

Integrating Diversity in the European Union (InDivEU)

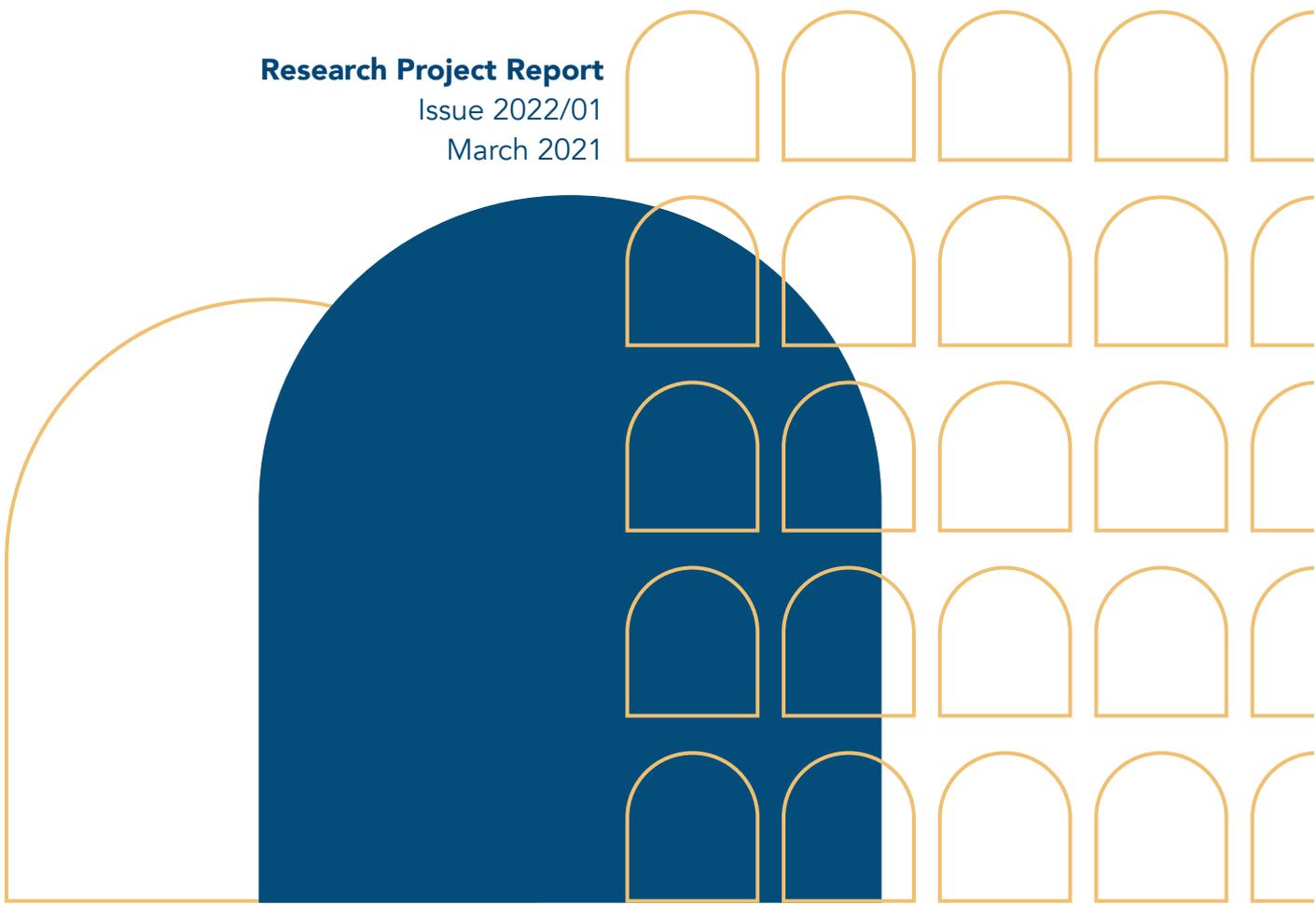
Differentiated Integration Manual

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Research Project Report

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Abstract

The present manual offers to policymakers and practitioners a comprehensive and ready-to-use toolkit for the design, choice, and assessment of differentiated integration scheme. On the one hand, it distils the policy-relevant insights of academic research on differentiation and other forms of flexibility in a clear, synthetic, and accessible form, with thematic suggestions for further readings and evidence-based recommendations. On the other hand, it provides access to a range of useful tools and resources: an evaluation framework; a checklist of recommendations; and a series of thematic policy briefs and fact sheets; five quantitative datasets on the empirical patterns of differentiated integration and the preferences of relevant publics; a comprehensive bibliography; an experts' directory; and links to key external sources. The manual is conceived as a digital 'living document' which will remain accessible for the next 10 years and will continue to be developed and updated on a regular basis.

Submission note

The following document is a static version of the digital manual compiled on 28.02.2022. The current dynamic version of the manual is available at the following link: <http://indiveu.eui.eu/manual>.

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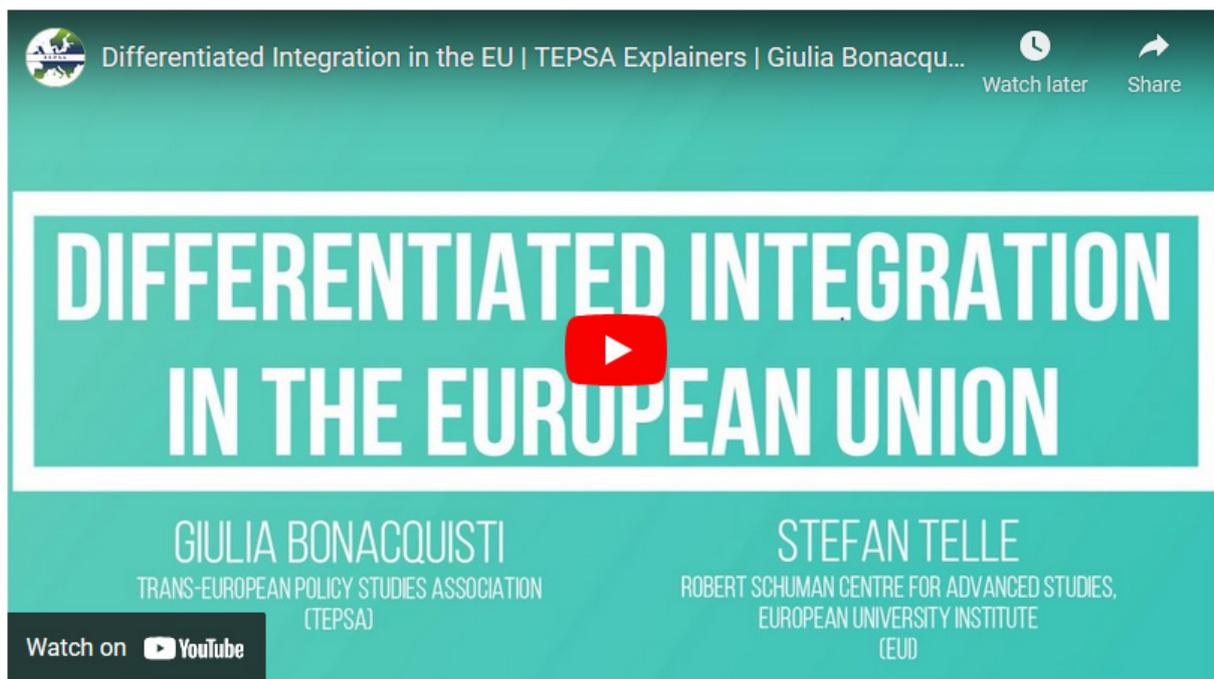
1. The manual

The present manual offers to policymakers and practitioners a **comprehensive toolkit for the design, choice, and assessment of differentiated integration schemes**, intended as a ready reference and collection of resources for all people working on European integration and on policy problems and solutions that may benefit from the use of legal differentiation and flexibility. The manual presents the state of the art of academic research on differentiated integration, distils policy-relevant insights in a synthetic and accessible form, and is built as digital 'living document' which will be further developed and updated on a regular basis. Its content is based on three years of work by a large team of specialists in the framework of the Integrating Diversity in the European Union (InDivEU) research project, which has been funded by the European Union's Horizon 2020 programme ([grant agreement number 822304](#)).

We invite you to explore the manual and find the **contents and resources** you may find most helpful for your specific purposes. The second chapter gives an overview of what we currently know about differentiated integration on the basis of the best available empirical evidence and research. The third chapter offers concrete recommendations for the assessment and design of differentiated integration schemes. The fourth chapter presents alternative forms of flexible integration and their strengths and weaknesses compared to differentiated integration. The fifth chapter discusses the use of external differentiated integration, that is the selective alignment of third countries with EU norms and policy regimes. The sixth and final chapter provides direct access to a variety of useful resources: a series of thematic policy briefs and fact sheets on specific issues; five original datasets on the prevalence of differentiated integration in EU law as well as on the relevant preferences of citizens, parties, governments, and stakeholders; an annotated list of links to key external sources; a comprehensive bibliography of the academic literature on differentiated and flexible integration; and a searchable database of available experts who can assist you with inquiries and requests for collaborations.

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Link: <https://youtu.be/C3txpZiBeB4>

2. What is differentiated integration

Differentiated integration, understood in its internal dimension (internal DI), is a form of European integration allowing for the selective limitation of the validity of international legal rules to a subset of the EU member states. A closely related concept, 'external' differentiated integration (external DI), is dealt separately in chapter 5. Differentiated integration is a formal choice in the design of international schemes which seeks to reconcile the promotion of further legal and political integration with the protection of key national interests and preferences. It stands in opposition to a higher level of uniform integration, the status quo, and uniform or differentiated disintegration. Other forms of flexible integration also exist and are outlined in chapter 4.

The second chapter of this manual summarizes the main features of differentiated integration on the basis of a critical review of the available academic literature and empirical evidence: its main forms; its past and present patterns; its causes; its expected outcomes; and proposals and scenarios for its future use.

2.1 Forms

Differentiated integration comes in many forms, each exhibiting different features and outcomes.

Theoretically, a number of binary or continuous features can be identified, which can be combined to form a variety of **types**. First, differentiations can be multi-speed (temporary) or multi-end (permanent). Second, differentiations can lead to a multi-tier pattern ('core Europe', 'concentric circles') or to a multi-menu pattern ('à la carte' integration). Third, existing differentiations are overwhelmingly geared at the promotion of further integration and do not allow the regression from existing integration levels (differentiated integration), but some theoretical proposals argue for their use to enable forms of differentiated disintegration (e.g. the right of unilateral or negotiated withdrawal from specific policy 'clubs'). Fourth, differentiations may be based on EU law (EU primary, secondary, and tertiary law) or on international law (*inter se* treaties, international organizations). Fifth, differentiations may be voluntary (when country successfully negotiates a legal opt-out from an unwanted commitment) or involuntary (when new EU member states are subjected to temporary 'discriminatory' exceptions or when some EU members are purposely excluded from *inter se* treaties). Sixth, individual differentiations may encompass a small 'outsider' group (e.g. the Schengen area) or a large one (e.g. the Euro area). Seventh, differentiations rarely involve a full opt-out from an entire legal instrument or policy area (e.g. the Danish opt-out from the Economic and Monetary Union) and typically foresee instead a selective opt-out from specific legal provisions. Finally, formal differentiation is not always matched by material differentiation, that is exemptions from the actual pooling of funds and resources. For instance, countries with major formal differentiations in key policy areas (e.g. Denmark and Ireland) often seek to selectively 'reintegrate' in them with subsequent agreements, ending up as participants and funders of many relevant EU agencies and programmes.

Types of internal differentiation

multi-speed	vs	multi-end
multi-tier	vs	multi-menu
differentiated integration	vs	differentiated disintegration
based on EU law	vs	based on international law
voluntary	vs	involuntary
small outsider group	vs	large outsider group
full opt-out	vs	selective opt-out
formal differentiation	vs	material differentiation

In practice, the choice of the **legal tool** strongly constrains the feasibility and potential impact of differentiations. Primary EU law is very difficult to introduce and change, requiring the unanimous consent of all national governments and complex negotiation and ratification procedures, but is often the only viable option to promote further integration in areas lying outside existing EU competences and to introduce exemptions which would clash with existing Treaty obligations. Differentiations in this area include both full opt-outs from entire policy areas and more selective exemptions from individual articles and provisions. Secondary EU law is easier to introduce and change, often requiring only a qualified majority vote (QMV) of all national governments or of the national governments participating in the specific ‘club’, but it must be compatible with existing EU Treaties. A number of alternative tools are available, including ‘normal’ (ordinary and special) legislative procedures, the general enhanced cooperation procedure, and special differentiated regimes in the field of the Economic Monetary Union (EMU), the Area of Freedom, Security and Justice (AFSJ), and security and defence policy (PESCO). Finally, treaties under international law are typically easier to negotiate, are not restricted by the scope of EU competences, and allow for the self-selection of participants, but must be compatible with existing EU law, do not enjoy the advantages of EU legislation (tested negotiating fora, primary and direct effect, use of EU budget and institutions), and are disliked by strongly Europhile actors for their detrimental impact on the EU legal order and on European solidarity. They include both bilateral *inter se* treaties, multilateral *inter se* treaties, and other international treaties and organizations including non-EU members (e.g. Council of Europe conventions, North Atlantic Treaty Organization).

Legal tools for differentiation

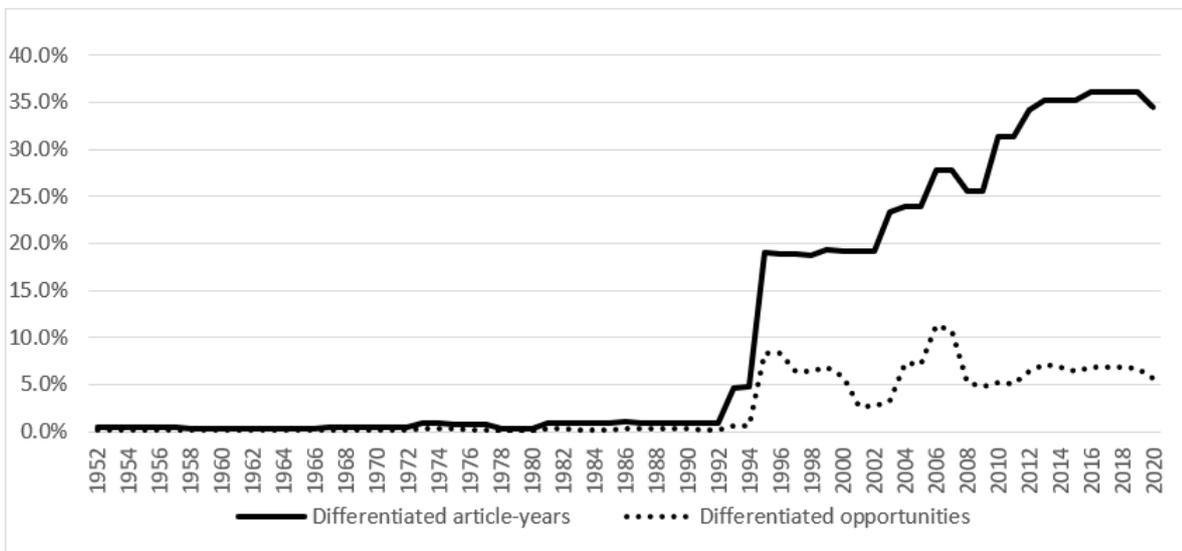
primary EU law	secondary EU law	international law
full opt-outs	‘normal’ secondary legislation	bilateral <i>inter se</i> treaties
other exemptions	enhanced cooperation	multilateral <i>inter se</i> treaties
	Economic and Monetary Union (EMU)	other international treaties
	Area of Freedom, Security and Justice (AFSJ)	
	Permanent Structured Cooperation (PESCO) in security and defence policy	

2.2 Patterns

The empirical patterns assumed by differentiated integration in the history of European integration can be tracked with great precision with the help of quantitative datasets. This tells us that differentiation has been and remains a **common feature** of the European Union, albeit its prevalence has varied over time and is less frequent than what might be expected. Differentiation in three kinds of legal tools (primary EU law, secondary EU law, international law) must be analysed separately, due to the way the empirical evidence has been collected and coded.

