



RSC 2022/ 23
Robert Schuman Centre for Advanced Studies
Integrating Diversity in the European Union (InDivEU)

WORKING PAPER

**Normative foundations and political party
views of differentiated integration**

Richard Bellamy, Sandra Kröger, Marta Lorimer

European University Institute
Robert Schuman Centre for Advanced Studies
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ISSN 1028-3625

© Richard Bellamy, Sandra Kröger, Marta Lorimer, 2022

Published in April 2022 by the European University Institute.
Badia Fiesolana, via dei Roccettini 9
I – 50014 San Domenico di Fiesole (FI)

Italy

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With the support of the
Erasmus+ Programme
of the European Union

The European Commission supports the EUI through the European Union budget. This publication reflects the views only of the author(s), and the Commission cannot be held responsible for any use which may be made of the information contained therein.

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Integrating Diversity in the European Union (InDivEU)

Integrating Diversity in the European Union (InDivEU) is a Horizon 2020 funded research project aimed at contributing concretely to the current debate on the 'Future of Europe' by assessing, developing and testing a range of models and scenarios for different levels of integration among EU member states. InDivEU begins from the assumption that managing heterogeneity and deep diversity is a continuous and growing challenge in the evolution of the EU and the dynamic of European integration.

The objective of InDivEU is to maximize the knowledge of Differentiated Integration (DI) on the basis of a theoretically robust conceptual foundations accompanied by an innovative and integrated analytical framework, and to provide Europe's policy makers with a knowledge hub on DI. InDivEU combines rigorous academic research with the capacity to translate research findings into policy design and advice.

InDivEU comprises a consortium of 14 partner institutions coordinated by the Robert Schuman Centre at the European University Institute, where the project is hosted by the European Governance and Politics Programme (EGPP). The scientific coordinators of InDivEU are Brigid Laffan (Robert Schuman Centre) and Frank Schimmelfennig (ETH Zürich).

For more information: <http://indiveu.eui.eu/>

Acknowledgments

This project received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement number 822304.

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**Integrating
Diversity in the
European Union**

Abstract

To prevent differentiated integration from being itself a source of unfairness, the report identifies certain substantive and procedural conditions that it should meet to remain fair. Substantively, no member states should be excluded from a policy if they would become worse off than they currently are as a result, nor should a state be allowed to opt out of a policy or be exempted from meeting certain standards if that would render the participating or complying states worse off than they are. Procedurally, both exclusions and exemptions should be agreed either unanimously by representatives of all member states when negotiating the accession of new members or amending the Treaties, or result from a member state choosing not to participate in enhanced cooperation by at least nine member states. Political party actors express mixed views of differentiated integration. While some view it as a pragmatic way forward for the EU, others worry about its negative implications for political equality, solidarity, and unity. Party actors from poorer and less integrated member states are generally more sceptical about differentiated integration than actors from older and richer member states because they worry about being left behind.

Keywords

Differentiated integration, European Union, party actors, democratic dilemmas, interview

