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The Politics of EU Differentiated Integration: Between Crises and Dilemmas

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ABSTRACT

The debate about differentiated integration (DI) from the beginning of the European Union (EU) integration process to the 2017 White Paper on the Future of Europe can be divided into three different periods, according to the main dilemmas that policy-makers tried to address respectively: (i) a political dilemma about the final 'destination' of the EU integration project between the 1950s and the 1980s; (ii) a legal dilemma about the mechanism to adopt to promote DI in the 1980s and the 1990s; and (iii) an institutional dilemma about the growing complexity of EU institutions, begun in the 2000s and encapsulated in the Lisbon Treaty. Each period of debate coincided with a specific type of crisis – respectively, a crisis of design, a crisis of (foreseen) enlargement and a crisis of economic adaptation. Based on past and recent history, one can conclude that the debates about DI will become a permanent feature of EU politics.

KEYWORD

differentiated integration; EU crises; EU political debates; EU enlargements

While the literature on differentiated integration (DI) typologies and legal mechanisms is abundant, the literature on the related political debates is far more limited (Leruth *et al.* 2017). This is quite striking: the concepts political scientists and jurists use in their studies are largely the result of political debates and reflect very closely the concepts and metaphors used by politicians. This article will contribute to filling this gap by arguing that debates about DI emerged since the beginning of the European Union (EU).

Here, DI is defined as "any modality of integration or cooperation that allows states (members and non-members) and sub-state entities to work together in non-homogeneous, flexible ways" (Lavenex and Križić 2019, 3). This definition captures the various shapes DI can assume and the variety of political actors' perspectives about it. However, the main focus of this article is the political debates about internal (and not external) differentiation, emphasising at the same time the debates between EU member states (MSs) and EU institutions during treaties negotiations. Despite their relevance, few authors have written about such debates, and bigger attention has been devoted to negotiations (also with third countries) on specific policies (for example, Lavenex 2015; Lavenex and Schimmelfennig 2009).

Building mainly on primary sources such as reflection documents of EU institutions, letters and interviews to newspapers, and important speeches of political leaders, the article will look at the history of DI primarily from the perspective of policy-makers. The

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length of the period considered and the number of political contributions on DI required a careful selection of the documents analysed. This selection was driven by the four criteria John Scott (1990, 189-90) highlights in approaching and utilising primary sources: that is, authenticity (soundness of the origins and authorship), credibility (accuracy and reliability), representativeness (survival and availability of the documents as proxies for their importance) and meaning (referring to the document's clarity and comprehensibility, and its meaning in the social and political context within which it was produced).

Because of its interest in treaty reforms, the article will mainly deal with DI in primary law. For the same reason, it will mainly look at governmental contributions and positions as well as the papers and proposals presented by the EU institutions. As Frank Schimmelfennig declares, "DI results from intergovernmental negotiations on European treaties and legal acts if member states either refuse to participate in integrated policies or accepted individual rules, or if they are excluded from participation" (Schimmelfennig 2019, 177). Therefore, it is not surprising that DI has become central to the political debates every time the EU had to face a dilemma of deepening or enlarging its integration (Kelemen *et al.* 2014).

The article starts by briefly presenting its place in the literature on DI and added value, and introducing the three main core dilemmas of DI and their relationships with the crises that the EU had to cope with. It then moves on to an analysis of the political dilemma between unity and flexibility typical of the 1960s and 1970s. Next, it presents the dilemma concerning the most appropriate legal instruments for promoting DI – particularly relevant in the 1980s and 1990s. Finally, it turns to the institutional dilemmas and the reconciliation between the governance structures of the EU and the differently integrated MSs, beginning in the 2000s. Moreover, it will also focus on the institutional organisation of DI, namely the governance processes by which MSs shape differentiation (Lavenex *et al.* 2009). This article will conclude that the politics of DI will become a permanent feature of the EU because it calls into question important aspects of EU integration, namely its policies, its polity and the mechanisms of integration (Telle *et al.* 2021).

DI dilemmas and crises in the EU

DI is a key topic in contemporary EU studies. Particularly in the last 25 years, scholars have studied almost every aspect of non-homogeneous and flexible integration. They have formulated useful typologies and conceptualisations (Stubb 1996; Lavenex and Križić 2019), investigated the reasons behind its adoption (Schimmelfennig 2019), its legal instruments (Schimmelfennig and Winzen 2020), its internal and external dimensions (Holzinger and Tosun 2019). Less attention has been devoted to the political debates about DI (Leruth 2015), and when this is done, the analysis is limited to specific negotiations (Stubb 2002) or periods (Telle *et al.* 2021).

