

# POLICY BRIEF

## Integrating Diversity in the European Union (InDivEU)

### Differentiated integration does not improve member state compliance

#### Research Questions

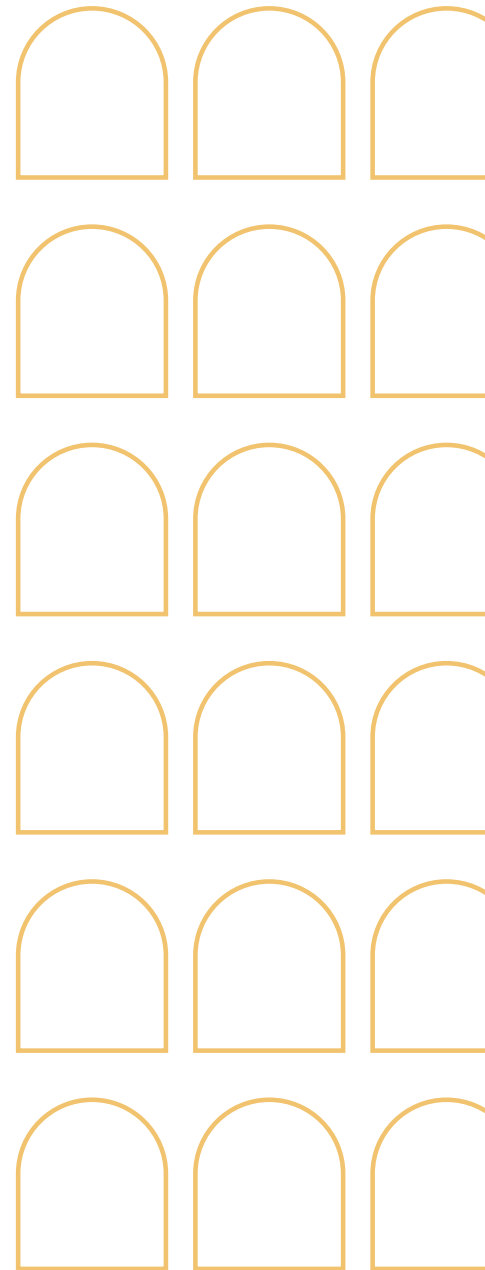
Does differentiated integration improve member state compliance?  
Is it more effective in overcoming non-compliance than flexible implementation?

#### Background

The EU uses differentiated integration to facilitate legislation in contexts of pronounced international heterogeneity of integration preferences and capacities. It seems straightforward to expect that DI increases compliance. If we assume that those member states that either fundamentally disagree with the aims of a certain piece of legislation, or have the most severe capacity and cost problems in implementing it, are also the most likely candidates for non-compliance, then exempting these member states from the obligation to comply improves the compliance record for any given legal provision. In addition to legal differentiation, the EU has alternative instruments to manage diverse preferences and capacities in implementing EU law, which can be summarized under the heading ‘flexible implementation’, which – in contrast to DI – obliges all member states to comply with a legal provision, but accords them discretion and room

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to manoeuvre in the actual implementation. The question then is how the compliance record of differentiated legislation compares to legislation with flexible implementation.

## Study Design

This policy brief is based on two statistical analyses. The first study (Sczepanski and Börzel 2021) combines data on directives from the EUDIFF2 dataset on DI in secondary law (Duttle et al. 2017) with the Berlin Infringement Database (BID) covering the period 1979-2012<sup>1</sup> as well as data on the legislative process and member state characteristics. It uses regression analysis to explain for each directive whether or not the European Commission sent reasoned opinions to a member state – the first formal stage of infringement proceedings. The second study (Princen et al. 2021) uses EUDIFF2 data together with data from the Flexible Implementation in the EU (FIEU) dataset (Princen et al. 2019; Zbiral et al. 2020). Based on 164 directives adopted between 2006 and 2015, it tests how differentiated integration and flexible implementation are correlated with non-compliance, again measured as reasoned opinions.

## Findings

The findings of both studies are negative. The expectation that differentiated integration reduces non-compliance was not confirmed. Nor does flexible implementation systematically improve the EU's compliance record. Even though the results are not statistically significant, they indicate that differentiated integration and flexible implementation are actually associated with a rather higher than lower probability of non-compliance. In addition, the contribution of differentiated directives to non-compliance is larger than that of flexible implementation.

These findings need to be interpreted with considerable caution. First, because of the lack of statistical significance, it would be exaggerated to state that DI and flexible implementation are counterproductive in tackling non-compliance. Second, it is highly likely that directives with high levels of discretion, and especially those exempting member states, are either highly contested or highly demanding in terms of member state capacity, in the first place. It may therefore very well be the case that these directives would have experienced even higher

non-compliance had they not allowed for differentiated integration or flexible implementation. We can say with confidence, however, that neither DI nor FI reliably fulfil the promise of reducing the EU's compliance problems through granting legal flexibility.

## Recommendations

The results of the two studies do not provide sufficient grounds for recommending the use of differentiated integration as an instrument to improve compliance with EU directives. Nor do they convincingly show that either differentiated integration or flexible implementation are preferable in a compliance perspective. The findings indicate that both differentiated integration and flexible implementation serve primarily to facilitate intergovernmental and interinstitutional agreement in decision-making on EU legislation – but do not make a systematic difference for compliance.

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1 See <https://www.polsoz.fu-berlin.de/en/polwiss/forschung/international/europa/bid/index.html>, last access May 15, 2021

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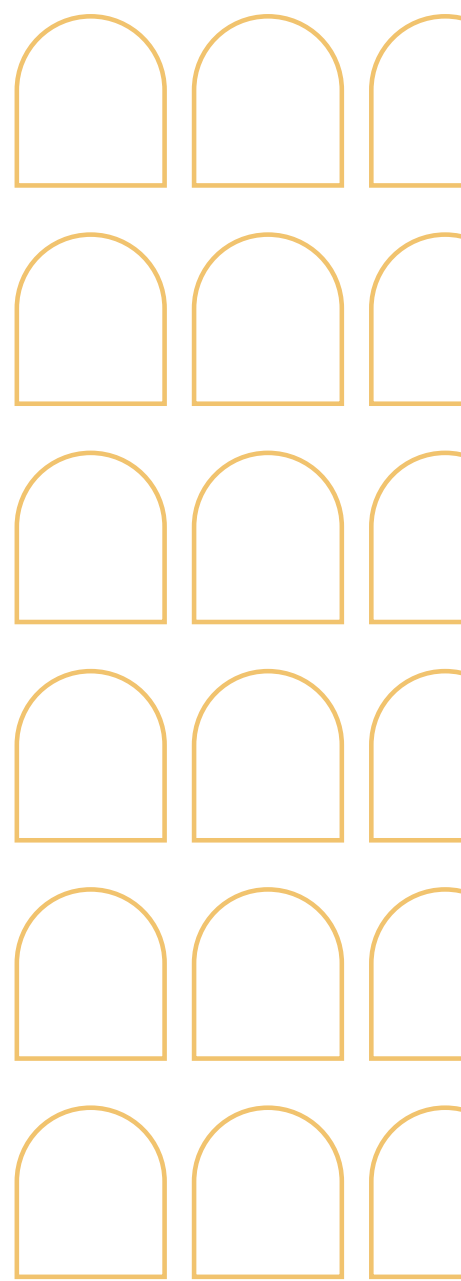
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