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Key findings

- Differentiated integration can foster fairer cooperation between EU member states by acknowledging how one size may not fit all given the significant socio-economic differences between them and their often divergent political and cultural preferences regarding the extent and nature of the integration process.
- However, differentiated integration can also become or be viewed as unfair: it may lead to exclusions of some member states or exemptions for others from participating in various EU policy areas or meeting certain agreed standards in ways that reduce their benefits and raise their costs.
- To prevent differentiated integration from being itself a source of unfairness, therefore, the report identifies certain substantive and procedural conditions that it should meet to remain fair.
- Substantively, no member states should be excluded from a policy if they would become worse off than they currently are as a result, nor should a state be allowed to opt out of a policy or be exempted from meeting certain standards if that would render the participating or complying states worse off than they are. Moreover, the conditions governing both exclusions and opt outs/exemptions should ensure the maintenance of public goods, such as a clean environment, and common resource pools, such as fish stocks, are not eroded as a result.
- Procedurally, both exclusions and exemptions should be agreed either unanimously by representatives of all member states when negotiating the accession of new members or amending the Treaties, or result from a member state choosing not to participate in enhanced cooperation by at least nine member states. Moreover, participants must consult non-participants on the conduct of the policy area, which should remain subject to common Treaty provisions, and provide them the prospect of joining in the future.
- No member state should be able to opt out from Article 2 TEU or deny EU citizens their entitlements under the Charter of Fundamental Rights of the European Union. Indeed, in the shape of 'value' differentiated integration, differentiated integration can justify the exclusion of backsliding member states from EU decision-making in the Council and the curtailing of their access to EU funding.
- Political party actors express mixed views of differentiated integration. While some view it as a pragmatic way forward for the EU, others worry about its negative implications for political equality, solidarity, and unity.
- Party actors from poorer and less integrated member states are generally more sceptical about differentiated integration than actors from older and richer member states because they worry about being left behind.
- Party actors share the idea that differentiated integration should be subject to substantive constraints such as those outlined above. While they accept that it can be fair and ensure an equitable distribution of the costs and benefits of European integration, they fear that if left unchecked it could also result in issues such as freeriding and some paying less than their fair share.
- Party actors also advocate procedural constraints similar to those we present. They contend differentiated policies must remain open for all to join and be based on clear criteria. They also think that all member states should have a say in the Council, though only participating states should be entitled to vote. In the European Parliament, they believe all MEPs should vote on differentiated policies.
- Almost all party actors worry differentiated integration might facilitate democratic backsliding. They agree that differentiation in the areas pertaining to Article 2 should not be accepted and that the EU has the legitimacy to enforce the principles of Article 2 through legal, economic, and political measures.

Introduction

Differentiated integration is increasingly a feature of the European Union (EU). Differentiated integration means that certain laws and policies are not uniformly applied across all member states of the EU (Holzinger & Schimmelfennig, 2012). The Schengen area, Economic and Monetary Union and the European Public Prosecutor are familiar examples of differentiated integration. It arises for two main reasons (Winzen, 2016):

- Capacity differentiated integration emerges when certain member states lack the capacity to join certain EU policies, and are either temporarily excluded or exempted from joining them (e.g. temporary exclusions from Schengen and the euro zone in EU enlargement).
- Sovereignty differentiated integration emerges when a member state seeks an opt-out or exemption from participating in a particular policy area because it does not wish to integrate further in that area (e.g., opt-outs from Economic and Monetary Union).

Differentiated integration usually takes the shape of opt-outs, exemptions or exclusions from common policies. Enhanced cooperation, which allows a group of at least nine member states to integrate further in an area when not everyone wishes to do so, is also a form of differentiated integration.

But when is differentiated integration fair and democratic? This report presents the key findings of research on the substantive and procedural fairness of differentiated integration undertaken in 2019-21 as part of the H2020 project InDivEU.

This research addressed what constitutes fair and democratic differentiated integration from both an ideal, normative perspective, and empirically, through interviews with 35 political party actors from seven EU member states (Austria, Denmark, Germany, Greece, Hungary, Portugal, Romania). The first, theoretical, part of the research led us to suggest principles that should guide fair and democratic differentiated integration. The second, empirical, part explored how far key domestic actors shared these principles. Taken together, the two produce a picture of when differentiated integration can be regarded as justified and is likely to be accepted as legitimate.

The report proceeds as follows. The first section introduces party views on differentiated integration in general. It then addresses the substantive and procedural fairness of differentiated integration, as well as its relationship with democratic backsliding both theoretically and empirically. The concluding section presents policy recommendations and a 'fairness checklist' to determine whether introducing differentiated integration is fair.

Party views on differentiated integration

Little is known about what political party actors think about differentiated integration. Our interviews show that differentiated integration is divisive for them.

Who supports and opposes differentiated integration?

Respondents from richer and from more integrated member states tended to be more positive about differentiated integration than those from poorer and less integrated member states. While the former saw differentiated integration as allowing both opt-outs for those unwilling or unable to integrate further and enhanced cooperation for those able and desirous of doing so, the latter feared being excluded and relegated to a second-class status.

We found no significant differences between the views of party actors of the Left, Right and Centre. We also saw no connection between being pro- or anti-EU and positions on differentiated integration.

