

# EU crisis and reform: is differentiated integration the answer?



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## Executive summary

The Covid-19 pandemic reinforces the crises of integration that the European Union has experienced in the past decade. The asymmetric Corona shock exacerbates the existing divides in economic performance and fiscal health between Northern and Southern European member states and puts new pressures on the cohesion of the Eurozone.

Unilateral border closures in reaction to the spread of the virus have further disrupted the Schengen area, which was still suffering from the 2015 high influx of refugees. Finally, the pandemic hit during the crucial phase of the negotiations on the post-Brexit economic relations between the European Union and the United Kingdom. The principle of 'level playing field' at the heart of the EU internal market is not only tested in these negotiations, but further endangered by the suspension of the EU rules on state aid. In all of these areas of crisis, reforms were deadlocked before the pandemic – and it is an open question whether the Covid-19 shock will unlock negotiations or further shrink the room for agreement.

In an ever more heterogeneous and contested EU, differentiated integration has facilitated substantially the deepening and widening of European integration. It has been particularly effective in kick starting the integration of new policies and the admission of new member states.

Differentiation is less suitable, however, to address the main current challenges to the EU: the repair and reform of crisis-ridden highly integrated policies. To illustrate the difficulties, the paper applies key theoretical and empirical insights from past differentiation to areas of current EU crisis and reform: the Eurozone, Schengen and Brexit.



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## EU crisis and reform. Is differentiated integration the answer ?

4

The Covid-19 pandemic is the gravest threat to Europe's public health and economy since World War 2. It also reinforces the crises of integration that the European Union (EU) has experienced in the past decade. The Corona shock exacerbates the existing divides in economic performance and fiscal health between Northern and Southern European member states and puts new pressures on the cohesion of the Eurozone. Unilateral border closures in reaction to the spread of the virus have further disrupted the Schengen area, which was still suffering from the refugee crisis. Finally, the pandemic hit during the crucial phase of the negotiations on the post-Brexit economic relations between the EU and the UK. The principle of 'level playing field' at the heart of the EU internal market is not only tested in these negotiations, but further endangered by the suspension of the EU rules on state aid. In all of these areas of crisis, reforms were deadlocked before the pandemic - and it is an open question whether the Covid-19 shock will unlock negotiations or further shrink the room for agreement.

The recent crises have strengthened EU's more general integration dilemma. On the one hand, the EU has been faced with significant incentives for reform either to reap additional benefits of integration or to repair dysfunctional integrated policies. On the other hand, however, major institutional and policy changes in the EU continue to require intergovernmental unanimity, the consent of the European Parliament and domestic ratification in each member state, thus creating numerous veto points. At the same time, the heterogeneity of member state preferences and capacities as well as the domestic contestation of EU policies have grown - increasing the probability that these veto points will be activated. Under these conditions, agreement on the uniform introduction or reform of EU policies becomes ever more difficult to achieve.

**Map 1. A map of differentiated European integration**



Cartography: Le Grand Continent, 2020

Under these circumstances, differentiated integration (DI) has become a core instrument in overcoming deadlock in EU reform since the 1990s. DI allows the EU to move ahead with integration without requiring all member states to participate. It thereby accommodates international heterogeneity and removes veto points. DI operates via exemption or exclusion. Exemption offers member states the possibility to opt out of EU policies they reject. Exclusion bars member states from participating in EU policies until they meet certain requirements. Monetary union is a case in point. Non-Euro area member states comprise both countries that would be able to join the Eurozone but are unwilling (such as Denmark and Sweden) and those that would be willing but are considered unfit (such as Bulgaria and Romania). The same logic applies to European non-member states. Some - such as Norway and Switzerland - would be welcome to join the EU but are only willing to participate in selected EU policies. Others are blocked from full membership but admitted to specific policies - as in the case of Turkey's participation in the customs union.

As a result, the EU has developed from a system of (largely) uniform integration, in which integrated policies applied to all members (and members only) to a system of differentiated integration, in which the territorial validity of integrated policy regimes is not congruent with formal membership<sup>1</sup>. Figure 1 shows a map of graded membership in the EU - ranging from fully integrated member states to non-member states with mere cooperation agreements.

In the past decade, however, the challenges to European integration have fundamentally changed. Rather than struggling to muster support for EU enlargement,

1. Schimmelfennig et al. 2015

the EU has had to deal with member states threatening to leave (Brexit) or crash out of the Eurozone (Grexit). And rather than finding flexible ways to boost the integration of new policy areas, the EU has faced deep crises in already highly integrated policies (monetary union and asylum policy). Past experience has shown that DI facilitates the integration of new members and policies. But is it also a suitable instrument for coping with threats of disintegration posed by old members and policies?

The ongoing policy debate on EU reform has considered DI as a viable alternative to uniformity. In March 2017, the heads of state and government of France, Germany, Italy and Spain agreed on a Europe of multiple speeds during a preparatory meeting for the 60th anniversary of the Treaties of Rome; the European Commission's 'White paper on the future of Europe' included a differentiated scenario ('Those who want to do more'); and, in September of the same year, President Macron endorsed differentiated as a core principle in his programmatic Sorbonne speech.

