but not least in importance, a strategy of *consolidation* is required to bring the various forms of differentiated integration back together. As past experience has shown, the planned incorporation of the Fiscal Compact into the EU treaties will only succeed if carried out in conjunction with more comprehensive changes to EU primary law as well as far-reaching compromises with countries outside the euro area. Providing that these three conditions are fulfilled, differentiated integration will allow the necessary integration steps to be taken within a core of Member States to deepen the EMU without causing the EU as a whole to unravel or split.

## Differentiation as a reality in the integration process

Differentiated integration is changing the political dynamics and processes of the European Union. These changes, and the associated fears of a “split Europe,” are a constant factor in the debates that have been underway since the Eurozone debt crisis began. Key policy decisions on financial assistance to debt-stricken countries but also on sweeping reforms of economic governance in the EU have been made—or at least agreed politically in advance—by the Euro-17.<sup>1</sup> Even non-Eurozone Member States voluntarily contributed to portions of the financial assistance programs and to the Euro Plus and the Fiscal Compact, not least to counter the risk of a “division of the EU into countries inside the Eurozone and countries outside” (Polish Prime Minister Tusk).<sup>2</sup> The EU is thus splitting into three distinct groups: the 17 Eurozone countries, countries such as Poland that are legally obligated and politically committed to join (‘pre-ins’) and permanent outsiders such as the United Kingdom.

The debate about the pros and cons of a multi-speed Europe that has been ongoing since the 1970s is thus obsolete—differentiated integration has long since become a reality of the integration process. In the face of the heterogeneous interests of a soon-to-be 28-member EU, which will make it difficult to enact further EU treaty reforms in the medium term, it is now clear that differentiation will be the primary method of European integration going forward. What consequences does differentiated integration have, particularly for the balance of power between individual Member States and EU institutions? And how should differentiated integration be designed to keep the negative impacts on the EU to a minimum for both the insiders and the outsiders?

<sup>1</sup> This includes decisions on the structure of the European Financial Stability Facility (March 2010), the creation of the Euro Plus Pact (March 2011), the second Greece bailout package (July 2011), and the Fiscal Compact (March 2012).  
<sup>2</sup> “Vor dem EU-Gipfel: ‘Deutschland diktiert niemandem etwas,’” *Frankfurter Allgemeine Zeitung*, December 16, 2010.

### Forms of differentiated integration

The debate around differentiated integration in the EU is marked by a certain conceptual ambiguity. There is an “excess of terminology,”<sup>3</sup> ranging from a “two- or multi-speed Europe,” a “Europe of concentric circles, a “core Europe,” and a “Europe à la carte” all the way to the Treaty instruments of “enhanced cooperation” and “permanent structured cooperation.” Although often used synonymously, these terms imply different forms of integration, with politically very different consequences for the EU and its Member States.

The common element running throughout all variants of DI is their deviation from the principle of a uniform integration of all Member States in a single political entity. By definition, differentiated integration stands in direct contrast to the vision of an “ever closer union” (Article 1 TEU) and to the principle of supremacy of European law. This principle manifests itself not only in a series of judgments handed down by the European Court of Justice, in which the judges have continuously emphasised the fundamental importance of EU law and the “need to maintain its uniform validity and application in all Member States.”<sup>4</sup> Pursuant to the principle of sincere cooperation (Article 4(3) TEU), the Treaty on European Union also obliges Member States to assist each other in full mutual respect. Differentiated integration can thus be defined as the state in which the uniformity and simultaneity of integration of all Member States is more or less restricted by temporary or permanent exceptions.<sup>5</sup>

The various forms of differentiated integration are usually divided into three categories—time, space, and

<sup>3</sup> Alexander Stubb, “A Categorization of Differentiated Integration,” *Journal of Common Market Studies* 34, no. 2 (1996): 283–95.

<sup>4</sup> Daniel Thym, “Supranationale Ungleichzeitigkeit im Recht der europäischen Integration,” *Europarecht* 41, no. 5 (2006): 637–55.

<sup>5</sup> Tobias Bender, “Die Verstärkte Zusammenarbeit nach Nizza. Anwendungsfelder und Bewertung im Spiegel historischer Präzedenzfälle der differenzierten Integration,” *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 61, no. 4 (2001): 729–70 (733).



matter.<sup>6</sup> The concept of a *multi-speed Europe* relates to a purely temporal variance in the level of EU states' participation in integration, which nevertheless share the same goal. The most commonly found examples of temporally limited DI are the transitional provisions governing the accession of new Member States. These were applied, for instance, during the major enlargement in 2004/2007.<sup>7</sup> Other examples of temporally differentiated integration include those projects in which participation in an integration project is tied to the fulfilment of qualitative criteria. For example, all of the countries that acceded in 2004 and 2007 are contractually bound to adopt the euro as their currency. However, to do so, they must first meet the Maastricht criteria, such that to date only five of the twelve states have joined the Eurozone. As this example illustrates, the model of a multi-speed Europe is structured around the long-term goal of uniform, supranational integration.

The concept of *variable geometry*, or a "Europe of concentric circles," on the other hand, is premised on a spatially *permanent* differentiation. According to this model, the goal of unified integration is abandoned in some or all areas, while only smaller groups of Member States move forward together in specific policy fields. This core group is then surrounded by an outer circle of less-integrated countries that do not wish to participate in certain policy areas for the foreseeable future. One illustration of variable geometry can be seen in the opt-outs established in protocols of the EU treaties, for instance, the Danish non-participation in the Common Security and Defence Policy (CSDP). A special form of variable geometry is a "core Europe," in which one single group of states would become more closely integrated across several policy areas.

Furthest away from unified integration is the concept of a *Europe à la carte*, in which the Member States

can, depending on their ability and above all on their political will and interests, decide whether to participate in broad policy areas or even whether to participate only in specific measures on a case-by-case basis. This most extreme form of differentiated integration is therefore not characterised by any stable, integrated core. Instead, Member States only share a small number of basic political objectives such as the internal market, while they work together in fluctuating configurations in the large majority of policy areas.

The concepts of a *multi-speed Europe* and a *Europe à la carte* thus form opposite poles in the broad spectrum of DI. Although both share the fundamental element of differentiation, they differ significantly in their potential effects on European governance. While the purely temporal differentiation of a multi-speed Europe is aimed at strengthening integration through the establishment of an *avant-garde* group, a *Europe à la carte* implies an EU that is defined by intergovernmental agreements, offering only a weak common superstructure for the Member States. In this network-type system, the key players are the states themselves, which maintain control over their individual treaties and are able to determine which substantive issues they will participate in, based on their capabilities and political interests.

### The legal foundations and their effects on differentiated integration

EU Member States have a variety of instruments at their disposal for designing and adapting projects of differentiated integration. The most institutionally and politically important distinction is whether DI is used within or outside of the EU treaties. In the former case, the EU structures can be fully used, but the treaties also set clear legal limitations. The main instrument for differentiated integration enshrined in the EU treaties is the mechanism of *enhanced cooperation*. This instrument is subject to specific conditions and regulations for use. These parameters orient the instrument of enhanced cooperation toward the model of a multi-speed Europe with the aim of strengthening supranational integration. Hence, enhanced cooperation should serve "to further the objectives of the Union, protect its interests, and reinforce its integration process" (Article 20(1) TEU).

The scope of enhanced cooperation has very specific limitations. It is permitted only within the shared

<sup>6</sup> This categorisation, introduced by Alexander Stubb in 1996, is not absolutely clear-cut. This is especially evident in the distinction between categories of space and matter. More recent studies, therefore, divide DI projects, into up to six dimensions with more than ten characteristics. For the purposes of political debate, however, Stubb's classification remains the most manageable. An overview of the different classification schemes can be found in Katharina Holzinger and Frank Schimmelfennig, "Differentiated Integration in the European Union: Many Concepts, Sparse Theory, Few Data," *Journal of European Public Policy* 19, no. 2 (2012): 292-305.

<sup>7</sup> An overview of all the transitional periods of the 2004 treaties of accession is provided in: *Übergangsfristen im EU-Beitrittsvertrag*, Info-Brief 32/03. Wissenschaftliche Dienste des Deutschen Bundestags (Berlin, 2003).

competences of the EU—thus excluding exclusive competences<sup>8</sup>—with special arrangements that apply to Common Foreign and Security Policy (CFSP) and the CSDP (Article 329 TFEU).<sup>9</sup> Enhanced cooperation can thus be used neither to expand EU powers nor to reduce them by returning competences to the national level.<sup>10</sup> An additional guideline protects the core area of integration, declaring that enhanced cooperation may not undermine the internal market or the economic, social, or territorial cohesion of the EU, and may not lead to bias or discrimination in trade and competition between Member States.

In line with its goal of promoting maximum integration, enhanced cooperation requires that the supranational institutions participate in the initiative and the decision-making procedures of enhanced cooperation. It is designed to be used only as a “last resort” (Article 20(2) TEU) when the Union as a whole cannot agree on the desired objectives within a reasonable period of time and when at least nine Member States are willing to take part in such cooperation. The actual proposal for enhanced cooperation must come from the Commission, and it must be approved by the European Parliament as well as a qualified majority of the Council.<sup>11</sup> Thus, whereas the non-participating

states have no veto right, the European Parliament remains fully involved. The emphasis on strengthening European integration is further evident in the decision-making processes in enhanced cooperation, which involve non-participating states as well. All EU countries are allowed to participate in the deliberations of the Council as observers, but only DI participants have the right to vote, while Parliament, the Commission, and the Court of Justice perform their normal functions in the respective policy areas. These rules are intended to ensure a high degree of permeability in the enhanced cooperation. Moreover, as long as specified criteria are met, subsequent participation is allowed at any time. The permanent exclusion of a Member State from enhanced cooperation is not permissible.

A special form of DI exclusively for the CSDP is *permanent structured cooperation* (PESCO). There are important differences between permanent structured cooperation and enhanced cooperation, which resemble each other only on a semantic level. Permanent structured cooperation is concentrated on developing military capabilities, while decisions about CSDP operations remain subject to all EU countries. PESCO is more closely aligned to the model of a *Europe à la carte*. Thus, it allows even smaller groups of Member States to establish PESCO, but at the same time also ensures that individual Member States can withdraw—or even be excluded—at any time (Article 46 TEU). In contrast to enhanced cooperation, PESCO may be initiated in the CFSP with a qualified majority. In this process, the High Representative and the European Defence Agency are assigned coordinating functions linking the PESCO to the EU framework. PESCO was conceived primarily to establish a core group in the defence sector that is willing to meet particularly demanding requirements in developing military capabilities and to work together very closely in this critical area of national sovereignty. The participating states must meet rigorous quality criteria, which first need be defined in the Council’s decision to establish the PESCO. However, so far no group of Member States agreed to closer cooperation on defence, and in the three years since the entry into force of the Lisbon

operation of Member States that do want to participate is considered automatically approved. Jörg Monar, “The ‘Area of Freedom, Security and Justice’: ‘Schengen’ Europe, Opt Ins, Opt Outs and Associates,” in *Which Europe? The Politics of Differentiated Integration*, ed. Kenneth Dyson and Angelos Sepos (Basingstoke, 2010), 279–92.

**8** The areas of exclusive competence are defined in Article 3 of the Treaty on the Functioning of the EU (TFEU) and include customs union, competition rules for the internal market, monetary policy for the euro states, parts of the common fisheries policy, common commercial policy, and international agreements that relate to EU competences.

**9** The complete opening of enhanced cooperation into all areas of EU competence, including security and defense policy, is one of the crucial changes in this instrument introduced by the Lisbon Treaty. In the CFSP, however, unanimity in the Council is necessary to approve enhanced cooperation, while the European Parliament and the Commission are largely excluded (Article 329 TFEU).

**10** Article 333 TFEU contains an important additional option that was introduced by the Treaty of Lisbon. This makes it possible, with a unanimous decision of the participants in an enhanced cooperation project, to change decision-making to the ordinary legislative procedure. In this procedure, decisions are adopted by a qualified majority in the Council with codecision by the European Parliament.