Party actors' arguments in support of differentiated integration

A little over half of the interviewees we contacted expressed qualified support for differentiated integration. These interviewees supported differentiated integration for both pragmatic and principled reasons and thought that it was desirable because:

- Opt-outs and enhanced cooperation enable EU integration to proceed despite stalling and disintegrative tendencies. They facilitate integration and cooperation in the absence of agreement concerning the direction of the EU. Enhanced cooperation in particular offers a way to pioneer new measures which may be then adopted by all member states.
- In the context of EU enlargement, differentiated integration provides newer member states with time to adapt through exemptions. It also protects older member states from the potential negatives of hasty integration through exclusion of new member states from certain policies.
- From a principled perspective, opt-outs also make it possible to protect diversity and respond to the democratic wishes of European peoples.

“If one country has a majority in the Parliament to go in one direction, this flexibility should be there [...] You shouldn't impose rules on countries where there is no majority in their Parliament to go that way.”

- However, many supporters acknowledged that differentiated integration could have negative implications. Therefore, they insisted that it be used with caution and within clearly established guidelines. For many, it was also viewed as a second-best solution compared with uniform integration.

Party actors' arguments against differentiated integration

The remaining respondents were more sceptical of differentiated integration. They considered that while it may be pragmatically appealing, it risked having negative implications. They considered that differentiated integration was undesirable because:

- It creates additional barriers between European countries. For example, some of our respondents worried that exclusions from the Schengen area hindered the functioning of the single market.
- It harms the principle of fairness by creating space for free-riding and limiting burden sharing.
- It diminishes equality and creates different tiers of membership, potentially leading to the emergence of Class A and Class B EU citizens.

“By admitting that there are two groups, the core group and not so core group, I think we lose this opportunity to get closer and closer and therefore I think it's jeopardising the whole idea.”

- It could lead to further disunity and ultimately to disintegration.
- However, just as supporters of differentiated integration acknowledged its limitations, so most sceptics accepted that it could be potentially useful in certain circumstances. These respondents considered differentiated integration as a 'necessary evil' which could be accepted if no viable alternative was available.

When is differentiated integration substantively fair?

Democracy needs to provide a legitimate process to make equitable collective decisions. A simple way to do so would be to say that one should have 'one law for all'. Yet, this account fails to consider that individuals have different capacities and abilities and that applying the same rule to all may result in inequitable policies.

Differentiated integration provides a way to respond to this issue and treat unlike cases differently. For example, providing exemptions from common elements of the *acquis* for new member states is a way to accommodate different capacities. However, there is a risk that differentiated integration may become substantively unfair if, for example, it enables some member states to avoid paying their fair share towards the costs of a given policy.

What can be done to make sure that differentiated integration does not become substantively unfair?

Our research identifies a series of rules that help us identify when differentiated integration is substantively fair (Bellamy and Kröger, 2019, forthcoming; [Bellamy, Kröger and Lorimer, 2022](#)).

Substantive fairness concerns redistributive social justice and what each individual owes and is due as a member of a system of social cooperation – for example, how much should people pay in taxes and what level of social benefits are they entitled to.

We suggest that to be substantively fair, differentiated integration must respect the two principles of impartiality and reciprocity:

- **Impartiality:** to be impartial, differentiated integration should recognise that people can pursue a plurality of conceptions of the good and not privilege any one of them. Differentiated integration should also acknowledge that member states and citizens might have numerous advantages and disadvantages for which they are not responsible, so that fair rules should abstract from their natural endowments and social position.
- **Reciprocity:** To respect reciprocity, differentiated integration should enable all who do their bit in a given cooperation to benefit to an agreed standard.

Therefore, differentiated integration will be substantively fair when:

- It makes (i) at least one member state better off without making any other member state worse off, or (ii) it results in everyone being better off. Opt-outs should also avoid generating additional costs for participants.
- It involves member states who are able to fulfil the obligations of membership and includes provisions for member states to assist other participants in the cooperation that suffer unexpected losses or prove temporarily unable to fulfil their obligations.
- It makes it possible for member states to fulfil their social commitments both towards their citizens and towards other member states.
- Opt-outs from club goods, such as the Euro, on sovereignty grounds are substantively fair, so long as they are consistent with membership of the EU core club of the single market.

Club goods are goods that are excludable and non-rivalrous

Public goods are goods that are both non-excludable and non-rivalrous.

Common pool resources non-excludable, but rivalrous.