Differentiation in **primary EU law** has sporadically been present since the entry into force of the European Coal and Steel Community (ECSC) Treaty in 1952 but only took off after the entry into force of the Maastricht Treaty (TUE) in 1993. According to the EUDIFF1 dataset, which includes not only EU Treaties and Accession Treaties but also six EU-related *inter se* agreements, it has affected 13.3 per cent of Treaty articles and 4.6 per cent of opportunities across the 1952–2020 period. In 2020, this touched 34.4 per cent of articles (388 out of 1,127) and only 4.6 per cent of opportunities, markedly below the peak of 11.3 per cent reached in 2006. The figures include both the consequences of major opt-outs permanently exempting individual countries from an entire policy area (currently, six opt-outs for Denmark, Ireland, and Poland) and more specific and temporary exemptions to individual articles.

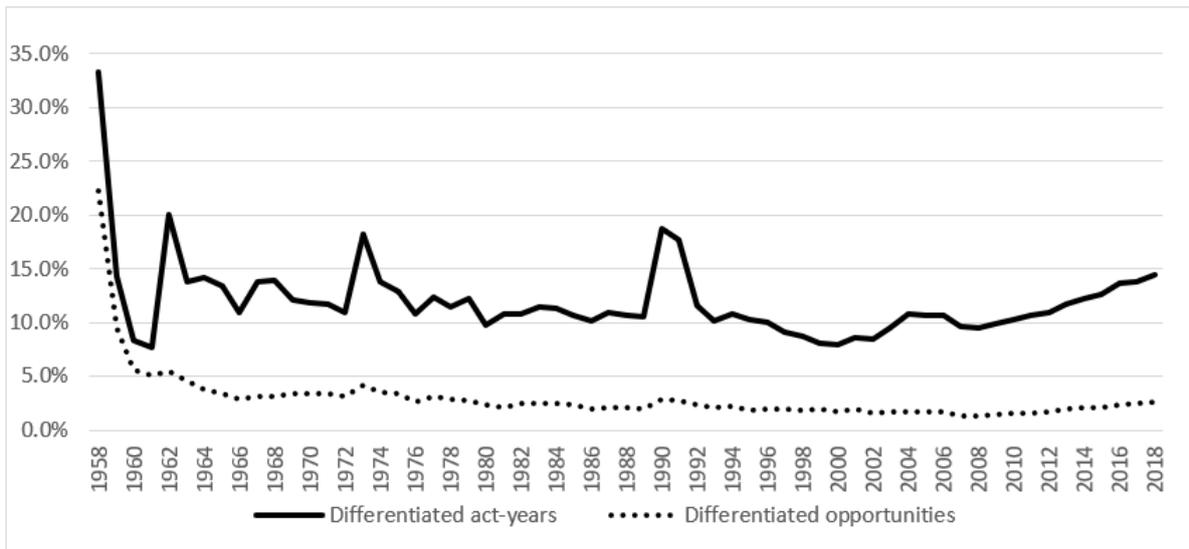
Differentiation in EU-related primary law, 1952–2020



Source: EUDIFF1 dataset.

Differentiation in **secondary EU law** has been more constant over time. According to the EUDIFF2 dataset, it has affected 11.2 per cent of legislative acts and 2.0 per cent of opportunities across the 1958–2018 period. In 2018, this touched 14.4 per cent of acts (204 out of 1,414) and 2.6 per cent of opportunities, with a slow increase since the trough of 1.2 per cent reached in 2008. The figures include both full exemptions from an entire act (e.g. as a consequence of Treaty opt-outs) and selective exceptions or qualifications on individual norms.

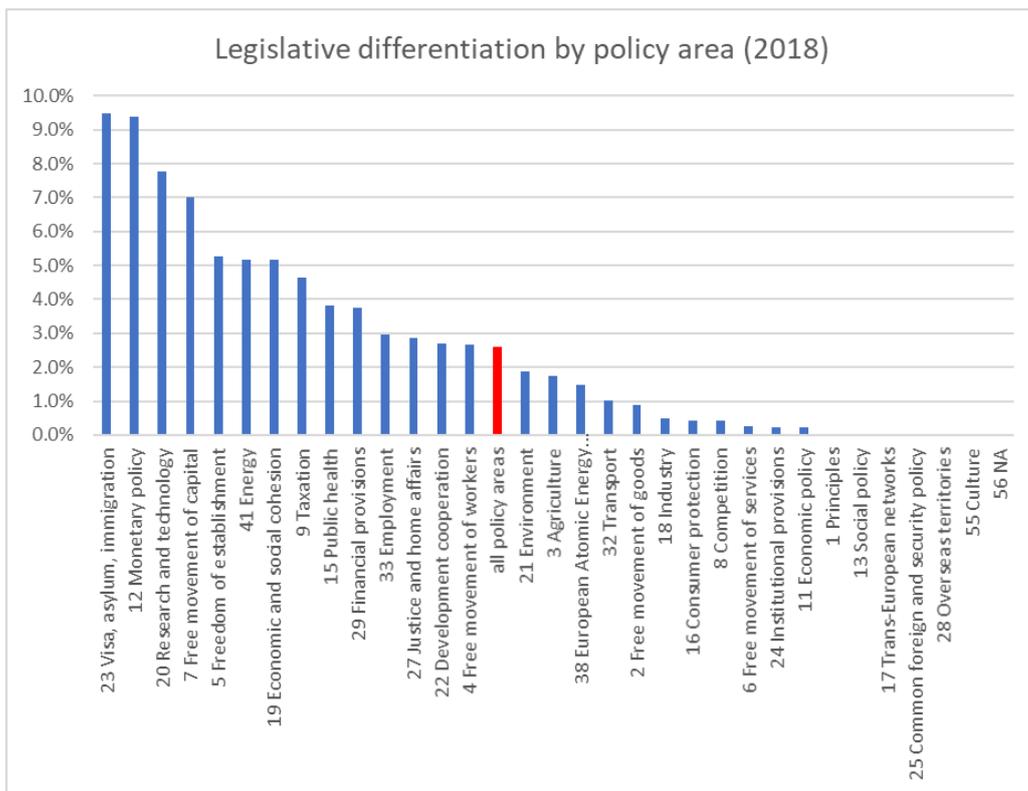
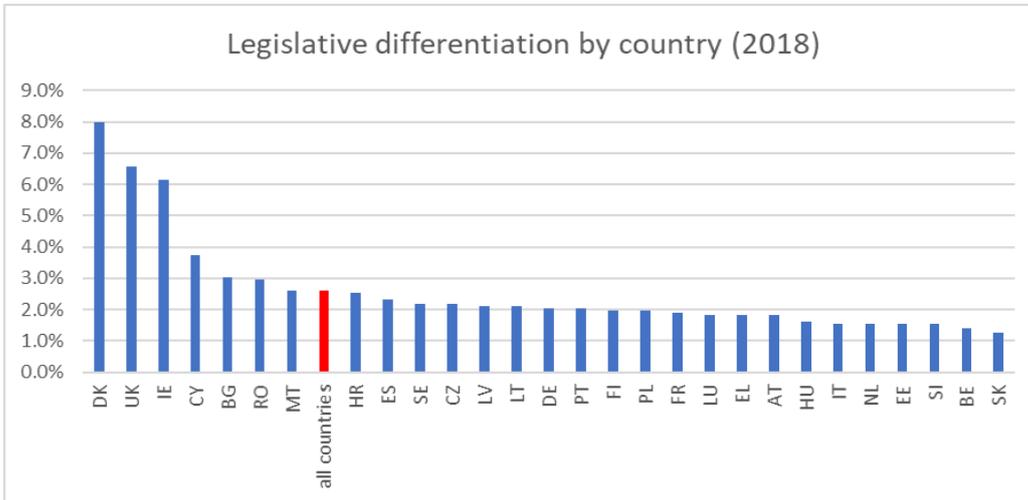
Differentiation in secondary EU law, 1958–2018



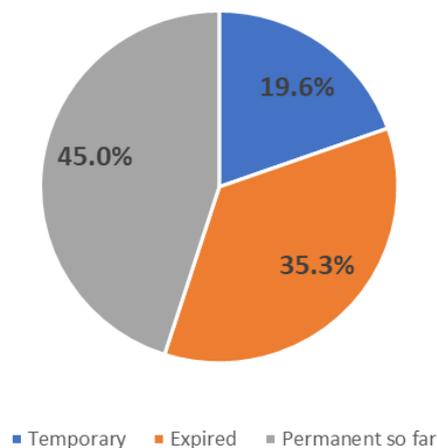
Source: EUDIFF2 dataset.

Differentiation in **international law**, outside of EU law, has yet to be properly quantified but includes a large number of bilateral *inter se* treaties (such as the 1964 Élisée Treaty between France and West Germany), multilateral *inter se* treaties (such as the 2001 OCCAR Convention), other international treaties and organizations (such as the 1949 North Atlantic Treaty Organization), and informal agreements. According to the United Nations Treaty Collection, an individual EU member state is typically party of slightly less than a thousand international treaties, almost equally divided between bilateral and multilateral ones: some of them lead to more or less important differentiation effects. Crucially, *inter se* treaties and informal agreements have frequently been used in the history of European integration as tools to launch ambitious integration efforts among a ‘vanguard group’ of countries: important examples are the 1948 Western European Union, the 1979 European Monetary System, the 1985 Schengen Agreement, the 2000 Charter of Fundamental Rights of the European Union, the 2012 Treaty establishing the European Stability Mechanism, and the 2013 Fiscal Compact. In many of these cases, the content of the international agreement has been partially or fully ‘repatriated’ within EU law at a later stage, preserving the existing differentiations but overcoming resistances to the use of EU legal instruments (EU Treaties and secondary legislation).

The EUDIFF2 dataset can also be used to map the prevalence of differentiated integration across **member states** and policy areas as well as its temporary or permanent character. In term of affected member states, differentiations affect all countries but are high only in a handful of them: Denmark, the United Kingdom, Ireland, and Cyprus. In term of affected **policy areas**, differentiations predominantly affect politically sensitive domains belonging to the ‘core state powers’, such as immigration, monetary policy, and taxation, but are also common in some ‘low politics’ areas such as research, the single market, and social cohesion. In terms of **permanence** over time, differentiation seem to be predominantly of a multi-speed type: over the whole 1958–2018 period, only a minority of differentiations have turned out to be permanent (45.0 per cent) while the rest have been conceived from the outset as temporary (19.6 per cent) or have nevertheless expired (35.3 per cent). However, the figures certainly overestimate the share of the former, as many recent differentiations are likely to expire in due course.



Legislative differentiation by permanence (1958-2018)



Altogether, differentiation has generally been deployed in an eclectic, pragmatic, and constrained manner which might be termed **reluctant differentiation**. In terms of purpose, it has almost exclusively been used to promote further integration, while proposals advocating differentiated disintegration have remained largely theoretical. In terms of persistence, it is more multi-speed (temporary) than multi-end (permanent). In terms of morphology, it has fully matched the expectations of neither a multi-tier nor a multi-menu model, giving rise instead to a 'soft-core Europe' of partially overlapping policy regimes and fine-grained exceptions. Finally, most differentiations have only been granted as an option of last resort, are highly constrained in scope, and are very controversial, due to a fear of their effect on the uniformity of EU law, the stringency of shared commitments, and European identity and solidarity. Whereas differentiation is often the norm in international relations (e.g. principle of free consent, unilateral reservations) and many multilateral organizations (e.g. United Nations and Council of Europe conventions), legal and political integration within the European Union remains largely uniform.

Nevertheless, differentiation is likely to continue to play an important role in the **future of European integration**. First, as the growing number and heterogeneity of EU member states under unanimity decision-making rules continually brings the EU to the brink of political paralysis, differentiated integration (its actual use as well as its mere threat) represents a useful tool to rein in or bypass isolated resistances to further integration. Secondly, further integration in currently differentiated policy areas and in core state powers are likely to create new permanent differentiations, although the stagnation of the process of EU enlargement is likely to reduce the number of temporary differentiations. Thirdly, currently differentiated regimes do exhibit a certain tendency to expand their membership over time, but none of them (particularly the Economic and Monetary Union) is expected to reach complete uniformity in the foreseeable future. At the same time, many of the current challenges facing the European Union centre on constitutional, redistributive policies, and regulatory policies where differentiated integration may be functionally suboptimal and normatively controversial. Over the past decade, the Eurozone crisis has produced a marked increase of differentiated integration, but the migration crisis has resulted in no further integration, and the Brexit and Covid-19 crisis have led to a renewed focus on uniform integration. Thus, much of the future evolution will depend on the contingent outcome of general and policy-specific debates among national governments and European institutions.

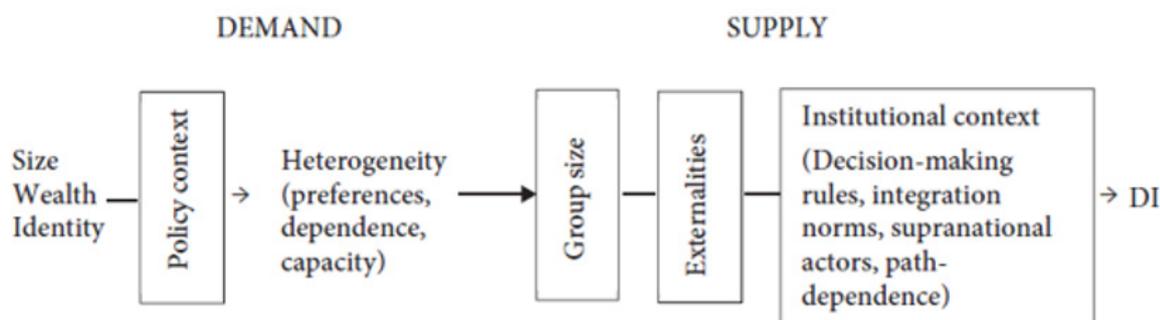
2.3 Causes

Many competing insights and theories have been proposed to explain why the desire of EU member states to cooperate in a specific policy area leads to differentiated integration, rather than to uniform integration or the maintenance of the status quo.

In a comprehensive synthesis, Schimmelfennig and Winzen have identified **ten demand and supply** factors as the main drivers of differentiated integration. Subsequent preliminary testing seems to partially support the expectations of the model, albeit with several caveats. The sources of heterogeneity have an unexpectedly uneven impact: a **strong exclusive national identity** tends to increase the likelihood of differentiations for a country, but the impact of a high **relative wealth** depends on the context (slightly positive for old member states, strongly negative for new member states), and a large country size in terms of population or Gross Domestic Product has no significant impact. The policy context plays an important role, as differentiation overwhelmingly occurs in the politically sensitive broad area of **core state powers** (in the form of 'constitutional' differentiations motivated by national sovereignty and identity concerns), but this impact is uneven across legal tools: in accession treaties and secondary EU law, differentiation also frequently occurs in areas theoretically resistant to differentiated integration such as the internal market (in the form of 'instrumental' or discriminatory differentiation motivated by efficiency and distributional concerns). The impact of actual heterogeneity (preferences, dependence, and capacity) and of supply factors has not been tested directly, as it would require a detailed analysis of the conditions and outcomes of potential reforms proposals, rather than successful integration agreements. The fact that new differentiations in each amendment of primary and secondary EU law typically concern only a small minority of countries, however, lends some support to the hypothesis that a **large group of insiders** and **low negative externalities for outsiders** may be conducive to differentiated integration. Similarly, the fact that actual differentiations are concentrated in the integration of **new policies and new members** and in **already differentiated policy areas** also seems to support the idea of a strong role of played by the institutional context, as the pressure exerted by majoritarian

decision-making mechanisms, shared norms, and supranational actors in favour of uniform integration is here stronger than in more established areas of cooperation (e.g. the Single Market).

Drivers of differentiated integration



Source: Schimmelfennig and Winzen (2020: 37).

In addition, the analysis of empirical patterns clearly shows that the amount of differentiation strongly depends on the **pace of deepening and widening** of European integration. Whenever integration moves forward, overall differentiation tends to rise to accommodate or bypass national resistances; in phases of stagnation, on the contrary, overall differentiation tends to decrease, as part of the existing exemptions expire and are not replaced by new ones.