**11** In addition, there are a series of special clauses specifying conditions for the use of this instrument in the area of justice and home affairs, according to which enhanced cooperation is established semi-automatically. Such “semi-automatic” enhanced cooperation occurs if a legislative procedure in specific policy areas of justice and home affairs is brought to a halt at the request of a Member State and is referred to the European Council. If the heads of state and government do not reach agreement at the highest level, the enhanced co-

Treaty, permanent structured cooperation has yet to be used.<sup>12</sup>

Finally, differentiated integration within the existing EU structures can also be established on the basis of EU treaties and protocols in the form of *negative differentiation through opt-outs* claimed by individual Member States. This option was used for the first time in the Maastricht Treaty, which the United Kingdom approved on the condition that it would remain permanently outside the monetary union. Similarly, after the first negative referendum on the Treaty of Maastricht, Denmark negotiated opt-outs that enabled the country to distance itself from the military CSDP as well as large parts of justice and home affairs and the monetary union.<sup>13</sup> With the Treaty of Lisbon, the number of opt-outs reserved by individual Member States has continued to rise. In the meantime, these opt-outs have come to impinge on areas that are essential to the fundamental values of the EU and the development of a European identity, such as the Charter of Fundamental Rights, which has only limited application in the United Kingdom and Poland.<sup>14</sup> Because the opt-outs that are set down in protocols to the EU treaties, they can only be established or rescinded through treaty change.<sup>15</sup> In the past, they have therefore been used only as a last resort to enable compromise in the course of major treaty negotiations. Because of the great effort associated with treaty

change, opt-outs are not suitable for differentiation in regular procedures. The modalities of the decision-making process and the involvement of non-participating states in such opt-outs are regulated on an individual basis in the protocols.<sup>16</sup> If the UK does want to repatriate powers from the EU, it will therefore need a full-scale treaty change agreed to and ratified by all 27 EU Member States.

Provisions for opt-outs within the EU framework become particularly complex in cases where outsiders are also given the right for an opt-in, thus allowing them to participate in individual decisions in the respective policy areas. An example of this can be seen with Protocol 21 of the TEU, which grants Britain and Ireland an opt-out to provisions in the Area of Freedom, Security, and Justice (AFSJ).<sup>17</sup> Article 3 of this Protocol, however, allows the two countries, during a legislative procedure in the AFSJ, to nevertheless decide to participate in the individual measure. In this case, they are fully involved in the relevant decision-making processes.<sup>18</sup> These opt-in provisions provide non-participating states with a maximum of flexibility and therefore correspond to the model of a *Europe à la carte*. Holders of an opt-in are not required to be involved in the project as a whole, can select which financial and political costs they want to take on, and choose to act solely in line with their own interests. These opt-in opportunities are therefore used on a regular basis: Ireland and the United Kingdom have participated in the majority of decisions on asylum policy and on the fight against illegal migration but have largely avoided agreements on visa policy, border management policy, and legal migration.<sup>19</sup> Since the Treaty of Lisbon entered into force, Britain has exercised its opt-in rights in 20 of the 24 Council decisions taken in the AFSJ, which constitutes almost full involvement in that area.<sup>20</sup>

12 Sven Biscop and Jo Coelmont, "Permanent Structured Cooperation in Defence: Building Effective European Armed Forces," in *Integrationsprojekt Sicherheit. Aspekte europäischer Sicherheitspolitik im Vertrag von Lissabon*, ed. Franco Algieri et al. (Baden-Baden, 2011), 101–10.

13 Rudolf Hrbek, "Der Integrationsprozess und das Konzept 'differenzierte Integration'," in *Europe Reloaded. Differentiation or Fusion?*, ed. Udo Diedrichs et al. (Baden-Baden, 2011), 78–109.

14 According to Protocol 30 of the TEU, none of the rights established by the Charter of Fundamental Rights are enforceable in Poland or the United Kingdom. The concrete implications of this protocol are the subject of legal controversy. See Josef Franz Lindner, "Zur grundsätzlichen Bedeutung des Protokolls über die Anwendung der Grundrechtecharta auf Polen und das Vereinigte Königreich," *Europarecht* 43, no. 6 (2008): 786–799. It should be noted that the Czech Republic also wants to join in this protocol. As the necessary treaty amendment via a simplified procedure was recently rejected by the European Parliament, the protocol still does not cover the Czech Republic at the time of writing.

15 A state can, however, retreat from its opt-outs unilaterally insofar as provided for in primary law. For example, Denmark has the option of giving up its special status in the Schengen area at any time according to its constitutional provisions (Article 8, Protocol 22 TEU).

16 Gorm Rye Olsen and Jess Pilegaard, "The Cost of Non-Europe? Denmark and the Common Security and Defence Policy," *European Security* 14, no. 3 (2005): 339–60.

17 Funda Tekin, *Differentiated Integration at Work. The Institutionalisation and Implementation of Opt-outs from European Integration in the Area of Freedom, Security and Justice* (Baden-Baden: Nomos, 2011).

18 In cases where a negative vote from the UK or Ireland blocks approval of an initiative—for example, because it is an issue that requires unanimity—the other Member States may adopt the initiative after a "reasonable period" even without the two states' approval (Article 3(2) Protocol 21 TEU).

19 Monar, "The 'Area of Freedom, Security and Justice'" (see note 11): 281.

20 Own research based on EUR-Lex.

Apart from the, in many respects, restrictive legal foundations for differentiated integration within EU structures, there is also the relatively open possibility for European countries to cooperate on the basis of international law—even in agreements involving non-EU countries. Such *intergovernmental cooperation outside the EU framework* is neither excluded nor explicitly regulated by the EU treaties, and can therefore take different forms. EU countries are subject to only three restrictions in this respect under European law. First, differentiated integration is excluded in areas such as trade policy that fall within exclusive competences of the EU—competences that the Member States have already ceded to the EU. Second, the principle of solidarity and the respect for the objectives of the EU Treaty are imperatives that may not be infringed upon. An international agreement that includes a Member State may not run counter to the principles of the EU. Finally, such agreements, in contrast to agreements within the EU legal system, cannot rely on the full involvement of EU institutions. From the perspective of the partner states, this ensures that further competences are not transferred to the supranational institutions of the EU. However, it eliminates the potential for the Commission and the European Court of Justice to enforce the relevant decisions, and removes the additional democratic potential that would arise through the full participation of the European Parliament.

Within the bounds of these three restrictions, intergovernmental cooperation outside the EU is used by Member States in manifold ways. One of these is to foster European integration. The Treaty of Schengen and the Prüm Convention, for example, were created outside the EU on the basis of international law but were intended for eventual transposition into EU law and application to the entire EU.<sup>21</sup> At the other end of the spectrum, however, intergovernmental cooperation may also be used to permanently remain outside the EU framework. One example of this was the agreement of France and the United Kingdom in November 2010 for closer defence cooperation—an explicitly bilateral project with no ambitions for eventual “Europeanisation.”<sup>22</sup>

<sup>21</sup> This is underscored in the preamble to the Prüm Convention, where the Parties emphasise their strong desire to transfer these regulations into the legal framework of the Union.

<sup>22</sup> Ben Jones, *Franco-British Military Cooperation: A New Engine for European Defence?* (Paris: EU Institute for Security Studies, 2011).

## Differentiated integration is becoming the modus operandi of the EU

Thus far, differentiated integration as a whole has taken place in three main policy areas—common currency, justice and home affairs, and Common Security and Defence Policy (CSDP). Looking at the current uses of differentiated integration by individual Member States (see the diagram in the appendix, page 34), four parallel dynamics can be identified. First, a core of Member States has emerged, comprised of countries that have participated in almost all integration projects to date. These include the founding states of the EU and most of the euro-area member states, with Germany and France at the group’s centre. However, Member States that joined later, such as Estonia, Finland, Malta, and Austria, have also participated in all of the major DI projects. Moreover, several Central and Eastern European countries have participated in all integration initiatives with the exception of the EMU, for which they do not yet meet the necessary criteria. In addition, several of them are on their way to joining the euro within the next five to ten years. This core of 20 Member States constitutes a majority of the European Union.

Second, integration “outsiders” do not comprise a consistent group, but vary from one policy area to the next or even within policy areas. The inconsistent and ever-changing picture of Member States that remain outside of DI projects points to the development of a *Europe à la carte*, in which the individual countries determine their participation individually, based on their own policy preferences. The spectrum ranges from the United Kingdom, which is an outsider in almost all DI projects, with the exception of (limited) participation in the CSDP and the EU patent,<sup>23</sup> through Member States like Poland that have only withdrawn from participation in a few projects, all the way to core members like Spain, which has remained outside only a single DI project (in this case, the EU patent) for reasons of particular national interest.

Third, up to this point, differentiated integration has been used only in exceptional cases—as a last resort solution to stalled negotiations or when new special conditions had to be negotiated after a failed ratification. Differentiation has not been the result of a systematic plan for the development of a more

<sup>23</sup> Only Italy and Spain have decided not to participate in the EU Patent. On the introduction of the patent, see page 16.

integrated core. This was apparent, for example, in the negotiations about the inclusion of the Charter of Fundamental Rights in the Lisbon Treaty. The British veto on the incorporation of the Charter was fundamental in nature and therefore could not be overcome by concessions in other policy areas. In order to avoid having to abandon the symbolically significant inclusion of the Charter in the treaty, exceptions have been granted to the United Kingdom—and later Poland, and in the future possibly the Czech Republic as well.<sup>24</sup>

That the instrument of differentiated integration has been employed only as a desperate remedy to overcome blockages in negotiations and not as a general strategy is attributable to a broad coalition of Member States that have opposed its systematic use. When attempts have been made to promote DI, particularly those that have garnered significant media attention such as the Schäuble-Lamers paper (1994) or Joschka Fischer's ideas about differentiation in his speech at Humboldt University Berlin (2000), they have been sharply rejected by smaller Member States and those not qualified for participation. For one thing, many critics see a risk of dividing the EU into privileged and non-privileged states, into first- and second-class members. More specifically, German and French initiatives for the expansion of DI have been seen as an expression of hegemonic aspirations. A Franco-German dominated "core Europe," critics suggest, would result in a Union with several categories of Member States, in which states outside the core would be excluded and steadily lose influence.<sup>25</sup>

Although DI has long been a reality—with projects such as the euro and the Schengen Area launched during the integration process—it has never prevailed as a general strategy for European integration. Instead, decision-makers have sought to find solutions that work for all Member States. Negotiations have therefore been guided by the maxim that no Member State should be permanently excluded from an integration project against its will. The high psychological resistance towards DI is also manifest in the major legal hurdles placed before enhanced cooperation, as discussed above. In practice, until 2010 this instrument was used instead as a means to create pressure

<sup>24</sup> Janis A. Emmanouilidis, *Conceptualising a Differentiated Europe*, Eliamep Policy Paper, 10/2008.

<sup>25</sup> For a discussion of whether differentiated integration has a divisive or unifying impact, see Peter-Christian Müller-Graff, "Differenzierte Integration.' Konzept mit sprengender oder unitarisierender Kraft für die Europäische Union?," *Integration* 30, no. 2 (2007): 129–39.

to jumpstart deadlocked negotiations. For instance, in the case of the European Arrest Warrant, the option of using enhanced cooperation was successfully used against the veto of the Italian government: when a credible group of Member States threatened to resort to enhanced cooperation, Italy gave in and agreement was finally reached.<sup>26</sup>

The fourth dynamic that becomes evident when looking at the cases in which differentiated integration has been used to date is a lowering of the aforementioned threshold—a lessening in the reluctance to employ this instrument. This process has been accelerated dramatically by the European debt crises. The instrument of enhanced cooperation, never used before, was utilised for the first time, in 2010–2011. Although the Treaty of Lisbon has not lowered the legal hurdles,<sup>27</sup> since then it has already been used three times. First, in 2010, 14 Member States agreed on a regulation for trans-European divorces in the context of enhanced cooperation.<sup>28</sup> Due to the extensive cultural and legal heterogeneity within the EU on this issue—Malta, for instance, did not even have a divorce law until 2011—a proposed regulation on divorce had failed in 2006 due to national vetoes. In contrast to the situation with the European Arrest Warrant, enhanced cooperation in this case was not merely used as a tactical threat but was actually implemented with the approval of the Commission and the Parliament.

Even closer to the core area of European integration—the economic integration of the single market—was the 2011 decision to use enhanced cooperation to establish an EU patent regime. For more than thirty years, Member States had been negotiating such a patent as a means of reducing the cost of patent protection and of increasing legal unity in this area within the internal market. Several attempts to reach compromise over the language rules of the patent, which was the last major area under discussion, ended in failure due to Italy and Spain's veto. In response, the remaining 25 Member States submitted an appli-

<sup>26</sup> Eric Philippart, *Optimising the Mechanism for "Enhanced Cooperation" within the EU: Recommendations for the Constitutional Treaty*. CEPS Policy Brief, May 2003, no. 33 (Brussels: Centre for European Policy Studies (CEPS), <http://aei.pitt.edu/1978/> (accessed March 19, 2008).

<sup>27</sup> In comparison to the Treaty of Nice, the Treaty of Lisbon only increased the minimum number of Member States from eight to nine, in addition to extending cooperation to include all aspects of the CFSP.

