

CHALLENGE EUROPE

Yes, we should!

EU priorities
for 2019-2024

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Handle with care: The potentials and limits of differentiated integration

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MAIN RECOMMENDATION ▶ Differentiated integration offers a pragmatic and functional way to maintain the Union's capacity to act, but should be handled with care.

WHAT TO DO:

- ▶ Differentiated integration should only remain the second-best option to ensure procedural and institutional coherence.
 - ▶ Differentiated integration should not lead to a closed-off 'core Europe'. It should always follow the principles of openness, inclusiveness and efficiency.
 - ▶ Differentiated integration should as much as possible take place within the EU's existing legal set-up.
 - ▶ Berlin and Paris should focus more on including other member states' perspectives in their thinking to form wider leadership coalitions at an early stage.
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The concept of differentiated integration has once again moved to the centre stage in the debate on the future of the European Union (EU). But differentiated integration is not a new concept: it has been and will continue to be an integral feature of European integration, although it is still unclear in which areas, how and to what extent it will be applied in practice in the years to come.

Flexible forms of cooperation and integration involving not all member states have always been a way to overcome political stalemate and opposing views on the priorities and scope of integration. The Schengen area and the eurozone constitute the most prominent of many examples of differentiated integration in which a group of countries decided to deepen their cooperation without all member states taking part (from the very beginning).

Differentiated integration is not a panacea to cure the EU's internal divisions. It should remain a second-best option in order not to jeopardise the Union's political, legal and institutional cohesion.

Given the many internal and external challenges the EU is facing and the increased heterogeneity among member states, the number of flexible forms of cooperation will likely further increase in the next politico-institutional cycle (2019-2024) as it offers a pragmatic-and functional way to maintain the Union's capacity to act. However, differentiated integration is not a panacea to cure the EU's internal divisions. It should remain a second-best option in order not to jeopardise the Union's political, legal and institutional cohesion. If applied, differentiated integration should always follow the principles of openness, inclusiveness and efficiency and should as much as possible take place within the EU's existing legal set-up to ensure procedural reliability and institutional coherence.

European leaders' support for differentiated integration expressed in Sunday speeches is not matched in Monday's actions.

In reality, however, striking a fine line between openness and inclusiveness on the one hand and efficiency on the other hand is at times difficult to achieve, as some member states might not be able or willing to deliver or have diverging motifs for joining the group.

The need for more differentiation

Over the past decade, the experience and consequences of the so-called poly-crisis have severely hampered the Union's cohesion and its capacity to act. The United Kingdom (UK) has even entered a path of 'negative integration', aiming to break itself free from the EU. Ruptures have emerged between the Union's North and South in the euro crisis, and between the East and West over irregular migration. These developments have fuelled fragmentation and distrust both among the EU28 and between national capitals and 'Brussels' (see also contribution by Janis A. Emmanouilidis in the present volume).

The EU's inability to overcome stalemates and blockages in crucial policy areas not only exposes it to the risk of future crises but also undermines the confidence of citizens in the Union. Past experiences have shown that differentiated integration can help to increase the EU's efficiency when dealing with internal and external challenges. It is very likely that after the European elections in May 2019, the new EU leadership will have to operate in an even more complex and conflictual environment leaving only little room for manoeuvre for an ambitious reform agenda. This has intensified the debate on the scope of member states taking the lead and moving forward in certain policy areas, while leaving the door open for others to join at a later point in time.¹ Differentiated integration can be a pragmatic alternative for those member states with a greater ambition to move beyond the lowest common denominator.

Differentiation and its critics

The debate on flexible forms of cooperation between a limited number of member states gained particular traction after the UK's decision to leave the EU. In March 2017, the European Commission put forward a White Paper presenting five scenarios for the Union's future including a 'flexible Europe' scenario ("Those who want more do more") that foresaw a group of member states enhancing their cooperation.² On the occasion of the 60th anniversary of the Treaty of Rome in May 2017, the leaders of the EU27 subscribed to the possibility of moving ahead at different speeds while stressing the indivisibility of the Union.³ In his Sorbonne speech in September 2017⁴, and recently in his op-ed published across Europe in March 2019⁵, French President Emmanuel Macron gave another boost to the debate when he affirmed his support for a higher level of differentiation, endorsing the creation of a vanguard of states that might not have to wait for a wider consensus to move ahead to advance specific reforms.

