

EU3D

Differentiation
Dominance
Democracy



To join or not to join?

An analysis of the enhanced
cooperation to establish the
European Public Prosecutor's
Office

Raquel Ugarte Díez

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Preface

The EU has expanded in depth and breadth across a range of member states with greatly different makeups, making the European integration process more differentiated. *EU Differentiation, Dominance and Democracy* (EU3D) is a research project that specifies the conditions under which differentiation is politically acceptable, institutionally sustainable, and democratically legitimate; and singles out those forms of differentiation that engender dominance.

EU3D brings together around 50 researchers in 10 European countries and is coordinated by ARENA Centre for European Studies at the University of Oslo. The project is funded by the European Union's Horizon 2020 research and innovation programme, Societal Challenges 6: Europe in a changing world – Inclusive, innovative and reflective societies (2019-2023).

The present report is part of the project's work on EU-internal differentiation. The focus is on differentiated integration (DI) with particular focus on enhanced cooperation. More specifically, the report zooms in on the European Public Prosecutor's Office (EPPO) as a case of enhanced cooperation. It draws on crisp-set qualitative comparative analysis to shed new light on this form of enhanced cooperation and discusses the findings against established theories of DI.

John Erik Fossum
EU3D Scientific Coordinator

Abstract

The treaty of Amsterdam included an innovative provision called 'closer cooperation' that allowed a subgroup of member states to move forward and deepen integration in policy areas where consensus could not be found. While scholarly interest in understanding differentiated integration (DI) has grown recently, a gap in our understanding of why member states join enhanced cooperation initiatives or not remains. Enhanced cooperation has been used to deepen integration in the areas of divorce law, the European unitary patent, property regimes of international couples, the European Public Prosecutor's Office (EPPO), and Permanent Structured Cooperation (PESCO) in the area of defence and security. Across the instances of enhanced cooperation, participation patterns remain puzzling. This report tests the explanatory power of DI theories when it comes to the case of the EPPO establishment, in which 22 member states participate to date. Using crisp-set qualitative comparative analysis, this study finds that high interdependence and relative power of member states are sufficient explanations of the decision to join when combined with non-Eurosceptic governing parties and non-Eurosceptic public attitudes. Better governance standards or Eurosceptic governing parties explain the decision not to join the enhanced cooperation to establish the EPPO. Puzzling results about the role of exclusive national identities raise further questions about the relevance of the constructivist explanations and the accuracy of the measurements commonly used in this type of research. The study concludes that understanding the motivations of member states for deciding to join differentiated integration projects or not is complex and thus, requires causality to be understood as multiple and conjunctural.

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Key Words

Enhanced Cooperation

Differentiated Integration

European Public Prosecutor's Office

Qualitative Comparative Analysis

Chapter 1

Introduction

With the entry into force of the Treaty of Amsterdam a new flexibility mechanism was added to the integration tools of the EU called closer cooperation. Closer cooperation allowed a sub-group of member states to pursue differentiated integration with the aim to 'further the objectives of the Union, protect and serve its interests' (Amsterdam Treaty, Article K.15). The procedure of closer cooperation has evolved with each treaty revision and is now called enhanced cooperation. Although enhanced cooperation is the only available mechanism for flexibility within the treaties of the European Union, it was first used by member states only in 2010. The enhanced cooperation procedure has been used to deepen integration in the areas of divorce law and family law, to establish a European unitary patent, to establish the European Public Prosecutor's Office (EPPO) and, most recently to established Permanent Structured Cooperation (PESCO) among a sub-group of member states who cooperate on defence policy.

Scholarly interest in differentiated integration (DI) is growing, yet accounts that explain the membership patterns in enhanced cooperation instances are lacking. Given the renewed scholarly interest in explaining differentiated integration and the political interest in enhanced cooperation as a potential solution in the context of the debate about the future of Europe, this report contributes to our understanding of

enhanced cooperation by studying the case of the establishment of the EPPO, authorised in 2017.