Altogether, these factors explain some but not all instances of differentiation, which often seems to depend on a delicate combination of factors strongly dependent on contextual, contingent, and random variations, such as: fine-grained subjective expectations about the likely outcomes of a specific norm; the politicization of the issue at stake among specific national veto players and electorates; the need of, or decision to, ratify the decision via constitutional amendments and popular referendums; and a failure to negotiate uniform commitments through package deals, compensatory payments, or diplomatic pressures.

2.4 Outcomes

Differentiated integration produces markedly different outcomes than its main alternatives: uniform integration and no further integration (the status quo).

In functional terms, the use of differentiated integration alters the **overall net benefits** (benefits minus costs) of a given scheme. These vary according to the specific features of the problem addressed, solution adopted, and participating countries but, in many areas of cooperation characterized by economies of scale, complementary goods, high negative externalities, and homogenous needs and preferences, are often thought to be larger than those of the status quo and smaller than those of uniform integration.

In political terms, differentiated integration offers a way to tailor the degree of European integration of each country to **its national interests, preferences, and capacities**: vanguard countries are allowed to move forward with common schemes without the need of getting the consent of every other member state and laggard countries are not forced to adopt commitments adversely impacting on their preferences and autonomy. Thus, differentiated integration may increase the degree of subjective desirability and **acceptance** of a given scheme at the national level. At the same time, it may produce several undesirable side effects. Firstly, differentiated integration may reduce the satisfaction of aggregate **supranational preferences**, if other countries strongly object to the formation of vanguard groups and to the granting of opt-outs. Secondly, individual states may be encouraged to adopt a 'cherry-picking' approach, pursuing the benefits of cooperation but avoiding its inevitable costs. The final result is a **patchwork of underwhelming and inefficient agreements**, as 'package deals' allowing negotiations across policy issues are made more difficult, frequent opt-outs reduce the benefits of policies requiring a large and uniform participation (the single market, redistributive schemes, the production of common goods exposed to free-riding), and the system becomes more complex and costly (separate decision-making

and implementing bodies, proliferation of legal and administrative requirements). Thirdly, differentiated integration may undermine the sense of **common identity and solidarity** among the member states of the EU. As a consequence, this option is highly controversial within the European Union and always faces a large degree of principled and pragmatic opposition. Finally, it typically allows only for a **one-off, binary in-out choice** in the context of the introduction or renegotiation of specific legal instruments, while differentiated disintegration (e.g. the unilateral or negotiated right to rescind specific commitments) and other forms of flexibility (e.g. loose and non-binding commitments, legislative and administrative discretion, experimentalist governance, non-compliance) offer the possibility of a more nuanced graduation of integration levels.

In practical terms, differentiation has an important impact on the subsequent course of European integration. On the one hand, it is often a necessary **precondition for further integration**: without the possibility for countries to opt out from new initiatives or to be granted selective exceptions, negotiations subject to the unanimous consent of all EU member states are more likely to result in no integration and the continuation of the status quo. On the other hand, differentiation frequently produces a strong path dependence: major Treaty opt-outs automatically reverberate on subsequent secondary legislation; countries and policy areas with pre-existing differentiations are more likely to acquire new differentiations as time goes by; and countries with a history of differentiations tend to view more positively both existing exceptions (e.g. non-membership in the Euro area) and differentiated integration in general. Finally, some authors have hypothesised that differentiations may encourage disintegration and reduce non-compliance, but neither claim seem to be borne out by the empirical evidence.

2.5 Proposals and scenarios

The use of differentiation as a tool to enable further integration of the EU while accommodating an increased heterogeneity among its member states has long been of interest to policymakers, practitioners, and academics. Since at least the 1970s, prominent politicians such as Leo Tindemans, Ralf Dahrendorf, Jacques Delors, Wolfgang Schäuble, David Cameron, and Emmanuel Macron have advocated specific forms of differentiated integration as the way forward for the European integration process. This interest has reached a high point in the 2010s, when the apparent inability of the EU to address vital challenges and concerns led to a flurry of projects of reform, many of which included a strong differentiation component.

A representative summary of **recent proposals** for the future use of differentiation is provided in the figure below. All proposals include multi-speed elements (countries are typically allowed to give up their opt-outs and join the integrated group at a later date) but present major differences in terms of their main type of differentiation (multi-tier, multi-menu, or incremental), their impact on the EU legal order (unitary, dual but compatible, or dual) and institutions (unitary, differentiated, or separate), the number of policy clubs foreseen (fixed or open), the right to scale back existing commitments (not allowed, allowed once, or allowed), and the need for a preliminary reform of the EU Treaties (required or not). A first group of proposals, which can be termed incremental integration, views differentiation as an effective means to promote further integration without altering the existing membership and opt-outs of the EU. From this perspective, specific vanguard groups should move forward with differentiated integration schemes in key policy areas, bypassing the resistance of laggard countries. Some proposals can be implemented within the current legal framework, for instance through the use of existing differentiated regimes or new enhanced cooperations, while others would require a reform of the Treaties and the explicit consent of all member states. A second group of proposals, which can be termed multi-tier integration, advocates a radical restructuring of the EU in two clearly distinct entities: a highly integrated core and a less integrated periphery. This could happen either through an additional *inter se* treaty among the core countries or through a Treaty reform allowing a ‘decoupling’ of core and periphery. A third group of proposals, which can be termed multi-menu (dis)integration, advocates a reform of the Treaties to expand the possibility to adjust the actual level of integration of individual countries, formalizing the existence of specific policy ‘clubs’ and allowing for a (unilateral or negotiated) entry in and exit from them. Crucially, this perspective explicitly permits a regression of existing levels of integration: if countries are interested in cooperating, it will result in differentiated integration; if not, it will lead to differentiated disintegration.

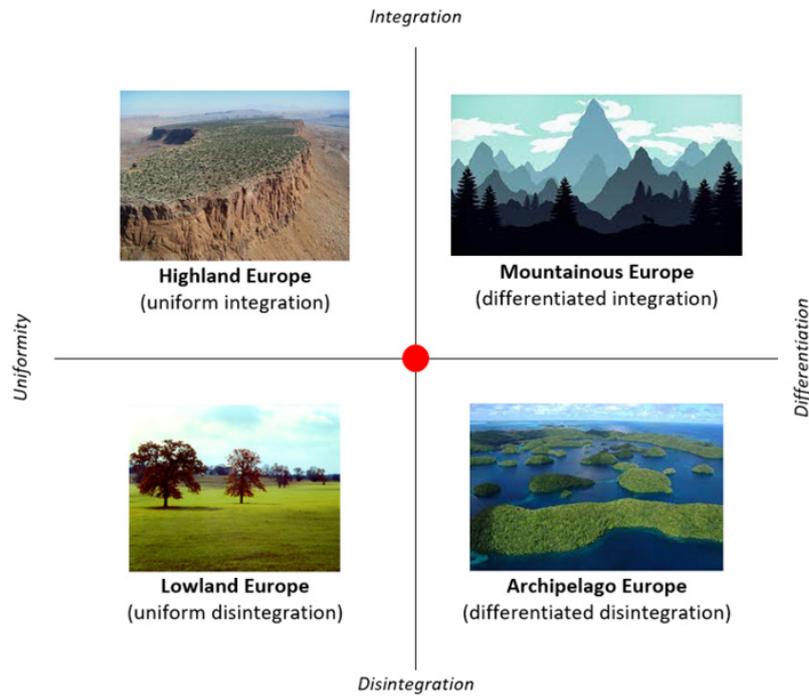
Altogether, this review shows the versatility of differentiation, as its concrete design choices can be inspired by opposing preoccupations and can lead to widely different empirical outcomes. Despite their

theoretical appeal, most proposals are unlikely to ever find a concrete application in their entirety, as path dependency, legal obstacles, decision-making mechanisms with many veto players, and dominant political preferences converge to resist radical departures from the status quo and favour a course of modest, incremental integration without major Treaty changes. However, multi-speed, multi-menu, and multi-tier elements will necessarily represent more or less prominent components of such incremental process, shaping its direction, pace, and characteristics.

Recent proposals for future differentiation in the EU

Proposal	Type	Description
European Commission (2017) S3 'Those who want more do more'	incremental integration with multi-menu elements	sustained multi-tier integration in three areas (EMU, defence, Schengen)
Pirozzi et al. (2017)	incremental integration with multi-menu elements	sustained multi-tier integration in three areas (EMU, defence, Schengen)
Schmidt (2019)	incremental integration with multi-menu elements	'soft core Europe' of overlapping policy communities with leadership constellations and solidarity mechanisms
Macron (2017)	incremental integration with multi-tier and multi-menu elements	'sovereign, united, and democratic Europe' with one or several vanguard groups leading the way
UEF (2019)	incremental integration with multi-menu elements	'federal Europe' with sustained integration in three areas (EMU, defence, Schengen) and more majoritarian decision-making
Volt (2021)	incremental integration with multi-tier elements	'federal Europe' with state-like institutions and a two-tier system
Hennette et al. (2019)	multi-tier integration	additional 'T-Dem treaty' for the Euro area with separate budget, taxes, and assembly
Piris (2011) Fourth option	multi-tier integration	Eurozone-based 'two-speed Europe'
Fabbrini S. (2019)	multi-tier integration	decoupling of EU into 'economic union' (less integrated) and 'political union' (more integrated), one-off possibility for states to decide their membership
Fabbrini F. (2020)	multi-tier integration	additional 'political compact' compatible with EU law and institutionally connected with the EU
Majone (2009, 2014)	multi-menu (dis)integration	'Europe of clubs' with a single market topped by multiple functional clubs, free entry and exit, cooperative competition rather than harmonization
Demertzis et al. (2018)	multi-menu (dis)integration	common 'bare-bones EU' topped by four optional clubs

The possible impact of differentiation on the future course of European integration can be usefully explored with the help of **scenarios**: challenging, plausible, and memorable depictions of 'possible futures' which visualize their main expected outcomes and stimulate an informed debate about desirable visions, threats, opportunities, strategic choices, and appropriate institutional, legal, and policy solutions. To this end, the InDivEU project has developed **European landscapes 2035**, a set of four narrative scenarios on internal differentiation outlining the possible consequences of different strategic choices on the future of the European Union by 2035. The scenarios are based on an in-depth analysis of the relevant scientific literature and empirical evidence, presented in a narrative style, and depict four possible evolutions of the status quo (red dot): uniform integration (Highland Europe), differentiated integration (Mountainous Europe), uniform disintegration (Lowland Europe), and differentiated disintegration (Archipelago Europe). While reflecting existing knowledge on the likely outcomes, strengths, and weaknesses of each option, they all depict relatively successful situations in an unbiased manner, leaving each reader free to autonomously assess their desirability according to his or her own specific values, preferences, and sensibilities. The text of the four scenarios can be read in the following policy paper.



Project Number: 822304

Project Acronym: ~~InDivEU~~

Deliverable no. 9.6

Deliverable title: Short paper 2: scenarios for internal differentiation

European Landscapes 2035: four scenarios for internal differentiation

Paolo Chiocchetti

31 October 2021

Abstract

This paper presents a narrative set of scenarios on the future use of internal differentiation in the European Union by 2035. The four scenarios outline paradigmatic alternatives for the internal development of the EU: 'highland Europe' (uniform integration), 'mountainous Europe' (differentiated integration), 'Lowland Europe' (uniform disintegration), and 'archipelago Europe' (differentiated disintegration). The set of scenarios offers to policymakers, experts, and citizens a useful tool to think about the future of European integration, stimulate an informed debate on desirable visions, threats, opportunities, and strategic choices, and support the design the appropriate institutional, legal, and policy solutions.

Link: <https://hdl.handle.net/1814/73669>

2.6 Useful readings

For further information on the nature and patterns of differentiated integration, we recommend the following literature.

Chiocchetti, Paolo (2022). *Models of differentiated integration: past, present, and proposed*. EUI RSC Working Paper 9. Fiesole: EUI.

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Damro, Chad, Elke Heins, and Drew Scott (2021). *European Futures: Challenges and Crossroads for the European Union of 2050*. Abingdon: Routledge.

De Witte, Bruno (2021). *Legal feasibility study of the differentiation options*. Fiesole: EUI.

Dyson, Kenneth and Angelos Sepos (eds) (2010). *Which Europe? The politics of differentiated integration*. Basingstoke: Palgrave Macmillan.

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Kölliker, Alkuin (2001). 'Bringing together or driving apart the Union? Towards a theory of differentiated integration', *West European Politics* 24(4): 125–51.

Leuffen, Dirk, Berthold Rittberger, and Frank Schimmelfennig (2013). *Differentiated integration: explaining variation in the European Union*. Basingstoke: Palgrave Macmillan.

Schmidt, Vivien A. (2019). 'The Future of Differentiated Integration: A "Soft-Core," Multi-Clustered Europe of Overlapping Policy Communities'. *Comparative European Politics* 17(2): 294–315.

Schimmelfennig, Frank (2021a). *Report on the dynamics of differentiated integration*. Fiesole: EUI.

Schimmelfennig, Frank (2021b). *Test of the explanatory framework*. Fiesole: EUI.

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3. When and how to use differentiated integration

Differentiated integration has advantages and disadvantages compared to alternative solutions, such as uniform integration or the status quo. When should it be chosen, and how can it be designed to yield the best possible results? The third chapter of this manual provides evidence-based advice for policy-makers and practitioners for **the assessment and design of differentiated integration schemes**. First, it presents an evaluative framework which can help guide the assessment process. Then, it suggests the methods and sources useful to determine the comparative feasibility, effectiveness, substantive fairness, procedural fairness, and acceptance of differentiated integration schemes. Finally, it provides concrete assessment and design recommendations.

3.1 Evaluative framework

The assessment of international integration schemes is a practical endeavour relying on both **positive and normative elements**. On the one hand, the expected outcomes of a given scheme can in principle be identified, forecasted, and compared with viable alternatives in an objective and value-free manner, albeit with greater or lesser levels of accuracy and reliability. On the other hand, normative value judgements are required to establish the desirability of each outcome and of their overall combination: these, in turn, tend to be inherently subjective and controversial, depending on the specific interests, preferences, experiences, and sensibilities of each observer. Therefore, the role of academic research is best understood as one of assisting the decision-making process by presenting the best available empirical evidence and predictions in an accurate, clear, and neutral way, leaving to the critical judgement of each reader and to social coordination mechanisms (expert debate, public debate, the political process) the task to assess their subjective desirability and determine their actual adoption.

On the basis of a review of the relevant literature, we have developed an **evaluative framework** which can be usefully applied to the assessment of any kind of differentiated integration schemes or aspects thereof, their comparison with alternative options, and the design of new legal, institutional, and policy proposals (figure below). The framework includes six criteria which appear essential to the evaluation of differentiated integration schemes: feasibility, overall benefits, substantive fairness, procedural fairness, acceptance, and overall desirability. All criteria have multiple dimensions: for instance, the acceptance of a scheme may vary among governments, parliaments, electorates, supranational institutions, experts, and stakeholders. Finally, either of two principles can be applied to each criterion: the maximization of its value, leading to the pursuit of an 'optimal' solution, or the satisficing of its value, leading to the selection of a solution 'good enough' in relation to relevant alternatives and decision-making constraints (e.g. information and time available).

Evaluative framework: criteria, dimensions, and principles

Criteria	Dimensions	Principles
feasibility	number of veto players (few) reluctant veto players (few) time required (little)	maximization or satisfaction
overall benefits	internal outcomes global outcomes	maximization or satisfaction
substantive fairness	non-maleficent distribution egalitarian distribution merit-based distribution need-based distribution	maximization or satisfaction
procedural fairness	level legitimacy democratic legitimacy democratic congruence	maximization or satisfaction
acceptance	governments' support parliaments' support electorates' support supranational institutions' support experts' support stakeholders' support	maximization or satisfaction
overall desirability		maximization or satisfaction

Source: Chiocchetti (2021)

The use of the above-mentioned framework can assist policymakers and experts in the **assessment, choice, and design** of differentiated integration schemes, leading to better and more informed decisions. It is important to stress that the evaluation should always be specific (features and outcomes of a concrete differentiated integration scheme over a given timeframe), comparative (juxtaposition of relevant alternative options), and transparent (explicit and realistic assumptions about causal mechanisms, expected outcomes, and the evolution of the external context).