However, European leaders' support for differentiated integration expressed in Sunday speeches is not matched in Monday's actions. And often, those who call

for more flexible forms of integration are, at the end of the day, not able or willing to deliver. Coalitions between member states are often of an ad hoc nature or created with the main purpose of blocking progress in specific policy fields ('negative coalitions') as the examples of the Visegrád Group or the New Hanseatic League have repeatedly shown in practice.

Moreover, the concrete application of a higher level of differentiation is highly contested. Newer and smaller member states, especially in Central and Eastern Europe, are concerned that additional layers of flexibility would gradually lock them into a kind of second-class membership, thus further exacerbating the already existing divisions between member states. They argue that those willing to move ahead might increasingly use differentiation as a threat to exert pressure on those who are not willing or able to enhance cooperation at EU level. With the UK leaving the EU, these concerns have become more pronounced, as the group of member states that are reluctant to envisage deeper integration will lose an important ally in preserving their interests.

Openness, inclusiveness, and efficiency as guiding principles for differentiation

In light of these concerns and to safeguard the Union's political, legal and institutional cohesion, cooperation among a limited number of EU countries should always adhere to the principles of openness, inclusiveness and efficiency – even if the

accommodation of all three principles is not always an easy task. In more concrete terms, this means that; (i) all EU countries should be involved in the decision on whether or not to allow differentiated cooperation; (ii) all EU countries are invited to join an

initiative at any time – also at a later stage; (iii) ‘outs’ should be constantly informed and involved as much as possible in the given area of differentiated integration. Moreover, procedural reliability and institutional consistency should be ensured by applying differentiation as much as possible within the Union’s existing legal set-up, with the strong involvement of the EU institutions. Finally, differentiated integration initiatives should always pass the test of delivering a more efficient policy output than would be the case without it – not least to highlight the clear benefits to European citizens. Thus, all members willing to move ahead should share the same direction of the initiative and fully commit to the responsibilities they have agreed to.⁶ In reality, however, striking a fine line between openness and inclusiveness on the one hand and efficiency on the other hand is at times difficult to achieve, as some member states might not be able or willing to deliver or have

diverging motifs for joining the group. More generally, these principles also highlight that higher levels of differentiation should not lead to a closed-off ‘core Europe’, in which an *avantgarde* of member states deepens the level of cooperation while excluding other EU countries. In the past years, when moving ahead, EU governments and institutions have already been careful not to create or exacerbate a deep rift in Europe between those who are part of a potential core and those who are not. But the creation of a closed ‘core Europe’ is not only undesirable, as it violates the principles of openness and inclusiveness, it is also unrealistic. It presupposes that a number of member states are ready to make a qualitative leap forward towards closer integration in a number of policy fields. Yet, even the most integration-friendly countries are not ready to substantially deepen their level of integration well beyond the current state of affairs.

Inside or outside the EU Treaties – The different shapes of differentiated integration

Differentiated integration can take many shapes.⁷ The most important distinction is whether higher levels of cooperation take place inside or outside the EU’s existing legal framework. Closer cooperation outside the Union’s framework bears a number of risks. First, it might lead to a deep rift between participating and non-participating countries, if cooperation among a limited number of member states does not follow the principles of openness and inclusiveness. Second, there is a risk of institutional duplication in case EU institutions do not play a strong executive, legislative or judicial role. Finally, democratic legitimacy and parliamentary scrutiny at both the national

and European level might be compromised if cooperation takes place outside the EU framework and thus beyond the control of the European Parliament, and if cooperation is limited to relations between governments.⁸

Despite these potential risks, past experience has repeatedly shown that there is sometimes no other alternative than to organise closer cooperation through intergovernmental arrangements – particularly if the urgency of a crisis situation requires immediate action. But the examples of the adoption of the Fiscal Compact and the European Stability Mechanism (ESM) in the context of the euro area crisis highlight that member states have

been willing and able to take into account the aforementioned concerns when turning to solutions outside the EU framework. These intergovernmental arrangements involved non-euro members and EU institutions and are due to be incorporated into the Union's framework at a later point in time.⁹