A reconstruction of political debates is inevitably a narrative, and a narrative is inevitably an interpretation. However, "not only is politics a highly contingent affair, but what we currently think of as 'true story' [. . .] is to a great degree politically contingent too" (Gilbert 2008, 658). With this risk of oversimplification clearly present, this article will read the debates on DI through the lenses of what Nicole Koenig (2015) identifies as the three DI's core dilemmas. The first is a political dilemma that reflects the

contrast between flexibility and unity. This dilemma is particularly relevant when DI is based on exclusivity: only MSs fulfilling strict accession criteria can have access to the 'club'. "The fear", Koenig points out, "is that differentiation can spur further heterogeneity, undermine the fragile sense of a common European identity and trigger tendencies of disintegration" (7). The second dilemma is a legal one and refers to the question of whether DI should be organised within or outside of the EU legal framework. In general, Koenig writes, instrumental differentiation originated by enlargement is temporary and organised within the EU legislation. However, when confronted with important and irreconcilable preferences, MSs may decide to act outside the EU treaties. Finally, the third dilemma refers to the EU's institutions: when promoting DI, the MSs can use existing institutions, modify their composition or establish parallel governance structures.

These dilemmas were *always* present in the minds of the EU's political leaders. However, they also reflect three different stages of the debate about DI. While it is difficult to separate these stages from a chronological point of view, it is useful from a heuristic point of view. As it will appear from the discussion of the sources, there has been a shift in the emphasis placed on the various arguments and approaches in favour or against DI. Paradoxically, the last document considered here, the White Paper on the Future of Europe, is also a summary of the debates about the future perspective of EU integration and DI.

With this premise in mind, one may note that the discussion about the unity of the integration process (a political dilemma) took place mainly between the 1950s and the 1980s. This debate was a precondition for the definition of (new) legal instruments to promote DI and the related discussion held between the mid-1980s and the new century. The debate about the institutional implications of DI is more recent and reflects the growing complexity of the EU as a result of the 2004-2007 enlargements and the 2008-2012 economic crisis.

Each period coincides with a specific crisis, defined as "a turning point in an unstable and dangerous time when decisive but uncertain change is impending" (Ross 2011, 1-2). The debate regarding the political dilemma of DI was about the uniqueness and final aim of the EU integration process. The corresponding crisis was what George Ross (2011, 11) calls a "crisis of design" – epitomised by the dramatic rejections of the United Kingdom's (UK) application by France in the 1960s, or the 'empty chair crisis' resolved by the Luxembourg compromise. While this type of crisis was not confined to the Union's early years, its subsequent crises of design rarely matched the drama of those initial watershed moments. However, the debate about the political dilemma was also a consequence of the economic crisis of the 1970s, when the EU's governments were tempted by a 'beggar-thy-neighbour' approach instead of coordination and collaboration. In that period, some critical decisions regarding DI were nonetheless taken – for instance, the creation of the European Monetary System (EMS).

The subsequent debate about the legal instruments needed to adopt mechanisms of DI began mainly in the 1980s and continued until the end of the 20th century. During this period, the EU's national governments were all optimistically oriented to find new ways to relaunch the Union's integration. At the same time, after the fall of the Berlin Wall, the prospect of the accession of new MSs raised concerns about the sustainability of the enlargement project. As previous enlargements had shown, every such step implies new

negotiations about the EU budget, institutions and policies. In that case, the foreseen accession of twelve new states was paralleled by a debate about DI as a solution to an inevitably more complex union. Enhanced cooperation is one of the DI mechanisms adopted to solve this kind of dilemma. The 1985 Schengen Agreement was another example of an intergovernmental differentiation project. While enhanced cooperation was established within the framework of the EU legal system, the Schengen Agreement and the subsequent Schengen Convention were signed outside it – and became part of the *acquis* only in 1997.

Finally, the third (institutional/organisational) dilemma is typical of a more recent period – starting with the new century. In this period, discussions no longer centred on the acceptability of DI but mainly on the coordination mechanisms required between existing and newly adopted institutions – particularly in the attempt to preserve the Eurozone from the global economic turmoil. The move of the EU from permissive consensus to constraining dissensus (Hooghe and Mark 2009), as well as the rise of populist and Eurosceptic parties, constitute two other challenges to the legitimacy and effectiveness of EU institutions. The third dilemma is well encapsulated in Tobias Kunstein and Wolfgang Wessels's (2013, 11) words: "'More Europe' in terms of making EMU [the EU's Economic and Monetary Union] more resilient to crises will in all likelihood be accompanied by 'less Europe' in terms of differentiated integration in the EU polity as a whole".