A number of **issues** should be kept in mind during this process. Firstly, a reliable objective assessment of the features and expected outcomes of a scheme is often extremely difficult: they are many and often resistant to quantification (e.g. immaterial benefits), may depend on poorly understood or causally unrelated factors, and typically depend on a correct prediction of uncertain future trends. Secondly, their normative assessment is typically highly controversial, as different individuals and interest groups are likely to hold different and sometimes diametrically opposed standpoints. Thirdly, the comparison of relevant alternatives for addressing a problem inevitably requires the selection of a handful of simplified options, but the potential variation in terms of integration models (e.g. differentiated integration, uniform integration, status quo, disintegration, experimentalist governance) and concrete design features is extremely large, and expected outcomes are very sensitive to small design variations. Therefore, a detailed expert-led assessment of differentiated integration schemes normally provides many useful indications to inform the decision-making process, but it inevitably retains a large degree of incompleteness and uncertainty and does not eliminate the need for an open democratic debate about desirable social interests, preferences, and goals.

Practical guidance on the use of the criteria is provided in the following sections.

3.2 Feasibility

Whenever facing a proposal for a new international scheme, establishing its legal and political **feasibility** is the first and most important task. This is a largely empirical criterion depending on three elements: the number of veto players who may potentially veto or delay its enactment; the number of reluctant veto players who need to be convinced or bypassed; and the amount of time and effort required to bring the enactment to its successful conclusion.

All other conditions held constant, differentiated integration tends to be more feasible than uniform integration, as it automatically reduces the number of potential participants and veto players of the scheme and may allow integrationist countries to bypass the opposition of specific reluctant ones. This effect is particularly strong for procedures relying on the unanimity of participant countries. However, both its absolute level of feasibility and the size of the feasibility gains compared to other forms of integration strongly depend on the nature of the problem addressed and on the legal instrument adopted to solve it. All major procedures are listed below, following an ordered scale ranging from least to most feasible.

<i>Feasibility assessment</i>		
feasibility	legal instrument	comparative advantages of DI
highest	status quo	no
	non-legislative means	no
	inter se agreements	large
	secondary EU legislation	medium
	primary EU legislation	large
lowest		

The **status quo** always exhibits the highest level of feasibility, as any departure from it inevitably requires negotiations between countries with different interests and preferences, complex enactment and ratification procedures involving a large number of additional veto players (e.g. EU institutions, national parliaments, national electorates, national courts), and, in some instances, additional substantive and procedural legal obstacles (e.g. the need for national constitutional amendments).

The use of **non-legislative means**, in particular through discretionary decisions or innovative interpretations of existing law by European institutions such as the Commission, the European Central Bank, and the Court of Justice, come next. They typically only need the approval of a single supranational body, although particularly controversial decisions may be legally challenged before the Court of Justice or subsequently reversed by member states by amending the relevant legal basis. The comparative advantage of differentiated integration in this field tends to be minimal or absent, as this kind of decisions cannot change the legal applicability of the norm (uniform or differentiated) and tends to be taken by undifferentiated institutions by simple majority.

The use of **inter se agreements** is usually the next-best method, but not in all circumstances. On the one hand, they can be deployed in a wide range of situations (including in areas beyond the range of EU competences), can strongly reduce the number of participating states (up to a minimum of two), allow for the self-selection of participants (excluding reluctant member states), and do not require the approval of EU supranational institutions (Commission, Parliament, and Court of Justice). On the other hand, they cannot be adopted in areas of exclusive EU competence, must be compatible with existing EU law, often (but not always) involve ratifications by national parliaments and challenges before national courts, which can instead be avoided in most EU legislative procedures, and cannot rely on EU institutions to facilitate the negotiations. In general terms, differentiated *inter se* agreements tend to yield large feasibility gains compared to uniform *inter se* agreements and uniform integration through secondary EU legislation, but the latter may be equally or more feasible in situation when a consensus among national governments already exists or when decisions can be taken by qualified majority vote.

The use of **secondary EU legislation** usually follows. A number of special procedures facilitate the adoption of differentiated integration schemes compared to uniform ones. The enhanced cooperation procedure allows a group of minimum nine states to move forward with an integration scheme, provided that they do not violate existing EU norms, are authorized by a qualified majority of the Council (on a proposal from the Commission and with the consent of the Parliament), are launched as a 'last resort', and remain open for all other member states to join. Special regimes in the field of Economic and Monetary Union (EMU), Justice and Home Affairs (JHA), and defence (PESCO) automatically exclude

non-members from relevant voting rights in the Council. In both cases, the support needed to enact the scheme is markedly lower than in uniform legislative procedures. EU regulations and directives approved with the ordinary legislative procedure can be indifferently used to introduce uniform or differentiated schemes. They require the support of the Commission (simple majority), national governments in the Council (qualified majority), the European Parliament (simple majority), and may be challenged before the Court of Justice (simple majority). While the opposition of few countries does not prevent the adoption of a uniform norm, the offer of full or selective differentiations can still be useful when the opposition is sufficiently large or when it threatens to lead to subsequent non-compliance problems, reprisals on unrelated issues, or a deterioration of the pro-European orientation of specific countries. Finally, legislative procedures still subject to a unanimous consent of all national governments in the Council (e.g. in taxation, social security, foreign and defence policy) are very suitable to the adoption of differentiated integration schemes, as reluctant governments may decide not to veto new initiatives if they are exempt from their obligations.

Finally, the use of **primary EU legislation** to amend the Treaties is the least feasible option, as it requires the unanimous consent of all national governments, domestic ratification procedures in all member states (typically a simple majority in the lower chamber, but sometimes also entailing the participation lower chambers, presidents, courts, and national electorates, the achievement of qualified majorities, and separate constitutional amendments), and additional procedural steps (e.g. a convention and intergovernmental conference in the case of the ordinary revision procedure). Most of these hurdles are time-consuming but not particularly hard to overcome: however, the need for governmental unanimity and national referendums (particularly frequent in Ireland and Denmark) have often led to substantial or unsurmountable problems. Differentiated integration can greatly facilitate the enactment of Treaty revisions compared to uniform integration, as the opposition of individual national governments and electorates can be softened by granting them permanent opt-outs from new initiatives (e.g. in the Maastricht Treaty) or by temporary limiting the rights of new EU members (e.g. in accession treaties).

Thus, depending on the goals, legal constraints, and support of a specific scheme, different methods can be used to increase its feasibility. On the one hand, legal instruments minimizing the number of veto players and the complexity of enacting procedures should be adopted whenever possible, making use of all possible margins of discretion: in particular, decision-makers should try to avoid formal revisions of the EU treaties, national referendums, and difficult domestic ratification procedures, choosing instruments with simpler procedures. On the other hand, differentiated integration often substantially increases the feasibility of a scheme compared to uniform integration. Altogether, the creation of differentiated schemes through *inter se* agreements, existing special regimes (EMU, JHA, PESCO), and the enhanced cooperation procedure seems particularly advantageous, while the granting of differentiations in treaty revisions yields very large comparative advantages but is remains weakly feasible in absolute terms. Finally, differentiated disintegration is rarely feasible, as requests of individual countries to regress from existing levels of integration tend to be met with fierce opposition by most other countries and supranational institutions.

3.3 Effectiveness

The effectiveness of a scheme depends on its **overall net benefits** (benefits minus costs) for the entire group of its participants. Unfortunately, it is often hard to estimate them with accuracy, for two kinds of reasons. On the one hand, the objective outcomes of a scheme tend to be many, resistant to precise quantification and aggregation, sensitive to the context, and the result of a complex interplay of factors, many of them unrelated to the actual impact of the scheme. On the other hand, the subjective desirability of such outcomes may vary according to the characteristics and preferences of each interested party: for instance, the provision of the same amount of EU funds may be perceived as greatly beneficial by a poor country but as negligible by a rich country, and the achievement of a specific policy goal may be regarded as positive by observers supporting it but as negative by those opposing it. The ex ante and long-term assessment of large, complex, and politically controversial schemes is particularly problematic: for instance, economic estimates of the overall welfare benefits of past EU membership in monetary terms, leaving aside issues of immaterial gains, future developments, and subjective utility, range from 0 to 26.1 per cent of EU GDP, with a very influential paper suggesting one-off medium-term gains of 6.0

per cent but other ones indicating continuous yearly gains or no statistically significant effects. Thus, results may be more or less precise and reliable, often relying on simplifying assumptions, guesstimates, and unproven derivations from theoretical models.

The calculation of overall net benefits always depends on the specific features of a concrete scheme, its relevant alternatives, and the broader context: the nature of the policy problem addressed; the specific policy goals, solutions, and means chosen; the financial, technical, and administrative resources deployed; the effectiveness of internal decision-making, administrative, and compliance mechanisms; the future evolution of environmental trends and events; the reactions of implementing authorities, final users (European administrations, firms, and individuals), and third parties (non-EU countries); the number and characteristics of participating countries; and the scope of the cooperation and exceptions envisaged. Nevertheless, **four general categories** can be distinguished, with important implications for the choice of differentiated integration.

In the first category, the net benefits of European integration can be established or assumed to be always positive and increasing with the number of participating countries: differentiated integration is here a second-best solution compared to uniform integration. In the second category, overall benefits follow a similar pattern, but individual benefits are negative for specific countries: uniform integration remains the best solution but requires compensations to win the support of the integration losers, and differentiated integration becomes more likely to be used. In the third category, net benefits are only positive for some constellations of countries and norms: differentiated integration is the way to go, tailoring the scope and membership of the scheme to approximate the 'optimal policy area' yielding the largest benefits. In the fourth category, the net benefits are expected to be always negative: no integration should be preferred from a functional point of view, as all other options yield negative net benefits. The bulk of the theoretical and empirical literature claims that, in general terms, most typical areas of international cooperation tend to belong to the first two categories, but more in-depth analyses regularly show the existence of entire policy areas or specific issues belonging to the third category.

The overall benefits of further integration

overall net benefits	desirable forms of integration
1. always positive and increasing with scale	uniform integration (++) differentiated integration (+)
2. always positive and increasing with scale, but negative for individual countries	uniform integration with compensations (++) differentiated integration (+)
3. positive only in some cases	differentiated integration (++)
4. always negative	no integration (++)

Thus, it is essential for policy designers and decisionmakers to be able to correctly identify the nature of problem at hand through a **concrete analysis** of the potential costs and benefits of key variations in the design and membership of the scheme under discussion. Features increasing the likelihood of category 1 and 2 problems are the presence of complementary goods, positive economies of scale, high negative externalities, and homogenous needs and preferences of the participants. Typical areas belonging to these categories are the promotion of economic, personal, and cultural exchanges (e.g. the single market), the pooling of resources to solve shared problems (e.g. infrastructural investment, police cooperation), and the tackling of cross-border externalities (e.g. environmental policy). Differentiated integration is here a second-best solution yielding positive but suboptimal benefits and should be used only if uniform integration turns out to be unfeasible due to essentially political resistances among specific veto players. Features increasing the likelihood of category 3 problems are the presence of rival goods, negative economies of scale, low negative externalities, and heterogeneous needs and preferences of the participants. Typical areas belonging to these categories are those where countries have fundamentally different objective needs (e.g. fishing policy, monetary and economic policy), subjective preferences (e.g. state vs market, Atlanticism vs neutrality), and capacities (e.g. compliance with legal, administrative, and policy standards). Category 3 problems may also occur with reference to specific issues within areas otherwise suitable to broadly uniform policies, requiring an effort at selective fine-tuning. Differentiated integration is here the optimal solution, while uniform integration will yield suboptimal or even negative net benefits.

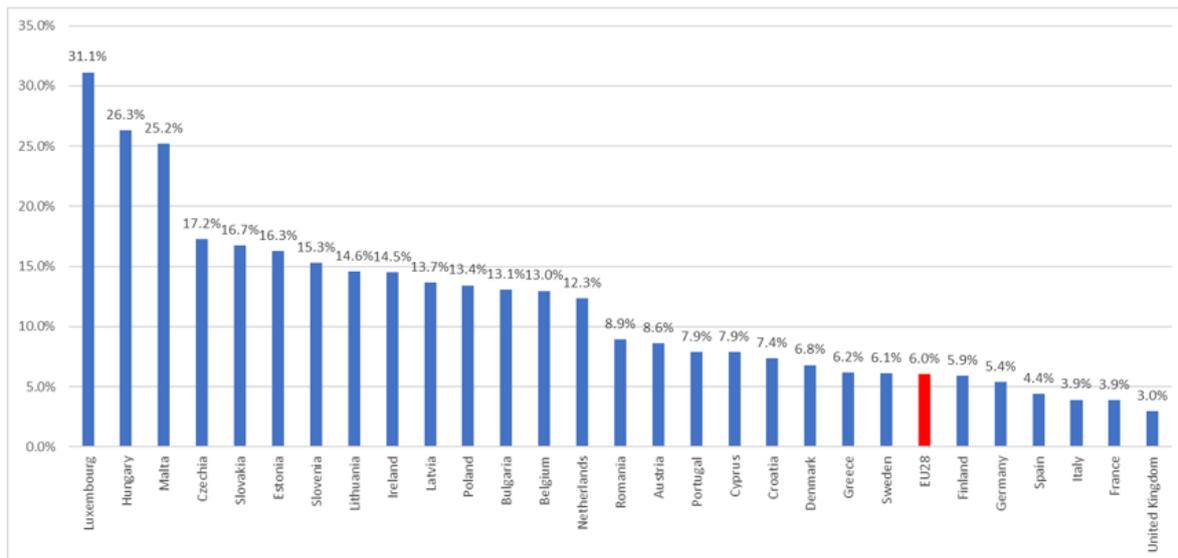
Finally, the **global overall net benefits** of a scheme, including the costs and benefits for third countries, should also be taken into account in the analysis. In many circumstances, a scheme may be beneficial for EU members but accompanied by high externally detrimental effects (e.g. trade diversion) or characterized by an excessively small geographical scope: here, uniform integration remains preferable to differentiated integration, but the scheme would profit from an extension beyond EU borders through EU enlargement, selective external integration, or its upgrade into a global multilateral framework (e.g. United Nations).

3.4 Substantive fairness

The **substantive fairness** of a scheme depends on the actual and perceived distribution of its costs and benefits as well as on a normative assessment of their appropriateness. Scholarly and popular opinions are divided on question of which kind of distribution should count as fair. At a general level, four options are possible. A non-maleficent scheme (Pareto efficiency) leaves no participant worse off and is often advocated as a minimal condition; at the same time, gains may be distributed very unequally, and truly redistributive policies may become impossible, unless benefits are framed in a highly subjective manner (e.g. the pleasure of richer countries derived from transferring money to poorer ones). An egalitarian scheme produces equal benefits for each participant, either in terms of countries or of individuals; it is often advocated as a default option but disregards the diversity in merits and needs of each participant. A merit-based scheme distributes gains according to individual efforts or contributions; however, it often reinforces pre-existing inequalities and may reward participants for accidental characteristics independent from any real merit (e.g. inherited wealth). A needs-based scheme, finally, distributes gains according to individual needs, typically from the rich to the poor; however, the latter are often criticized as underserving. At a more specific level, people may disagree about the details: for instance, too little redistribution between countries, uneven gains for sub-national territories and social groups, wrong criteria to determine efforts and needs, or an excessive burden demanded from one's own country. The various distributive criteria tend to be mutually exclusive, although compromises can often be found around schemes contributing to a positive-sum, non-maleficent, fairly egalitarian distribution of the overall benefits of European integration (e.g. a merit-based Single Market compensated by a need-based regional policy).