Still, the risks, limits and concerns that come with intergovernmental arrangements can be avoided when using the instruments foreseen in the EU Treaty framework. The instrument of "enhanced cooperation" is the most elaborate arrangement for Treaty-

based flexible cooperation.¹⁰ In the past, member states have refrained from using the instrument. Yet, more recent examples such as the introduction of a common system of patent protection or the inception of the European Public Prosecutor's Office illustrate that it is a workable instrument, which is increasingly explored but hinges on the political will of member states. Enhanced cooperation entails less risk, as differentiation takes place in a unitary, institutional structure preventing an exclusive club of member states to develop a separate nucleus of rules and procedures.¹¹

Making differentiation work

The debate on whether and how to apply higher levels of differentiated integration is likely to intensify in the next politico-institutional cycle. As a second-best option, differentiated integration might prove to be a pragmatic instrument to deepen cooperation on migration, security and defence, and in the attempt to further stabilise the eurozone. Yet, in all three policy fields, there are also considerable constraints to its application.

RESPONSIBILITY-SHARING IN THE AREA OF MIGRATION – LAST OPTION DIFFERENTIATION

The large increase of irregular migration in 2015 has revealed the shortcomings of the Dublin system that places the sole responsibility for the vast number of asylum claims on member states with an European external border.¹² For the time being, there is no consensus among all member states for a structural reform of the Dublin system that could address these deficiencies. The governments who are most strongly advocating for European solutions are cautious not to exempt other

countries from the responsibility of taking their share of the re-distribution of refugees. Temporary Emergency Relocation Schemes to move asylum seekers from Greece and Italy to other member states adopted by the Council through qualified majority voting failed. They were not effectively implemented given, first and foremost, the strong resistance of the outvoted Visegrád countries.

In the absence of a structural reform, some member states have looked to reallocate responsibility to the national level. There are, for instance, the bilateral agreements of Germany with Spain, Portugal and Greece. In addition, willing member states agreed on several ad hoc arrangements to relocate migrants stranded on search and rescue vessels in the Mediterranean in case of immediate urgency.

Yet, the pressure to find adequate solutions to reform the Dublin system will remain high in the years to come (see also the contribution by Evangelia (Lilia) Tsourdi). Even though irregular migration has dropped significantly since 2016, migration policies will continue to dominate the

political debate in many EU countries and chances are high that migratory pressures will re-emerge in the future. Differentiation through voluntary arrangements can be one tool to overcome the political stalemate – at least as a transitional solution until a more structural reform involving all member states will be found. The Commission’s recent proposal to set up a contingency plan for the disembarkation of migrants in times of particular pressure could serve as a starting point to develop an appropriate framework beyond pure ad hoc arrangements.¹³

EUROPEAN DEFENCE COOPERATION – CAUGHT BETWEEN INCLUSIVENESS AND AMBITION

Higher levels of differentiation should not lead to a closed-off ‘core Europe’, in which an *avantgarde* of member states deepens the level of cooperation while excluding other EU countries.

Given the vast number of external security challenges, the case for deeper European defence cooperation has gained momentum. At its core lies an instrument of differentiated integration foreseen in the Lisbon Treaty. Permanent Structured Cooperation (PESCO) was launched in December 2017 to intensify the cooperation in the field of Common Security and Defence policy (CSDP). With 25 participating members¹⁴ PESCO is characterised by a high level of inclusiveness, but also allows willing and able members to join forces through concrete projects in the fields of defence investment, capability development and operational readiness.

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The participating members will have to prove that the inclusive approach to PESCO does not undermine the level of ambition, despite the continuing differences in member states’ strategic cultures.¹⁵ Moreover, the principle of unanimity in the decision-making process will continue to hamper consensus building. The projects that have, so far, been established by smaller groups of member states are a mixed bag in terms of the level of ambition. More political will is needed to exploit the full potential of PESCO, which could lead to more differentiation within this framework in the future.

The French proposal to launch the European Intervention Initiative (E2I) was widely seen as a response to an overly inclusive and unambitious PESCO. In contrast to the latter, which focuses on building capabilities, E2I aims to enhance the operational dimension of military cooperation. So far, only ten states are part of E2I, and that number is expected to stay low, with the intention of forming an ambitious and effective club. At the same time, as the initiative is organised outside the EU and NATO framework, E2I allows for cooperating with CSDP opt-out Denmark and tying the UK to wider European defence cooperation after Brexit (see also contribution by Jamie Shea).