This paper explores the viability of DI in EU reform in two steps. First, it draws on existing theoretical and empirical insights to specify the conditions under which differentiated integration is likely to facilitate integration agreement<sup>2</sup>. It then applies these insights to three brief case studies of Eurozone and Schengen reform as well as the Brexit negotiations, which discuss the prevailing conditions and the prospects of differentiation in these policy areas.

I argue that differentiated integration is generally less helpful to facilitate reform in already highly integrated policy areas threatened with disintegration than it has been in the integration of new policies and new member states. Whereas international heterogeneity generates demand for differentiation in both contexts, supply conditions for differentiation are less conducive to coping with crisis and agreeing on reform in highly and uniformly integrated policy areas. In this context, differentiated integration would generate sub-critically small groups of member states. Splitting up highly integrated policy areas would also lead to detrimental positive and negative externalities between the groups. Moreover, decision-making rules, strong supranational organizations, informal integration norms and high path dependencies reduce the efficiency, legitimacy and feasibility of differentiation in highly integrated domains. Combinations of these conditions have frustrated attempts to use differentiation to overcome non-agreement caused by incompatible integration preferences and capacities. In sum, for all its benefits in boosting enlargement and the initial integration of new policy areas, differentiated integration is not the EU's silver bullet for coping with crises of advanced integration.

## Drivers and conditions of differentiated integration

To explain why integration is differentiated, I distinguish demand factors that create an interest in differentiation among states from supply factors that facilitate or inhibit the realization of the demand for differentiated integration. I draw on the theoretical framework and empirical findings in Schimmelfennig and Winzen<sup>3</sup> to further specify the relevant demand and supply factors. I then compare the contexts of pre-integration and existing integration with regard to these factors. I claim that, if we assume demand to be constant, the supply factors for differentiated integration are less favourable under conditions of pre-existing (substantial) integration. This has mainly to do with increased interdependencies or externalities and with changes in the constellation of bargaining power.

### Demand: Accommodating heterogeneity

The literature shares the assumption that differentiated integration helps to overcome negotiation deadlock caused by increasing heterogeneity among the member states<sup>4</sup>. Schimmelfennig and Winzen<sup>5</sup> distinguish two major logics of differentiation in European integration: 'constitutional' and 'instrumental differentiation'. Constitutional differentiation typically originates in the context of treaty reform, in which member states negotiate on the integration of new policies or the further centralization of already integrated policies. These negotiations raise concerns about national autonomy - especially in policy areas affecting core state powers and national identity (such as internal and external security policy, fiscal policy and migration and asylum policy). Furthermore, autonomy concerns are particularly strong in wealthy and well-governed states, in which national autonomy appears to work well, and in states, in which national identities are strong, Eurosceptic parties thrive, and national referendums provide an unmediated venue for citizen influence on treaty ratification.

By contrast, instrumental differentiation typically originates in the context of enlargement, which generates concerns about redistribution and efficiency. Old member states, or powerful interest groups in these states, fear economic and financial losses originating from market integration with the new member states, the redistribution of EU funds, and weak implementation capacity of the member states. New member states may in turn be concerned about pressures on domestic producers when they join the internal market and are obliged to implement demanding regulatory standards. Welfare concerns in the context of enlargement emerge both in the economic policy areas of the EU - the internal market and its

2. Schimmelfennig and Winzen 2020

3. Schimmelfennig and Winzen 2020

4. Holzinger and Schimmelfennig 2012

5. Schimmelfennig and Winzen 2020

flanking regulatory and redistributive policies - and in the area of core state powers, which are not only instruments of nation building and symbols of national sovereignty, but also provide citizens with public goods such as secure borders, a functioning judicial system, and a stable currency. In the instrumental perspective, governments worry about the effects of integration on the quality of these public services. These concerns most likely arise when relatively poor new member states join the EU, which create low-wage and low-regulation competition, benefit disproportionately from the structural and agricultural funds of the EU, and typically have weaker governance capacity.

In sum, international heterogeneity creates demand for differentiated integration on both ends of the international wealth and governance distribution. Rich and well-governed states refuse deeper integration (in the area of core state powers and in particular if their citizens have pronounced national identities), whereas poorer and more poorly governed states are being refused deeper integration. In order to realize these demands, however, differentiated integration requires favourable supply conditions.

#### **Supply: size, externalities and institutional context**

The typical preference constellation that creates demand for differentiated integration consists of one group of 'integrationist' countries with a first preference for more integration, whereas another group, the 'status quo' countries reject more integration. Differentiation is only possible if both groups also prefer differentiation to the status quo or are at least indifferent between the status quo and differentiated integration. Whether this condition obtains and demand will actually result in agreement on differentiated integration depends on the relative size of the two groups and the externalities that differentiation produces between them. Their relative bargaining power matters, too.