The political dilemma: from the Treaty of Rome to the Delors Commission

EU integration has always been considered without a unique and clear *finalité*. Despite Jean Monnet and Robert Schuman imagining a united Europe in which states would have been integrated in equal measure, forms of DI were already present in the Treaty of Rome, signed in 1957 to establish the European Economic Community (EEC). Indeed, this agreement contained provisions that restricted its territorial scope, specific exceptions for some MSs and numerous safeguard clauses: at least six of the ten final annexes promote forms – albeit bland and transitory – of DI (Hanf 2001).

The debate on DI became central just a few years after the entry into force of the EEC Treaty, in the context of the first round of enlargements, after the French rejection of the UK application in 1963 and 1967, and the 'empty chair crisis' in July 1965.[1] On 4 February 1969, the French President Charles De Gaulle hosted a lunch at the Elysée Palace with Christopher Soames, the UK Ambassador to Paris. Taking advantage of the absence of other guests, the General explained his viewpoint on numerous topics – including the increasingly divergent ideas of EU integration among the six founding MSs. Given the forthcoming UK accession, de Gaulle suggested that the EU adopt the form of a wide and somewhat loose association of countries, which would include all the then EECMSs plus the seven members of the European Free Trade Association (EFTA). He also proposed that this association be guided by a *directoire* formed by representatives of the larger countries. According to what was reported in the telegram sent by Soames to

[1]President Charles De Gaulle opened the empty chair crisis when he decided to dismiss all noteworthy French representatives from Brussels because he refused the Commission's proposal on how to finance the Common Agricultural Policy and rejected the qualified-majority voting system in the Council.

his Foreign Ministry, the French President hoped for the development of the EU into a broad economic association, but with a limited council formed by France, West Germany, Italy and the UK (Pine 2004, 63).

De Gaulle's proposal was just the starting point of a debate that, since the 1970s, would always characterise the EU. As an example, on 19 November 1974 – in a speech entitled "France, Germany and Europe", delivered to the French Organisation of the European Movement – the former West German Chancellor Willy Brandt declared that no country had the right to prevent some MSs from cooperating more closely. Therefore, he expressed his preference for a "graduated integration" (*Abstufung der Integration*) (Brandt 1975). The assumption underlying Brandt's reasoning was that the then nine MSs were at different stages of development. For this reason, they needed different treatment in order not to threaten the survival of the integration effort itself.

Brandt anticipated what would be written in the Tindemans Report commissioned by the European Council in December 1974. Emerging from years of economic crisis, the nine MSs were profoundly interested in continuing on the road to integration. However, there were very different viewpoints among them about the exact meaning of the expression 'European Union' as coined by French President Georges Pompidou. As a consequence, the Tindemans Report proposed a series of institutional reforms and suggested "a new approach" to integration where "each country will be bound by the agreement of all as to the final objective to be achieved in common; it is only the timescales for achievement which vary" (Tindemans 1976, 20-21).

The Tindemans Report remained on the agenda of four European Councils without being discussed. In November 1979, German-British philosopher Ralf Dahrendorf gave a Jean Monnet Lecture at the European University Institute in Florence. In his words, the "European Union has been a remarkable political success, but an equally remarkable institutional failure" (Dahrendorf 1979, 8). "The European Communities as such", Dahrendorf continued, "seemed to have reached the end of their tether. Because the Community got increasingly entangled in technicalities which had little to do with either the political concerns of members or even the European interest, new ways had to be found" (14). To overcome this setback, Dahrendorf supported the idea of a Europe *à la carte*, based on the example of the EMS: "Europe *à la carte*, that is common policies where there are common interests without any constraint on those who cannot, at a given point of time, join them, must become the rule rather than the exception" (21).

Dahrendorf gave his speech a few months after the signing of the Treaty of Accession of Greece to the Community and on the eve of the enlargements to Spain and Portugal, with the related concerns about the economic implications of these enlargements. Moreover, his reference to the EMS relates to a second major event that took place in the same year. The EMS was one of the first forms of DI: even if it was open to the participation of all EEC MSs, none of them was obliged to do so. Furthermore, it was not promoted by a Community treaty nor by a Commission legislative proposal.