As far as the **objective distribution of benefits** is concerned, the impact of differentiated integration naturally varies according to the specific features of the scheme, but some general tendencies can nevertheless be identified. First, differentiated integration often entails a reduction of overall net benefits but simultaneously allows individual participants to increase their relative share: the final outcome is that most countries must forfeit a certain amount of individual gains in absolute terms, but not all of them and not in the same measure. For instance, certain countries can profit from excluding direct competitors for market shares or fiscal transfers. Secondly, the benefits of European integration tend to be distributed quite unequally. One study of the economic gains of each country in 2014 from market integration and budgetary transfers (figure below), for instance, estimate them as ranging from 3.0 per cent of the GDP for the UK to 31.1 per cent for Luxembourg, with disproportional gains accruing to smaller (Benelux, Malta, Ireland) and poorer (Eastern European) countries. On the other hand, such relatively progressive redistribution between countries tends to be accompanied by a regressive redistribution within countries, with more advantaged sectors, social groups, and actors (e.g. finance, entrepreneurs, large corporations) taking the lion's share of the benefits. The exact effects of differentiated integration are unclear but should tend to produce similar results in a more attenuated form. Thirdly, differentiated schemes requiring the unanimous consent of all EU members (e.g. Treaty opt-outs) can be typically expected to improve the non-maleficence of outcomes, as countries with negative benefits or fundamentally different preferences are more likely to opt-out. Fourthly, differentiated schemes requiring the consent of mere groups of EU members (e.g. *inter se* treaties or enhanced cooperations) may instead increase the maleficence and inequality of outcomes, as they can be used to monopolize the enjoyment of excludable goods and may create negative externalities for outsiders. Finally, both types of differentiated schemes may limit the scope for redistribution, as net contributors are more likely to decline participation.

Economic benefits of EU membership (% of GDP)



Note: static level effects compared with a hypothetical complete collapse of EU integration steps and fiscal transfers.

Source: own elaboration from Felbermayr et al. (2018).

As far as the choice of appropriate **normative criteria and standpoints** is concerned, little direct evidence exists on the normative preferences of the public about the substantive fairness of European integration schemes, their membership (uniform or differentiated), and their design features. The existing survey and experimental evidence on broader attitudes toward distributive justice and international solidarity point to a broad support for all contradictory principles (merit, needs, equality, non-maleficence), a fading of redistributive attitudes with the increase of geographical and emotional distance (stronger toward fellow citizens, weaker toward countries perceived as distant), a substantial role played by self-interest, and large variations depending on the concrete features of the scheme, its context, and the framing of the question.

Therefore, recommendations on how to assess and design substantively fair differentiated integration schemes are necessarily limited to a few methodological suggestions. First, a great effort must be made in accurately predicting the expected distribution of costs and benefits of the proposed scheme for countries and societal groups. Secondly, the creation of maleficent outcomes may be justified for willing participants but is often perceived as unfair for non-participants, as it damages them against their consent; while it is a normal feature of international relations, it should be minimized at the European level. Thirdly, the choice of the appropriate fairness criteria must be made explicitly and transparently, on the basis of the collection of direct empirical evidence about prevailing societal preferences (e.g. surveys, experiments, focus groups, or the public debate) or a discretionary choice of policymakers. Fourthly, the enacted scheme should remain open to public scrutiny and responsive to experience and changing democratic preferences. In this respect, both the use of majority-based amendment procedures (e.g. the ordinary legislative procedure) and the introduction of exit provisions seem to present major advantages over entrenched schemes which can only be revised or terminated with an unanimous consent.

3.5 Procedural fairness

The **procedural fairness** of a scheme depends on the actors and procedures used to enact it as well as on a normative assessment of their appropriateness.

Again, opinions are very divided on which procedures should count as fair, which **many possible normative standpoints** combining statist and cosmopolitan, nationalist and federalist, democratic and technocratic, supranational and intergovernmental, majoritarian and consensual, and flexible and entrenched elements. In terms of level legitimacy, people disagree on the most appropriate level of governance where decisions on specific issues should be taken. In terms of democratic legitimacy, all forms of European integration tend to enjoy a minimum level of credibility – as far as prescribed

procedural norms are duly followed –, as they all ultimately rely on the consent of voters expressed in free and fair elections. However, some procedures entail a more direct and stronger democratic legitimation (e.g. those involving national and supranational parliaments elected with a high turnout) while other are more vulnerable to complaints about a substantial ‘democratic deficit’ (e.g. those exclusively involving appointed supranational institutions). In terms of democratic congruence, all forms of international and European integration involve complex compromise between many countries and are weakly responsive to subsequent changes in national and supranational preferences. Altogether, differentiated integration can be justified as an extension of national sovereignty based on the voluntary consent of national representatives, but it may be rejected by supporters of a strong sense of identity and mutual obligation between EU member states, by non-participating countries fearing negative externalities and domination, and by people opposing the ‘constitutionalization’ of policy constraints in highly entrenched international agreements.

A body of **empirical evidence on preferences** about the procedural fairness of European integration schemes. Survey data on the relative strength of national and European identities, the most appropriate governance level where specific policy decisions should be made, and actual policy preferences are available in the Eurobarometer and other survey. Official turnout data and public information about the composition and internal decision-making relevant institutions can help to determine the strength and directness of democratic legitimacy. Finally, several in-depth studies have been conducted on the attitudes of specific categories of actors, such as political parties, national governments, and the general public. Altogether, these tend to suggest an improving but still inferior legitimacy of uniform European integration compared to national decision-making and the potential of differentiated integration and disintegration to satisfactorily address many substantive national concerns, but also the presence of strong objections to proposed violations of rival procedural norms (e.g. the right of reluctant countries to veto detrimental schemes or the right of integrationist countries to refuse free-riding opt-outs). If differentiated integration is chosen, schemes proposed by one’s member state or by the European Parliament, decided with a majority vote, including a large number of participants (e.g. at least 18), and where all countries ultimately join seem to be perceived as fairer than other ones.

In terms of design **recommendations**, some general suggestions for differentiated integration schemes which might be acceptable for supporters of most normative procedural views can be offered. First, they are preferably enacted according to a restrictive understanding of proper legal procedures, avoiding clear conflicts with substantive and procedural provisions: for instance, by explicitly amending relevant provisions in the EU Treaties and in national constitutions rather than trying to get away with ‘integration by stealth’. Second, they are most suitable for areas with strong preferences for national policymaking, such as the regulation of core state powers, and strongly heterogeneous preferences. Third, procedural objections of outsider states to the formation of vanguard groups can be softened by respecting their right of veto (which allows them to block detrimental developments or to extract compensatory payments in other policy areas), by using differentiation as a ‘last resort’ after a genuine attempt at a consensual solution, by granting them some consultation and surveillance rights (e.g. non-voting participation in the Council, full participation in the European Parliament), and by keeping the ‘clubs’ open to outsiders. The enhanced cooperation procedure approximates this ideal, but a strict compliance with the first requirement would highly constrain the use of differentiation in all kinds of EU secondary legislation. Fourth, mechanisms encouraging ‘multi-speed’ differentiation through explicitly temporary provisions, clear accession criteria, and convergence policies may increase the legitimacy of differentiated integration schemes among both concerned insiders and discriminated outsiders. Fifth, they can derive a strong democratic legitimacy through the substantive involvement of national parliaments or of the European parliament in their enactment and subsequent operation: the former option is best achieved with EU and *inter se* treaties explicitly requiring a parliamentary ratification, while the latter one is best achieved with the ordinary legislative procedure. Sixth, they should be designed in a way which maximizes their supranational and national acceptance at the point of the enactment as well as their responsiveness to subsequent changes in preferences. The latter requirement is difficult in principle, due to the high level of entrenchment of much EU law; however, a strong political willingness of national governments to pursue acceptable compromises may help in this respect.

3.6 Acceptance

Finally, the empirical acceptance of a scheme refers to the degree in which it is actually supported by relevant publics, particularly national governments and national electorates. It depends both on rational reflection and on less rational considerations, such as unreflective opinions and emotions, cues from political parties, media, and peers, and unrelated contextual factors. Typically, acceptance contributes to the final decision as one of several evaluative criteria: for instance, decisionmakers may become convinced of the effectiveness and fairness of a given scheme on the basis of expert-led assessments but nevertheless discard it due to its low popular support. On the other hand, in light of its synthetic nature, high democratic status, and easy measurability, acceptance is sometimes used as a proxy for the overall desirability of the scheme, entirely replacing a more in-depth assessment: for instance, decisionmakers may wish to directly rely on the ‘wisdom of the crowd’ on issues which are normatively highly controversial, have unclear and subjective empirical outcomes, or can be better assessed by larger groups than by an individual expert.

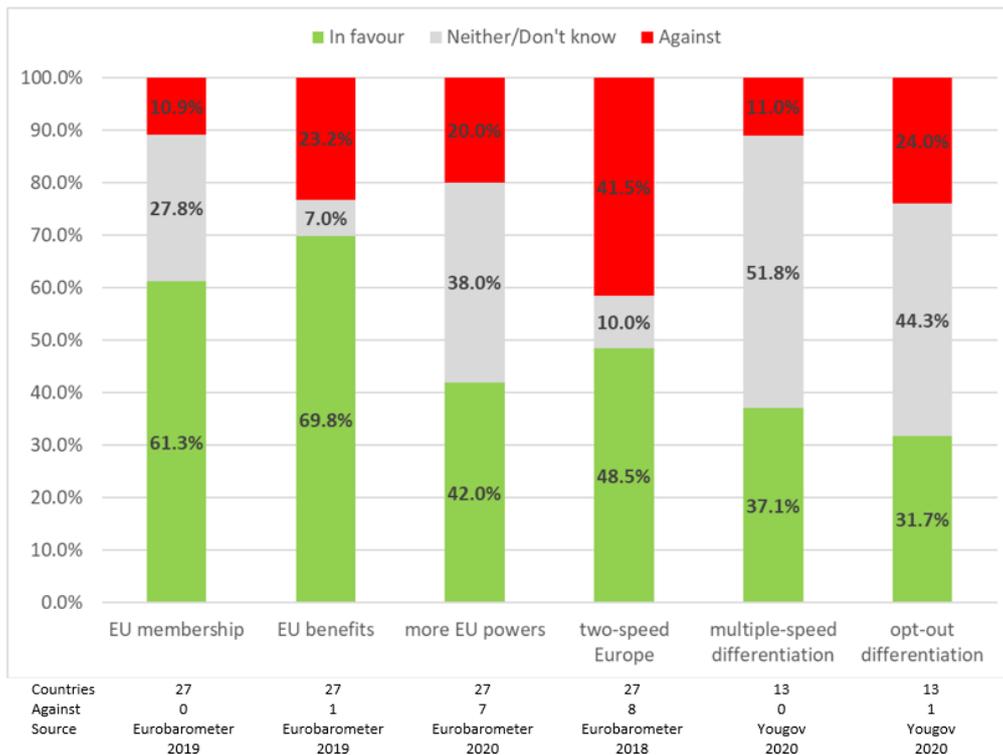
It is perfectly possible and even relatively common to launch integration schemes with low levels of popular acceptance, provided that decisionmakers transparently justify their reasons for doing so, win the support of all relevant veto players, and are ultimately held accountable by their electorates. However, completely ignoring the preferences of the majority of citizens is hard to reconcile with many normative conceptions of democracy and representation and may subsequently lead to major practical problems.

The preferences of relevant publics on European integration and differentiation can be gauged with the analysis of the **empirical evidence** provided by surveys, interviews, official documents and statements, and past voting records. The [InDivEU integrated database](#), in particular, provides direct access to a comprehensive wealth of existing and new evidence on the preferences of citizens, parties, governments, and stakeholders on differentiated integration. When choosing and designing EU integration schemes, such preferences should be explored and taken into account in the analysis.

The use of differentiated integration may **either increase or decrease the support** for a scheme. In a first category of situations, it softens national oppositions to further integration in reluctant countries without affecting the preferences of integrationist countries. In a second category, it elicits a strong resistance from countries preferring uniform integration and unwilling to countenance the granting of opt-outs and special treatments. In a third category, it raises the spectre of involuntary exclusion or negative externalities among laggards, leading them to prefer any other outcome (no integration or uniform integration) to the formation of a vanguard group. Aggregate and national opinions will necessarily vary according to the concrete content of the scheme, the way it is framed and presented to the relevant publics, and the broader social and political context (e.g. knowledge and politicization of European issues, approval ratings of governments, economic situation of countries).

Nevertheless, some **general indications** can be derived from the recent empirical evidence. With regard to integration, all countries are currently strongly supportive of EU membership and, with some isolated exceptions, of its existing uniform and differentiated policies. A plurality of countries also seems to support an overall expansion of EU powers and further integration in selected policy areas, but sizeable minorities prefer the status quo or some degree of disintegration. EU institutions and national governments are markedly more integrationist than national electorates, which not infrequently turn against further integration if a concrete scheme is properly debated and voted upon in a referendum. With regard to differentiation, opinions are more varied. The issue typically has a very low salience, with a lot of actors with unclear, neutral, or unstable preferences. Citizens and parties do not seem to oppose differentiated integration in principle, but they have many concerns about its practical details (particularly against multi-end differentiation) and probably prefer more uniform solutions. Governments, in turn, are often opposed in principle but prepared to accept concrete schemes if the alternative is no further integration. An overview of key evidence on the aggregate level of citizens’ support for uniform and differentiated integration in 2019–20 is provided in the figure below.

Citizens' support for uniform and differentiated integration



3.7 Recommendations

The assessment of differentiated integration schemes is a difficult endeavour which depends on many complex aspects: the objective features and outcomes of the scheme examined; the objective features and outcomes of relevant alternatives; the subjective interests, preferences, and normative views held by each interested actor; and the work of selection, measurement, prediction, and evaluation performed by experts. It is very sensitive to small design variations, concrete assumptions, and dominant attitudes and it can often be satisfactorily performed only ex post, when a sufficient amount of direct experience, empirical evidence, and debate about the scheme confirms or rejects theoretical expectations about its actual outcomes, advantages, and disadvantages. Nevertheless, policymakers and practitioners can rely on existing knowledge about European integration and differentiation to inform their action, thereby improving the quality of the assessment and design processes and – hopefully – leading to improved expected outcomes.

To this end, the InDivEU project has developed a catalogue of **recommendations** for the assessment and design of European integration schemes, summarized in the following checklist.