First, the size of the integrationist group needs to be large enough to deal effectively with the policy problem at hand. Moreover, the benefits of more integration need to exceed the transaction costs, which consist, among others, in negotiating an agreement and creating and sustaining common institutions. Economies of scale further increase the attractiveness of moving ahead with more integration. Finally, a large integrationist group that spans different (regional or economic) groups of member states increases the legitimacy of differentiation. Size is a more important consideration for constitutional than for instrumental differentiation. In the case of enlargement, the more integrated group (the old member states) is always large, whereas proponents of deepening need to build sufficiently sizable support in the first place.

Second, the realization and development of differentiated integration depends on the kind and extent of inter-group externalities that it produces<sup>6</sup>. Generally, the more externalities DI creates, the more unfavourable the supply-side conditions for DI become and the less likely it is that DI will come about. The heterogeneity-based demand for DI is most easy to meet if there is no interdependence between the integrationist and status quo groups, i.e. if their unequal levels of integration do not create substantial mutual externalities threatening to wipe out the benefits that states derive from DI.

If integration creates positive externalities for the status-quo countries, they can free ride (or 'cherry pick') on the integration efforts of the integrationists. The more positive externalities integration produces, the more it reduces incentives for the status-quo countries to end differentiation and seek uniformity. Low-capacity outsiders see no reason to invest in capacity building; outsiders with high autonomy concerns have no incentive to reconsider the costs of autonomy preservation. Moreover, substantial positive externalities produce centrifugal effects among the integrationist group. Why contribute to deeper integration if you can enjoy the benefits outside? Thus, substantial positive externalities reduce the likelihood that differentiation is established in the first place and that it will lead to high-level uniform integration in due course.

By contrast, if DI imposes negative externalities on the status-quo countries, it turns happy bystanders into dissatisfied integration losers<sup>7</sup>. As a result, the outsiders prefer to join - unless they are powerful enough to prevent integration differentiation in the first place. Negative externalities also create strong incentives for low-capacity countries to strengthen their capabilities quickly in order to qualify for integration. Either way, differentiation will not happen or be short-lived. The outcome is uniform integration - at the level of the status quo desired by the outsiders (if they are more powerful) or at the level of integration desired by integrationist vanguard.

**Table 1 : Institutional constrains on differentiated integration**

	No prior integration	Low-level integration	Uniform high-level integration	Differentiated high-level integration	Disintegration
Decision making rules	Facilitating	Inhibiting	Inhibiting	Facilitating	Inhibiting
Norms	Absent	Weakly inhibiting	Strongly inhibiting	Facilitating	Strongly inhibiting

6. Kölliker 2001; 2006

7. Gruber 2000

<b>Supra-national actors</b>	Absent	Weak	Strong	Mixed	strong
<b>Path dependencies</b>	Absent	Weak	High	Mixed	High
<b>Effect on DI</b>	Very positive	Positive	Negative	Positive	Negative

Finally, the institutional context of negotiations on differentiated integration matters. Here I distinguish five typical contexts: no, low, (high) uniform and differentiated integration and, finally, disintegration. These contexts differ with regard to the bargaining power of the status-quo countries, the legitimacy of differentiation, the role of supranational actors and the effect of path dependencies. In a situation of no prior integration, institutional norms, rules and path-dependencies do not exist. The heterogeneity of preferences and material bargaining power is all that counts. Integrationist states can move ahead without the formal agreement of states that refuse or are refused to join. A context of ‘no integration’ thus greatly facilitates differentiation, *ceteris paribus*.

Once integration is established, it generates formal decision-making rules and informal norms. Supranational actors enter the stage, and path-dependencies are likely to develop. Specifically, the decision-making rule of unanimity weakens the institutional bargaining power of states interested in changing the status quo. If integrationist countries seek more integration, status-quo states can threaten to use their veto. In addition, the EU has a normative bias in favour of ‘ever closer union’ and uniform integration. Unlike other constitutional principles such as proportionality, subsidiarity, and conferral (Art. 5 TEU), the treaties do not mention, let alone approve, differentiation explicitly. Supranational actors such as the European Commission, Parliament, and Court favour uniform integration in principle, too. Finally, path dependencies of integration build up over time as integration creates sunk costs, triggers endogenous interdependencies and raises exit costs<sup>8</sup>. To what extent these factors constrain differentiation, depends on the level and type of prior integration.

As long as integration remains at a low or shallow level, supranational actors and path-dependencies are absent or weak. Status-quo countries are less likely to object to integrationist states moving ahead in policy areas, in which they are not or only weakly invested. And even though uniform integration would be normatively preferable, differentiated integration is legitimate if ‘ever closer union’ would otherwise be blocked by individual member states, especially if differentiation is limited in time and integration is open to late joiners. For these reasons, the institutional constraints on the differentiated integration of previously weakly integrated policies or states are minor.

By contrast, in a situation of high (uniform) integration, major institutional constraints on differentiation are in place. Supranational actors sceptical of DI are powerful. Path dependence locks in uniformity and creates incentives for uniform further integration. Normative bias works in the same direction. In general, status-quo states have more incentives to block differentiation if they are part of a highly integrated group and are heavily invested in the existing level of integration.