However, the idea that DI threatens the unity of the EU was still present. In 1979, Barend Biesheuvel, former Prime Minister of the Netherlands, Edmund Dell, former UK Trade Minister, and Robert Marjolin, former Vice-president of the European Commission, presented their "Report on European Institutions" to the Dublin European Council. These 'three wise men' condemned DI without appeal by saying that

"Differentiated solutions should not be allowed to proliferate either by design or by oversight after enlargement. They should be adopted only where there is no practical alternative, after careful consideration of the possible ill effects" (Biesheuvel *et al.* 1979, 69).

Nevertheless, the 'Three Wise Men Report' did not put an end to the debate on the use of differentiation mechanisms. During the same period, Italian Member of the European Parliament (MEP) Altiero Spinelli proposed to the European Parliament (EP) the "Draft Treaty establishing the European Union". Article 82 of this text, approved by the EP on 14 February 1984, *de facto* advocated, for the first time, the creation of a 'core Europe' (European Parliament 1984). On 24 May 1984, a few weeks before the Fontainebleau Summit, French President François Mitterrand suggested the creation of a "two-speed Europe" in a speech to the EP plenary session (Mitterrand 1984). Mitterrand probably thought that Article 82 of the 'Spinelli Treaty' might serve the French cause as a counterbalance to the minimalist British integrationist position. Although supported by President Mitterrand, Spinelli's project did not meet the favour of all EU national governments (Beach 2005).

During this period, the *ad-hoc* committees established by the European Council to study institutional reform and the eventual adoption of DI mechanisms were always very cautious, they feared that DI could be useful only in certain circumstances and that it also posed a threat to the unity of the EU. An example is the report presented by Irish Senator James Dooge to the Brussels European Council in March 1985, according to which DI could be useful only if it was "limited in time [...], based solely on economic and social considerations and respect[ed] the principle of budget unity" (Dooge *et al.* 1985, 109).

Meanwhile, on 6 January 1985, the new European Commission took office, chaired by French socialist Jacques Delors, who had been a member of the EP since 1979. It was precisely in Strasbourg that Delors would have the opportunity to develop ideas about a variable-geometry Europe that would guide his future action (Olivi and Santaniello 2005, 129-30). In January 1990, before the European Parliament, Delors put forward the hypothesis of a concentric Europe with a federal heart or inner circle, a second circle comprising an economic European space, a third one consisting of a network of cooperation agreements and a fourth one made up of agreements with a more typical confederal variable-geometry nature.

Delors alone would not have been able to relaunch the EU integration project. His appointment was the consequence of a more favourable climate towards integration in the mid-1980s resulting from the convergence of economic rationales (Europe was falling behind in global competitiveness, unemployment was rising and higher than in competitor countries) and political will. The emphasis in the debate on DI was no longer on the eventual survival *per se* of the EU as a unique process of integration, but on the most effective and legitimate instruments to deal with the challenges the EU faced.

The legal dilemma: from Schengen to Nice

Attention to the legal instruments started when the EU moved away from its definition as a regulatory state or a trade community to become a (sort of) political union. This change went hand in hand with the perspective of new enlargements, which became particularly important after the events of 1989 in Central and Eastern Europe. There was also a third

transformation that, as said before, is beyond the scope of these pages, that is, the need to regulate the association of non-MSs, leading to more external differentiation (Lavenex 2015).

A first decision related to the adoption of a more political dimension of integration concerned the Schengen Agreement signed on 14 June 1985 by five of the then ten MSs. Three of the signatory countries (Belgium, Luxembourg and the Netherlands) had already abolished border controls in 1960 as part of the Benelux Economic Union, and precisely this agreement served as a model for the idea launched at the Rambouillet Summit in May 1984 by French President Mitterrand and West German Chancellor Helmut Kohl.

The Schengen Agreement was signed outside the EU legal and regulatory framework for three main reasons: the lack of consensus among MSs on the desirability of border-control removal; the fact that the five signatory countries did not want to wait for other MSs to approve new standards; and, finally, because of the lack of institutionalised procedures for such enhanced cooperation. Nevertheless, the agreement remained open to other MSs, some of which would join it during the 1990s. Only the UK and the Republic of Ireland would sustain their resistance over time.