The political momentum for deeper defence cooperation has opened up pathways for differentiation within and outside the existing legal framework. In the best case, PESCO and E2I will be mutually reinforcing. Yet, both formats will compete for EU leaders' political capital, which could also lead to a weakening of European cohesion.¹⁶ Thus, a proper link between both initiatives should be established that ensures a minimum level of transparency for EU member states that do not participate in E2I. Much will depend on whether France and Germany find a mutual understanding on how both initiatives can co-exist and benefit from each other.

ONLY LIMITED LEEWAY FOR DIFFERENTIATION IN THE EUROZONE

The euro crisis has highlighted the imperfect construction of the Economic and Monetary Union (EMU) and the urgent need for additional reforms (see also piece by George Pagoulatos). Yet, the immediate crisis response did not lead to a higher level of differentiation within the eurozone but rather to a further deepening of cooperation involving all euro countries.¹⁷ Considerable measures have been taken to respond to the immediate crisis situation based on intergovernmental treaties that were concluded outside of the EU framework (Fiscal Compact and ESM), which included the Euro19, the EU institutions and non-euro countries from the beginning.

Beyond the decisions taken in 2010-2012 under the immediate pressure of the euro area crisis, the profound differences between the 'responsibility and competitiveness' camp and the 'solidarity and caring' camp over how to substantially reform the EMU still persist.¹⁸ Many of the underlying structural causes of the crisis remain unresolved, leaving the eurozone vulnerable to future crises. While EU leaders managed to achieve a 'mini-compromise' at the December 2018 EU Summit, many open questions and unsettled issues still need to be clarified, particularly on the eurozone budget or the European Deposit Insurance Scheme.¹⁹ In the absence of an immediate crisis, it seems more than likely that the deepening of cooperation in the euro area will progress incrementally. Only another escalation of the crisis might apply sufficient pressure for substantial economic, fiscal and financial integration to materialise.

Yet, in the medium term, the withdrawal of the UK from the EU could increase the efforts of some non-euro countries to join the common currency. Given the loss of an important and influential ally to advance their interests vis-à-vis the Euro19, their fear of being marginalised in EU decision-making has increased.²⁰ In the coming years, the next EU leadership should

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thus clearly articulate the advantages of eurozone membership, i.e. higher financial stability, lower financing costs as well as access to the ESM and full participation in the Single Supervisory Mechanism (SSM). The

adoption of the common currency in more EU countries would decrease the overall level of differentiation between the ‘ins’ and the ‘outs’ and thus further enhance the Union’s political and institutional cohesion.

Pragmatic exception, not a panacea

In the next politico-institutional cycle, the new EU leadership will be confronted with an even more complex and conflictual political environment, leaving only little room for manoeuvre for an ambitious reform agenda. Differentiated integration can serve as a pragmatic and functional instrument to overcome stalemates and blockages and to maintain the EU’s efficiency and responsiveness in addressing current and future challenges.²¹ However, the examples of the key policy fields of migration, eurozone governance, and security and defence illustrate that besides the opportunities that come with differentiated integration there are also considerable constraints to its applicability that have to be taken into account.

More generally, differentiated integration should be handled with care. It should not lead to a closed-off ‘core Europe’ and it is no panacea to cure the EU’s internal divisions – rather it should remain a second-best option in order not to jeopardise the Union’s political, legal and institutional cohesion. When applied in practice, a higher level of cooperation among a limited number of EU countries should always follow the guiding principles of openness, inclusiveness and efficiency and should as much as possible be applied within the EU’s existing legal set-up. If the situation requires moving ahead outside of the EU treaty framework, intergovernmental arrangements should always accommodate these principles and eventually be integrated into the EU’s legal system as quickly as possible. The future EU leadership will also have to think long

and hard about how to extend the concept of differentiated integration to non-EU countries and how to tie these countries closer to the Union beneath the level of full EU membership. While Brexit forces the EU to find solutions on how to design the future EU-UK relationship, it could also provide an opportunity to reassess its enlargement and neighbourhood policies and the formats it has at its disposal to work towards more tailor-made solutions for partner countries, depending on the level of ambition and the compliance in meeting EU standards (see also contributions of Larissa Brunner and Fabian Zuleeg, Dimitar Bechev as well as Janis A. Emmanouilidis).