The institutional constraints are particularly high in case a state demands ‘differentiated disintegration’<sup>9</sup>, i.e. seeks to move to a lower level of integration. In this situation, the integrationist states become defenders of the status quo and benefit from the unanimity requirement. Each integrationist government becomes a veto player, and the member state that is most averse to disintegration defines the limits of change. Veto threats do not preclude disintegration because states always have the option to exit the EU (under Article 50). Yet full exit may impose prohibitive costs on governments that only want to renegotiate the conditions of their membership and reduce their level of integration slightly. Moreover, demands for (differentiated) disintegration from a high level of integration entail high exit costs, face opposition from supranational actors and are least legitimate in the perspective of ‘ever closer union’.

Finally, a context of pre-existing differentiated integration mitigates the institutional constraints on further differentiation again. First, differentiation enjoys higher legitimacy in domains in which it is already an established practice. Second, if the integrationist group decides to move ahead with integration, it can do so more easily, because the most sceptical member states are not part of the decision<sup>10</sup>. Third, supranational actors may be ‘differentiated’, too - as in the case of the European Central Bank. Fourth, path dependence locks in uniform and differentiated integration equally. If prior integration has put states on two different paths, sunk costs and endogenous interdependence may propel states onto divergent integration trajectories and increase the costs of changing paths.

### Implications for EU crisis and reform

I define ‘EU crisis’ as a situation that presents a manifest threat or perceived significant probability of disintegration, i.e. a reduction in the level (centralization) or membership of an integrated EU policy. For instance, monetary union was manifestly threatened at least with the exit of Greece (if not the end of the euro) in the Euro crisis. In the Schengen crisis, the breakdown of the ‘Dublin’ asylum regime and potentially the Schengen regime of free cross-border movement was at stake. The Brexit

8. Pierson 1996

9. Schimmelfennig 2018

10. Jensen and Slapin 2012

vote threatened the EU with the loss of a member state.

In light of the theoretical framework of this paper, situations of EU crisis feature both heightened demand for and formidable supply-side constraints on DI. On the one hand, EU crisis is likely to highlight or increase international heterogeneity among the member states. Crises reinforce distributional conflict among the member states, e.g. on the costs of adjustment in the Euro crisis, the allocation of asylum-seekers in the Schengen crisis, or the UK's budget contributions after Brexit. They aggravate ideological and value conflicts on issues such as sovereignty and migration. And they put the gaps in economic and administrative capacity between the member states in the limelight - above all in the Euro and Schengen crises. Thus, EU crises and the reform proposals they generate typically increase the demand for differentiated integration.

On the other hand, however, proposals for differentiation are prone to running into major supply-side obstacles. First, differentiated reform and disintegration reduce the membership size of the integrated policy and may thus compromise the viability of differentiation. Second, differentiated reform and disintegration are likely to be affected by major positive and negative externalities. Third, supranationally and uniformly integrated policies generate important institutional constraints for reforms based on differentiation and disintegration. Decision-making rules, integration norms, supranational actors and path dependencies work in favour of maintaining uniform integration.

To illustrate the problems and limits of differentiation in EU crises, I provide three brief case studies of the most pressing current crisis and reform issues: the Euro crisis and Eurozone reform, the Schengen crisis and the reform of the common asylum policy, and the Brexit crisis and the reform of free movement of people. In none of these cases have we seen differentiated integration in spite of pronounced international heterogeneity and academic as well as political forays in favour of differentiation. These negative outcomes suggest significant obstacles to a differentiated solution.

### **Eurozone crisis and reform**

Economic and Monetary Union (EMU) has been a differentially integrated policy area from the start. The British and Danish opt-outs from monetary union were codified in the Treaty of Maastricht, years before the Euro was introduced. These opt-outs are best explained as 'constitutional', based on self-determination concerns. In addition, the Eurozone can exclude EU member states (which have a legal obligation to adopt the euro) if they do not meet the economic and fiscal convergence criteria. On this basis, EMU initially excluded Greece (until 2000) and new member states from 2004 onwards. This is instrumental

differentiation, based on capacity.

In the Eurozone crisis, the differentiation between euro-area and non-euro-area member states has remained stable. Yet the crisis has put in question uniform integration among the members of the Eurozone. Economists have asserted early on that the Eurozone was far from an 'optimum currency area' - lacking in both labour mobility and fiscal integration<sup>11</sup>. Political economists have further pointed out that monetary union brings together countries pursuing opposite growth strategies: a supply-side or export-led growth strategy based on wage restraint, productivity and competitiveness in Germany and the 'north' of the Eurozone, and a demand-led growth strategy based on fiscal expansion and wage inflation in the 'south'<sup>12</sup>. Monetary union led to further divergence, forcing Germany into stronger supply-side reform in the early 2000s and allowing the southern countries to borrow at low cost<sup>13</sup>.