The Convention implementing the Schengen Agreement entered into force in September 1993 and became operational in March 1995. Nevertheless, the participating countries required the application of numerous clauses and derogations, as well as periods of suspension at times of heightened social tension or during terrorist attacks. Since the approval of the Amsterdam Treaty in 1997, the Schengen Agreement has been part of the Union's *acquis communautaire*. However, the UK and Ireland were granted a permanent derogation, while Denmark became a Schengen member only in 1996. Moreover, the Schengen Agreement also established conditions for the full abolition of border controls. Among them, particularly important were the need to maintain strict external border control and the fight against corruption. More than ten years later, the lack of respect for these conditions by Bulgaria and Romania was used to place these two countries in the Schengen 'waiting room'.

About six months after the signing of the Schengen Agreement, in February 1986, EEC MSs signed the Single European Act (SEA): for the first time, a Community treaty recognised the possibility that MSs might proceed with integration at different speeds (see Arts. 15 and 18, SEA). However, it was mainly with discussions surrounding the Treaty of Maastricht and the eventual creation of the Economic and Monetary Union (EMU) that the debate about DI saw a relaunch. The Intergovernmental Conference (IGC) leading to the Treaty of Maastricht opened in December 1990 in an EU that was facing new and unexpected scenarios after the fall of the Berlin Wall and the end of the communist regimes in Central and Eastern Europe. However, during the negotiations, it seemed even clearer that MSs held profoundly different ideas – not only on which strategy to follow to provide the EU with "the necessary means of action" (European Council 1990, 1) but also on the EU's very future. Even at this juncture, the UK Prime Minister Margaret Thatcher announced, ahead of the IGC, that the UK would veto and, in any case, fight hard against any prospect of achieving EMU (Olivi and Santaniello 2005, 168). Despite British resistance, the other governments continued their discussions and came to the agreement that an MS could avoid certain treaty obligations in some

policy areas. In other words, they created the premise for the opting-out. The opt-out from EMU (and from social policies) thus became an integral part of the Maastricht Treaty.

The Maastricht Treaty presented significant innovations related to the legal dilemmas of DI. As part of the establishment of EMU, the treaty made an important distinction between objective and subjective differentiation (Hanf 2001, 14-5). Objective differentiation referred to those countries that did not meet the economic criteria necessary to participate in the adoption of a single currency. These countries were obliged to participate, but only from the moment at which they met the so-called 'Maastricht criteria' (see Art. 109K of the Maastricht Treaty). The category of subjective differentiation, on the other hand, referred to countries like the UK and Denmark, which were guaranteed the right – but not the obligation – to adopt the single currency. The situation of Sweden was peculiar. Formally considered an MS with an (objective) derogation, before accessing the single currency, it was required to change its national legislation on the regulation of its central bank and adopt the criteria necessary to access the Exchange Rate Mechanism (ERM II) between the Euro and national currencies (Koller 2012, 4).

Another example of variable geometry in the Maastricht Treaty was the Protocol on Social Policy, which would not apply to the UK until 1997, when that country decided to join it. Its non-application to the UK made it possible for the other MSs to adopt the annexed Agreement on Social Policy. However, the chosen differentiation mechanism also worked in reverse and constituted the basis for what, in the Amsterdam Treaty, would become the mechanism of enhanced cooperation: it is not that an individual country (for example, the UK) is 'excluded' from greater integration, but rather that the other countries decide to integrate more closely in a specific public-policy field. In fact, unlike the EMU agreement, the Protocol on Social Policy did not contain provisions on possible UK accession.

The entry into force of the Maastricht Treaty was not a simple matter: on 2 June 1992, the citizens of Denmark rejected it in a national referendum. As a consequence, after lengthy internal negotiations, on the following 30 October, Danish political parties presented a document entitled "Denmark in Europe", focusing on issues such as defence policy, irrevocable fixing of exchange rates between currencies, citizenship of the Union, cooperation in the fields of justice and home affairs, openness and transparency in the EU decision-making process, the effective application of the principle of subsidiarity and the promotion of cooperation between MSs in the fight against unemployment. In the Conclusions of the Presidency (European Council 1992), the Council accepted *de facto* all the conditions set by Denmark, thereby adopting DI measures.

Following the approval of the Maastricht Treaty, an intense period of institutional reform began – and DI was a key element in all debates. In particular, the prospect of new enlargements to Central and Eastern European countries and the difficulties in implementing the third stage of EMU compelled national governments to continue reflecting on the EU's institutional structure and the inevitable forms of DI (European Council 1993).