<sup>28</sup> EU Council, "2010/405/: Council Decision of 12 July 2010 authorising enhanced cooperation in the area of the law applicable to divorce and legal separation," (Brussels, 2010).

cation for enhanced cooperation in 2010. Their application was approved in March 2011 against the protests of the Italian and Spanish representatives to the Council.<sup>29</sup> This brought differentiated integration close to the internal market, and simultaneously pushed two states that had until then been firmly at the core of EU integration to the outside on this issue. In 2012, the use of enhanced cooperation picked up momentum when eleven Member States made further use of this instrument to introduce a financial transactions tax, abandoning negotiations among 27 Member States after only nine months of official talks in the Council.

Above all, differentiation within the Eurozone has accelerated with the ongoing debt crisis that began in early 2010. In the wake of the crisis, the EU implemented reactive policy measures in the form financial assistance for countries in crisis and establishing the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM), but also adopted significant structural reforms of economic policy coordination in the Union—reforms that were largely agreed upon in advance by the Euro-17. These reforms include the European Semester, whereby preparation of national budgets and economic reforms are coordinated annually, as well as the “six-pack,” six legislative measures that serve to strengthen the Stability and Growth Pact and establish procedures for monitoring macroeconomic imbalances. Although most of these reforms primarily affect the Eurozone, they are not without impact on non-Eurozone states. The existence of the common market links EU countries to each other, so the joint progress of the Euro-17 in areas such as financial and banking regulations, the tax system, and other aspects of economic policy, has consequences even for states that do not participate in the euro. For those countries that have committed themselves to adopting the single currency (“pre-ins”) but do not yet belong to Eurozone and therefore its institutional infrastructure, an additional problem arises: they have only limited input on decisions concerning Eurozone governance<sup>30</sup> yet are forced to

watch as changes are made to the terms and conditions of the common currency that confront new members with higher and higher demands.

The EU is thus splitting apart increasingly into several distinct groups: First, there is the Euro-17, a group of countries that has been involved in all rescue and reform measures over the course of the crisis or who are themselves receiving financial support. The second group comprises the “pre-ins” who have committed to adopt the euro. But even within this group, there is considerable variation in the willingness to participate in euro crisis management and to seek deeper economic policy integration in the future. For instance, Latvia has applied to join the Eurozone in 2014, while Hungary and the Czech Republic, for instance, are taking a wait-and-see approach. A third group consists of countries that either have a permanent opt-out (United Kingdom, Denmark) or that have avoided legal obligations by not meeting the membership criteria, as is the case with Sweden and also to an increasing degree with the Czech Republic.

The dramatic increase of differentiation in the EU became especially apparent with the conclusion of the Euro Plus Pact (2011) and the Fiscal Compact (2012). The only countries that did not ratify the Euro-Plus Pact were the United Kingdom, Sweden, the Czech Republic, and Hungary, all clearly taking a position outside the monetary union. Denmark, on the other hand, signalled its willingness to collaborate with the countries of the Eurozone by signing the Fiscal Compact. When it came to the project of establishing fiscal discipline in EU primary law, the 27 Member States failed to reach consensus following the British veto in late 2011. As a result, when 17 Eurozone countries and eight other Member States finally signed the Fiscal Compact in March 2012, it became yet another DI project with yet another different configuration of states. It is noteworthy that the Fiscal Compact includes the objective of using enhanced cooperation more in the future to bring about deeper economic integration (Article 9, Fiscal Compact).

And looking ahead, this trend of differentiation is certain to continue: In the immediate future, the planned single supervisory mechanism (SSM) as a cornerstone of a future banking union will be realised via differentiated integration. Although its exact setup is still to be determined, it is already clear that the

<sup>29</sup> Council of the EU, *Council Decision of 10 March 2011 authorising enhanced cooperation in the area of the creation of a unitary patent* (2011/167/EU) (Brussels, 2011).

<sup>30</sup> In a formal sense, decisions on the eurozone states must be adopted by the entire European Union, primarily via the Economic and Financial Affairs Council (ECOFIN). However, in this case, the non-eurozone states were regularly presented with a package that had been largely negotiated in advance. Nicolai von Ondarza, *Koordinatoren an der Spitze. Politische Füh-*

*rung in den reformierten Strukturen der Europäischen Union*, SWP Research Paper 8/2011 (Berlin: Stiftung Wissenschaft und Politik, April 2011).

SSM will initially only cover the banks of the Eurozone countries, while non-Eurozone EU countries can join on a yet to be defined status.<sup>31</sup> Based on current discussions, most of the pre-ins are contemplating joining the SSM, while the UK government has made it clear that it will remain outside. Thus, the SSM will establish a new, very significant project of DI as a cornerstone of European financial markets. In the medium term, even more differentiation is to come. All central elements under discussion for the deepening of EMU—an integrated financial framework, integrated budgetary framework, possibly a fiscal capacity for the Eurozone, an integrated economic policy framework, plus new measures for strengthening the democratic legitimacy in these areas—will only be agreed upon by the Euro Member States plus other interested EU countries, but not the whole Union.

In short, the European Union is moving swiftly toward a critical threshold: soon it will be impossible to look at differentiated integration as the exception to the prevailing principle of uniformity. Instead, differentiated integration will have to be viewed in key policy areas as the *modus operandi* of European integration.

**31** Karel Lannoo, “The Roadmap to Banking Union: A call for consistency,” CEPS Commentaries, 2012.

## The effects of differentiated integration

In the debate over “More Europe” as a possible way out of the European debt crisis, differentiated integration has once again moved to the focus of public debate. In the resulting debate there are two seemingly irreconcilable camps: the proponents of DI praise it as a strategy to make progress in EU integration possible and bring together the most pro-integration countries.<sup>32</sup> The critics, on the other hand, argue that DI is a fundamental threat to the cohesion of the EU because it entails the exclusion of some Member States. Over the long term, they argue, this threatens to split the Union.<sup>33</sup> Thus, as the reforms of EMU progress and it becomes clear that the EU will become more and more differentiated in the immediate future, it seems all the more urgent to empirically analyze the actual effects of differentiated integration.

### A way out of blocked negotiations

The primary goal of any form of differentiated integration is to overcome political impasses. It allows a group of willing Member States to move forward, while others can remain outside—whether because they do not want to join in, because they are not ready to fulfil certain criteria, or because they are obstructing decisions. In this way, differentiated integration can present a “soft alternative” to unanimity, making

it possible to find a compromise that is acceptable to everyone. This instrument is particularly useful in cases where a very small minority is blocking agreement on an ongoing basis. In this respect, Article 20(2) of the TEU says that the instrument of enhanced cooperation should be used when “the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole.” Implicit in this is not only the aim of allowing willing Member States to work more closely together, but also that of calming the political situation in the EU by taking the pressure off non-participating Member States to justify their position.

The current state of differentiated integration clearly shows that this aim is a common thread that runs through all DI projects to date. Numerous examples illustrate the effectiveness of DI as a means of overcoming political impasses: indeed differentiated integration has often paved the way for compromises in treaty negotiations. In 1992, during negotiations on the Treaty of Maastricht, the British government opposed not only the common currency but also the proposed agreement on social policy on political principle. The adoption of the agreement in the form of a Protocol on Social Policy, which was accepted by all the other eleven Member States, enabled the agreement to proceed and at the same time reduced the political pressure on the British government.<sup>34</sup>

However, it is not just differentiated integration within the EU system that can help to overcome impasses. As with the Fiscal Compact, which aimed at strengthening budgetary discipline in the Eurozone—an objective already contained in principle in the EU Treaties<sup>35</sup>—it was an intergovernmental agreement in form of the 1985 Schengen Agreement between initially just five EU Member States that brought about the opening of internal borders and introduction of free

<sup>32</sup> See for example, Sebastian Kurpas et al., *From Threat to Opportunity: Making Flexible Integration Work*, Working Paper No. 15 (Brussels: European Policy Institutes Network [EPIN], September 2006); Kenneth Dyson and Angelos Sepos, “Differentiation as Design Principle and as Tool in the Political Management of European Integration,” in *Which Europe? The Politics of Differentiated Integration* (see note 11), 3–23; Emmanouilidis, *Conceptualising a Differentiated Europe* (see note 24).

<sup>33</sup> Thus, still in November 2011 EU Commission President Barroso warned against any form of differentiated integration: “Let me be clear—a split union will not work. This is true for a union with different parts engaged in contradictory objectives; a union with an integrated core but a disengaged periphery; a union dominated by an unhealthy balance of power or indeed any kind of directorium. All these are unsustainable and will not work in the long term.” José Manuel Barroso, “The State of Europe—Die Europa Rede” (Berlin, November 9, 2011), <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/738> (accessed March 22, 2012).

<sup>34</sup> Hrbek, “Der Integrationsprozess und das Konzept ‘differenzierte Integration’” (see note 13).

<sup>35</sup> From a legal perspective, the Fiscal Compact introduces little that is new. See António Vitorino, “The ‘TSCG’: Much Ado about Nothing?,” *Notre Europe: Jacques Delors Institute*, February 23, 2012, [http://www.notre-europe.eu/uploads/tx\\_publication/TSCG\\_ViewpointNE\\_Feb2012.pdf](http://www.notre-europe.eu/uploads/tx_publication/TSCG_ViewpointNE_Feb2012.pdf) (accessed March 22, 2012).



movement of persons. This agreement was made outside EU structures but had been preceded by a long-standing block by some Member States that opposed implementing the EU Treaties' provision for the free movement of persons.<sup>36</sup> The compromise of an inter-governmental treaty satisfied both camps: one group was able to open their borders to participating Member States, while the rest of the states were free to control their borders as before.

The crucial precondition for this use of DI as a compromise solution is that the non-participating states reject the particular integration project and do not seek a means of participating. If this condition is not met, DI can have the contrary effect and exacerbate political conflicts between Member States. This can be seen, first, when states are excluded from an integration project at the outset because of their failure to comply with quality criteria. Poland has been particularly assertive in pushing for its inclusion in negotiations on reforms in the Eurozone. Although it had pledged in the early 2000s to join the Eurozone, the Economic and Monetary Union has changed considerably through the crisis and now makes significantly higher demands on its members in terms of integration and resources. Legally bound to join the Eurozone, Poland is left only the choice of whether to accept the new "terms and conditions" of the Eurozone or to violate its commitment to join. As a result, Polish Prime Minister Tusk as well as the Swedish government have threatened not to sign the Fiscal Compact as long as non-euro area states are not guaranteed participation in the new Euro Summits.<sup>37</sup> In this case, differentiated integration does not act as a catalyst for overcoming political impasses but may actually be responsible for creating them in the first place.

Secondly, DI may have a divisive effect when the non-participating states are specifically excluded because the other Member States were not prepared to agree to their conditions. The use of enhanced cooperation to introduce an EU patent, for example, was intended to push Italy and Spain to relent on the language issue. Both countries insisted that EU patents need to be filed not only in the three working languages of the EU (English, German, French) but also

in their native language.<sup>38</sup> From the perspective of the other states in the Council and the European Parliament, however, adding to more languages would have raised the costs of the EU patent so much that its cost advantage over existing arrangements would have essentially been lost. The exclusion of the two countries, however, allowed the EU patent to get underway and the political deadlock to be overcome. However, the debate became so polarised that Spain and Italy filed appeals before the EU Court of Justice for an annulment of the enhanced cooperation.<sup>39</sup> The question of whether DI offers a workable compromise solution is therefore not so much an issue of the legal framework of the integration project, but rather of whether DI outsiders are actively excluded or stay away of their own accord.

### Differentiation as a catalyst for European integration

The broader European policy vision that is linked to the use of differentiated integration in the sense of a "multi-speed Europe" goes beyond the goal of simply overcoming short-term impasses. The vision is that DI can function as a catalyst for the integration all Member States by unleashing centripetal forces from the more integrated core group and thereby pulling in the outsiders. The long-term goal of this process is ultimately the "reunification" of all EU Member States. In this spirit, the Schengen Agreement not only provided from the outset that each Member State would be able to join later, but further allowed for the eventual replacement of its provisions by legislation of the European Community.<sup>40</sup> Similarly, the Fiscal Compact signed in 2012 included a paragraph in Article 16 stating that the substance of the agreement would be transposed into EU Treaties within five years.

<sup>38</sup> EU Council, 2011/167/EU: Council Decision of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (Brussels, 2011).

<sup>39</sup> In their suits, both states accused the Council of violating the treaty provisions for enhanced cooperation, claiming that "the envisaged enhanced cooperation does not aim to further the objectives of the Union but to exclude a Member State from the negotiations." EU Council, C-274/11 Case before the Court of Justice of the European Union—Kingdom of Spain v Council of the European Union (Brussels, 2011).