The financial crisis turned export-led Eurozone countries into surplus and creditor states and demand-led countries into deficit and debtor states with divergent preferences on crisis management. Each sought to minimize adjustment costs and shift the burden of Eurozone rescue to the other. Whereas the northern countries sought to minimize their liabilities and financial assistance and called for austerity in the south, southern countries favoured the Europeanization or forgiveness of debt and financial transfers from the north. This preference and actor constellation has endured throughout the Eurozone crisis and shaped debate on Eurozone reform to this day<sup>14</sup>. At the height of the crisis, the Eurozone member states were able to agree on the establishment of a rescue fund (the European Stability Mechanism) and supranational supervisory and recovery mechanisms in a banking union. Yet north-south heterogeneity of integration preferences and capacity has blocked or whittled down further-reaching reforms, most prominently proposed by French President Emmanuel Macron, which would transform the currency area into a fiscal union with the decision-making and financial capacity to engage in effective Eurozone-wide macroeconomic policy.

The heterogeneity of state preferences and capacities in the Eurozone's non-optimal currency area has inspired numerous recommendations for differentiated disintegration, i.e., for reforming the Eurozone through the exit or exclusion of a group of its member states. For instance, Roger Bootle won the Wolfson Economics prize proposing a Northern monetary union led by Germany<sup>15</sup>. Fritz Scharpf<sup>16</sup> favours a two-tier 'European Currency Community' composed of (predominantly northern) EMU members

11. Krugman 2012  
12. Hall 2012: 358-359  
13. Scharpf 2011: 13-16  
14. Schimmelfennig 2015  
15. Bootle 2011  
16. Scharpf 2016



and other (predominantly southern) member states with national currencies pegged to the euro according to the EU's Exchange Rate Mechanism (ERM II). Finally, Joseph Stiglitz<sup>17</sup> regards uniform reform of the Eurozone as the best way forward, but advocates 'amicable divorce' in the absence of such reform, preferably by Germany and other northern members leaving the Eurozone (2016: 292).

As I argued above, however, the differentiated disintegration of a highly integrated policy area such as EMU is confronted with the most adverse supply-side conditions and therefore highly unlikely to produce international agreement. First, the resulting currency union(s) would be much smaller than the current EMU. EMU might well cease to be the political core of the EU and produce too few returns to scale. Second, the negative externalities of the split would be massive. In the Euro crisis, in spite of their conflicting fiscal interests, north and south agreed that a break-up of the Eurozone had to be avoided for the prohibitive economic and political risks that it would entail<sup>18</sup>. Even a post-crisis 'amicable solution' would require massive transfers and debt forgiveness to stabilize former Eurozone countries<sup>19</sup>. It would also cause the currencies of the northern countries leaving the Eurozone to appreciate massively - with the likely effect of an export slump. And it would undermine the belief in the durability of the monetary union and invite speculative attacks by financial markets testing member states' commitment to the single currency.

Finally, the institutional context makes differentiated disintegration difficult. The Eurozone is designed to be permanent and has no procedures for the exit of member states. It features the ECB, a highly independent and powerful supranational agency with a vital interest in preserving the Eurozone, which has played a decisive role in preventing a break-up during the Eurozone crisis. A split of the Eurozone would also go against the prevailing integration norms and raise major legitimacy concerns, especially in case of a non-consensual break-up or forced exit - see the adverse political reactions to German Finance Minister Schäuble's proposal for a Greek 'time out' from the Eurozone in July 2015. In line with these considerations, the Eurozone crisis has not resulted in the differentiated disintegration of the Eurozone - in spite of the strong demand-based case.

Instead of differentiated disintegration, the Eurozone could consider differentiated integration, i.e. a reform, in which a group of member states moves ahead with fiscal integration without changing the monetary integration of the rest. Such a 'Eurozone Plus', including, for instance, a common bank deposit insurance, a backup unemployment insurance or Eurobonds could be sponsored either

by the northern or southern group of Eurozone countries who have sufficiently homogenous preferences and capacities to find agreement. A Eurozone Plus would certainly be more acceptable than the Eurozone Minus proposed by Bootle, Scharpf or Stiglitz. It would not reduce the size, disrupt the institutions and interdependencies of EMU, or create significant externalities. The risk-sharing instruments could be designed so that outsiders are excluded from their benefits. A scheme for advancing integration differentially would also be more legitimate than one that reduces integration and expels member states.

Yet differentiated integration along the cleavage between north and south would defeat the basic purpose of fiscal union or risk sharing. Whereas a Eurozone Plus of southern countries would not be sufficient to stabilize its members in a future economic crisis, a Eurozone Plus of fiscally healthy northern countries would be neither necessary to stabilize its members nor helpful for stabilizing the south. Obviously, a fiscal union or risk-sharing community requires high- and low-capacity countries in a uniform regime to develop its potential. If the lack of solidarity is the main problem, differentiated integration cannot be the solution. It is therefore small wonder that proposals for differentiated fiscal integration have remained absent from the policy debate.