On 24 and 25 June 1994, the Corfu European Council inaugurated a Reflection Group responsible for preparing the new IGC scheduled for 1996 (Beach 2005). Its mandate included the proposal of "any other measure deemed necessary to facilitate the work of the institutions and guarantee their effective operation in the perspective of enlargement"

(European Council 1994, 11). It was in the framework of this debate that, in September 1994, German Christian Democratic Union (CDU) politicians Wolfgang Schäuble and Karl Lamers proposed the creation of a "Core Europe" in a document, later adopted by the CDU/CSU group of the German Parliament (Schäuble and Lamers 1994). The 'Schäuble-Lamers Report', as this document is commonly known, did not bind the German government. However, the text received great attention and, sometimes, prompted strong opposition (Chevènement 1994). In favour of a more differentiated EU, one can find French Prime Minister Édouard Balladur (1994a; 1994b), but also British Prime Minister John Major (1994). All these debates were conducted in the shadow of the next enlargements. All the leaders were aware that enlargements in the past had brought serious consequences for the EU, and they knew that the fifth enlargement would be the largest and most uncertain in the Union's history. They also knew that the new MSs in Central and Eastern Europe would increase the EU's economic and social imbalances – altering, at the same time, its institutional and political equilibria. As a consequence, the discussion turned to the institutional reforms that the EU needed to continue to be effective. The legal mechanisms adopted to make the EU more differentiated were part of this debate (Brunazzo 2017; 2019).

An example comes from the open letters published by German Chancellor Helmut Kohl and French President Jacques Chirac in 1995 and 1996 in which they expressed their support for a multi-speed Europe (Chirac and Kohl 1995; 1996), confirming that the debate was no longer on the possibility of DI but on the instruments needed to promote it. On 27 February 1996, the German and French foreign ministers – respectively, Klaus Kinkel and Hervé de Charette – published a joint paper (Kinkel and de Charette 1996). Among other things, the document proposed the introduction of a general clause on enhanced cooperation to allow those MSs that had the desire and ability to develop closer forms of cooperation to do so. It suggested that it would be sufficient for some MSs to submit cooperation projects to the Council. These projects, once approved by the Council, would be considered approved by the Union as a whole. This kind of agreement would have introduced the necessary flexibility into the treaties without diminishing the coherence of the Union.

The Amsterdam Treaty, entering into force in May 1999, introduced numerous innovations in EU institutions (Shaw 1998). Among them, it allowed the creation of enhanced cooperation. Therefore, it is not surprising that, at least initially, DI was not on the agenda of the 2000 IGC. For this conference, MSs tried to keep the number of issues that they had to address to a minimum to maximise the possibility of agreement and avoid delaying the enlargement. In the European Council meetings held in Cologne (June 1999) and Helsinki (December 1999), the topic of DI was only marginally touched on. However, it was still very present in the minds of policy-makers.

In September 1999, European Commission President Romano Prodi invited a group of three independent 'wise men' to write a report on the implications of enlargement for the EU. Long passages of this report are dedicated to DI. In particular, one can read,

> the European Union would not survive if Member States were allowed to pick and choose among obligations of the Union. But [enlargement] does imply that, in a more heterogeneous aggregate of Member States, some will wish to go further or faster than others (Weizsäcker *et al.* 1999, 7).

The debate about DI was at that time intertwined with five other debates related to the widening and deepening of the EU: the creation of EMU; the need for integration in the field of justice and home affairs; the creation of a common security policy; the concerns produced by the impending enlargement; and, finally, the need to overcome the opposition of reluctant states to integration in sensitive areas (Stubb 2002, 107). However, in comparison with previous debates, the discussion was more clearly focused on technical issues, such as the decision-making mechanisms and the MS threshold necessary to adopt flexibility mechanisms, its application to the second pillar of Common Foreign and Security Policy and the conditions to be met once closer cooperation between a group of MSs would be achieved.

Germany and France were, once again, among the more proactive MSs. In a speech at Berlin's Humboldt University in May 2000, Joschka Fischer, the German Foreign Minister, proposed the creation of a Europe based on enhanced cooperation: "Does the answer to the twin challenge of enlargement and deepening, then, lie in such a differentiation, an enhanced cooperation in some areas? Precisely in an enlarged and thus necessarily more heterogeneous Union, further differentiation will be inevitable" (Fischer 2000, 12).

A month later, in a speech to the Bundestag in Berlin on 27 June 2000, Jacques Chirac, President of the French Republic, announced the beginning of a transitional period leading to an institutional reorganisation of the EU, also suggesting the establishment of a "pioneer group" of countries that, together with Germany and France, intended to participate in all forms of enhanced cooperation (Chirac 2000).