- Exclusions from certain club goods, such as the Euro, should only arise if they are Pareto improvements that a) increase the benefits and lower the costs for club members and b) do not worsen the social and economic position of the excluded member state; while c) some of the enhanced benefits for club members should be employed to support entry of the excluded member state into the club, for example through increased structural funds.
- Requests for opt-outs stemming from sovereignty concerns should not be granted if they allow those member states to generate negative externalities that undermine the production of public goods or the protection of common pool resources that arise from cooperation at the EU level. For example, opt-outs allowing lower environmental standards might fall into this category. However, requests for temporary exemptions by poorer member states on capacity grounds, giving them time to adapt to higher standards, may be fair, and wealthier member states should pick up the slack. Such reasoning mirrors that of the Paris agreement on climate change with regard to developing countries.
 - For example, it is fair to exclude member states that lack the capacity to fulfil certain criteria to join the Eurozone or that request an opt-out if they consider joining it would diminish the welfare of their citizens, so long as this does not make other member states worse off.

Party views on the substantive fairness of differentiated integration

Our empirical analysis shows that impartiality and reciprocity matter in political parties' assessment of the substantive fairness of differentiated integration.

We found that most political party actors considered temporary capacity differentiated integration in EU enlargement substantively fair. These respondents considered that this form of differentiated integration respects the principle of impartiality because it allows the EU to respond to the different capacities of new member states and facilitate their integration.

“Saying that it’s the same doesn’t mean that it’s not unfair. If you ask an elephant to climb a tree it’s unfair, the elephant cannot climb the tree. [...] It’s about equity, being the same doesn’t mean that it’s fair. [...] So, I think this kind of flexible and differentiated policy and way of looking at the European project, it’s really the way of making it fairer.”

However, some also suggested that one should make sure that temporary exemptions introduced at the moment of enlargement do not become permanent, or result in newer member states being unable to profit from the same benefits as older member states.

We found more scepticism regarding sovereignty differentiated integration and permanent opt-outs from new policies. On the one hand, some respondents thought that allowing member states to opt-out from further integration is compatible with impartiality because it makes it possible for the EU to respond to the needs and wishes of its member states. Against our theoretical account, many thought that member states should not be forced to take part in policies that they do not want to partake in, even if this means that policies become more expensive for others. On the other hand, those who opposed the idea of some members opting out permanently from policies were concerned that this would breach the principle of reciprocity. They worried that these opt-outs would lead to some member states not paying their fair share and free-riding. They noticed that more and more member states only wanted to benefit from integration without contributing to it, and worried this would harm unity and cohesion in the EU.

“It should be very clear that if you want to be a member of the European Union you should participate in every aspect of it, and both the hard times as well as the good times. [...] We do not want to participate in the hard stuff that actually costs money, we do not want to increase the amount that we pay into the EU budget, even though Denmark is greatly benefiting from the European Union.”

Concerning the economic implications of differentiated integration, respondents were generally favourable to differentiated integration that made both participants and non-participants better off, or when it made participants better off but did not have a negative effect on non-participants. However, and in line with our theory, respondents opposed enhanced cooperation that made non-participants poorer. Respondents from poorer member states were the most likely to oppose this type of differentiated integration.

Overall, our research indicates that there is a trade-off between impartiality and reciprocity. Impartiality demands that differences in capacity and will between member states be acknowledged, and hence, supports differentiated integration. Reciprocity demands that everyone who participates benefits to a certain standard, and may be harmed by differentiated integration if it allows for free-riding or some member states not paying their fair share.

When is differentiated integration procedurally fair and democratic?

Differentiated integration can address some of the democratic issues generated by the EU's heterogeneity. For example, it can provide a way to ensure that all those involved in a policy have a roughly equal stake, while excluding those unaffected by it. It also makes it possible to respond to the different wishes and needs of member states, helping avoid a tyranny of the majority.

In spite of these advantages, scholars have questioned the democratic legitimacy of differentiated integration. They have suggested that it may harm the principle of political equality and generate domination. Domination entails the capacity of an agent or agency to arbitrarily impose or influence another agent(s) or agency(s) to do their will, without having to consider the reasons and interests of the dominated.

What can be done to prevent differentiated integration from creating domination?