Recommendations for the assessment and design of European integration schemes

Checklist

General

- use the InDivEU evaluation framework to inform the design and assessment of the integration scheme
- estimate the objective features and expected outcomes of the scheme and of relevant alternatives reliably and accurately
- estimate the subjective preferences of relevant publics reliably and accurately

- justify the choice of normative criteria and standpoints transparently
- weigh the trade-offs between evaluation criteria transparently: e.g. feasibility vs effectiveness, functional benefits vs subjective preferences, European vs national interests, stability of commitments vs democratic congruence
- prefer schemes requiring a broad and substantive participation of relevant publics in their enactment and eventual revision: e.g. transparent and informed debate, democratic deliberation and decision-making, high democratic accountability, revisable commitments
- consider differentiated integration to accommodate a high heterogeneity in national preferences, dependencies, and capacities

Feasibility

- maximize or satisfice the feasibility of the scheme on the basis of a concrete analysis
- consider the use of design features minimizing the number of reluctant veto players: e.g. inter se agreements and secondary EU legislation; full or selective opt-outs for countries with idiosyncratic preferences and ratification procedures
- always consider differentiated integration to address potential obstacles, as it is generally more feasible than uniform integration

Effectiveness

- maximize or satisfice the overall net benefits of the scheme for the EU on the basis of a concrete analysis
- consider the use of design features increasing its expected benefits: e.g. reliance on complementary goods, excludable goods, and economies of scale
- avoid negative externalities of the scheme for EU non-participants and, possibly, for the rest of the world
- consider the possible extension of the scheme to third countries: e.g. EU enlargement, external differentiation, or global agreements
- consider differentiated integration only when the overall net benefits of the scheme are positive but are reduced by the inclusion of specific countries, due to their objective characteristics or subjective preferences

Substantive fairness

- maximize or satisfice the fair distribution of the overall benefits of the scheme among its participants and beneficiaries (countries, regions, social groups) on the basis of a concrete analysis
- justify normative choices pertaining to substantive fairness transparently: e.g. non-maleficent, egalitarian, merit-based, or needs-based distribution
- consider the use of design features increasing the satisfaction of the chosen normative criteria: e.g. compensatory transfers, selective exceptions, and flexibility
- avoid negative externalities of the scheme for EU non-participant and, possibly, for the rest of the world
- consider differentiated integration to improve the individual benefits of participants (compared to

no integration) and non-participants (compared to uniform integration); avoid it when it enables unwanted exclusions and free-riding and to pursue redistributive outcomes

Procedural fairness

- maximize or satisfice the fairness of the procedures for the enactment and eventual revision of the scheme on the basis of a concrete analysis
- justify normative choices pertaining to procedural fairness transparently: e.g. level legitimacy, democratic legitimacy, or democratic congruence
- consider the use of design features increasing the satisfaction of the chosen normative criteria: e.g. substantial involvement of the European and the national parliaments, concessions to reluctant countries, and revisable commitments
- select unanimous decision-making procedures whenever the scheme threatens to undermine vital national or European interests; if the two interests clash, seek mutually acceptable compromises
- consider differentiated integration only when it is used as last resort option, includes consultation rights for excluded member states (e.g. observation in the European Council and full participation in the European Parliament), and remains open for non-members to join on unanimously agreed criteria

Acceptance

- maximize or satisfice the acceptance of the scheme among relevant publics on the basis of a concrete analysis: national governments, national parliaments, national electorates, supranational institutions, experts, and stakeholders
- consider the use of design features increasing acceptance both in the EU as a whole and in individual countries: e.g. strong preferences for supranational solutions, homogenous cross-national preferences, low negative externalities, framing, and multi-speed differentiation
- consider differentiated integration and alternative solutions (e.g. package deals) whenever individual countries are strongly opposed to further integration in a specific area

Altogether, differentiated integration is a **useful method to accommodate a high heterogeneity** in national preferences, dependencies, and capacities, but presents several weaknesses. In terms of feasibility, its use tends to greatly facilitate the adoption of any given scheme. In terms of effectiveness, it often produces sub-optimal solutions compared to uniform integration but may help maximize overall benefits in dealing with a specific category of problems, when the benefits of European integration are generally positive but will decrease with the inclusion of specific countries, due to their objective characteristics or their subjective preferences. In terms of the remaining evaluation criteria (substantive fairness, procedural fairness, and acceptance), it presents both advantages and disadvantages. Depending on its specific features and the actual distribution of aggregate and national preferences, differentiated integration may either increase or depress the legitimacy and acceptance of a given scheme. It should therefore be designed carefully, pursuing mutually acceptable compromises between integrationist and reluctant countries. In particular, the granting of concessions and opt-outs to accommodate reasonable national preferences, the avoidance of negative externalities for non-participants, and the maintenance of specific procedural rights for the latter (e.g. ability to veto or at least delay differentiation except as a 'last resort'; consultation on its subsequent development; ability to subsequently join in a 'multi-speed' process) often leads to better outcomes, while differentiations perceived as threatening to widely supported values (e.g. political equality of states, legal equality of citizens, primacy of EU law), goals (e.g. solidarity, redistribution), and existing integration levels (e.g. differentiated disintegration) tend to boost opposition. In terms of legal tools, procedures relying on the unanimous consent of all states (e.g. Treaty revisions) are more acceptable to reluctant countries, procedures relying on the

consent of a self-selected group (e.g. *inter se* treaties and existing differentiated regimes) are more acceptable to integrationist countries, and procedures relying on qualified majorities (e.g. secondary legislation, enhanced cooperation) are more suitable for compromises, as they may allow integrationist countries to forge ahead while taking into account vital interests of the reluctant ones.

3.7 Useful readings

For further information on the assessment and design of differentiated integration, we recommend the following literature.

Bardach, Eugene (2012). *A practical guide for policy analysis*. 4th ed. Thousand Oaks: SAGE.

Beckfield, Jason (2019). *Unequal Europe: regional integration and the rise of European inequality*. Oxford University Press.

Bellamy, Richard, Sandra Kröger, and Marta Lorimer (2022). *Flexible Europe: differentiated integration, fairness, and democracy*. Bristol: Bristol University Press.

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Kröger, Sandra, Marta Lorimer and Richard Bellamy (2021). 'The democratic dilemmas of differentiated integration: the views of political party actors', *Swiss Political Science Review*, DOI: [10.1111/spsr.12449](https://doi.org/10.1111/spsr.12449).

Reestman, Jan-Herman (2021). *National constitutional obstacles to differentiated integration*. EUI Working Paper RSC 6. Fiesole: EUI.

4. Flexible integration

Beyond differentiated integration (internal DI), various other forms of flexible integration are available to address heterogeneity problems within the European Union: flexible implementation, experimentalist governance, and a range of other tools. Some of them are complementary to country-based differentiation while others are alternative to it, representing rival means to achieve similar goals. The fourth chapter of this manual provides a brief overview of their features as well as some recommendations on their possible use and design.

4.1 Flexible implementation

Rather than introducing differentiations for specific countries, EU legal instruments can introduce more general forms of flexibility in the pursuit of given goals. On the one hand, national authorities can be granted legislative discretion in the transposition of EU directives and in the implementation of EU regulations. Various types of discretion are possible: (1) elaboration discretion, which allows states to further specify a provision; (2) reference to national legal norms, which allows a reliance on pre-existing national laws to define the scope or meaning of specific provisions; (3) minimum harmonization, which allow states to adopt more stringent legal standards; (4) scope discretion, which allow states to expand or restrict the cases to which a provision applies; (5) application discretion, which allows states to deviate from a provision in individual cases. On the other hand, supranational and national authorities typically retain a certain degree of executive and administrative discretion in the application of abstract legal norms to concrete factual circumstances. In addition, they are sometimes formally granted the possibility to deviate from EU norms in specific situations: for instance, the Treaties contain several safeguard and derogation clauses which can be unilaterally activated by member states, while the Stability and Growth Pact contains two flexibility clauses, which must however be expressly authorized by the Commission and the Council.

The empirical patterns of flexible implementation can be explored with the FIEU dataset. Over the period 2006–2015, discretion affected around 26 per cent of all provisions in new EU directives, with particularly high values in the fields of justice and social policy and a prevalence of elaboration discretion (40 per cent) and references to national law (23 per cent). At the same time, around a third of discretions were subjected to legal constraints, particularly substantive and reporting ones (65 per cent). The potential of discretion in encouraging experimentation and innovation rarely materializes, as it is mainly used by states to retain existing policy arrangements. Directives containing many formal opt-outs tend to contain many discretion clauses: this suggests that flexible integration is complementary to differentiated integration and shares with it similar purposes and drivers. Finally, discretion does not seem to reduce non-compliance by national authorities, suggesting that its actual use is not sufficient to fully accommodate the underlying structural or political obstacles to further integration.

Therefore, we can formulate the following recommendations on the use and design of flexible implementation. Firstly, this tool should be considered alongside differentiated integration to address heterogeneity problems with general and nuanced legal solutions. Secondly, the use of flexible implementation may reduce the ambition of shared commitments and is less suitable in dealing with highly symbolic political issues. Thirdly, it should be designed in a way which minimizes legal uncertainty and accompanied by incentives to stimulate innovation and cross-border learning.

4.2 Experimentalist governance

Experimentalist governance provides an additional method of decision-making which can be used to deal with diversity in a context of supranational integration. Unlike conventional hierarchical governance, experimentalist governance puts in place a process of recursive goal setting and revision based on local experimentation, and mutual learning, and joint deliberation. Typically, it involves the creation of a multi-level architecture (e.g. EU institutions and national authorities) linking four elements in an iterative cycle: the agreement of provisional framework goals and metrics (e.g. good water quality) between all actors involved; the granting of a large autonomy and discretion to local actors to pursue those goals

with their preferred means; regular reporting and peer review of their performance, leading to policy learning and appropriate corrective measures; and a periodic revision of goals, metrics, and procedures on the basis of the strengths and weaknesses revealed by the process. More recently, more simplified experimentalist architectures have emerged which combine synchronic uniformity with diachronic revisability, reducing the margins of discretion for local actors at any given moment but maintaining a process of revision of rules over time based on deliberation and mutual learning. Both types of experimentalism are widely used in the European Union across a range of policy domains: for instance, industrial regulation, food safety, environmental protection, social inclusion, justice, and fundamental rights.

Experimentalist governance can be introduced in all kinds of integration schemes, mostly acting as an **alternative** to the use of legal uniformity and country-based differentiations. Compared to uniform integration, it allows to take into account the heterogeneity of national conditions and to foster innovation. Compared to differentiated integration, it avoids a binary divide between insiders and outsiders and fine-tune commitments in a graduated manner similar to that foreseen by flexible implementation. However, it can sometimes coexist with the other two forms of integration, helping to improve the quality of uniform rules in the regulation of highly interdependent and uncertain sectors (e.g. energy regulation) or becoming possible only as a result of preliminary opt-outs of countries with fundamentally divergent preferences (e.g. Banking Union).

In terms of recommendations, experimentalist governance seems to be particularly useful in tackling policy problems where member states broadly agree on the desired aims and outcomes but the specific form, means, and pace of their attainment cannot be easily stipulated in a uniform manner: for instance, when adaptations to local conditions and traditions or to a rapidly changing external context are required or when equally valid solutions are available or must be discovered in the problem-solving phase. However, it should be accompanied by compensatory measures (e.g. fiscal transfers, technical support) or temporary differentiations (e.g. transitory exemptions) when the heterogeneity of capacities is bound to affect the performance of states willing but unable to reach the common goals. On the other hand, experimentalist governance does not seem to be helpful when member states hold fundamentally divergent preferences on the desirable goals to be pursued: in this case, differentiated integration is likely to yield markedly superior outcomes.

4.3 Other tools

Finally, a range of tools can be employed to accommodate diversity in the European Union.

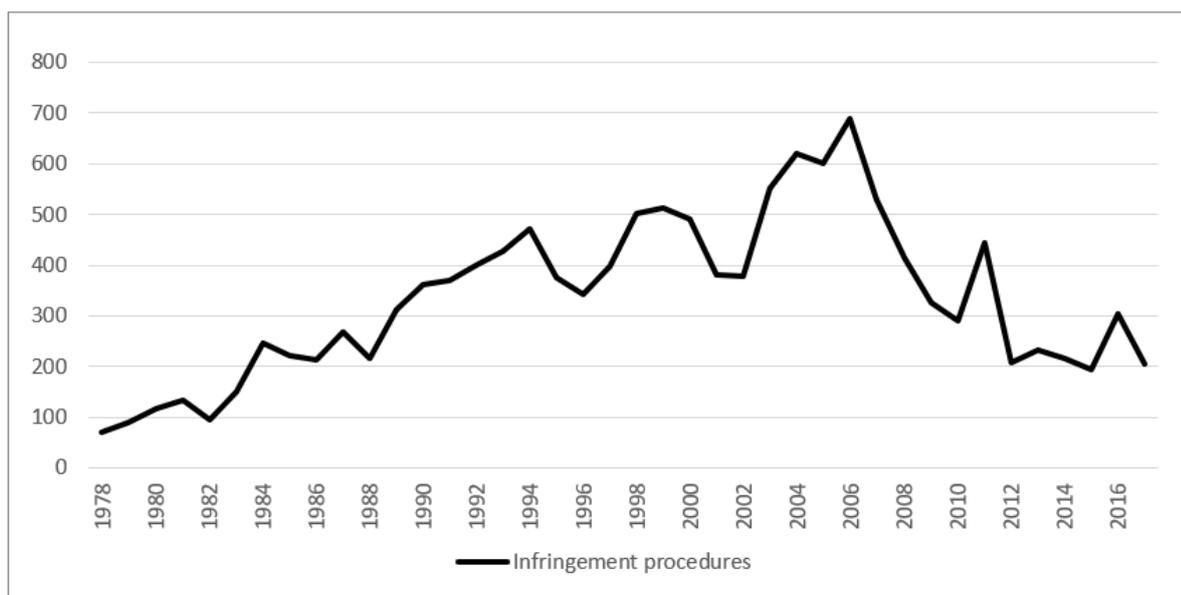
If objections to an integration scheme depend on the special conditions or preferences of limited territorial areas, **sub-national differentiations** can be introduced to address their needs while avoiding unnecessary national opt-outs or no integration. This tool is widely used across policy areas. Several special territories are granted wide-ranging or complete derogations from EU law: nine outermost regions (OMT), such as Guadeloupe; thirteen overseas countries and territories (OCT) which are not considered part of the EU, such as Greenland; and ten special cases, such as Ceuta and Melilla. In addition, sub-national territories of third countries are sometimes granted a selective external integration in the EU: for instance, Northern Ireland. EU cohesion policy classifies all sub-national territories in three distinct categories (less developed regions, transition regions, more developed regions): the former, in particular, enjoys a privileged status in the distribution of EU funds and special derogations to EU norms. The EU also encourages the territorial cooperation between regions, particularly cross-border ones, with specific programmes (e.g. INTERREG) and legal instruments (e.g. the European Grouping of Territorial Cooperation).

Fundamental disagreements on the desirable degree and content of European integration can also be solved with looser forms of **voluntary cooperation**, leaving countries free to determine the content of their national laws and policies according to their specific preferences and to voluntary coordination processes. More specifically, it allows states to freely determine their level, form, and pace of cooperation, unilaterally increase or decrease their commitments, and flexibly adapt to changed internal or external circumstances. It is widely used in areas lying beyond the competences and activity of the European Union and whenever EU law only imposes weak minimum standards, vague orientations, or non-binding commitments. This tool has both advantages and disadvantages, which mirror in a

radicalized form those of differentiated integration. On the one hand, it provides a potentially attractive solution for dealing with a wide range of problems which are either unsuitable to uniform regulation, are politically controversial, cannot be legally handled within the framework of EU law without formally amending the Treaties, or entail commitments whose constitutionalization in entrenched international legal instruments is rejected for democratic or pragmatic reasons. On the other hand, it undermines the negotiation of stable and credible commitments, the achievement of uniform outcomes, the provision of common goods, and the avoidance of externalities.

The inability or unwillingness to comply with existing international commitments can also be accommodated with **non-compliance**. While it is typically more difficult to violate EU norms compared to international ones, in light of their primacy and direct effect and of the presence of effective enforcement mechanisms against reluctant countries (e.g. financial penalties), incomplete or delayed compliance with particularly complex, detrimental, or controversial norms is not uncommon. The [BID dataset](#), for instance, shows that 13,367 infringement procedures against member states were opened by the Commission between 1978 and 2017, for an average of 334 procedures per year; after reaching a peak of 688 in 2006, they declined to 204 in the last year under consideration. Moreover, the dataset only identifies the tip of the iceberg of the phenomenon and does not fully capture its actual magnitude in several policy areas, such as European fiscal governance, the Dublin and Schengen regimes, or democratic backsliding in Hungary and Poland. Non-compliance can represent a very effective form of flexibility for individual member states, but it is of course illegal and undermines the credibility of negotiated commitment. Scholars have often suggested that all other forms of differentiated and flexible integration may help to reduce this problem, but recent analyses indicate that this may not be the case.

New infringement procedures opened against EU member states, 1979 – 2017



Source: own elaboration from Börzel (2021).

Finally, rather than by using differentiation and flexibility, objective or political obstacles to the negotiation and implementation of integration schemes can often be addressed by adopting uniform rules with **compensatory mechanisms**, such as fiscal transfers or technical assistance. These are fairly common in the European Union: for instance, the disruptive and unequal impact of market integration has repeatedly led to the introduction of direct compensatory policies (e.g. Common Agricultural Policy, Cohesion Policy, Next Generation EU) and countries with specific concerns routinely manage to extract side payments in package deals (e.g. EU budget rebates, location of EU institutions and agencies, increased funding for specific policies). Compensatory mechanisms are an excellent alternative to differentiated integration whenever uniform integration yields high overall benefits but produces serious problems in selected countries or an excessively unbalanced distribution of individual costs and benefits. On the other hand, they are not useful in situations characterized by zero-sum games, fundamentally divergent preferences, or threats to vital national interests. It must also be reminded that all forms

of differentiation and flexibility not relying on the unanimous consent of all parties tend to undermine the ability of opposing states to extract compensatory payments, thereby increasing the likelihood of negative externalities and decreasing the legitimacy and acceptance of the outcome.

