

# POLICY BRIEF

## Integrating Diversity in the European Union (InDivEU)

### Differentiated Integration and the Future of Europe – Potentials and Pitfalls

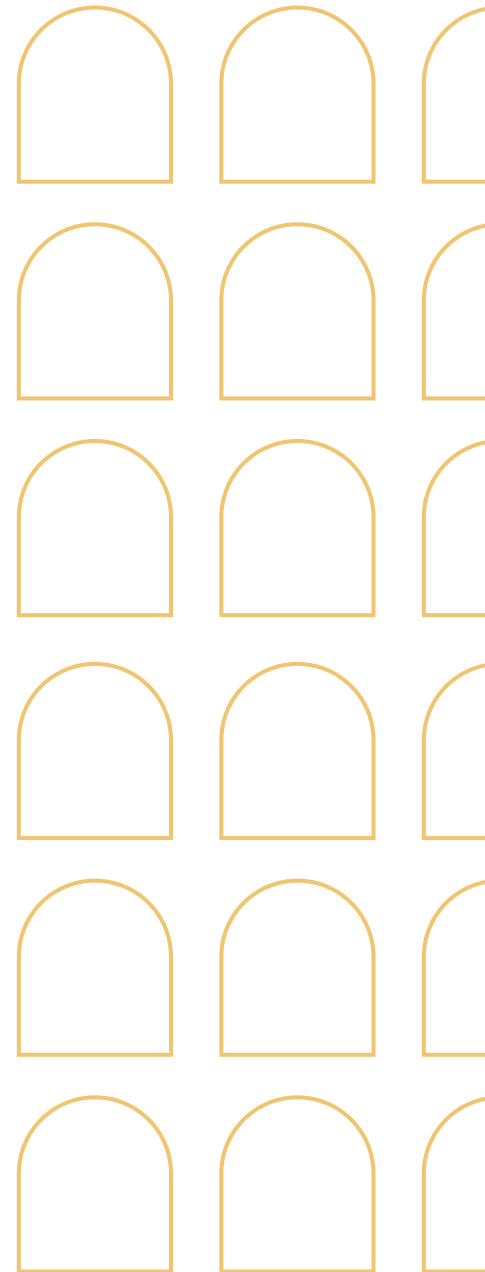
#### Introduction

In its ‘White paper on the future of Europe’ of 2017, the European Commission set out five scenarios for the further development of the EU and its possible shape in 2025, one of which was entitled ‘Those who want more do more’. It envisaged a ‘future of Europe’, in which ‘coalitions of the willing’, representing varying sub-groups of the EU member states, would agree on further integration in specific policy areas. This is a scenario of differentiated integration (DI). An integration agreement is differentiated whenever individual member states do not participate (internal differentiation) or one or more non-member states participate (external differentiation). DI is, of course, not a new scenario, but has been standard practice in the history of European integration.

In the meantime, DI has developed from a niche topic to a research focus in the study of EU politics. This brief summarizes main findings of the Horizon 2020 collaborative project on “Integrating Diversity in the European Union” (InDivEU). They describe how DI works and contributes to European integration, but also point out limits of differentiation.

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## Why DI?

At its core, differentiated integration is an instrument to increase the chances of reaching agreement under the dual constraints of heterogeneous state preferences and capacities, on the one hand, and the unanimity rule, on the other. It is clear that the prospects of EU reform currently suffer from both constraints.

In the face of a series of deep crises, EU policy-makers and academic observers have identified a number of policy areas that require major reforms to overcome dysfunctional policies and consolidate the Union. Prominent examples include the completion of the banking union (above all the European deposit insurance scheme EDIS), the overhaul of European asylum policy after the migration crisis, an effective rule-of-law mechanism to protect the independence of national judiciaries, a shift to qualified majority decision-making in foreign policy, and a solution to the conflict between Parliament and European Council on the election of the Commission President. In all of these areas, divergent preferences of the member states and fundamental intergovernmental conflict have led to protracted reform impasses.

For one, these impasses reflect deeply rooted preferences about the desirable direction and kind of European integration, e.g. conflicts about social and political values, the integration of core state powers such as internal and external security and about intergovernmental vs. supranational decision-making. In addition, they reflect heterogeneities of capacity, in particular between relatively affluent member states with high fiscal and administrative capacity and member states with lower capacity. As the EU has expanded its membership, ventured into contested policies linked to traditional notions of state sovereignty and shifted competences to supranational bodies, these heterogeneities have become both more pronounced and more salient.