<sup>40</sup> Article 140–142, Convention Implementing the Schengen Agreement.

<sup>36</sup> Thorsten Müller, *Die Innen- und Justizpolitik der Europäischen Union: Eine Analyse der Integrationsentwicklung* (Opladen: Leske + Budrich, 2003), 124–29.

<sup>37</sup> Valentina Pop, "Future EU Bail-outs Only for Treaty Signatories, New Draft Says," *EU Observer*, January 20, 2012.

This ‘reunification’ of all EU Member States has taken place only once to date:<sup>41</sup> in the Agreement on Social Policy of the Treaty of Maastricht, which was rejected by the conservative British government and later supported by the United Kingdom after the change to New Labour in 1997. The agreement was subsequently incorporated into EU law by the Amsterdam Treaty.<sup>42</sup> In other differentiated integration projects, however, reunification has not been successful. In cases where states rejected an integration project for political reasons, reunification has not been observed—none of the other treaty opt-outs granted to Member States have been rescinded to date.<sup>43</sup> Tendencies towards partial integration are seen particularly in DI projects from which states were initially excluded because they did not meet qualitative criteria. The Schengen area is one such project. It was gradually expanded to the majority of countries that acceded in 2004 and 2007, five of which have already adopted the euro. With ten countries remaining outside the Eurozone, the euro is still far from being the currency of the entire EU.

With regard to the integration of international treaties into EU primary law, on the other hand, the balance sheet is more positive. The Schengen Agreement was transposed into the EU framework through the Amsterdam Treaty. However, this could only be accomplished at the price of an opt-out for the United Kingdom and Ireland. The Prüm Convention, signed in 2005,<sup>44</sup> which provided for closer cooperation among an initial group of seven states in fighting cross-border crime, followed the same model and was able to be incorporated into *acquis communautaire* under the

German Council Presidency in 2007, albeit only at the cost of including opt-outs.<sup>45</sup>

In both cases, with the transposition of agreements into the *acquis communautaire*, the objective was largely fulfilled—to advance European integration through an *avant-garde*. In these cases, the rapid succession of changes in EU primary law in the 1990s and 2000s proved beneficial.<sup>46</sup> For example, the original signatories to the Schengen and Prüm agreements intentionally concluded these treaties either before EU Treaty negotiations or concurrently with them. They were therefore able to use the intergovernmental agreements developed outside EU structures as leverage to advance their ideas within the Community.<sup>47</sup> Nevertheless, the transpositions were successful in each case only because differentiated integration was imported into the EU structures in addition to the substance of each respective treaty: Ireland and the United Kingdom are still exempt from the provisions of the Schengen and Prüm agreements.

With respect to the Fiscal Compact, mixed conclusions can therefore be drawn. Integration into EU Treaties within five years as envisaged in the agreement can only be achieved if it is discussed in the context of larger treaty negotiations. Considering the difficulties encountered in the 2000s with the ratification of the Constitutional Treaty and the Lisbon Treaty, such “revisions of the treaties” are likely only if, under the additional pressure of the euro crisis, steps are taken toward deeper integration.<sup>48</sup> Even then, however, it is to be expected that the United Kingdom and the Czech Republic will insist on exemptions from the rules of the Fiscal Compact.

41 Exceptions to this of course are time-limited transitional provisions in areas such as the free movement of labor, which automatically expired after the end date.

42 The Agreement on Social Policy is still sharply criticised within the British Conservative Party and viewed as an area in which the United Kingdom is contemplating the negotiation of further opt-outs.

43 Before stepping down from office, the previous Danish administration under Prime Minister Lars Løkke Rasmussen, however, publicly considered a referendum on the elimination of the Danish opt-outs. Valentina Pop, “Denmark Eyeing Referendum on Euro,” *EU Observer*, March 3, 2011, <http://euobserver.com/843/31912> (accessed March 19, 2012).

44 See Thierry Balzacq et al., *Security and the Two-Level Game: The Treaty of Prüm, the EU and the Management of Threats*, CEPS Working Documents, No. 234 (Brussels: CEPS, January 2006), <http://www.ceps.eu/ceps/download/1136> (accessed March 29, 2012).

45 Daniela Kietz, “Heimspiel in der Polizeikooperation. Spannungen zwischen Impulsgebung und Vermittlung,” in *Handlungsspielräume einer EU-Ratspräsidentschaft. Eine Funktionsanalyse des deutschen Vorsitzes im ersten Halbjahr 2007*, ed. Daniela Kietz and Volker Perthes, SWP Research Paper 24/2007 (Berlin: Stiftung Wissenschaft und Politik, September 2007), 60–67.

46 From 1986 (Single European Act) to 2007 (Treaty of Lisbon), EU treaty changes were agreed on average every 4.2 years.

47 Alexander Stubb, *Negotiating Differentiated Integration: Amsterdam, Nice and Beyond* (Basingstoke: Palgrave Macmillan, 2002).

48 Lars Brozus, Daniela Kietz, and Nicolai von Ondarza, “Die Entwicklung des EU-Systems zwischen Reformdruck und Integrationsmüdigkeit. Möglichkeiten und Grenzen des Pragmatismus,” in *Entwicklungsperspektiven der EU. Herausforderungen für die deutsche Europapolitik*, ed. Annegret Bendiek, Barbara Lippert and Daniela Schwarzer, SWP Research Paper 18/2011 (Berlin: Stiftung Wissenschaft und Politik, July 2011), 9–18.

## Shifting the political balance in the Union

One impact of the euro and debt crises is virtually undisputed: Germany's influence in the EU has increased substantially because of its central role in crisis management. Germany's new prominence is generally attributed first and foremost to its current economic strength. Berlin acted as a major catalyst in the passage of financial assistance packages for struggling Eurozone countries coupled with strong conditionality and in the agreement on reforms strengthening the institutional architecture of the Eurozone, also by virtue of its veto power. Germany has been able to achieve its objectives, often working closely with France—for example, in the revision of the treaty establishing the European Stability Mechanism (ESM), the design of the Fiscal Compact, and the rejection of euro bonds.<sup>49</sup>

The effects of crises notwithstanding, the mechanisms of differentiated integration themselves also shift the political balance in the Union. There are three primary factors at work: On a strictly mathematical level, *adjustments to decision-making procedures* affect the voting power of individual Member States in the Council.<sup>50</sup> In the case of enhanced cooperation and other forms of DI initiated within the EU framework, the EU Treaties stipulate that voting in the Council must proceed in accordance with the rules of the qualified majority, with the same weighting of votes and the same percentage share of the weighted votes.<sup>51</sup> The threshold for a qualified majority is formed in relation to the quorum of 255 of 345 votes necessary for a normal qualified majority, which corresponds to roughly 74 percent of the vote. At first glance, the rules governing DI appear to uphold the traditional distribution of votes among the participating states: Germany and France, for example, both retain their 29 votes. Upon closer examination, however, the elimination of some states, especially larger

states, changes the *relative* weight of countries, both in relation to each other and in comparison with the total number of votes needed. This applies to the qualified majority as well as to the blocking minority. As illustrated in Table 1, this impact is even stronger when there are fewer Member States participating in a project of differentiated integration.

The practical implications of this shift are vividly illustrated by the example of the Eurozone. When the Council makes decisions that concern the monetary union, for example, on budgetary surveillance, only euro area states have a voting right pursuant to Article 136 TFEU. The 17 Eurozone states have a total of 213 votes, meaning that 158 votes are necessary for a qualified majority. In this case, 56 votes are sufficient for a blocking minority. Germany and France, which together have 58 votes, can therefore block any decision. This veto power increases their political weight in the Eurozone. Spain and Italy—the two largest of the states that have recently become a focus of attention—together also have enough votes to create a blocking minority of 56 votes. The situation is different, however, for other Euro member states that have been affected by the crisis: Even if Ireland, Greece, Portugal, and Cyprus pooled all of their collective 35 votes, this would still not be enough to form a blocking minority. This may further explain why these countries have relatively limited influence over the drafting of their economic assistance programmes in comparison with Italy and Spain.

A second important factor that affects how differentiated integration shifts the political balance within the EU is the changed distribution of Member States' policy preferences. It is extremely unlikely that the interests of a group of Member States that is seeking to move forward on a policy issue coincide with the interests of the entire EU. Instead, countries that share a common interest, in at least one area, tend to work more closely together. As a result, however, countries that are not involved may be overlooked, and majority preferences may shift significantly. The former problem is once again illustrated by EU Patent Law, in which the interests of Italy and Spain could effectively be ignored. In cases where insiders share the majority of an outsider group's interests—as was the case with the United Kingdom in the area of justice and home affairs—there is substantially lower risk that their preferences will be ignored.

A shift in the majority position within the group of DI insiders may also have far-reaching consequences for the individual states that are participating in dif-

49 William E. Paterson, "The Reluctant Hegemon? Germany Moves Centre Stage in the European Union," *The JCMS Annual Review of the European Union in 2010*: 57–75.

50 Since the European Parliament has been involved in all forms of differentiated integration to date only as a whole, the distribution of seats is not changed there (see below).

51 Article 238(3) TFEU. In conjunction with the Protocol 36 on transitional provisions, weighted voting rights as established in the Treaty of Nice remain in force until 2014. Subsequently, the same percentile will apply (55% of participating states, which represent 65% of the population of the participating states) in cases of differentiated integration as is in votes with all Member States.

**Table 1**  
**Change of total votes and qualified majority in the Council of the EU in cases of differentiated integration**

		<i>Total votes</i>	<i>Qualified majority</i>	<i>Blocking minority</i>
EU Council (total: 27)		345	255	91
EU Council (AFSJ: 24) <sup>a</sup>		302	224	77
EU Council (Eurozone: 17)		213	158	56

a These figures assume that the three opt-out states (Denmark, the UK, and Ireland) do not make use of their right to opt in. If they claim this right, they are once again counted among participating Member States, which has implications both for the total number of votes, as well as the number needed to make a qualified majority.

**Table 2**  
**Blocking minorities in the Council of the EU for decisions about the euro**

<i>Blocking minorities within the Euro-17</i>	<i>Required: 56 votes</i>
German and France	58
Italy and Spain	56
Ireland, Greece, Portugal, Cyprus	35

Sources for Tables 1 and 2: Written request from February 2012 to the General Secretariat of the EU Council. Author's calculations of blocking minorities.

ferentiated integration. As the Council's decisions usually represent a compromise among the interests of the Member States, in the context of DI, this may mean that some states lose important political allies. It may become problematic for Germany, for instance, if future economic policy decisions are to be made increasingly within the Eurozone context or as part of enhanced cooperation among Eurozone countries. Germany will then no longer be able to form alliances with countries that have a highly developed culture of stability such as Poland and Sweden, or with others whose basic economic policy interests are consistent with its own.<sup>52</sup>

A third factor, and a question that is especially critical for states that are not participating in differentiated integration, is the extent to which DI projects provide institutional access for outsiders. Such access is generally guaranteed within the EU framework: in

the case of both enhanced cooperation and opt-outs, non-participating Member States can at least be observers in formal negotiations. This enables them to obtain sufficient information about the state of negotiations, assert their own positions, and form coalitions. Furthermore, in case they have an opt-in right, they can even vote on specific resolutions. For outsiders, this is a very comfortable situation. For example, the United Kingdom is considered to have a major influence in the area of migration and asylum policy, despite its opt-outs, because it plays an important role in negotiations and participates substantially in a large share of practical measures.<sup>53</sup>

If, on the other hand, this kind of passive participation is not permitted, the influence of DI outsiders is reduced to a minimum. An example of differentiated integration that is exclusionary, at least from the German perspective, can be seen in the bilateral treaty between France and the UK on security and defence

<sup>52</sup> Jean Pisani-Ferry, "Only One Bed for Two Dreams: A Critical Retrospective on the Debate over the Economic Governance of the Euro Area," *Journal of Common Market Studies* 44, no. 4 (2006): 823–44.