4.4 Useful readings

For further information on flexible integration, we recommend the following literature.

Börzel, Tanja (2021). *Why noncompliance: the politics of law in the European Union*. Ithaca: Cornell University Press.

Bureau, Dominique and Paul Champsaur (1992). 'Fiscal federalism and European economic unification', *The American Economic Review* 82(2):88–82.

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Sabel, Charles F. and Jonathan Zeitlin (2010). *Experimentalist governance in the European Union: toward a new architecture*. Oxford: Oxford University Press.

Van den Brink, Ton (2017) 'Refining the division of competences in the EU: national discretion in EU legislation'. In *The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future*, eds. Sacha Garben and Inge Govaere. Oxford: Hart Publishing, 251–75.

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5. External differentiation

External differentiated integration (external DI) is a form of European integration allowing for the selective extension of the validity of EU legal rules to non-members. External differentiated integration stands in opposition to both full (uniform or differentiated) integration through EU accession and differentiated disintegration entailing a more distant relationship. The fifth chapter of this manual summarizes the main features of external DI and offers evidence-based advice on how to choose and design effective schemes.

5.1 Forms

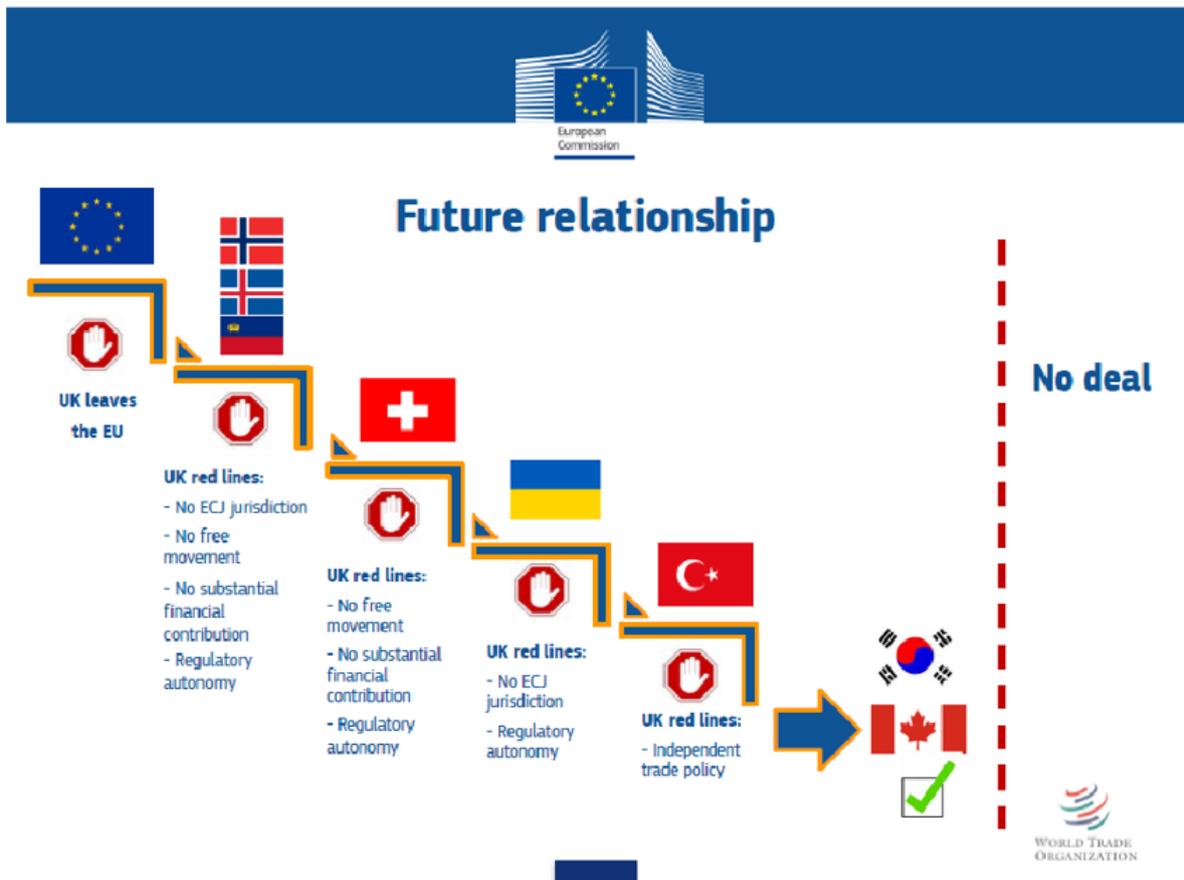
External differentiated integration entails an **increasingly close external relationship** between the EU and third countries, ensuring a growing legal alignment of the latter with EU norms while avoiding any granting of membership rights. As such, it can affect any aspect of the EU's external relations with individual countries or groups of countries.

External differentiation comes in several **forms**, which do not however fundamentally alter its purpose and nature. First, differentiation can be achieved through the conclusion of international agreements between the EU and third countries (e.g. the 2020 EU-UK Trade and Cooperation Agreement) or be the result of the unilateral adoption of EU internal acts having an external effect (e.g. the 2016 General Data Protection Regulation). Second, it can affect the bilateral relationship with one individual country (e.g. the 1995 EU-Turkey Customs Union) or the multilateral one with a group of countries (e.g. the 1994 European Economic Area). Third, it typically destroys uniformity in the relation with third countries and creates instead a given number of discrete and ordered non-membership 'steps' on a continuous 'integration ladder'. For instance, Schimmelfennig and Winzen have identified eight such 'grades of non-membership' (no institutionalized relationship, trade agreement, cooperation agreement, free trade area, bilateral agreement, association agreement, internal market integration, candidacy, and accession negotiations) while Michel Barnier has identified six 'models of relationship' (no deal, Canada, Turkey, Ukraine, Switzerland, and Norway). Fourth, each third country will inevitably take a place on such scale, exhibiting a closer (e.g. Norway) or more distant (e.g. North Korea) relationship with the EU. Fifth, external integration increases the sheer number of countries the EU has a relationship with in the first place. Sixth, external relations with specific countries can become closer over time, following a path of differentiated integration (e.g. pre-2013 Croatia), or more distant, following a path of differentiated disintegration (e.g. post-2020 United Kingdom). Finally, external differentiation typically gives third countries little substantive say in determining the content of applicable rules, beyond the initial negotiations on the scope of integration, some flexibility in the implementation, informal avenues of influence on EU institutions, and the threat to violate or withdraw from the treaty. Despite their formal nature of free contracts between equal parties under international law, many international agreements of the EU – particularly the most comprehensive ones, such as the EEA – essentially require the unilateral (static or dynamic) alignment of third countries with EU law, raising the danger of a 'self-inflicted hegemony'. Theoretically, it might be possible to remedy to this problem by conferring partial membership rights to non-EU partners (e.g. reduced voting rights in relevant schemes and agencies), but such proposals are currently incompatible with primary EU law and unlikely to be ever accepted by the EU.

Forms of external differentiation

International agreement	vs	Unilateral extension
Bilateral agreement	vs	Multilateral agreement
Uniform non-membership	vs	Graded non-membership
Close relationship	vs	Distant relationship
No relationship	vs	Many relationships
Differentiated integration	vs	Differentiated disintegration
No say in decision-making	vs	Partial membership rights

Barnier's ladder of external differentiation



Source: European Commission (https://ec.europa.eu/info/sites/default/files/slide_presented_by_barnier_at_euco_15-12-2017.pdf)

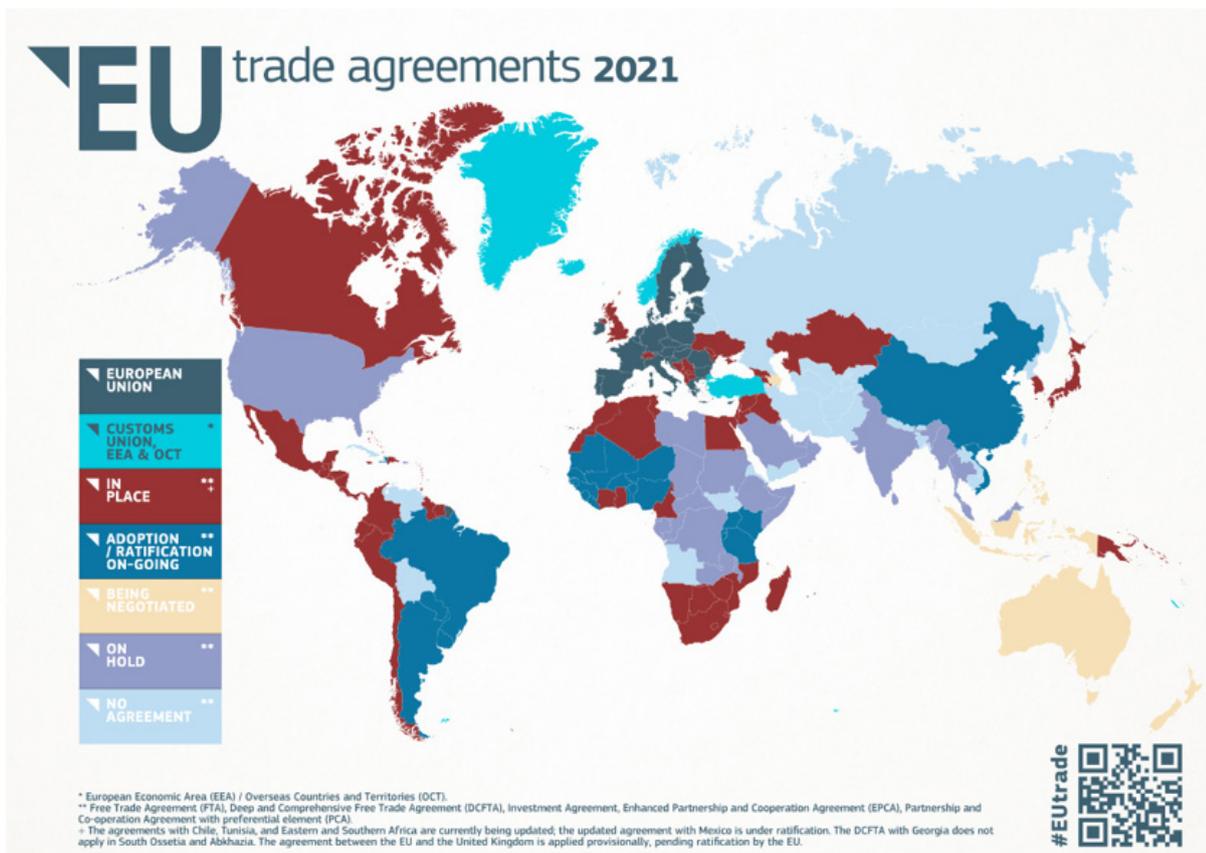
From a policy perspective, only two issues really matter. On the one hand, the EU is interested in the use of external differentiation as a tool to extend the validity and influence of EU norms and policies beyond its borders: as the number, closeness, and power asymmetries of its external relationships increase, so does the **influence of the EU** on the world stage. On the other hand, policymakers and practitioners are attracted to external differentiation as a **viable alternative to EU enlargement**, capable of reproducing most functional benefits of European integration while avoiding insurmountable

political opposition to accession in existing member states and prospective candidate countries. Thus, highly developed external integration agreements have been concluded in the past with neighbours such as Iceland, Liechtenstein, Norway, Switzerland, Turkey, and the United Kingdom and are currently seriously discussed for candidate countries in the Western Balkans.

5.2 Patterns, causes, and outcomes

Unlike internal differentiation, external differentiation has yet to be examined in a comprehensive and systematic manner with the help of quantitative datasets. However, a review of the available empirical evidence, case studies, and research yields a certain number of clear findings.

In terms of patterns, external differentiation is a constitutive feature of the external relations of the European Union, creating a complex web of differentiated relationships between the EU and third countries ranging from very weak to very strong levels of integration and legal alignment. International agreements of the EU include at least 2,183 treaties, covering virtually all sovereign countries of the world. Relationships achieving a substantial level of economic cooperation and legal integration (association, partnership, and trade agreements) have been established with roughly two-thirds of sovereign countries (around 125): they mainly encompass former European colonies and countries of the broader European neighbourhood, but also include cooperation and trade links with other Latin American, North American, and Asia partners. Preferential trade agreements exist with more than a third of countries (around 79); many of them provide for comprehensive free trade (e.g. the Trade and Cooperation Agreement with the United Kingdom). Finally, a handful of countries have achieved an extremely high level of market and policy integration with the EU: in particular, Turkey (customs union), Switzerland (bilateral agreements), Iceland, Liechtenstein, and Norway (European Economic Area), and four European microstates (*de jure or de facto* alignment). In addition, third countries are occasionally included without voting rights in policy-specific EU initiatives: for instance, seven of them participate in the Schengen Area (EU regime), four in the European Defence Agency (EU agency), and nine in the Energy Community Treaty (EU international agreement).



Source: European Commission (https://trade.ec.europa.eu/doclib/docs/2020/december/tradoc_159174.pdf)

The external integration of third countries has tended to grow over time, with periodic pushes to establish closer relationships with former colonies in the Global South (e.g. Lomé Convention, Cotonou Agreement, and Economic Partnership Agreements), neighbouring countries (e.g. bilateral free trade agreements with EFTA members, European Economic Area, European Neighbourhood Policy), and important economic partners (e.g. recent free trade agreements with Canada and Japan). At the same time, differentiated integration frequently results in a successful accession bid (22 countries), transforming external partners in full EU members, and often encounters insurmountable obstacles in dealing with major powers (the United States, China, Russia, and India) and alternative economic blocs (Eurasian Customs Union, ASEAN, Mercosur). External agreements also tend to be formally very durable, with few cases of suspension, withdrawal, or termination. Finally, non-EU countries and societal actors are often led to align with EU norms even in absence of binding international commitments, particularly in order to gain access to the Single Market and other EU programmes (unilateral external DI, 'Brussels effect'). This pressure has generally grown with the widening and deepening of European integration process but may be challenged in the future by the attractiveness of competing regional integration frameworks centred on China, the United States, and East Asian countries.

The **causes** of external differentiation are explained by Schimmelfennig and Winzen with a modified version of the model used for internal differentiation. The demand for differentiation is mainly shaped by heterogeneity (of preferences, dependence, and capacity) and country features (wealth, identity, capacity, and good governance). The supply for differentiation essentially depends on an asymmetric bargaining process, where negotiations are conducted between the EU as a bloc and the relevant third countries and typically require the unanimous consent of all member states involved (except for 'EU-only' agreements). As a result, affluent neighbours with a high governance quality and strong concerns about their national sovereignty (e.g. Switzerland) are more likely to refuse to join the EU and settle for lower levels of external integration, while poorer neighbours with a poor governance quality (e.g. Ukraine) may wish to pursue ever closer integration leading to EU accession but are more likely to be rejected by the EU. Beyond these factors, other aspects seem to play an important role in determining the degree of integration of third countries in the EU: in particular, a shared history with existing member states, geographical proximity, and geopolitical considerations.

Finally, external differentiated integration yields different **outcomes** compared to EU accession, the status quo, and differentiated disintegration. From a functional perspective, differentiated integration is preferable when further integration would increase the overall net benefits of the relationship, but not in all policy areas and details. Theoretically, the scope and degree of external integration can be perfectly tailored to maximize such benefits; in practice, their content is strongly affected by distributive concerns (e.g. each party seeking to maximize its own benefits) and strategic considerations (e.g. the desire to encourage the potential EU accession of a country), increasing the likelihood of both a conclusion of suboptimal agreements and of a failure of negotiations. A precise quantification and comparative assessment of the costs and benefits of each option will inevitably depend on the specific details of each agreement: nevertheless, differentiated integration is often assumed to produce more overall benefits than status quo and less ones than EU membership. From a political perspective, external integration creates specific trade-offs between potential material gains, a loss of national autonomy, and a gain of influence on shared decision-making. Thus, some countries may wish to pursue a lower level of external integration to preserve their ability to freely determine their own laws and policies, at the cost of forfeiting important functional benefits, while other countries may want to pursue full EU membership to have a formal say in collective decision-making processes, at the cost of constraining their formal national autonomy. From a practical perspective, each type and degree of integration seems to be subject to a certain path dependence, as existing agreements are hard to terminate with legal means and likely to become less politically controversial over time. However, the commitments contained in international agreements are theoretically more exposed to the risks of obsolescence and non-compliance than those entrenched in EU law.