### **The Schengen crisis and reform of asylum policy**

The situation in the Schengen area has many similarities with the Eurozone. Like EMU, the EU's border regime has been differentiated from its start in the mid-1980s. And as in EMU, some member states refused to join (to maintain full national control of their own borders), whereas others were excluded until they met the conditions (to guarantee efficient control of the Schengen area's external borders).

Like the Eurozone crisis, the 2015/16 refugee crisis has exposed serious problems and heterogeneities within the Schengen area. The so-called 'Dublin rules' of the Schengen area normally allocate responsibility to the country where the asylum-seeker first applies for asylum, i.e., in most cases the country of arrival to the Schengen area. Consequently, the migration flows from Northern Africa and the Middle East affected the Mediterranean member states almost exclusively. In the migrant surge of 2015, Greece in particular was overwhelmed. The frontline states were neither capable of blocking unauthorized migration at the external Schengen border nor did they possess the infrastructure to handle such a high number of asylum-seekers. Yet the Schengen area lacks a system of burden sharing among member states and a supranational organization that could effectively support the border countries. As a result, the frontline states stopped registering numerous migrants, failed to conduct their asylum procedures, and turned a blind eye to migrants disappea-

17. Stiglitz 2016

18. Schimmelfennig 2015

19. Stiglitz 2016: 290-2

ring into illegality or to other Schengen countries<sup>20</sup>.

The policy failure of the Schengen regime in the migration crisis prompted the European Commission to propose a major reform of the Common European Asylum System, including the establishment of an EU asylum agency, a common asylum procedure, further harmonization of the qualification and protection standards and reception conditions and a permanent resettlement framework. The most contested centrepiece of the reform, however, was a change to the Dublin rules that would allow for a permanent quota system for the allocation of asylum seekers to the member states and thus provide for a fairer sharing of the asylum burdens. However, the member states have not been able to reach agreement on the reform package since 2015.

Intergovernmental preference heterogeneity mirrors variation in affectedness. Because of their geography, frontline states like Greece and Italy are affected most immediately by the migrant flows. In addition, destination states like Germany and Sweden, prosperous countries with a comparatively liberal asylum regime, are strongly affected by secondary migrant movement. Both groups of member states support the corrective allocation system to alleviate their burden. By contrast, transit countries that lay on the migration routes from the frontline to the destination states and by-stander countries that were located off-route and therefore not directly affected oppose the quota system<sup>21</sup>. The most vocal and uncompromising opposition came from Central and Eastern European member states, not only because they were either by-stander or transit countries but also because they were most ideologically and culturally opposed to extra-European migration. International heterogeneity of ideological integration preferences based on divergent attitudes towards migration is thus an additional source of non-agreement.

Would differentiated integration offer a way out of non-agreement and confrontation over the reform of the Schengen area's asylum policy? Both the Viségrad countries and President Macron have made suggestions that would amount to differentiation in the Schengen area.

The Central and Eastern European opponents of corrective reallocation proposed 'flexible solidarity' as an alternative in 2016. Like its successor concept 'effective conditionality', however, it does not entail a formal differentiation of the Schengen area with two groups governed by different asylum rules. It rather means that each member state ought to decide individually 'on specific forms of contribution taking into account their experience and potential. Furthermore any distribution mechanism

should be voluntary.<sup>22</sup> In practice, 'flexible solidarity' would allow willing member states to engage in burden sharing while unwilling Schengen countries opt out.

In March 2019, in his address to the 'citizens of Europe' ahead of the European elections, President Macron proposed to 'rethink the Schengen area: all those who want to be part of it should comply with obligations of responsibility (stringent border controls) and solidarity (one asylum policy with the same acceptance and refusal rules). We will need a common border force and a European asylum office, strict control obligations and European solidarity to which each country will contribute under the authority of a European Council for Internal Security'<sup>23</sup>. The proposal leaves open how the differentiation would be implemented. Would it lead to a Schengen Plus, in which those wanting to participate would agree to a deepening of asylum and border control integration, or to a Schengen Minus, from which those refusing 'obligations of responsibility ... and solidarity' would be excluded?

In general, a differentiation of the Schengen area faces the same adverse supply conditions as the differentiation of EMU. Both are highly integrated policy areas. Because the Schengen area is not as centralized and interdependent as EMU, however, some of the conditions are more favourable towards differentiation. First, because Schengen has a much larger membership than EMU, the effect of differentiation on size would be less severe. Second, the Schengen area lacks powerful supranational actors like the ECB in EMU. The EU agencies related to the Schengen regime (Frontex and EASO, the European Asylum Support Office) lack supranational competences. Third, a split in the Schengen area would be less disruptive than a breakup of the Eurozone. Even according to the most pessimistic scenario, the annual 'cost of non-Schengen' would not have amounted to more than 0.2 percent of GDP annually<sup>24</sup> - a hundred times less than even the most optimistic models forecast for a Eurozone breakdown<sup>25</sup>.