<sup>53</sup> Andrew Geddes, "Getting the Best of Both Worlds? Britain, the EU and Migration Policy," *International Affairs* 81, vol. 4 (2005): 723–40.

policy. The two states deliberately sought to coordinate their negotiations outside the EU framework and concluded a bilateral agreement to establish a joint expeditionary force, to cooperate on armaments projects, and to design their aircraft carriers for interoperability. Most importantly, their agreement introduced ongoing intergovernmental consultations on security and defence policy and thus a process of close cooperation that reached its high point to date in their joint operations in Libya in 2011 and continued during the French campaign in Mali in 2013. The British and French weight in European security has thus increased, while Germany's influence has declined.<sup>54</sup>

### Using informal forums to build bridges

A country's political influence in the EU also crucially depends on its participation in diverse informal forums where Member States meet to discuss current European policy issues. These informal bodies serve three main goals: first, they facilitate the exchange and harmonisation of positions in the context of EU decision-making processes (*consultation function*). Examples include the talks that take place in preparation for European Council meetings between countries such as Germany and France or between European party families. Second, Member States with shared positions regularly launch initiatives that feed through formal EU institutions into the respective decision-making processes (*initiative function*). An example of this was the 2011 joint initiative proposed by the Weimar states plus Italy and Spain to High Representative Catherine Ashton for specific projects designed to strengthen the CSDP.<sup>55</sup> Informal forums are used, third, to coordinate national measures and establish joint policies that extend cooperation within the EU framework (*coordination function*). This goal is being pursued, for instance, in the area of justice and home affairs by the G6, an informal group of interior ministers from the six EU Member States with the largest population that meets to coordinate approaches to fighting terrorism and other key issues.

<sup>54</sup> Ronja Kempin and Jocelyn Mawdsley, *Abkehr von der GSVP? Französisch-britischer Bilateralismus in der Sicherheits- und Verteidigungspolitik*, SWP-Aktuell 81/2010 (Berlin: Stiftung Wissenschaft und Politik, November 2010).

<sup>55</sup> Toby Vogel, "Sidestepping the UK over EU Military Headquarters?," *European Voice*, September 15, 2011.

These kinds of informal groups can affect DI differently depending on how they are designed and used politically. On one hand, they can be used to prevent the emergence of political divisions within the EU. Just as the Council allows non-participating states to take part as observers, informal groups enable DI outsiders to be involved in negotiations without having formal voting rights. One example of how informal forums have been used as a bridge is the Salzburg Forum, which provides eight Central and Eastern European states<sup>56</sup> an opportunity for exchange and discussion of judicial and internal security matters. Founded in 2000 on the initiative of Austria, the Salzburg Forum was designed to support the Central and Eastern European states in the ASFJ and the Schengen area during the transitional phase following EU enlargement—for example, by sharing know-how or providing assistance in the implementation of EU legislation.<sup>57</sup> Two factors have been pivotal in the Salzburg Forum's successes to date: first, it was set up from the outset to pursue a strategy of gradual accession and was therefore closely linked to the EU framework. Second, the Salzburg Forum was initiated by Austria, which had a strong national interest—due to its position at that time on the border of the Schengen area—in bringing the participating neighbouring states into alignment with EU standards.

The G6 offers a second example demonstrating how informal forums can function as a bridge for DI outsiders. The G6 is a group of six EU states<sup>58</sup> that have been meeting since 2003 to discuss and build agreement around questions of internal security policy. These include issues around visa, migration, and asylum policy as well as the fight against terrorism and organised crime. The G6 was conceived with the goal of introducing initiatives into the EU framework and formulating policy in the area of justice and home affairs.<sup>59</sup> The UK is fully involved in the G6

<sup>56</sup> These are Bulgaria, Austria, Poland, Romania, Slovakia, Slovenia, the Czech Republic, and Hungary. Croatia held an observer status in the Salzburg Forum up to its accession to the EU.

<sup>57</sup> Austrian Federal Ministry of the Interior, *Aus dem Innern. Forum Salzburg* (Vienna, 2010).

<sup>58</sup> These are Germany, France, the United Kingdom, Italy, Spain and, since 2007, Poland.

<sup>59</sup> In a 2006 report, the House of Lords charged that the decisions of the G6 preempt any involvement of other EU states and leave them only the choice of whether to participate in implementation. The report further stated that the G6 considers its decisions to be made on behalf of and valid for the entire EU. House of Lords, *Behind Closed Doors: The Meeting of the*

process and participates even when the discussion deals with policy areas from which they have already opted out, such as the Visa Information System (VIS).<sup>60</sup> In comparison with other Member States that participate fully in the ASFJ, the United Kingdom even has a privileged role in the EU decision-making processes thanks to its position in the G6. Its inclusion in the G6 is therefore not the product of an accession strategy, as is the case with the countries in the Salzburg Forum, but rather the result of political arithmetic: as a country with significant political influence, the United Kingdom has been included in the G6 not because of its opt-outs, but despite them.

### The new Eurozone governance architecture: Exclusion out of necessity?

In contrast to this, the emerging governance structure of the Eurozone is designed to provide its member states an exclusive forum marked by confidentiality, in which the Euro-outsiders are not at the table for the negotiations. The primary example of this is the Eurogroup. It offers the 17 countries of the Eurozone an informal forum for coordination. Legally speaking, it has no decision-making powers<sup>61</sup>—these still reside with the Economic and Finance Affairs Council (ECOFIN).<sup>62</sup> In actual practice, however, the Eurogroup is playing an ever more central role in the architecture of the Eurozone and the governance of the EU, since it is there that all the decisions relevant to the Eurozone are debated and agreed upon in advance of their formal approval by ECOFIN.<sup>63</sup>

The actual voting process in ECOFIN is therefore increasingly becoming a formality. To give one example: in February 2012, the Eurogroup reached agreement on the second Greek bailout package in an hours-long meeting lasting late into the night. ECOFIN met the

day after the agreement had been reached in the Eurogroup and adopted the bailout decision without debate.<sup>64</sup> In contrast to the situation in enhanced cooperation, this more informal process excludes non-participants from the actual consultations. The same situation confronts even those EU Member States that have committed themselves to introducing the euro and will eventually be affected by decisions bearing on the Eurozone. During the debt crisis, Poland pressed for permission to take part in Eurogroup meetings, at least in its function as holder of the Council Presidency during the second half of 2011—a request that was denied, under pressure from France in particular, with the argument that the group was closed as the Eurogroup needs confidentiality to negotiate its difficult issues.<sup>65</sup>

This situation becomes particularly problematic for DI outsiders when policy decisions that have been reached in informal DI forums in the form of package deals extend beyond specific DI projects and affect other areas. During the euro crisis, highly sensitive political issues such as financial assistance to individual euro area states, the reform of economic policy governance in the EU, and general EU policy and budget policy were almost inseparably intertwined. Yet decisions were often formulated in the Eurozone structures and presented to pre-ins and permanent outsiders alike as *faits accomplis*. This was also true for the decision to provide Greece with additional funding from EU structural funds through a simplified procedure.

The problem of political spillovers resulting from agreements made in informal special groupings was exacerbated further with the institutional reforms adopted during the debt crisis. No treaty changes were made, and no new decision-making powers were assigned to the new bodies that would operate solely on behalf of Eurozone countries. However, three decisive institutional reforms were introduced in successive stages:

First, the Euro Summit—a meeting of the heads of state and government of the Eurozone states, which was first created as a tool for crisis management in 2010—was transformed into a permanent body that is

G6 Interior Ministers at Heiligendamm. 40th Report of Session 2005–06. European Union Committee (London, 2006).

<sup>60</sup> The VIS was one of the main topics of the summit in Heiligendamm. The United Kingdom was completely involved in the discussions even though it had not used its opt-in right.

<sup>61</sup> The Eurogroup was incorporated into the Treaty of Lisbon with Protocol 14, but it is still described as meeting “informally” (Article 1, Protocol 14 TFEU) and cannot make any legally binding decisions.

<sup>62</sup> Depending on which legal framework applies, only representatives of the euro area states are eligible to vote.

<sup>63</sup> Uwe Puetter, *The Eurogroup. How a Secretive Circle of Finance Ministers Shape European Economic Governance* (Manchester: Manchester University Press, 2006).

<sup>64</sup> “The Greek Crisis. The End of the Marathon?”, *The Economist—Charlemagne’s Notebook* (Blog), February 21, 2012, <http://www.economist.com/blogs/charlemagne/2012/02/greek-crisis> (accessed March 19, 2012).

<sup>65</sup> Piotr Kaczynski, *Polish Council Presidency 2011: Ambitions and Limitations* (Stockholm: Swedish Institute for European Policy Studies, 2011).

set to meet at least once every six months. The Euro Summits should actually be held *after* the meeting of the European Council to avoid spillovers like those described above. Yet because of the position of this body at the highest political level, it is predestined to make further-reaching economic policy decisions. The potential negative effects of this on DI outsiders have been mitigated to some degree in the negotiation of the Fiscal Compact: led by Poland, the non-euro states participating in the Fiscal Compact demanded and were accorded the right to participate in Euro Summit meetings at least once a year.<sup>66</sup> Over the course of 2011/2012, almost all European Council meetings were either preceded or followed up by a Euro Summit.

A second reform created the office of President of the Euro Summit. Like the President of the European Council, this office prepares for and leads summit meetings. Even more significantly: not only was current European Council President Herman Van Rompuy appointed as the first President of the European Summit; both positions are to be appointed concurrently in the future as well.<sup>67</sup> The two positions are thus so closely connected that a new “double-hatted” position has been created, and these offices are likely to be held by a single person even after the Van Rompuy era. For euro-outsiders, this has a double significance. For one thing, the Euro Summit President is responsible for informing non-Eurozone states (and the other EU bodies) about what took place at the meetings and integrating these states into the EU consultations. At the same time, what this means *de facto* is that in the future, only candidates from Eurozone Member States will be eligible for the office of European Council President. In view of the exceptional political importance of this office under the Lisbon agreement, this significantly weakens the position of the non-euro states within the EU hierarchy.

Third, to prepare for the meetings of the Eurogroup and the Euro Summit, an administrative base has been created to formulate decisions relevant to the Eurozone in form of the Eurogroup Working Group (EWG), a role analogous to that of the working groups in the

Council system. Here, the new chair is also “double-hatted,” as both the Economic and Financial Committee, in which all member states prepare the ECONFIN, and the EWG are chaired by the same person—currently Thomas Wieser. This expansion of administrative capacities has created a vertically continuous division between the normal Council structure and the Eurozone bodies. Although the latter have no formal decision-making authority, they are the settings where far-reaching preliminary policy details are worked out between Eurozone states.

From the perspective of non-Eurozone countries, this constitutes exclusion. They fear that with the dynamic development expected following the debt crisis, Eurozone members might gradually separate themselves from non-members. This may also become problematic for the Eurozone members themselves, since it not only increases the potential for divisions but also raises the risk of political blockades. Even if the balance of political power shifts toward the Eurozone, the EU-27 will remain formally responsible for important questions ranging from treaty changes and decisions on the Stability and Growth Pact to the distribution of EU budget funds and foreign relations. Forced exclusion of non-euro members could lead to a confrontation that would significantly reduce these states’ willingness to cooperate and one that could permanently weaken the Eurozone.

At the same time, these special rules for the Eurozone are built upon the need for confidential and effective decision-making on politically and economically highly sensitive questions. A permanent inclusion of the 10 non-Eurozone states in consultations would significantly increase the transaction costs of euro area management and make negotiations more difficult. The single currency area undoubtedly requires that the members of the Eurogroup work closely together and coordinate their activities. This has become especially clear in the wake of the debt crisis. If the Eurozone structures continue to develop and if the 17 members of the Eurozone integrate their economic and budget policies further, this functional need will grow. The EU institutions and the Eurozone states must therefore succeed in striking a balance between the need to prevent exclusion and the need to allow functionally necessary differentiation.

<sup>66</sup> Article 12(3) TSCG. This passage was only added after Poland and Sweden threatened that they would not sign the treaty if they were not allowed to take part in the Euro Summits.

<sup>67</sup> Heads of State and Government of the Euro Area, *Euro Summit Statement* (Brussels, October 26, 2011), [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/125644.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125644.pdf) (accessed March 19, 2012).

## The challenge of maintaining the balance between EU institutions

Beyond its other impacts, differentiated integration also affects the institutional balance and political character of the EU system. Decision-making procedures within DI projects must be adapted for Member States that opt out. The great challenge here lies finding a middle ground between allowing special arrangements for the various projects of differentiated integration and maintaining the institutional integrity of the EU.

In the extreme case, using international agreements outside of the EU treaties usually means that special institutional procedures and structures have to be created. The Prüm Convention (2005), for instance, was closely linked to justice and home affairs in the EU. Given the initially very low number of parties to the Convention<sup>68</sup> and the high conflict potential of the issues it dealt with, enhanced cooperation could not be used and recourse to EU institutions was therefore not an option.<sup>69</sup> Consequently, the convention established its own “Committee of Ministers” outside of EU structures that was empowered to adopt resolutions for implementation by unanimous vote (Article 43, Prüm Convention). In essence, it created a parallel structure to the Council of the EU. It seems consistent with this logic that non-participating EU Member States were not invited to consultations in the Committee of Ministers.