1.1 What is enhanced cooperation?

The legal basis for enhanced cooperation can be found in article 20 of the Treaty on the European Union (TEU). Article 20 states that a group of member states can request enhanced cooperation, in an area where the Union does not have exclusive competence, when consensus in the Council is not possible 'within a reasonable period'. Thus, enhanced cooperation is a measure of last resort. Article 20 also establishes a threshold of nine member states minimum to request enhanced cooperation. Furthermore, Article 20 clarifies the aim of enhanced cooperation shall be 'to further the objectives of the Union, protect its interests and reinforce its integration process'. As for non-participating member states, Article 20 establishes their right to participate in all deliberations, but not the right to vote in decisions taken within the framework of enhanced cooperation.

The Treaty on the Functioning of the European Union (TFEU) develops the provisions laid out in article 20 TEU. The TFEU mentions enhanced cooperation in articles 82 and 83 on judicial cooperation in criminal matters and definitions of criminal offenses; article 87 on police cooperation, and article 86 on the establishment of a European Public Prosecutor's Office. Article 86 TFEU introduces a fast-track procedure for resolving disagreements in the Council in the case of the establishment of the European Public Prosecutor. Title III of the TFEU (comprising articles 326 to 334) is dedicated to specifying the provisions determining when enhanced cooperation is available for member states and the procedure to cooperate within this framework.

Article 326 develops the limitations for member states wishing to request enhanced cooperation by a set of conditions. Enhanced cooperation shall 'comply with the treaties and Union Law', it 'shall not undermine the internal market or economic, social and territorial cohesion' or 'constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them'. Article 327 mentions non-participating members and explicitly calls for enhanced cooperation initiatives to 'respect the competences, rights and obligations of those

Member States which do not participate in it'. It also stipulates that non-participating member states 'shall not impede its implementation by the participating Member States'. One of the main provisions when it comes to non-participating countries is laid out in article 328 where it is stated that those states that initially do not participate can request to do so at any time, if they meet the conditions set out in the authorising decision and accept the acts adopted within the framework. Moreover, this article mandates that 'the Commission and the Member States participating in enhanced cooperation shall ensure that they promote participation by as many Member States as possible'. Article 331 establishes the procedure for member states who wish to join the Enhanced cooperation framework at a later point after it is established. The procedure for requesting and implementing enhanced cooperation is established in Article 329. The procedure for the area of foreign and security policy differs from the procedure for other policy areas concerning the request and authorisation stages (Wessels and Gerards, 2018).

The procedure for enhanced cooperation, starts with at least nine member states addressing a request to the European Commission specifying the 'scope and objectives' of their proposed enhanced cooperation. After the request, the Commission may submit a proposal for enhanced cooperation if it deems the conditions of last resort, mentioned above, are met. The Commission submits the proposal for authorisation in the Council, voting as a whole by qualified majority voting (QMV), after receiving consent from the European Parliament, also voting as a whole, with a simple majority. Once authorised the implementation of the enhanced cooperation will follow the policy-making procedures that apply to the policy area, unless Article 333 TFEU is invoked to change from the special legislative procedure to the ordinary legislative procedure. All decisions after the establishment of enhanced cooperation are taken by the group of participating countries.

Article 331(1) details the procedure for member states which wish to participate in the enhanced cooperation after it has been authorised. The member state wishing to join, notifies the Council and the Commission the intention to join. The Commission then has up to four months to decide whether the member state complied with the conditions to join and confirm the participation after positive evaluation. The role of the

Commission is important, since in the case that it concludes that the member state has not fulfilled the conditions it can propose transitional measures for the state to join or re-evaluate the intention once more. After the second negative evaluation by the Commission, the member state can submit its intention to join to the Council which can in turn confirm the participation.

In the area of security and defence policy the procedure varies in that the member states address the request to the Council, the High Representative for Foreign Affairs (HRVP) and the Commission. The Council authorises the enhanced cooperation acting under unanimity, after receiving opinions from the HRVP and the Commission and informing the European Parliament (Article 329 (2)). Similarly, when a member state requests to join, it should address its notification of intention to join to the Council, which will confirm participation unanimously, after consulting the HRVP and the Commission (Article 331(2)).