Finally, differentiated integration is standard Schengen practice. Not only was the original Schengen Agreement an intergovernmental treaty outside the treaty framework; a group of seven Schengen member states also signed the Prüm Convention 'on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration' in 2005. Because of these precedents, a Schengen Plus scheme could enjoy sufficient legitimacy.

Yet, as in the case of the Eurozone, differentiation would defeat the purpose of integration: a burden-sharing

20. Trauner 2016: 315

21. Biermann et al. 2018

22. Joint Statement of the Heads of Governments of the V4 countries, accessed at <http://www.visegradgroup.eu/calendar/2016/joint-statement-of-the-160919>.

23. <https://www.elysee.fr/emmanuel-macron/2019/03/04/for-european-renewal-en>.

24. European Parliament 2017

25. Schimmelfennig 2018a: 983

and harmonization scheme that would stabilize the EU asylum regime. Schengen Plus would most likely bring together only those frontline and destination countries that would benefit from reallocation. Whereas Schengen Plus might provide for a fairer and more orderly distribution of migrants across the most affected countries, it would not lower their collective burden, however, if transit and bystander countries remain outside.

What is more, Schengen Plus would likely generate positive externalities. An improved asylum regime might make it even more attractive for migrants to seek asylum in one of the Schengen Plus rather than the regular Schengen countries. Unless the origin of the major migration flows shifts from the south to the east, the Eastern member states would fare best by remaining outside of Schengen Plus while benefiting from the current regime for their own citizens. A differentiated arrangement would thus not only institutionalize the free-riding behaviour of the non-affected countries, it would also create incentives for the insiders to defect.

In order to change the incentives of the opponents of Schengen reform, the integrationists would therefore have to be able to threaten them credibly with expulsion from the Schengen area - in the hope that they value free movement more highly than migration control. If Schengen was still regulated by an intergovernmental agreement, as it was until the mid-2000s, such a threat might work. Because it is an integral part of the EU treaties, however, a refounding of the Schengen regime would require a renegotiation of the treaties. The threat to exclude unwilling Schengen countries thus lacks credibility.

### **The Brexit referendum and the negotiations on a new settlement for the UK within the EU**

In his January 2013 Bloomberg speech, UK Prime Minister David Cameron promised to negotiate a new settlement for the UK in the EU, to be followed by an in-out referendum before the end of 2017, in order to appease the EU opponents in the Conservative Party and to deflect the challenge posed by the UK Independence Party (UKIP). Initially, the referendum pledge bought Cameron time - but he had to make good on his promise after leading the Conservatives to victory in the 2015 general elections. In his November 2015 letter to Donald Tusk, President of the European Council, Cameron sought a legally binding opt-out from the treaty obligation to 'ever closer union' and limits to the free movement of citizens within the internal market<sup>26</sup>.

For many years, Cameron had sought in vain to renegotiate the freedom-of-movement principle with the EU

in order to take back national control over immigration. He knew that most member states considered a general opt-out from the freedom of movement non-negotiable<sup>27</sup> and did not want to be put in a position in which he would have to recommend British voters to leave the EU because his far-reaching demands were rebuffed. Cameron therefore put forward measures that would limit the free movement for citizens of future new member states only, fight the abuse of free movement, restrict in-work benefits to EU citizens for a period of four years, and end the sending of child benefit payments overseas. Even with these limitations, the demands amounted to differentiated disintegration, which would exempt Britain from existing treaty obligations and discriminate against current and future member states.

Even though the UK was a major recipient country of intra-EU migrants, these temporal, indirect or future measures would probably not have led to major reductions or distortions in the free movement of persons across the EU. The size condition therefore did not stand in the way of agreement. Yet the British demands meant disintegration in a supranationally and uniformly integrated core policy area of the EU: the single market. The UK therefore faced highly adverse institutional conditions.

First, its institutional bargaining power was diminished. Whereas the UK has typically been the least integrationist member state, resisting change towards more integration, and therefore in a strong position to bargain for opt-outs, it now found itself in the position of pushing for change and requiring the consent of the other member states. This put the other member states in the favourable bargaining position of status quo defenders. Unsurprisingly, the strongest opposition came from the new member states whose citizens benefited most from the freedom of movement to the UK.

Second, the UK attacked the integrity of the internal market. Not only is the internal market the single most important policy area of the EU; it is also the classic example of supranational and uniform integration. Even though the member states have regularly agreed to exempt or exclude new member states from provisions of the internal market, and the freedom of movement of labour in particular, these differentiations have generally been temporary and short-lived. Moreover, the integrity of the internal market, i.e. the adherence to all four market freedoms, is a cherished principle, firmly anchored in the treaties and the jurisdiction of the Court. Whereas demands for differentiated disintegration are always likely to provoke resistance, it was bound to be particularly strong in this case.

Finally, concerns about cherry-picking ranked high. The UK was not the only country, in which immigrants from other EU member states and their entitlement to

26. A New Settlement for the United Kingdom in a Reformed European Union', available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/475679/Donald\\_Tusk\\_letter.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475679/Donald_Tusk_letter.pdf) (accessed 3 April 2018).