We identify a series of criteria that differentiated integration should follow to remain procedurally fair and non-dominating.

Procedural fairness concerns fair participation within, and the legitimate exercise of power by, the political institutions of the EU.

We argue that differentiated integration will be procedurally fair when:

- The terms of collaboration are approved by the citizens of each member state (either directly through referendums or indirectly by their representatives in national parliaments and in the European Parliament) and are consistent with domestic constitutional norms.
- Differentiation in one member state does not diminish the self-determination of the peoples of an associated member state without their consent.
- It makes it possible to respond to the rich diversity and different legal systems of the Union.
- It is guided by the principles of openness and inclusivity and implemented within the EU's existing legal framework.

- For example, it is fair to grant an opt-out if a policy infringes certain fundamental constitutional structures or lacks popular support within a member state. It is also acceptable for some member states whose peoples wish to integrate further to do so through enhanced cooperation. However, it is important that differentiated policies be carried out within the EU's institutional structure and non-participants be consulted so that they can guard against differentiated integration having a negative impact on them.

Party views on the democratic nature of differentiated integration

Our empirical analysis shows that some party actors also worry about differentiated integration creating domination (Bellamy et al., 2022; Kröger et al., 2021). Whereas most respondents thought differentiated integration does not create domination, several worried that it could become a source of arbitrary exclusion.

In their views, different types of differentiated integration pose different issues.

Sovereignty differentiated integration was positively viewed as a way to accommodate the diverse wishes and needs of member states and their citizens. Party actors also considered that it has the advantage of facilitating integration when some member states do not want to integrate further. However, some worried that undemocratic governments could use sovereignty differentiated integration to justify violations of the Rule of Law.

“We cannot wait for some states that have their own idiosyncrasies in internal, national policy. So, it’s perfectly acceptable that some countries don’t want to go further in integration, that’s okay, but that decision cannot block [...] the others that want to go further.”

Enhanced cooperation was positively evaluated for similar reasons as sovereignty differentiated integration. However, some worried that enhanced cooperation will end up ‘forcing’ everyone to join policies they did not want to be involved in or create a two-tier Europe in which some member states will have more rights and power than others.

“[Enhanced cooperation] is an instrument of introducing new stuff and getting it institutionalized and then there is some gravity and some pressure to actually do stuff which might not have come out like this if it would be in another process [...] In this way, you can get people out of the way and then you start, and then the starting point is not really negotiated with everyone. So, I think it’s really, it’s rather an instrument for the big states.”

Capacity differentiated integration was more negatively evaluated. It was welcomed by a minority as a way to facilitate the integration of poorer member states. However, several political actors from Southern and Central and Eastern Europe were concerned that this form of differentiated integration could be used to exclude them from policies they may have wanted to join.

“You have processes where the rules are clear [...] therefore if you push this lever, this happens and if you pull that lever, that happens. And then there are processes like Schengen where you have no idea where the levers are, whether you need to push or pull [...] It’s an esoteric political process where you just need to convince certain governments to politically do something different. And that is a process that is unfair.”

To address these issues, our interviewees thought that it was important that differentiated policies respect three criteria, which resonate with the ones we identify in our theoretical analysis:

1. Differentiated policies should remain open for all to join on the basis of transparent and achievable criteria. They should also be subject of genuinely inclusive consultation and voting processes to ensure that they remain non-dominating.
2. In the Council all members should be consulted prior to votes on differentiated policies, but only member states taking part in a policy should be given the right to vote.
3. In the European Parliament, all MEPs should be able to vote on all policies because they represent all EU citizens, and not just citizens in specific member states.

Does differentiated integration facilitate democratic backsliding?

The issue of democratic backsliding occupies a central place in political and academic debates about the nature and future of the EU (Kelemen, 2019; Müller, 2015; Scheppele, 2018). We argue that 'value' differentiated integration can strengthen EU action against the retreat of member state governments from democratic values (Bellamy & Kröger, 2021).

Why should the EU intervene against democratic backsliding?

The democratic character of member states is essential for the EU. The EU's legitimacy and functioning rest on its competences having been democratically conferred upon it, and on the involvement of democratically elected governments and MPs and MEPs in policymaking. Democratic values also support the EU's aims of peace and prosperity. If national governments and parliaments are not fully democratic, EU legislation in which they have been involved loses some of its legitimacy. Backsliding governments may also threaten EU cooperation due to worries about corruption and a failure to apply EU law impartially.