This kind of duplication of institutional structures can undermine the authority and legitimacy of EU bodies over the long term. The rapid integration of the Schengen Agreement and the Prüm Convention into the EU legal framework prevented the emergence of such parallel structures. Given the hurdles that are likely to arise in the transposition of the Fiscal Compact into EU law (see above), it is crucially important to ensure that duplicate structures do not emerge. This seems to be safeguarded in the Fiscal Compact through its provisions for recourse to the EU institutions: although it has the character of an agreement under international law, the Fiscal Compact allows the European Commission to be “lent out” to the

signatories and for the Commission to oversee the agreement’s implementation. In addition, when rules of the Fiscal Compact have been violated, Member States can pursue legal action in the European Court of Justice under Article 273 TFEU in connection with Article 7 of the Fiscal Compact. However, the hybrid structure thus created—standing outside of EU treaties but still integrated into the political and institutional system of the EU—does carry the danger of creating legal uncertainties.<sup>70</sup> The connection between debt brakes, which are based in national law, the Fiscal Compact, which is valid under international law, and the European legal provisions of the strengthened Growth and Stability Pact may produce significant tensions when contradictions arise between these three legal corpora—especially with the type of politically sensitive decisions that usually characterise national economic and fiscal policy.

If a DI initiative is carried out in the EU framework, at least the Council and the European Council can easily adapt institutionally. Since these are Member State institutions, participation and voting rights of the national representatives may vary from one decision-making procedure to the next. As shown above, for the large majority of differentiated integration projects—with Eurozone institutions forming the important exception—the rule is that DI outsiders are generally allowed to participate in consultations as observers without voting rights. This guarantees a high degree of inclusivity and enables the decision-making processes to be incorporated into the regular work of the Council.

The situation looks very different from perspective of the Commission. Acting as the representative of the community’s joint interests, it has not divided its areas of responsibility among DI projects so far. Decisions on justice and home affairs or on the Eurozone are made by unanimous decision within the College of Commissioners. Commissioners are neither legal nor political representatives of their states, and have the same voting rights independent of the status of their respective countries of origin. The Commission also plays a central role in DI projects within the EU structures as the political body that guarantees the cohe-

<sup>68</sup> With seven signatories, the number was initially below the quorum of eight member states that were needed at that time for enhanced cooperation.

<sup>69</sup> Daniela Kietz and Andreas Maurer, *Von Schengen nach Prüm. Sogwirkungen verstärkter Kooperation und Anzeichen der Fragmentierung in der EU*, SWP-Aktuell 24/2006 (Berlin: Stiftung Wissenschaft und Politik, May 2006).

<sup>70</sup> For other possibilities for “lending” EU institutions to international agreements (*Organleihe*), see Daniel Thym, *Ungleichzeitigkeit und europäisches Verfassungsrecht. Die Einbettung der verstärkten Zusammenarbeit, des Schengener Rechts und anderer Formen von Ungleichzeitigkeit in den einheitlichen rechtlichen institutionellen Rahmen der Europäischen Union* (Baden-Baden: Nomos, 2004), 315ff.



sion of the Union. Its job is to ensure that an enhanced cooperation project is compatible with EU law and to transmit information between non-participating Member States and the European Parliament. For non-participants in a DI, it thus constitutes the key point of contact, and for the participants, it guarantees the legitimacy of the chosen procedure in a European legal context. Thus, as long as the DI is carried out in an EU framework, it even strengthens the Commission.

### The political dilemma facing the European Parliament

From an institutional perspective, the expansion of DI projects has the most critical implications for the European Parliament (EP). On first sight, Parliament is in no way excluded from participating in the decision-making processes on DI projects *as long as* these take place in the context of the EU structures. This is, in fact, the norm: Parliament is involved in the same way in policy areas affected by opt-outs as it is in every other area: as a whole body, including the representatives of voters of opt-out states. Similarly, when budget and economic policy legislation with particular relevance to the Eurozone is under discussion, Parliament is consulted or fully involved in the decision-making process. The most striking example of Parliament's full inclusion was seen in the "six-pack" of legislative initiatives to reform the Stability and Growth Pact.<sup>71</sup> Here, Parliament was able to prevail against Member States in achieving its far-reaching demands, and even managed to strengthen provisions on certain points.<sup>72</sup>

This kind of participation is only possible, however, within the EU framework. Parliament is excluded from any involvement in purely intergovernmental agreements outside the Union. The EP was therefore not involved in any way in the Schengen Agreement before it was incorporated into EU law. The Prüm Con-

vention also did not envision any notification of Parliament; the EP was merely consulted about its transposition into the *acquis communautaire*. This marginalisation of Parliament stood in stark contrast to its already significantly magnified voice in decisions on justice and home affairs at the time when the Prüm Convention was signed.

The recently approved Fiscal Compact is the first international legal treaty among EU Member States that envisions the participation of the EP. First, it states that the new Euro Summit President is to inform the EP about the outcomes of summit meetings. Second, the EP President gained the right to speak before the Euro Summit. This right is already granted to the EP President before the European Council, but up to now this had of a more symbolic character and has rarely led to participation in actual negotiations.<sup>73</sup> Parliament's inclusion in the Fiscal Compact can also be seen as primarily symbolic, but from a longer-term perspective, if the EP gains influence through other reforms in policy areas relevant to the Eurozone, the President of the European Parliament or the heads of the major parliamentary groups could become important players at the highest level.

The dilemma over the EP's political legitimacy, however, only really becomes an issue when Parliament becomes fully involved in the decision-making processes within EU structures. The basic concept of differentiated integration—that the members of a community are divided into participants and non-participants—also implies an associated differentiation in the decision-making procedures linked to it. In the Council, it is taken for granted that opt-out countries have no voting rights on decisions in areas from which they have withdrawn. If applied to European Parliament, this would mean, for instance, that representatives from the United Kingdom would not be allowed to vote on issues pertaining to the common currency, and that the EP would de facto be composed differently from one issue to the next. In the past, the EP has rejected such fragmentation.<sup>74</sup>

The situation up to now has in fact been quite the opposite: in the differentiated integration projects carried out in the EU framework to date, Parliament has been involved as a whole, with all of its representatives. This practice is questionable from the stand-

<sup>71</sup> Although the Stability and Growth Pact was aimed primarily at Member States in the eurozone, it also has a limited effect on non-eurozone members. The legislative proposals of the "six-pack" were also formally adopted by the EU as a whole.

<sup>72</sup> For a detailed analysis of the reforms of economic policy governance and undertaken with the Six-Pack and the Stability and Growth Pact, see Stijn Verhelst, *The Reform of European Economic Governance: Towards a Sustainable Monetary Union?*, Egmont Paper No. 47 (Gent: Academia Press for Egmont-The Royal Institute for International Relations, June 2011).

<sup>73</sup> Philippe De Schoutheete and Helen Wallace, *The European Council* (Paris: Notre Europe, 2002).

<sup>74</sup> Honor Mahony, "Eurozone MEPs Should Have Exclusive Voting Rights, French Deputy Says," *EU Observer*, October 18, 2011, <http://euobserver.com/19/113972> (accessed July 5, 2012).

point of democratic legitimacy, since it gives parliamentary representatives a voice even in decisions that do not actually affect their constituencies. These representatives could therefore change the decisions of the European Parliament with their votes. Two examples vividly illustrate this problem. When the EP votes on questions regarding the monetary union, such as the resolution on the euro crisis, there are currently 273 representatives (36.2% of the plenum) that have a right to vote even though their Member States have not adopted the euro.<sup>75</sup> In the case of one parliamentary group, the “European Conservatives and Reformists,” more than 95 percent of the representatives are from non-euro states. It can therefore be assumed that the participation of parliamentary representatives from non-euro states is influencing the results of voting on questions of common currency.

If the trend toward more differentiated integration continues, the EP will certainly claim a role in decision-making that is commensurate with its position as the sole EU body vested with direct democratic legitimacy. Parliamentary representatives would then also have to face the quandary of political legitimacy. There does not seem to be any easy way out: the EP rejects the idea of splitting Parliament into one full parliament and sub-parliaments for individual DI projects, arguing that this would reduce its transparency and run counter to its fundamental principle and self-conception—the idea that parliamentary representatives represent the citizens of the union as a whole. On the other hand, votes in which more than one-third of all ballots cast are from representatives of unaffected populations are of dubious democratic legitimacy. By maintaining a full parliament without differentiation, the EU could weaken its influence in negotiations over the future structure of economic policy governance and risk ending up on the losing end of the DI process.

### Excluded from the central positions? Differentiation and staffing decisions

One area where the exclusion or inclusion of DI-outsiders takes effect is the staffing decisions in the EU institutions. Here, the extent to which personnel from non-participating member states are excluded from powerful positions varies widely. The EP claims to be a pan-European institution representing all of the

<sup>75</sup> Author’s calculation.

Union’s citizens. In its committees, however, one can clearly see a limited form of differentiation by country of origin among the Members of European Parliament (MEPs). Looking at the two committees responsible for the ASFJ, for example, two different effects can be seen. On the one hand, the percentage of MEPs from the UK is only slightly lower than the percentage from DI insider countries like Germany.<sup>76</sup> On the other hand, there have been no Danish or Irish MEPs on either committee in either of the legislative periods.<sup>77</sup>

This trend can also be seen in the pre-decisional phase of legislation. In the work of Parliament, the most important role is played by the rapporteurs responsible for a particular dossier. For instance, rapporteurs conduct the crucial negotiations in triologues with the Council and the Commission. Looking at the rapporteurs in the current legislature, it becomes clear that MEPs from a Member State not participating in a DI project are almost never named rapporteurs for the respective dossier. For instance, over the last two legislative periods, no Danish MEP has been appointed rapporteur on questions of CSDP.<sup>78</sup> Similarly, with just two exceptions,<sup>79</sup> all rapporteurs on issues directly related to the common currency have been from states that have already introduced the euro. This pattern can also be seen in matters of justice and home affairs. During the last two legislative periods, no MEPs from Denmark or Ireland were rapporteurs to the ASFJ. The strong influence of the British MEPs, on the other hand, appears to override this process of “natural selection”:

<sup>76</sup> For example, the German MEPs’ share of seats on the Committee on Civil Liberties, Justice and Home Affairs (LIBE) over the last two legislative periods was 10.5% (EP as a whole: 13.05%), the British MEPs’ share was 7.8% (EP as a whole: 9.85%). Author’s calculations based on official information from the European Parliament.

<sup>77</sup> Only in the 2004–2009 legislative period was there a Danish representative in the LIBE Committee, otherwise there were neither Irish nor Danish representatives on this or in the Legal Affairs Committee (JURI).

<sup>78</sup> Own survey based on official information from the European Parliament on the 2004–2009 and 2009–2012 legislative periods. See European Parliament, *Legislative Observatory*, <http://www.europarl.europa.eu/oeil/home/home.do?lang=en> (accessed February 3, 2012).

<sup>79</sup> The exceptions were a report by Bulgarian representative Slavi Binev on fighting euro counterfeiting and a report by UK representative Vicky Ford on the reform of the stability and growth pact (*ibid.*).

36 of a total of 170 dossiers in the ASFJ had British MEPs as rapporteurs.<sup>80</sup>

Regarding the leadership of the EP, DI projects have had very little effect on appointments to positions such as President or Vice-President of the European Parliament. This is evident from the election of Jerzy Buzek, who comes from the non-Eurozone country of Poland, as President. Of the 14 Vice-Presidents of the EP, in the last two legislatures continuously at least four came from non-members of the Eurozone or from states that are not part of the ASFJ. Here, too, the United Kingdom played a prominent role as at least one member of the Bureau was always a British MEP, a feat not achieved by French MEPs.<sup>81</sup>

A different picture emerges for the European Commission. At the level of the normal Commission officials, participation or non-participation in a DI project has little effect. Relative to the total staff of the Commission, British, Danish, and Irish officials have only slightly lower representation in the Directorates-Generals dealing with ASFJ<sup>82</sup> than in the others. Appointments to top decision-making posts, however, are guided by a very clear philosophy. Since the EU Member States began using the instrument of opt-outs on matters of common currency, ASFJ, and the Schengen area, none of the responsible Commissioner posts has been filled with an official from a non-participating state.<sup>83</sup> Furthermore, during this time, only politicians from countries participating in all DI projects—at present only 10 out of 27 states (see overview in Annex, p. 34)—have been elected Commission President. At least in the public debate, it has been emphasised that a Commission President should be in a position to represent the interests of the most important DI projects outside the EU.