27. Weiss and Blockmans 2016: 9

social benefits were contested. In addition, the member states tend to benefit unequally from the different market freedoms. If the EU were to grant an opt-out from the freedom of movement of persons to one country, other countries would likely demand the same. And if the EU were to grant opt-outs from the freedom of movement of persons, other countries might ask for opt-outs from other market freedoms.

In line with these considerations, the EU decided to accommodate British concerns without granting the UK differentiated disintegration. The agreed measures, an ‘emergency brake’ for in-work benefits and the indexing of child benefits, affected secondary legislation but not the treaties. They applied to all member states and not just the UK; and they were exceptional and conditional measures authorized collectively (rather than decided by the UK alone). As is well known, these measures were not sufficient to meet the demands of British voters for ‘taking back control’ - of immigration in particular - and to prevent a majority vote to leave the EU in the June 2016 referendum.

### Conclusions

Differentiated integration provides the EU with a powerful tool to facilitate and lubricate further integration under conditions of increasing heterogeneity among its member states. As European integration has expanded to countries with increasingly diverse integration preferences and capacities, and to more controversial policy areas related to core state powers, differentiated integration has allowed the EU to overcome national vetoes by exempting or excluding countries from further integration either temporarily or indefinitely.

DI has been most successful in facilitating the integration of new policies and new member states. Without differentiation, EMU and the Schengen regime would not have been possible, and the EU would have taken longer to admit new member states. The differentiated integration of new policies and new members benefits from favourable conditions: a large size of the (more integrated) insiders group, a low level of interdependence and no path-dependencies between insiders and outsiders, and high legitimacy as a contribution to ‘ever closer union’ and a commitment to the openness of the insiders.

By contrast, differentiation appears less helpful for reaching agreement when existing, supranationally integrated policies run into crises and existing members seek to change their level of integration. Whereas the international heterogeneity of preferences and capacities typically increases significantly in these situations, the supply-side conditions of successful differentiation deteriorate. A differentiated policy response to crisis in highly integrated contexts risks pushing group size to unsustain-

able levels, producing major externalities between the differentially integrated groups and generating prohibitive exit costs from uniform integration arrangements. In addition to efficiency constraints, DI suffers from weak legitimacy. And it runs against the interests of supranational actors and status quo-oriented member states, which benefit from the unanimity requirements for institutional change. These constraints are particularly tight and hard to overcome for states demanding partial disintegration.

Correspondingly, the three crisis cases used to illustrate these constraints - the Eurozone, Schengen and Brexit crises - have failed to bring about reforms based on differentiation. In the Eurozone, initial reforms at the height of the crisis (such as the ESM and banking union) apply uniformly to all Eurozone countries, but far-reaching reforms in the direction of fiscal union have not produced any substantive agreement. In the Schengen area, the reform of the common asylum policy has foundered altogether. In its negotiations with the UK, the EU has rejected the UK’s differentiated integration into the internal market. The alternative to differentiation in the three crises was non-agreement. The Eurozone remains without powerful fiscal instruments to alleviate economic imbalances between its member states and mitigate a future crisis. The Schengen area is unable to overcome the unequal refugee burden of its member states and appears poorly equipped to manage a future migration surge. And the EU’s rejection of a UK opt-out from the freedom of movement of persons has arguably contributed to, or at least done nothing to prevent, the British vote to leave the EU.

Yet, in all three crises, member states have concluded that differentiation would not produce a better outcome, or might even be worse, than non-agreement. In the Euro and Schengen crises, differentiation would have been difficult to implement and done nothing to deliver the solidarity and burden sharing needed to reform the regimes. Rather, differentiated (dis)integration would have produced prohibitive costs and negative externalities in the Eurozone and free-riding opportunities for anti-immigration member states in the Schengen area. In the Brexit negotiations, the member states also decided that granting a free-movement opt-out to the UK would put into question the integrity of the internal market and encourage further cherry picking.

DI remains a promising instrument to facilitate future enlargement and kick-start integration in new policy areas. The defence-related projects agreed under the Permanent and Structured Cooperation (PESCO) scheme in November 2017 without Denmark, Malta and the UK demonstrate this potential in a domain of low-level European integration. Moreover, in light of the Covid-19 pandemic, the low level of integration in European health policy provides the member states with ample opportunities for DI should attempts to upgrade the EU’s capacity to deal with health emergencies, e.g. through the stockpiling and distribution of medical equipment, meet the resistance of

individual member states.

By contrast, a differentiated response to the post-crisis economic recovery needs would face the same constraints as in the case of Eurozone reform: differentiation defeats the purpose of integration whenever an effective European policy response requires transfers from and burden sharing by the less-affected or higher-capacity member states. Yet, as the Franco-German European recovery plan and the Commission proposal for the EU budget indicate, the sheer size and existential threat of the Corona challenge may finally push the EU to overcome the limitations of differentiated integration in dealing with international heterogeneity. ◀

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