5.3 Scenarios

The possible impact of differentiation on the future course of European integration can be usefully explored with the help of scenarios: challenging, plausible, and memorable depictions of 'possible futures' which visualize their main expected outcomes and stimulate an informed debate about desirable visions, threats, opportunities, strategic choices, and appropriate institutional, legal, and policy solutions. To this end, the InDivEU project has developed **Love thy neighbour 2035**, a set of three analytical scenarios on external differentiation outlining the possible consequences of different strategic choices on the future of the European Union by 2035. The scenarios are based on an in-depth analysis of the relevant scientific literature and empirical evidence, presented in an analytical style, and depict three possible evolutions of the status quo (red dot): EU enlargement (Extended family), external integration (Close-knit community), and external disintegration (Good fences make good neighbours). While reflecting existing knowledge on the likely outcomes, strengths, weaknesses, and feasibility of each option, they leave each reader free to autonomously assess their desirability according to his or her own specific values, preferences, and sensibilities. The three scenarios can be read in the following policy paper.



Extended family
(EU enlargement)



Close-knit community
(external integration)



Good fences make good neighbours
(external disintegration)

Project Number: 822304

Project Acronym: [InDivEU](#)

Deliverable no. 9.6

Deliverable title: Short paper 3: scenarios for external differentiation

Love thy neighbour 2035: three scenarios for external differentiation

Paolo Chiocchetti

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Abstract

This paper presents an analytical set of scenarios on the future use of external differentiation in the European Union by 2035. The three scenarios outline and assess paradigmatic alternatives available to the EU to develop its relationship with third countries: 'extended family' (EU enlargement), 'close-knit community' (external integration), and 'good fences make good neighbours' (external disintegration). External differentiation turns out to be a useful alternative to both EU enlargement and no integration, but its desirability is constrained by several feasibility, functional, and normative problems. The set of scenarios offers to policymakers, experts, and citizens a useful tool to think about the future of EU external relations and support the design of appropriate strategies and institutional solutions.

Link: <https://hdl.handle.net/1814/73670>

5.4 Recommendations

External differentiation can be assessed with the evaluation framework depicted in the figure below and already discussed in section 3.1.

Evaluative framework: criteria, dimensions, and principles

Criteria	Dimensions	Principles
feasibility	number of veto players (few) reluctant veto players (few) time required (little)	maximization or satisfaction
overall benefits	internal outcomes global outcomes	maximization or satisfaction
substantive fairness	non-maleficent distribution egalitarian distribution redistribution	maximization or satisfaction
procedural fairness	level legitimacy democratic legitimacy democratic congruence	maximization or satisfaction
acceptance	governments' support parliaments' support electorates' support supranational institutions' support experts' support stakeholders' support	maximization or satisfaction
sustainability	stability of membership stability of norms	maximization or satisfaction
overall desirability		maximization or satisfaction

Source: Chiocchetti (2021)

The comparative desirability of more integrated external schemes (external integration) in relation to full integration with membership rights (EU accession), the existing level of integration (status quo), and less integrated external schemes (external disintegration) obviously depends on the specific features of the scheme, preferences of both parties (the EU and its member states on one side, the third country or countries on the other side), and broader international context. It therefore requires a case-by-case **concrete analysis**. Nevertheless, some general trends can be derived from the available evidence and research.

The **feasibility** of external integration tends to be lower than the status quo but markedly higher than EU accession. The latter requires the satisfaction of restrictive accession criteria, complex negotiations, the unanimous consent of all governments involved, national ratification procedures involving additional veto players (but rarely supermajorities and referendums). In addition, it is usually more politically controversial, often leading to the emergence of resolute pockets of opposition within existing EU member states, candidate countries, and rival international powers.

The **effectiveness** of external integration is often higher than the status quo but lower than EU accession. Firstly, EU accession yields higher material benefits in all areas profiting from an increase in the scale of common policies (such as the promotion of exchanges or the provision of complementary goods) and is generally thought by experts to be on balance functionally preferable for neighbouring and economically highly integrated countries. Secondly, the theoretical advantages of external integration, which allow both partners to tailor their relationship to exclude specific policy areas and sub-fields where uniformity is not actually beneficial, can rarely be realized in the course of the negotiations, as each party tries to maximize its own individual benefits (rather than overall ones). Finally, the same advantages can also be replicated by negotiating an EU accession with selective opt-outs and exceptions (internal DI). Thus, external integration tends to be functionally optimal only for countries with radically diverging identities, interests, and preferences in major policy areas or for the improvement of distant relations with weakly interdependent countries.

The **substantive fairness** of external integration is highly controversial, as it depends both on the unpredictable distributive effects of each agreement and on the divergent normative standpoint adopted by each country and independent observer to assess them. In general terms, the issue boils down to a trade-off between the costs and benefits of further integration, national policy autonomy, and shared influence on common decision-making. For third countries, rejecting accession offers the possibility to prevent adverse functional effects (e.g. sectoral economic shocks), limit contributions to the EU budget, and preserve the possibility to legislate in specific areas according to national preferences. On the other hand, it entails the potential for non-integration costs, negative externalities, and imposed or self-imposed domination, as the country will be forced to selectively align (statically or dynamically) with EU norms and case-law with little say over how those were formed and will evolve. For EU countries, rejecting enlargement offer the possibility to avoid the redistribution of 'club goods' with new countries (e.g. EU budget, single market, free movement) and preserve their existing influence of common decision-making. On the other hand, it also entails the potential for non-integration costs, negative externalities.

The **procedural fairness** of external integration is also highly controversial. Firstly, its geographical scope is often perceived as fairer than EU accession for relationships involving a weak sense of mutual solidarity and identification, but it may be strongly opposed on functionalist or cosmopolitan grounds as an obstacle to the solution of common problems with common means. Secondly, its democratic legitimacy tends to be both weaker (as it can encompass highly authoritarian countries) and more direct (as it ensures a stronger involvement of political institutions, i.e. governments and parliaments). Finally, it is equally problematic in terms of democratic congruence, as both forms of integration tend to 'constitutionalize' substantive commitments and make them less responsive to changing democratic preferences; however, such commitments are less intrusive and easier to circumvent in external integration.

Finally, the **acceptance** of external integration tends to be higher than full integration with membership. Accession is often rejected by the electorates of prosperous third countries (such as Norway, Switzerland, and the UK) while enlargement frequently elicits strong resistances among the electorates of existing member states, particularly if the candidate countries are poor, large, and perceived as distant (such as Turkey or Ukraine). The use of differentiation is generally very helpful in softening specific national oppositions and increasing the overall acceptance of agreements. Particularly close and intrusive external relationships, however, may remain highly controversial and be the object of national vetoes or pressures for renegotiation: for example, the comprehensive trade and partnership agreements with Switzerland, the United Kingdom, or Canada.

Altogether, some **general recommendations** can be formulated with regard to the choice and design of external differentiation schemes. First, external integration should be considered in situations characterized by the following features: a selective but strong heterogeneity in preferences, dependencies, and capacities; generally positive overall benefits of further integration with major sector-specific problems; a weak sense of shared identity and solidarity; and serious practical or political obstacles to EU accession. EU accession – if necessary, with transitory exceptions, selected opt-outs, and compensatory mechanisms – should be preferred for countries with strong geographical and economic ties, a shared identity, and similar preferences to EU member states; external disintegration may be a better solution for countries with fundamentally different interests and identities. Secondly, the status quo is often the most feasible and accepted choice, but external integration tends to be markedly superior to EU accession in both respects. Thirdly, the design of external integration schemes should respect vital interests and preferences of both parties, focus on the areas of cooperation most likely to yield large mutual benefits, avoid an excessively one-sided distribution of benefits, include effective (formal or informal) consultation and participation mechanisms of both parties in the formulation of new norms bound to affect them, and refrain from excessively compressing existing levels of democratic accountability and congruence (e.g. transparent public debates and parliamentary ratifications, reasonable avenues to renegotiate mutual commitments, no support for autocratization).

5.5 Useful readings

For further information on the assessment and design of external differentiation, we recommend the following literature.

Chiocchetti, Paolo (2021a). *Design principles for efficient and legitimate differentiated integration schemes*. EUI RSC Working Paper 66. Fiesole: EUI.

Chiocchetti, Paolo (2021b). *Report on scenarios for differentiation and other forms of flexibility*. Fiesole: EUI.

Chiocchetti, Paolo (2021c). *Love thy neighbour 2035: three scenarios for external differentiation*. EUI RSC Policy Brief 64. Fiesole: EUI.

Eeckhout, Piet (2011). *EU external relations law*. Oxford: Oxford University Press.

Eriksen, Erik Oddvar, and John Erik Fossum (2015). *The European Union's non-members: independence under hegemony?* Abingdon: Routledge.

Frommelt, Christian (2020). *Institutional challenges for external differentiated integration: the case of the EEA*. EUI RSC Working Paper 65. Fiesole: EUI.

Lavenex, Sandra and Frank Schimmelfennig (eds) (2010). *EU external governance: projecting EU rules beyond membership*. Abingdon: Routledge.

Pedreschi, Luigi and Joanne Scott (2020). *External differentiated integration: legal feasibility and constitutional acceptability*. EUI RSC Working Paper 54. Fiesole: EUI.

Schimmelfennig, Frank and Thomas Winzen (2020). *Ever looser union? Differentiated European integration*. Oxford: Oxford University Press.

6. Resources

The sixth chapter of the manual provides you direct access to a range of **useful resources** on differentiated integration developed by the InDivEU project: a selection of thematic policy briefs and fact sheets on specific aspects of differentiated integration and other forms of flexibility; five quantitative datasets tracking the past and present use of differentiation as well as the recent preferences of citizens, parties, governments, and stakeholders; an annotated list of links to relevant external sources; a comprehensive searchable bibliography of the academic literature; and experts' directory covering hundreds of academic specialists on different disciplines, policy areas, geographical regions, and specific issues.

6.1 Thematic policy briefs

We have produced seventeen thematic policy briefs and three fact sheets to provide concise advice to policymakers and practitioners on specific issues concerning the use and design of differentiated and flexible integration. The documents can be freely accessed below.

Policy briefs

[Differentiated integration and the future of Europe: potentials and pitfalls](#)

Alternatives to differentiated integration: flexible implementation and experimentalist governance

[European landscapes 2035: four scenarios for internal differentiation](#)

[Love thy neighbour 2035: three scenarios for external differentiation](#)

Normative foundations and party views of differentiated integration

Legal conditions and constraints for differentiated integration projects

Constitutional standards of democracy and accountability in differentiated integration

Fundamental rights as constraints to and triggers for differentiated integration

National constitutional obstacles to differentiated EU integration

External differentiated integration: legal feasibility and constitutional acceptability

Differentiated integration: blessing and curse?

Citizens support for the differentiated integration of their country

Differentiated integration does not improve member state compliance

Differentiated integration has been of limited use in the EU's polycrisis

Is flexible implementation an effective and legitimate way to cope with heterogeneity in the European Union?

EU regulation of electricity: uniform, differentiated and experimentalist approaches

The Single Supervisory Mechanism for banking union: uniformity, differentiation, and experimentalism in EU financial regulation

Fact sheets

[Differentiated integration in numbers](#)

[Governments and differentiated integration](#)

[Citizens and differentiated integration](#)

6.2 Datasets

We have developed five datasets to track the use and acceptance of differentiated and flexible integration. You can download the datasets and the relative codebooks below.

The **EUDIFF1 dataset** tracks differentiated integration in primary EU law, coding differentiations in the articles of all EU treaties, accession treaties, protocols, and amending acts, as well as of six EU-related *inter se* agreements from 1952 to 2020. It covers 1,649 treaty articles, 60,442 article-years, and 920,325 opportunities.

Citation: Schimmelfennig, Frank and Thomas Winzen (2022). EUDIFF 1 - differentiated integration in EU Treaties. <https://doi.org/10.3929/ethz-b-000538188>.

The **EUDIFF2 dataset** tracks differentiated integration in secondary EU law, coding differentiations in all legislative acts (regulations, directives, and Third Pillar decisions) from 1958 to 2018. It covers 4,841 acts, 53,849 act-years, and 962,632 opportunities.

Citation: Schimmelfennig, Frank and Thomas Winzen (2022). EUDIFF2 - differentiated integration in EU legislation. <https://doi.org/10.3929/ethz-b-000538562>.

The **EUDIFF-RES** tracks material differentiation in the area of core state powers, coding the absence of member states from the financing of all 'de novo bodies' created from 1998 to 2019. It covers 18 bodies, 240 body-years, and 6,323 opportunities.

Genschel, Phillip, Mark Jachtenfuchs and Marta Migliorati (2021). EUDIFF-RES dataset. <https://hdl.handle.net/1814/72951>.

The **FIEU dataset** tracks flexible implementation in secondary EU law, coding discretion in the legal provisions of all new EU directives adopted from 2006 to 2015. It covers 118 acts and 8,954 provisions.

Citation: Zbiral, Robert, Sebastiann Princen and Hubert Smekal (2022). Dataset on the legal scope for flexible implementation in EU legislative instruments (FIEU dataset). <https://doi.org/10.7910/DVN/I7BZGU>.

Finally, the **integrated database** tracks the preferences of citizens, parties, governments, and stakeholders on differentiated integration. It brings together recent evidence from Eurobarometer mass surveys (2009–2019), existing expert surveys on party positions (2009–2019), an original content analysis of official government documents (2008–2020), and original surveys of unrepresentative samples of stakeholders in seven countries (2020–21).

Citation: InDivEU (2021). Integrated database: preferences of citizens, parties, governments, and stakeholders on differentiated integration. <http://indiveu.eui.eu/integrated-database/>.

6.3 External sources

Beyond our datasets, several external sources are also useful to explore different aspects of differentiated and flexible integration. You can access them below.

[Berlin Infringement Database \(BID\)](#): dataset tracking non-compliance with EU law. It currently covers 13,367 infringement procedures from 1978 to 2019.

[Council Database on EU Treaties and Agreements](#): collection recording all treaties contracted by the EU member states among themselves and with third countries.

[DICE project](#): portal disseminating policy-relevant publications and resources on differentiated integration.

[ECPR Differentiated Integration in the EU](#): research network promoting scholarly research on differentiated integration.

[EUR-Lex website](#): collection offering a comprehensive access to the entire body of EU primary law, secondary law, international agreements, and other legal norms, including the full text of their original and consolidated version.

[Eurobarometer](#): series of cross-national public opinion surveys regularly tracking attitudes on European issues since 1974.

[European Commission - DG Trade website](#): website tracking the progress of the preferential trade agreements of the EU, including both those in force and those concluded but not yet ratified, currently under negotiation, or on hold.

[European Social Survey](#): cross-national survey tracking public attitudes in over 35 European countries since 2001 (nine rounds).

[United Nations Treaty Collection](#): collection recording all bilateral and international treaties registered at the UN.

6.4 Bibliography

We have prepared a comprehensive, searchable bibliography of the interdisciplinary literature on differentiated and flexible integration. The bibliography includes more than one thousand documents, will be regularly updated to cover new publications, and can be explored by topic or keyword. The [InDivEU bibliography on differentiated and flexible integration](#) is hosted on the open-source reference manager Zotero and can be freely accessed there after installing the programme.

6.5 Ask our experts!

Do you have a specific question? Do you need advice in assessing issues and designing solutions for your institution? Are you looking to contract someone to write a report, deliver a lecture, or organize a workshop? Are you a journalist with a request for an interview? Ask our experts!

Together with other research institutions, we have developed a directory of hundreds of world-class experts on differentiation and flexibility, searchable by category, policy area, region, and country of expertise. The [experts' directory](#) can be accessed on the website of our partner project Differentiation: Clustering Excellence (DICE).

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