At the same time, the preservation of consensus-based decision-making (both *de iure* and *de facto*) has made it more difficult to overcome the heterogeneity of preferences and capacities. Even in those cases, in which qualified majority decisions are foreseen, such majorities are either not available or regarded as unworkable. For instance, after the refusal of Central and Eastern European member states to implement the Council decision on the relocation of refugees, taken by qualified majority, it is now generally understood that reforms of the Common European Asylum System need to be based on intergovernmental consensus. It is

equally taken for granted that a regulation on EDIS could not be taken by a qualified majority against Germany.

Differentiated integration offers a way out of these impasses without abolishing the *de iure* or *de facto* consensual decision-making: it exempts or excludes those member states from a common policy who lack either the willingness or the ability to participate. It thereby reduces the number of participating member states up to the point at which their preferences and capacities become sufficiently homogenous to accept a reform unanimously.

## Differentiation facilitates integration

The 1990s and 2000s were a period of dynamic expansion in European integration. Membership has more than doubled in this period, from 12 to 27. In addition, the EU has broadened its policy scope from commercial and market-related policies to core state powers such as interior (justice and home affairs) policies, foreign and defence policies, and macroeconomic policies (in EMU). An expansion of differentiation accompanied this expansion of integration. Accession treaties have typically contained a high and growing number of ‘transitional arrangements’ exempting or excluding new members from EU policies, whereas revisions of the main treaties have typically granted opt-outs to member states sceptical of core state power integration. Indeed, without DI, this dynamic expansion would not have been possible. In enlargement, DI bought time for old member states that were concerned about the ability of new member states to comply with EU regulations, labour migration and demands on the EU budget. In deepening, it circumvented the veto of member states concerned about national sovereignty.

It is important to note that the differentiation of EU treaties has grown in proportion with integration. Whereas the absolute number of differentiations has increased over time, and in particular with Eastern enlargement, it has remained stationary relative to the expanding number of members and integrated policies. In this perspective, the EU is not more differentiated today than it was in the 1960s. This finding underlines that differentiation is primarily an instrument to facilitate integration and to compensate for the increasing heterogeneity of the EU.

Moreover, most differentiation is of the temporary ‘multi-speed’ variety. Two-thirds of the treaty-based differentiations that the EU has ever negotiated with member states have expired already. For differen-

tiations in the context of enlargement, the number increases to more than 80%. In addition, these differentiations have ended after a reasonable period of five and a half years on average. Differentiations driven by sovereignty concerns in the domain of core state powers tend to be durable, however. Monetary integration, in particular, has led to a long-lasting divide between Euro area and non-Euro area member states, which has further deepened as a result of the Eurozone crisis. Whereas the integration of core state powers displays some features of a 'core Europe', it should be said that the EU's core is inclusive. It comprises a large majority of member states (having none or only a few minor differentiations), and willing member states with numerous initial differentiations in Southern and East-Central Europe have been able to join the core. Finally, DI has not led to 'Europe à la carte'. Rather than fragmenting the EU into separate 'clubs' or 'many Europes', DI has preserved common institutions, in which all members partake, and a core group of member states that participate in all policies.

## The limits of differentiated EU reform

DI has worked best to facilitate the integration of new members and new policies. As integration progresses, however, common institutions, legal obligations and policy interdependencies make it more difficult and costly to split up and go separate ways. During both the euro and the migration crises, policymakers and academic experts put forward proposals for downsizing or splitting the Eurozone and the Schengen area. Yet these proposals have run into major political resistance, legal obstacles and prohibitive expectations of costs and risks, especially for the Eurozone.

Moreover, two types of issues are particularly intractable for DI: constitutional and redistributive issues. Constitutional issues concern the fundamental values and norms as well as the basic organizational set-up and institutional rules of a polity. The EU considers itself a community of liberal-democratic states sharing constitutional principles such as human rights, democracy and the rule-of-law and common values such as freedom, equality and non-discrimination. To the extent that such values and norms pertain to the domestic institutions and behaviour of member states, the differentiated integration of such issues is functionally feasible. Technically, the EU could grant its member states opt-outs from non-discrimination, such as LGBT-free zones in Poland, or from fair elections in Hungary. Yet because democracy is a foundational

value of the EU, and human rights are considered "indivisible", DI would be inappropriate.