In the Council of the EU and in the European Council, this kind of differentiation takes place automatically: the decision-making bodies are comprised of representatives of the Member States, and depending

on the rules of the DI project in question, non-participants either do not participate at all or participate without voting rights (see above). The Council Presidency, on the other hand, is assigned according to a strict rotation principle, such that DI outsiders may hold the presidency in Council configurations that deal, for instance, with questions of ASFJ. Under the Treaty of Lisbon, the question arises how DI could and should affect appointments to the two leadership positions in the Council system—the Permanent President of the European Council and the High Representative for Foreign and Security Policy.<sup>84</sup> Analogous to the situation in the Commission, it is unlikely that a Danish candidate, for example, would be seriously considered for the office of High Representative in light of this position's responsibility for CSDP. More striking are the consequences for the office of Permanent President of the European Council, who, as described above, now wears the "double hat" of President of European Council and President of the Euro Summit. Thus, it can be assumed that only candidates from Eurozone states will be appointed to this office in the future.

In sum, three conclusions can be drawn about differentiated integration from surveying the current staffing policies in the EU institutions: first, at least in the supranational institutions, non-participating states are involved on the administrative and operative level, but this pattern only extends as far as top leadership positions in the case of the European Parliament. Second, the United Kingdom occupies a special position: despite its large number of opt-outs, it is represented as well as, or better than, states that are participating but smaller. Third, the ongoing DI in the Eurozone ultimately intensifies differentiation in a manner that seems likely to increasingly exclude candidates from non-participating states, a trend that is reinforced in appointments to top leadership positions in the Commission and Council structure.

<sup>80</sup> Own survey. Under examination were only the two committees dealing directly with questions of the AFSJ: LIBE and JURI.

<sup>81</sup> Author's calculations based on official information from the European Parliament.

<sup>82</sup> These are the Directorates-General for Justice (JUST) and Home Affairs (HOME). In March 2012 there were staff members from all three opt-out states represented in both Directorates-General. European Commission, *Distribution of Officials and Temporary Agents by Directorate General and Nationality (All Budgets)*, August 2012, [http://ec.europa.eu/civil\\_service/docs/europa\\_sp2\\_bs\\_nat\\_x\\_dg\\_en.pdf](http://ec.europa.eu/civil_service/docs/europa_sp2_bs_nat_x_dg_en.pdf) (accessed August 25, 2012).

<sup>83</sup> Own survey based on official information from the EU.

## Solidarity and cohesion in the Union

From a European perspective, differentiated integration should be examined critically not least of all in relation to its effects on solidarity and cohesion in the Union. The principle of differentiation in itself is potentially dangerous for a political community. After

<sup>84</sup> On the reformed leadership structures in the EU see von Ondarza, *Koordinatorinnen an der Spitze* (see note 30).

all, a “sense of community”—which Max Weber viewed as essential for the acceptance of majority decisions and the formation of a common identity—only comes about in the process of working together to overcome shared challenges. Yet to a certain degree, DI prevents EU Member States from having this experience. If only the DI participants face shared challenges while the non-participating states are shielded from both positive and negative effects, it is impossible for a sense of community to arise. Three problematic constellations have had acutely negative effects on the Union’s cohesion in the past:

First among them is the perception of a “two-class EU,” which is closely connected to DI areas in which an integrated core group has actively excluded others. This was true of the numerous transitional arrangements that were used by the then 15 EU Member States to shield themselves from the potentially negative impacts of enlargement. Although the large majority of transitional arrangements in the enlargement rounds of 2004 and 2007 were of a technical nature, they were severely criticised in the affected societies—for example, because transitional arrangements on the free movement of workers disadvantaged their citizens.<sup>85</sup> In contrast to such processes of active exclusion, voluntarily chosen outsider positions, such as those taken by the United Kingdom, Ireland, and Denmark with their opt-outs, may have little effect on the cohesion of the Union. Whereas these three EU Members only participate in parts of the ASFJ, they do not consider this to be exclusion but rather confirmation of their own sovereignty.<sup>86</sup>

Second, voluntary opt-outs can undermine cohesion and solidarity in the EU when the outsiders are protected from shared risks and threats by their non-participation or are only indirectly affected. When migration to the southern borders of the EU increased following the political upheavals in the Arab world in 2011, only the member states in the Schengen Agreement were directly affected. This naturally gave rise to different perceptions of the problem within the EU: the Schengen states engaged in heated negotiations among themselves over how to deal with migration

and whether to re-introduce border controls for a limited period of time.<sup>87</sup>

At its core, this political debate revolved around solidarity over questions of asylum policy and migration among the members of the Schengen Agreement. Their solidarity was put to a severe test by the increasing pressure of migration. Commentators in the leading European news media interpreted the Franco-Italian conflict over the opening of Italian borders to allow refugees to continue on into France as evidence of a continued deterioration of trust in the EU. Observers also saw the temporary reintroduction of border controls by Denmark as an expression of creeping renationalisation and an assault on the European symbol of open borders.<sup>88</sup> Nevertheless, the joint commitment to the Schengen Agreement forced the parties to seek a European solution. Under pressure from the other Schengen states and the EU Commission, the basic provisions of the agreement were reformed and the competencies of the border security agency Frontex were expanded.<sup>89</sup> But the non-Schengen states escaped the pressure to find a joint solution. In short: whereas the conflicts between France and Italy raised doubts about the mutual solidarity between them, the opt-out states distanced themselves from this solidarity from the outset.

Third, a high level of DI may erode the already narrow foundation for European identity, especially when heavily symbolic areas are affected. As a key element of European identity, the EU Treaty envisions EU citizenship in addition to national citizenship (Article 20 TFEU). The Treaty also confers specific rights on the citizens of the EU, including free movement within the Union, active and passive voting rights in elections to the European Parliament, and the right to consular protection (Article 20(2) TFEU). Nonetheless under opt-out arrangements, EU citizens of specific Member States such as the United Kingdom and Poland are not fully protected by the European Union’s Charter of Fundamental Rights—a document that was aimed to have a formative character analogously to the US Bill of Rights or Articles 1–20 of the German Basic Law. In

<sup>85</sup> Christina J. Schneider, “Differenzierte Mitgliedschaft und die EU-Osterweiterung. Das Beispiel der Arbeitnehmerfreizügigkeit,” *Swiss Political Science Review* 12, vol. 2 (2006): 67–94.

<sup>86</sup> Rebecca Adler-Nissen and Thomas Gammeltoft-Hansen, “Straitjacket or Sovereignty Shield? The Danish Opt-out on Justice and Home Affairs and Prospects after the Treaty of Lisbon,” *Danish Foreign Policy Yearbook*, (2010): 137–61.

<sup>87</sup> Sergio Carrera et al., *A Race against Solidarity. The Schengen Regime and the Franco-Italian Affair*, CEPS Papers in Liberty and Security (Brussels: Centre for European Policy Studies, April 2011), <http://www.ceps.eu/ceps/download/5512> (accessed March 19, 2012).

<sup>88</sup> See, e.g., Peter Spiegel, “European Integration Is Unraveling,” *Financial Times*, May 30, 2011.

<sup>89</sup> European Council on June 23/24, 2011, *Conclusions* (Brussels, 2011).

the face of such fragmentation, the aim of forging a common identity based on shared rights is destined to failure.

The three aforementioned patterns appeared most clearly—and in mutually reinforcing, negative combination—during the debt crisis, when, for the first time in the history of the EU, the political debate over the core design and future of the Union focused on a project of differentiated integration. With the rapid series of crisis meetings held by Eurozone members, an active process of exclusion unfolded that was further exacerbated by reforms within the monetary union. As demonstrated above, the increasing institutional emancipation of the Eurozone states in the context of the Euro Summits is politically extremely dangerous, especially for the pre-ins. They are required to support the decisions made in the Eurozone framework with a view to their long-term prospects, but are excluded from the consultations among Eurozone states, heightening their fears of becoming “second-class members.”

Second, the solidarity between Eurozone members and non-members was put to a severe test by the high (financial) costs and risks of the assistance programmes for Greece, Ireland, Portugal, and Spain. Only the Eurozone member states committed support to Greece, the European Financial Stability Facility (EFSF), and the ESM. Yet non-Eurozone members such as Sweden and Denmark also contributed funds to specific EFSF programs.<sup>90</sup> There was particularly intense public discussion in the United Kingdom, which is itself deeply in debt, about whether to contribute to the assistance measures for Eurozone states that have run into balance-of-payments problems. The British government, with the agreement of Parliament,<sup>91</sup> ultimately decided to contribute bailout funds for Ireland out of a national interest, but refused to contribute to the other aid packages. At the same time, the distinction between Eurozone members and non-Eurozone members also affected the willingness of individual Member States to show solidarity with potential recipient countries. Thus, while the Eurozone states provided support to Greece, Ireland, and Portugal and the European Central Bank bought large quantities of Italian and Spanish government bonds on the second-

ary market, they provided no similar financial aid to non-Eurozone countries like Hungary and Latvia that were also facing debt problems. No matter how these rescue packages are evaluated politically and economically, this example shows how differentiated integration has created new dividing lines within Europe.

Not least of all, the common currency is an extremely powerful symbol of shared political identity, in both a positive and a negative sense, and one in which the non-euro states have no part. This is both true for the positive aspects of the euro’s symbolic power as a sign of European unity—with coins bearing images from all 17 Eurozone states passing daily through the hands of EU citizens who have come to take the existence of the euro for granted. In the UK, on the other hand, the retention of the pound is celebrated as an emblem of national sovereignty and of the island’s independence from the continent. Taken together, the rising differentiation surrounding Eurozone governance threatens to weaken cohesion and solidarity of the EU-27 over the long term.

<sup>90</sup> For a precise list of the states participating in the individual EFSF programs, see EFSF, *The European Financial Stability Facility*, 2012, [http://www.efs.europa.eu/attachments/faq\\_en.pdf](http://www.efs.europa.eu/attachments/faq_en.pdf) (accessed March 19, 2012).

<sup>91</sup> House of Commons, *Hansard. Loans to Ireland Bill, December 15, 2010, vol. 520, part no. 91, 2010.*

## Conclusions and Recommendations

There are three key insights that can be drawn from this analysis of the practice of differentiated integration and its consequences so far. Firstly, those who warn of the emergence of a “two-speed Europe” are adhering to a myth of European unity that has long since been left behind by the political realities of the EU. With projects like the common currency and the Schengen area, with the numerous opt-outs and the instrument of enhanced cooperation, the EU Member States are already well on their way down the path of differentiated integration. A fairly stable core group of 20 Member States participate in most of the DI projects, while the DI outsiders—with the UK at the forefront—vary from one policy area to the next. Some of the outsiders have emphasised that they do not intend to join the core integration group in the long term. The evolution of differentiated integration is following the model of a “core Europe,” and the differentiation currently taking place is of a permanent nature.

Secondly, despite the increasing fragmentation of the community amidst a growing number of DI projects, the EU has succeeded so far in limiting the negative effects of differentiation. This is partly due to the common institutional framework of the EU has allowed DI outsiders to stay informed about the negotiations and decisions on the different projects and in most cases to participate as observers. States that could not join the common currency or Schengen area because they did not meet qualitative requirements were provided with an accession strategy that is facilitating their transitional phases. Opt-in rights have also been accorded to some of the states that chose to opt out of certain areas. Furthermore, differentiated integration was designed in a permeable way so that non-participants can always opt in at a later point in time.

Thirdly, differentiated integration has reached a new level in the framework of the European debt crisis, and this will permanently affect the governance, the balance of power, and cohesion in the EU. The impacts of differentiated integration presented here do not just pile up but rather increase exponentially, in particular the negative effects: instruments like the Euro Plus Pact, the Fiscal Compact, the

planned use of enhanced cooperation for a financial transaction tax or the upcoming single supervisory mechanism for banks do offer ways out of gridlock, but at the same time, the EU is splitting up into more and more different groupings with 11, 17, 23, 25, or other numbers of members. Most of the new constructions are intergovernmental in nature. As a result, supranational EU institutions, first and foremost the European Parliament, are being marginalised, while the balance of power is shifting toward the large Member States. Moreover, a group of outsider states is gradually emerging, with the UK at the fore, that are distancing themselves so far from the core of the EU that they can scarcely be considered full members.

The answer to this challenge cannot be to adhere blindly to the principle of uniformity in integration—the EU is already too far down the path of differentiated integration. Within the current constellation of interests, such an approach would manoeuvre it into in an almost inextricable impasse with highly explosive potential. Full participation of all 27 EU Members in all crisis management measures is neither desirable from the viewpoint of the Eurozone states, nor would states like the United Kingdom, Czech Republic, or even Sweden be persuaded to assign wide-ranging new competencies in economic, fiscal, and budget policy to the EU level. In contrast, the efforts of the UK for new opt-outs have made it clear that the movement towards differentiation will continue. If EMU and the surrounding policy areas are to be deepened, an expansion of differentiated integration will necessarily be the method of choice.