Given the dangers that democratic backsliding creates for the EU's legitimacy and its effectiveness, it is important that the EU intervene to protect the values of pluralism that lie at the heart of European collaboration.

How can the EU intervene to tackle democratic backsliding?

Because the European Union has strong intergovernmental aspects and is formed of member states that 'govern together but not as one' (Nicolaidis, 2013, p. 531), to be legitimate, EU action against a backsliding member state must fulfil four criteria:

1. Action must not be an arbitrary imposition, which fails to consult the views and interests of the member states and their citizens, or to be accountable to them.
2. The identification of democratic failings needs to be undertaken in an impartial manner, which applies equally and consistently to all member states.
3. Sanctions must be proportionate and operate according to a pre-determined scale
4. Sanctions should target the government rather than the entire population.

How can differentiated integration help tackle democratic backsliding?

We propose a process which will fulfil the four criteria above.

To determine whether an infringement has taken place, we suggest a modification of the Commission's plans for an annual Rule of Law review cycle and its proposal for a joint regulation to protect the EU's budget from 'generalised deficiencies' as regards the rule of law. We suggest that:

- A ‘Panel of Independent Experts’, consisting of a nominee from each of the national parliaments and five from the EP, should determine the severity of the deficiencies. These experts will be vetted by the same panel constituted that determines the suitability of member states’ nominees to the CJEU.
- As part of the Rule of Law review cycle, the Commission should receive evidence from a range of organisations on deficiencies with regard to constitutional democracy. The Commission will draw on this evidence to determine whether an infringement of Article 2 has occurred.

To sanction backsliding member states, ‘value’ differentiated integration should be introduced as a measure of last resort. ‘Value’ differentiated integration represents a form of ‘reduced cooperation’ justified by a state’s inability to meet the minimal requirements for a functioning constitutional democracy (a free and fair electoral system, the respect of basic civil and political rights, and an independent judiciary). Two exclusions apply under ‘value’ differentiated integration:

- The halting of EU funding to backsliding member states: the EU can apply conditionality requirements to the receipt of EU funds. Such financial penalties should be exacted in a proportionate and targeted way, with larger infractions receiving larger penalties. In certain instances, funding can also be given directly to end users rather than via government agencies.
- Suspension of voting rights in the Council: the EU can remove certain voting rights in the Council in a proportionate manner and exclude backsliding member states from decisions in policy areas where failures are apparent. They may still take part in deliberations in the Council but not in the voting. Suspensions can be targeted against the government by allowing all elected MEPs to retain voting rights in the European Parliament.

Party views on democratic backsliding and differentiated integration

Political parties can influence whether the EU intervenes in matters of democratic backsliding. Drawing on our interviews and a follow-up survey of 42 party actors, we investigated whether they thought of democratic backsliding as a problematic issue, if they considered differentiated integration would help or hinder EU action against it, and how they thought the EU should respond to democratic backsliding.

Do party actors think differentiated integration is an issue, and why?

Democratic backsliding is a concerning development for political party actors. A wide majority of respondents considered that some EU governments are failing to uphold fully the Rule of Law and democratic principles.

Most importantly, respondents considered that a commitment to the principles of Article 2 is necessary for both the EU’s effectiveness and for its democratic legitimacy.

“If a Polish court cannot apply European law in one area, because it is not independent it means that the European law as such does not exist in Poland. [...] It’s really about the fundamental question of whether somebody who is a national of any member state, [...] can you count on a Polish court to apply the same rules as you would be able to do at home? And if the answer is no, then we have a big problem.”

Political parties of the centre and left tended to politicise democratic backsliding more than others, although we found evidence of far-right and centre-right parties raising issues about it as well.

Do party actors think differentiated integration facilitates democratic backsliding?

Critics of differentiated integration have suggested that the EU's increasing acceptance of flexibility provides backsliding member states with ammunition to justify their behaviour. Political party actors partially shared these concerns. Some worried that differentiated integration could be used by democratic backsliding governments to avoid following key rules. However, they also acknowledged that whether differentiated integration facilitates democratic backsliding will depend on how it is designed.