When the EU's own institutional order and rules are at stake, issues of externalities and feasibility loom large in addition. If individual member states were granted the right to rig EP elections or ignore CJEU decisions, DI would create inequality among states (and citizens) and undermine the proper functioning of the institutional system. For these reasons, divergent preferences and capacities of the member states regarding constitutional issues do not lend themselves to differentiated integration.

They also explain why differentiations in these domains are rare and limited. Differentiations are absent from the general and institutional provisions of the EU treaties. The only differentiations in the domain of constitutional issues, the UK and Polish 'opt-outs' from the Charter of Fundamental Rights, are generally seen as declaratory and having little practical effect.

Redistributive issues concern burden-sharing and material transfers between the member states. Just as in the case of common values and institutions, differentiated integration would be technically feasible in redistributive policies. Yet, differentiated integration in redistributive policies tends to be self-defeating. For instance, risk-sharing arrangements are most efficient if they consist of a large number of participants with a high diversity of risk profiles. Likewise, burden-sharing arrangements need to join low-capacity and high-burden members with those that have high capacity or a lower burden so that redistribution produces manageable burdens for all participants. Voluntary arrangements that allow member states to opt out inevitably lead to the exit of the countries with the lowest risks, lightest burdens and highest capacity, or to a significant reduction of their contributions. As a consequence, differentiation undermines the purpose of integration aimed at the social sharing of risks, burdens and wealth. In such areas, integration is typically either (almost) uniform or does not happen at all.

The problem with DI in the current reform of the EU is that many of the most pressing issues are either constitutional or redistributive. Take three of the institutional issues on the agenda: transnational lists in EP elections, the lead candidate system for the appointment of the Commission president, and qualified majority decisions in foreign policy. None of these could be solved through differentiated integration.

Nor would differentiated integration help in the rule-of-law crisis of the EU, in which the threat of national vetoes by the perpetrators has paralysed the Article 7 procedures. Because the line between opt-in and opt-out countries would run between good-governance and bad-governance member states, differentiated integration would neither improve the rule of law where it is under pressure most nor find the support of member states and institutions aiming to defend this fundamental EU norm. Consequently, the hard-won agreement on the rule-of-law conditionality of EU funding applies to all member states.

Reforms of the other two crisis-ridden policies of the EU – monetary and migration policies – are stuck on redistributive issues. Risk-sharing arrangements in EMU such as the EDIS, Eurobonds or common unemployment insurance, which would increase the overall stability and resilience of the monetary union, are resisted by the fiscally and financially strongest member states concerned about higher interest rates and incalculable transfers to high-risk Eurozone countries. If such risk-sharing arrangements were differentiated, the “frugals” would either opt out or only join on the condition that participation was conditional on the fulfilment of certain stability criteria. Either way, differentiated integration would likely divide fiscally healthy northern and fiscally vulnerable southern Eurozone countries and thus defeat the purpose of risk sharing.

In migration policy reform, the big divisive issue is the relocation of asylum-seekers that would alleviate the burden of the Mediterranean frontline states and of the final destination countries such as Germany and Sweden. Yet a reform of the Dublin rules or ad hoc relocation arrangements have been opposed so far – most vocally and uncompromisingly by a group of mainly Central and Eastern European member states, not only because they are either unaffected by migration or mere transit countries, but also because they are ideologically and culturally opposed to extra-European migration. As in the EMU case, differentiated integration would undermine redistribution. A reformed asylum system would most likely bring together only those heavily burdened frontline and destination countries that would benefit from reallocation. What is more, differentiated reform would likely generate positive externalities. An improved asylum regime might make it even more attractive for migrants to seek asylum in one of the integrationist countries.

To conclude, DI has served the EU well in facilitating the dynamic integration of new members and new policies in the 1990s and 2000s. In the current situation, in which accessions are at the bottom

of the agenda and the most pressing problems arise from constitutional and distributive conflict in already highly integrated policies, “Those who want more do more” is not a viable scenario for the future of Europe.

**Integrating Diversity in the European Union (InDivEU)** is a Horizon 2020 funded research project aimed at contributing concretely to the current debate on the 'Future of Europe' by assessing, developing and testing a range of models and scenarios for different levels of integration among EU member states.

InDivEU is coordinated by the Robert Schuman Centre at the European University Institute, where it is hosted by the European Governance and Politics Programme. The project comprises a consortium of 14 partner institutions and runs from January 2019 to December 2021. The scientific coordinators are Brigid Laffan (Robert Schuman Centre) and Frank Schimmelfennig (ETH Zürich).

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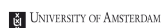
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