Not all MSs agreed with the French and German positions (Philippart and Sie Dhian Ho 2000). The reasons behind the opposition to further forms of differentiation relied on the lack of recourse to enhanced cooperation after the entry into force of the Amsterdam Treaty; the fact that treaty changes could be perceived (in particular by candidate countries) as a possible EU fragmentation; and the fact that, in all probability, the new treaty would have extended the use of qualified majority voting, making the use of enhanced cooperation increasingly unlikely.

Meanwhile, in the public debate, the topic was openly addressed by many leaders – more or less critically depending on their individual, national circumstances (Brunazzo 2019). The subsequent need to reconcile the different positions was very well exemplified by the speech given to the EP by the President of the European Commission, Romano Prodi, on 3 October 2000:

> [w]e need to simplify the mechanism for closer cooperation, at the same time leaving the door open to those Member States that wish to participate. The coherence of the *acquis communautaire* and the uniformity of the judicial framework must be preserved. Closer cooperation should be an inclusive not an exclusive instrument, but no-one should prevent a group of Member States from achieving the closer union to which the Treaties explicitly refer and which should be properly regulated within the framework of the Union's institutions (Prodi 2000).

As Alexander Stubb (2002, 119) points out, DI was one of the simplest issues to negotiate in Nice on the occasion of the European summit devoted to a new Treaty reform. The only divisive issue was flexibility in defence policy, which was abandoned due to British, Swedish and Irish opposition. However, an agreement was also reached regarding the

adoption of differentiation forms in this field. Nonetheless, the Nice agreement was considered weak and disappointing from the beginning. So, it is not surprising that the political debate on DI did not end there (see, among others, Jeanneney *et al.* 2001; Villepin and Fischer 2002; Chirac 2003). What became clear to everyone, however, was that

> [f]rom Maastricht up to the end of the IGC in 2003, the debate on flexible integration remained largely theoretical, as the pressure of enlargement was growing but remained a somewhat future perspective. Now, as enlargement approache[d], all countries [were] positioning themselves in an effort to either maximise their influence or to limit their perceived marginalisation (Grevi 2004, 44).

The institutional dilemma: Lisbon as a milestone for DI

With the Lisbon Treaty of 2007, the debate on DI became more focused on the institutional and organisational dilemma. This shift seems to follow logically from the former: once DI has a legal basis laying down the conditions under which it can be introduced, the question shifts to how DI is governed in practice – which brings in institutions. To be sure, questions related to the governance of DI were not completely new. For example, a particularly well debated aspect in the negotiations for the Maastricht Treaty concerned decision-making procedures in the social policy field; given the fact that the UK had obtained an opt-out from this policy, what was its role in the related institutions? The outcome of this debate was formalised in Point 2 of the Protocol on Social Policy: the UK accepted to be excluded from the deliberations and the adoption by the Council of legislative proposals made on the basis of the Protocol. At the same time, the British commissioner was not a national representative, and they could continue to participate in the debates and vote. The discussion about the Members of the European Parliament (MEPs) elected in the UK was more complicated: they were elected at a national, not at a Europe-wide level. However, in January 1994, the EP adopted by a large majority a resolution according to which British MEPs could participate in decisions on matters on which their country had obtained an opt-out.

Moreover, the Lisbon Treaty makes the adoption of enhanced cooperation easier, promotes permanent, structured cooperation in the field of defence, maintains, if not widens, the number and scope of protocols concerning specific countries (and therefore the derogations granted to them) and formalises existing differentiation practices. As a consequence, the debates moved from the legal instruments to the governance of DI. This issue is particularly relevant when one considers the increase in the 'agencification' of the EU that goes in parallel, with its implications for internal and external EU differentiation (Lavenex and Križić 2019).

The outbreak of the global economic crisis in 2008-2009 made the need for DI even more urgent. In terms of institutional differentiation, the Euro Summit (formed by the leaders of the Eurozone countries) has emerged as a potential rival of the European Council. At the same time, the Eurogroup (formed by the economic ministers of the Eurozone countries) works in parallel with the Ecofin Council, and its meetings are prepared by the Eurogroup Working Group, the correspondent of the Economic and Financial Committee, but gathering together only high-ranking officials from the Eurozone (Kunstein and Wessels 2013).