Hungarian opposition actors were the most concerned about differentiated integration facilitating backsliding. Specifically, they considered that making the European Public Prosecutor an enhanced cooperation rather than a compulsory policy limits the EU's ability to respond to their government's abuse of EU funding.

"We are an immensely corrupt state and clearly Viktor Orban wants a prosecutor who is dependent on the government. And he doesn't want anyone else to look into the finances of the government and how money is distributed in Hungary. And this is something that should not be allowed."

Most actors thought that differentiated integration should not apply in areas pertaining to Article 2. This indicates that although a backsliding member state may demand to be exempted from certain elements of Article 2, this would be unlikely to be acceptable to its peers.

How Should Democratic Backsliding Be Addressed?

Most of our respondents considered that the EU had the authority to enforce the principles of Article 2. They recommended a series of solutions, including:

- Legal solutions such as infringement procedures and the suspension of voting rights as per Article 7. Some actors even considered that the expulsion of backsliding member states should be on the table.
- Economic sanctions and cuts to EU funds for member states that fail to uphold the rules.
- Political approaches such as dialogue with backsliding member states, political shaming, the expulsion of backsliding governments from European Parliament party groups, or simply support for democratic responses at the national level which could yield new (non-backsliding) majorities.
- Only one respondent thought that differentiated integration might help address democratic backsliding by 'insulating' the EU from the influence of backsliding member states.
- Finally, a very small number of respondents thought that the EU should not be policing these matters. They considered that it should be down to the Council of Europe, national courts and national electorates to respond to democratic backsliding.

Recommendations

- In an increasingly heterogeneous EU, differentiated integration may not just be pragmatically appealing, but also, normatively desirable. As such, it should be considered as an option whenever uniform integration cannot be achieved.
- However, because differentiated integration can have negative effects, and can be perceived to create domination, it is important to consider whether, on balance, the benefits of differentiated integration in a specific policy outweigh its potential political and economic costs.

- If differentiated integration is pursued, certain elements of design can also mitigate potential negative effects that might follow its institution. These elements include:
 - An overall design that takes into account and respects the principles of substantive and procedural fairness as outlined in this report.
 - Inclusive deliberative practices that give non-participants in a differentiated policy area an opportunity to express their views on it.
 - Should they so wish, the possibility for non-participants to join in at a later stage based on clear and transparent criteria.
 - The involvement of EU institutions in the administration of differentiated policy areas.
 - The exclusion of the areas pertaining to Article 2 from differentiated integration.

Fairness checklist

The following questions help assess whether differentiated integration is likely to be fair. If the answer to any of these questions is 'no', then further consideration should be given to whether differentiated integration should be pursued.

Reasons for introducing differentiated integration

- Is differentiated integration being introduced to uphold the values of democracy and diversity in (a) member state(s)?
- Is differentiated integration being introduced to respond to the different capacities of EU member states?
- If introducing enhanced cooperation, have all avenues for uniform integration been tried before resorting to enhanced cooperation?

Elements of design

- Has the introduction of differentiated integration been democratically approved by the member states and their citizens (either directly through a referendum or indirectly via regular parliamentary procedures)?
- Is the proposed differentiated policy compatible with domestic constitutional norms?
- Is there a possibility for non-participants to express their views?
- Is there a possibility for non-participants to join the policy, should they wish to do so?
- Are the criteria for joining the policy clear and transparent?
- Are the EU institutions (Council, European Parliament, European Court of Justice) involved in the administration of the policy?

Effects

- Will the introduction of differentiated integration allow all member states and their citizens to maintain their equal status in the European Union?
- Will the introduction of differentiated integration enhance the self-determination of a people/member state without diminishing that of other peoples/member states?

- Will the introduction of differentiated integration result in all member states being better off, or at least none of them being worse off?
- Will the introduction of differentiated integration prevent freeriding?
- Will the introduction of differentiated integration facilitate levelling up of richer and poorer member states?
- Will the introduction of differentiated integration make it possible for (a) member state(s) to fulfil its social commitments both towards its citizens and towards other member states?
- Will differentiated integration be compatible with the maintenance of public goods and common resource pools at the EU level?
- Following the introduction of differentiated integration, will the principles enshrined in Article 2 be upheld?

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