### Two strategies for a differentiated Union

Against this backdrop, the EU and its Member States will have to tackle the question of how to shape the European integration process in the future in order to accommodate such a high proportion of DI projects. Here, policy makers face two very different options with fundamentally divergent effects.

The first possible approach would be to strive for a flexible Union in which DI is used as an instrument to adapt differentiation projects to the needs of the Mem-

ber States that want to participate. This strategy is based on the idea of the *EU as a toolbox* that Member States can draw from depending on their policy preferences. For Germany—the driving force behind the reform of the Eurozone and a participant in all DI projects to date—such a strategy could be beneficial particularly in the area of economic and monetary policy, where it could help to build a stable, competitive network of pro-reform countries around the monetary union.

The key feature of this strategy is its flexibility. As shown above, EU treaties and intergovernmental treaties offer the Member States a wealth of possibilities for organizing flexible cooperation. From a pragmatic political standpoint, states could use the legal framework that best serves their particular political goals in the multilevel EU system. The Union's toolbox is already extremely well stocked: if the aim is simply to coordinate national policies without transferring further competencies to the EU level, the option of using intergovernmental treaties is the right instrument, as exemplified by the Fiscal Compact. However, if the aim is to expand the EU's authority to enforce measures at the national level—for example, in the area of economic policy—a normal or simplified treaty revision procedure can be used that includes the possibility of opt-outs. For DI projects with close proximity to existing EU competencies, enhanced cooperation can be used.

The same flexibility could also be extended to the array of Member States that work together only when they are interested in closer cooperation or integration in a specific area. In the CSDP, for example, between 6 and 27 states participate in different operations, although no single EU state has been involved in all CSDP operations to date. According to the same principles, different core groups of DI projects could be established in a given policy area—in economic and monetary policy, the Eurozone would be the integrated core; in justice and home affairs it would be the Schengen area, and in security and defence policy, there would be a defence core that still remains to be created.

The second defining feature of this strategy is that, in consequence, the EU would be used primarily as an organisational framework in which the Member States remain the key actors that determine their own level of integration. The formal instrument of enhanced cooperation can only be implemented to a very limited degree in this manner as it greatly limits flexibility. For all other tools, however, it is the Member States—

in particular the heads of state and government—that operate the levers of power to create new DI initiatives. Intergovernmental instruments offer a maximum of flexibility in the range of areas covered and in the options for national governments to tailor decision-making procedures to their interests. As demonstrated, however, the employment of these differentiation tools comes at greater costs to the coherence and the integrity of the EU.

The opposite strategy is to create a *centre of gravity* within the EU structures. Here a core of strongly pro-integration Member States would work more closely together and provide an impetus for close cooperation in the further development of the Union. The first major difference between this and the previous strategy is that here, all DI projects would be anchored in the common organisational and legal framework of the European Union. Such a *voluntary limitation* would initially preclude intergovernmental approaches like those used to conclude the Schengen Agreement, the Prüm Convention, or the more recent Fiscal Compact, and would only include enhanced cooperation, PESCO, and the opt-outs and transitional provisions that are based in the EU treaties. As a result of this limitation, the provisions on differentiated integration anchored in EU law need to be adhered to, which would mean: no expansion of competencies without the agreement of all EU Member States. Here, the guiding principle should be consistency with all other EU policies, and the unified institutional framework of the EU should be utilised to the fullest. In addition, DI projects organised in the Union would be linked in a legally and politically appropriate manner to existing EU principles, the established EU procedures, and with other policy areas in order to guarantee that EU integrity is safeguarded and to exploit potential synergies.

The creation of a centre of gravity within the EU structures implies, secondly, that DI projects should be designed from the start around the model of a “two-speed” Europe that will allow all Member States to eventually participate. This can only be realised through a high level of *permeability*. For this, DI projects should fulfil three criteria: First, they should always accord DI outsiders the possibility of later accession, which may be conditioned on the fulfilment of qualitative criteria. Second, the EU institutions should involve DI outsiders structurally in the decision-making processes of the particular DI projects by allowing them to participate in consultations without voting rights as they are in the Council in

all policy fields except EMU, and by including both the European Parliament and the Commission. This would prevent the emergence of new lines of division and would greatly facilitate later entry to projects. Finally and not least in importance, projects that initially exclude states based on qualitative criteria should contain accession strategies from the outset that gradually prepare DI outsiders for later participation. These could include financial aid as well as the transfer of practical know-how—for example, in the form of joint training programs or the exchange of experts.

Third, a centre of gravity can only take full effect when it includes incentives for DI outsiders to eventually participate in all areas. DI projects should therefore be designed to provide their benefits only to those states that are willing to participate fully. Some of the existing instruments of differentiated integration violate this principle: opt-ins by the UK, Ireland, and Denmark include the possibility to participate in decisions that are advantageous to them and allow them to refrain from the rest. Opt-ins increase permeability, but not only do they reduce the transparency of the EU, they also take away any incentive to ever participate fully in ASFJ or Schengen. Positive incentives for participation should therefore be created in justice and home affairs—for instance, by granting access to joint instruments such as Europol and Frontex only to insiders. For the EMU, such incentives could take the shape of full access to the ESM and in the longer term also support mechanisms in the Eurozone for countries facing asymmetric shocks.

The use of differentiated integration exclusively within the EU framework would also alleviate some of the deficits in democratic legitimacy that have appeared in the process of dramatic expansion in the use of differentiated integration. The democratic deficits of the EU have been exacerbated by the use of differentiated integration outside the EU framework. Intergovernmental treaties like the Fiscal Compact, for example, push the EP to the margins. And when political decisions are brokered primarily by national governments behind closed doors, national parliaments are reduced to the role of rubber-stamp institutions that simulate legitimacy without being able to exercise any actual influence. The EU framework, however, contains a series of protective mechanisms that can guarantee a minimum of democratic legitimacy: these include the full involvement of the EP in the use of enhanced cooperation. Furthermore, national parliaments such as the German Bundestag also have fought to gain comprehensive rights of

information, monitoring, and co-decision in EU matters, which would then become applicable. The organisation of differentiated integration within the EU framework would mean an increase in democratic legitimacy and transparency in the European Union.

### Designing differentiated integration to strengthen the EU

When comparing the path of differentiated integration taken in recent years with the two strategies discussed here—the state-centred toolbox and the EU-focused centre of gravity—it becomes clear that the majority of Member States have decided in favour of the first option. With the exception of Permanent Structured Cooperation, all conceivable forms of differentiated integration have now been used intensively. The most recent DI projects have used primarily intergovernmental forms of cooperation with limited involvement of EU institutions and have also created new formal and informal institutions.

As the EU is moving towards deepening EMU, the architects of the coming reforms must now grapple with the consequences of the path that differentiated integration has taken so far. The first step should be to recognise differentiated integration as the *primary method of integration* under the given constellation of interests in the EU and to discuss its advantages and disadvantages openly. For too long, the European policy debate has been replete with normative, generalised warnings of “impending division” and “second-class membership.” Yet member states choose to expand differentiated integration with each treaty amendment. What is needed now is to engage decisively with this differentiation in order to move forward with as many Member States as possible, and to develop useful political concepts for this engagement.

As part of the reform efforts, the EU therefore needs a coherent design for the ongoing process of differentiated integration to prevent its disintegration into separate groups. To this end, in particular the German government should press for maximal *permeability* of the existing differentiated integration projects. As shown above, the new Eurozone institutions stand out as negative examples. In contrast to opt-outs and enhanced cooperation, they offer no rights of participation for DI outsiders. Participation without voting rights would help prevent the emergence of new dividing lines and would reduce tendencies towards decoupling from the EU, and would not place a pro-



hibitive burden on decision-making. The costs of the increased coordination efforts would be at least partly mitigated by the use of established EU structures, the increased ease of integrating new Member States at a later point in time, and the prevention of potential impasses that can result from tendencies to break away from the rest of the group. Concerted efforts should be made to integrate those states that have already made a legal and political commitment to join the euro.

For this, the principle of using the EU framework as the primary strategy for the further developing differentiated integration should be adopted formally and communicated publicly. This would mean a *limitation* to enhanced cooperation under fixed treaty provisions, with possible opt-outs in the case of expanded competencies or changes in primary legislation. Such a clearly communicated limitation would, however, have numerous advantages: the EU institutions would be fully involved and the coherent framework of the Union would be maintained, and transparency would also be created for non-participating partners. In addition, this could be expected to have fewer negative effects on transparency and democratic legitimacy, at least compared to an intergovernmental form of differentiated integration.

Finally, but not least important, the EU needs a long-term *strategy of consolidation* to bring the various forms of differentiated integration back together. After the recent expansion of differentiated integration into a wide array of formats in crisis management mode, the Euro-17, pre-ins, and the permanent outsiders should work together to bring the provisions of the Fiscal Compact and the Euro-Plus Pact back into the EU framework, as the EU did before in the case of the Schengen Agreement and the Prüm Convention. This will only be possible through extensive changes to the EU treaties and substantial compromises with states outside the Eurozone—the United Kingdom in particular. At the same time, the German government as primary driver of the reforms should follow the example of the Salzburg Group and reach out to those Central and Eastern European countries that are interested in accession to the euro and gradually integrate them into the new euro system. This should make it possible to stop the disintegration of the Union and move toward a centre of gravity in the EU that offers its members the flexibility they need and also empowers them with the capacity to act effectively together.

# Appendix

## Acronyms

AFSJ	Area of Freedom, Security, and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
DI	Differentiated Integration
EC	Enhanced Cooperation
ECOFIN	Economic and Financial Affairs Council
EFSF	European Financial Stability Facility
EMU	Economic and Monetary Union
EP	European Parliament
ESM	European Stability Mechanism
G6	Group of 6 (Interior ministers of the six largest EU Member States: Germany, France, UK, Italy, Poland, Spain)
JURI	Committee of the EP for Legal Affairs
LIBE	Committee of the EP for Civil Rights, Justice, and Home Affairs
MEP	Member of the European Parliament
PESCO	Permanent Structured Cooperation
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
VIS	Visa Information System

## Overview

### Participation of EU Member States in projects of differentiated integration

Projects	AT	BE	BG	CY	CZ	DE	DK	EE	ES	FI	FR	GB	GR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	Total
Eurozone	1	1	0	1	0	1	0	1	1	1	1	0	1	0	1	1	0	1	0	1	1	0	1	0	0	1	1	17
Euro Plus Pact	1	1	1	1	0	1	1	1	1	1	1	0	1	0	1	1	1	1	1	1	1	1	1	1	0	1	1	23
Fiscal Pact	1	1	1	1	0	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	25
CSDP	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26
Schengen Agreement <sup>a</sup>	1	1	1	1	1	1	1	1	1	1	1	0	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	25
Charta of Fundamental Rights	1	1	1	1	0	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	24
AFSJ <sup>b</sup>	1	1	1	1	1	1	0	1	1	1	1	0	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	24
EU Patent	1	1	1	1	1	1	1	1	0	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	25
Trans European Divorce Law	1	1	1	0	0	1	0	0	1	0	1	0	0	1	0	1	0	1	1	1	0	0	1	1	0	1	0	14
<b>Total</b>	<b>9</b>	<b>9</b>	<b>8</b>	<b>8</b>	<b>4</b>	<b>9</b>	<b>6</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>9</b>	<b>2</b>	<b>8</b>	<b>7</b>	<b>6</b>	<b>9</b>	<b>8</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>8</b>	<b>6</b>	<b>9</b>	<b>8</b>	<b>6</b>	<b>9</b>	<b>8</b>	

**a** Bulgaria, Romania, and Cyprus ratified the Schengen Agreement, but it has not entered fully into force.

**b** Opt-outs with an opt-in possibility are treated in this table as non-participation.

Source: author's compilation.

#### Country abbreviations

AT	Austria	CZ	Czech Republic	ES	Spain	GR	Greece	LT	Lithuania	NL	Netherlands	SE	Sweden
BE	Belgium	DE	Germany	FI	Finland	HU	Hungary	LU	Luxemburg	PL	Poland	SI	Slovenia
BG	Bulgaria	DK	Denmark	FR	France	IE	Ireland	LV	Latvia	PT	Portugal	SK	Slovakia
CY	Cyprus	EE	Estonia	GB	Great Britain	IT	Italy	MT	Malta	RO	Romania		