The emerging focus on the Eurozone situation is clear. Always hesitant about the idea of a differentiated Europe, German Chancellor Angela Merkel changed her opinion when confronted with the need to consolidate the economies of the Eurozone countries (Simon 2011). On 8 November 2011, during a debate at the University of Strasbourg, French President Nicolas Sarkozy declared, "We are 27. It is quite clear that we will open to the Balkans. We will soon be 32, 33 or 34. No one can think that federalism, total integration, is possible in 33, 34 or 35 countries". However, the French President continued, "there will be no single currency without an increase in economic integration and convergence, and it is in this direction that we must follow". As a result, Sarkozy concluded, "there will clearly be a two-speed Europe: a speed towards greater integration in the Euro area and a more confederal speed" (*Reuters* 2011).

This position was not shared by the European Commission. The day after Sarkozy's speech, the President of the European Commission, José Manuel Barroso, voiced what was intended as a direct retort to France's President: "Let me be clear – a split union will not work" (Barroso 2011).

Despite the position of the President of the Commission, Sarkozy and Merkel addressed a letter to the President of the European Council, Herman Van Rompuy, in which they proposed a list of reforms for the policies and institutions of the Euro area (including regular summits of the heads of state and governments of the Eurozone's countries, a stronger and more structured role for the Eurogroup and reinforced tools for enforcing compliance with budget constraints set at the EU level) as well as a reference to Article 136 of the Treaty on the Functioning of the European Union (TFEU) and the instrument of enhanced cooperation to allow the adoption of legislation common to the Euro-area countries on sensitive matters (Sarkozy and Merkel 2011). Several countries regarded this Franco-German idea with suspicion (see, as an example, *Radio Poland* 2012). Nonetheless, DI was an issue clearly addressed in all the strategic EU documents and reports concerning the future of the Eurozone (Van Rompuy *et al.* 2012a; 2012b; European Commission 2012; Juncker *et al.* 2015).

An important call for a more differentiated Europe also came from the President of the European Commission, Jean-Claude Juncker. On 15 July 2014, on the occasion of his opening statement in the EP plenary session, Juncker declared that the President of the Commission has the task of defending the general interests of Europe and, to do so, they will have to work with everyone. He also added that MSs do not necessarily have to travel at the same speed (Juncker 2014, 13). So, it is not surprising that DI was one of the five scenarios proposed for Europe by 2025 in the Commission's White Paper on the Future of Europe (European Commission 2017).

Conclusion

As Frank Schimmelfennig (2019, 189) emphasised, "[t]he heterogeneity of EU MSs preferences, dependencies and capacities has strongly increased thanks to the expansion of the EU's membership and tasks. Moreover, the recent EU crises have reinforced heterogeneity". This is true when looking not only at internal DI but also at the association of third countries to the EU. At the same time, heterogeneity has led the MSs to increasingly adopt mechanisms of DI.

However, this begets the question of what kind of heterogeneity emerges from the political debates presented in this article. Stefan Telle *et al.* (2021) adopt a distinction that can be useful for interpreting the political debates about DI since the 1950s. In their words, political actors can have different preferences about *policy* differentiation (originated in the diversity of preferences concerning policy integration), *polity* differentiation (that is, the impact of differentiation on the nature and functioning of the EU as a whole) and *mechanisms* of differentiation (that is, the use of opt-out or enhanced cooperation). The political debates presented here have shown that the three concepts are interlinked: more integration in a specific policy can lead to a specific model of integration also thanks to the adoption of opt-outs, as happened in the case of EMU.

At the same time, the political debates discussed in this article show that, despite the growing use of DI mechanisms, the three dilemmas of DI have not been solved. DI will always challenge the idea of an ever closer union stipulated in the EU treaties, will always require a fair degree of institutional innovation and will always call into question the complexity and legitimacy of the EU institutions.

The White Paper on the Future of Europe shows this very well. Far from proposing a clear-cut model of EU polity, it prefers to outline five scenarios going from the EU's retreat from certain policy areas to the creation of a quasi-federation. The pros and cons of scenario no. 3, "Those who want more do more", are summarised as follows:

> The unity of the EU at 27 is preserved while further cooperation is made possible for those who want. Citizens' rights derived from EU law start to vary depending on whether or not they live in a country that has chosen to do more. Questions arise about the transparency and accountability of the different layers of decision-making. The gap between expectations and delivery starts to close in the countries that want and choose to do more (European Commission 2017, 20).

This suggests that the debate about DI in the EU will likely continue even beyond 2025, the temporal horizon of the White Paper.

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