The current political situation requires the bold leadership of member states willing to deepen their cooperation despite the resistance of others. Reviving the Franco-German tandem and overcoming both countries’ fundamental differences on eurozone governance and security and defence will be crucial, but it will not be enough. Berlin and Paris should focus more on including other member states’ perspectives in their thinking to form broader leadership coalitions at an early stage. In this regard, differentiated integration can temporarily provide an adequate solution. However, leaders need followers as well. In the end, for the sake of maintaining the unity of the EU, the pioneers of deeper integration need to continue to engage with the ‘outs’ in the political debate and need to better communicate and coordinate their own positions to craft consensus.

1. Pirozzi, Nicoletta, Tortola, Pier Domenico, Vai, Lorenzo (2017), "Differentiated Integration: A Way Forward For Europe", Istituto Affari Internazionali (IAI), p. 1.
2. European Commission, [White Paper on the Future of Europe](#), 1 March 2017.
3. Council of the EU, [The Rome Declaration](#), 25 March 2017.
4. Emmanuel Macron, [speech on new initiative for Europe](#), 26 September 2017.
5. Emmanuel Macron, [For European Renewal](#), 4 March 2019.
6. Pirozzi, Nicoletta, Tortola, Pier Domenico, Vai, Lorenzo (2017), "Differentiated Integration: A Way Forward For Europe", Rome: Istituto Affari Internazionali (IAI), p. 1.
7. For an overview of instruments of differentiated integration see von Ondarza, Nicolai (2013), "Strengthening the Core or Splitting Europe - Prospects and Pitfalls of a Strategy of Differentiated Integration", Berlin: Stiftung Wissenschaft und Politik (SWP).
8. Emmanouilidis, Janis A. (2013), "Which lessons to draw from past and current use of differentiated integration?", Brussels: European Parliament, Policy Department C; Citizens' Rights and Constitutional Affairs.
9. *Ibid.*
10. Other Treaty-based instruments of differentiated integration include opt-outs and the Permanent Structured Cooperation (PESCO) in the field of security and defence.
11. A minimum of nine member states is required to trigger enhanced cooperation in the areas covered by the Treaties with the exception of fields of exclusive competence and the common foreign and security policy. All member states have to approve the wish of a group of member states to apply enhanced cooperation by qualified majority and the European Parliament has to give its consent. Finally, the 'outs' have an observatory status to ensure a certain level of transparency and can join the initiative at a later stage.
12. De Somer, Marie (2018), ["Dublin and Schengen: A tale of two cities"](#), Brussels: European Policy Centre.
13. European Commission, [Remarks by Commissioner Avramopoulos on progress made under the European Agenda on Migration](#), 4 December 2018.
14. Denmark has a general opt-out from the activities within the CSDP. The United Kingdom has also refrained from joining PESCO given its scheduled [withdrawal from the EU](#) in May 2019. Finally, also Malta refrained from joining PESCO.
15. Blockmans, Steven (2018), "The EU's modular approach to defense integration: an inclusive, ambitious and legally binding PESCO?", *Common Market Law Review* 55, 1785-1826.
16. Mölling, Christian & Major, Claudia (2018), ["Why joining France's European Intervention Initiative is the right decision for Germany"](#), Brussels: EGMONT.
17. Gnath, Katharina (2017), "Drin heißt drin: wenig Spielraum für Flexibilität in der Europäischen Wirtschafts- und Währungsunion", *Integration*, 3/2017, p. 227.
18. New Pact for Europe (2017), ["Re-Energising Europe – A Package Deal for the EU27": Third Report New Pact for Europe](#), Brussels: European Policy Centre.
19. Emmanouilidis, Janis A. (2018), ["The Need to 'Re-unite Europe': the results of another Brexit summit"](#), Brussels: European Policy Centre, pp. 7-8.
20. Pawel Tokarski (2019), ["Non-euro Countries in the EU after Brexit"](#), SWP Comment 2019/C 03, Berlin: Stiftung Wissenschaft und Politik (SWP).
21. Emmanouilidis, Janis A. (2017), ["The Future of a More Differentiated E\(M\)U – Necessities, Options, Choices"](#), Rome: Istituto Affari Internazionali (IAI).