The legal basis for the enhanced cooperation procedure has evolved with each treaty reform. For some, 'the evolution of the legal basis for enhanced cooperation - from Treaty of Amsterdam to Treaty of Lisbon - is clearly aimed at facilitating its establishment' (Kubin, 2017, p. 53). The changes to the procedure included the voting rules to authorise enhanced cooperation, moving from unanimity in the Council to qualified majority voting. This meant states no longer possessed veto power when it came to authorising enhanced cooperation (Warleigh, 2002, p. 52). Also, the Lisbon Treaty introduced 'accelerator clauses' for enhanced cooperation in the areas of judicial cooperation, including the European Public Prosecutor's Office (Böttner, 2018).

Scholars have discussed the normative implications of the provisions in the treaties that regulate enhanced cooperation. Some argued that the initial inclusion of a 'closer cooperation' clause in the Amsterdam Treaty was an attempt to de-legitimise flexibility outside of the treaties, such as the Schengen agreements (Wessels, 1998). Others highlight the instrumentalisation of enhanced cooperation in treaty negotiations as a bargaining chip by the member states (Warleigh, 2002). Furthermore, scholars have argued that enhanced cooperation was a tool to manage diversity within the EU and that the push for its inclusion in the treaties did not signify the ideological positions of the Member States or the EU institutions (Warleigh, 2002). Lastly, in terms of the relations between

participating and non-participating states, the open-door principle and the provision to allow non-participating states to be present in deliberations have been seen as ‘institutional bridges’ by some commentators (Philippart and Edwards, 1999, p. 92). Likewise, some argue that Article 328 (TFEU) identifies the finalité of enhanced cooperation which is the eventual participation of as many member states as possible (Ullrich, 2013).¹

1.2 The use of enhanced cooperation

Enhanced cooperation has been used five times to agree to cooperation in policy areas where there was no consensus, mainly in the policy area of justice and home affairs and one initiative in the area of defence and security (European Commission, 2019). Enhanced cooperation has been used to cooperate in the areas of divorce law, the European unitary patent, property regimes of international couples, the European Public Prosecutor’s Office (EPPO) and Permanent Structured Cooperation in the area of defence and security (PESCO). Participation patterns across the instances of enhanced cooperation are puzzling. The few attempts to analyse them include Wessels and Gerards’ mapping of the ‘Spaghetti bowl of enhanced cooperation’ (2018). In their preliminary examination they find several cleavages between the groups of participating and non-participating states. First, they identify a Eurozone cleavage, second, a geographical cleavage (separating northern and eastern European countries from southern and western Europe), third, an opt-out periphery, and fourth, a Franco-German tandem (Wessels and Gerards, 2018, p. 26). The membership-patterns remain puzzling, however, as the observed cleavages are not visible in all cases of enhanced cooperation. Why do some states participate in some enhanced cooperation projects but not others? Figure one below shows a map of the member states that participate in the enhanced cooperation to establish the EPPO. The label of ‘late-joiners’ applies to countries that requested to join the initiative after it was requested by at least nine member states.

1 “The Commission and the Member States participating in enhanced cooperation shall ensure that they promote participation by as many Member States as possible” Article 328 TFEU.

This report explores the choices of EU member states pertaining to participating in enhanced cooperation initiatives or not participating. The examples of enhanced cooperation initiatives presented above show a variation in the number of countries and the composition of the groups and of member states that participate in each enhanced cooperation initiative. This report will focus on explaining the choices of member states to participate or not participate in the enhanced cooperation to establish the European Public Prosecutor’s Office (EPPO). The research question that drives this study is thus, why do some member states choose to participate in the enhanced cooperation to establish the EPPO and others chose not to participate?

1.3 Why study enhanced cooperation?

The purpose of this research is twofold. Firstly, it aims to contribute to the academic debate on Differentiated Integration, which is a growing field of research in EU studies. The field began to attract scholarly attention after the publication of the study by Alexander Stubb in 1996 which identified and categorised up to 30 versions of ‘differentiated integration’ (Stubb, 1996). Since then, member states have negotiated opt-outs from the treaties, and not all EU member states participate in the monetary union or the Schengen zone. Differentiation in secondary law has also increased over time and albeit there are few examples.

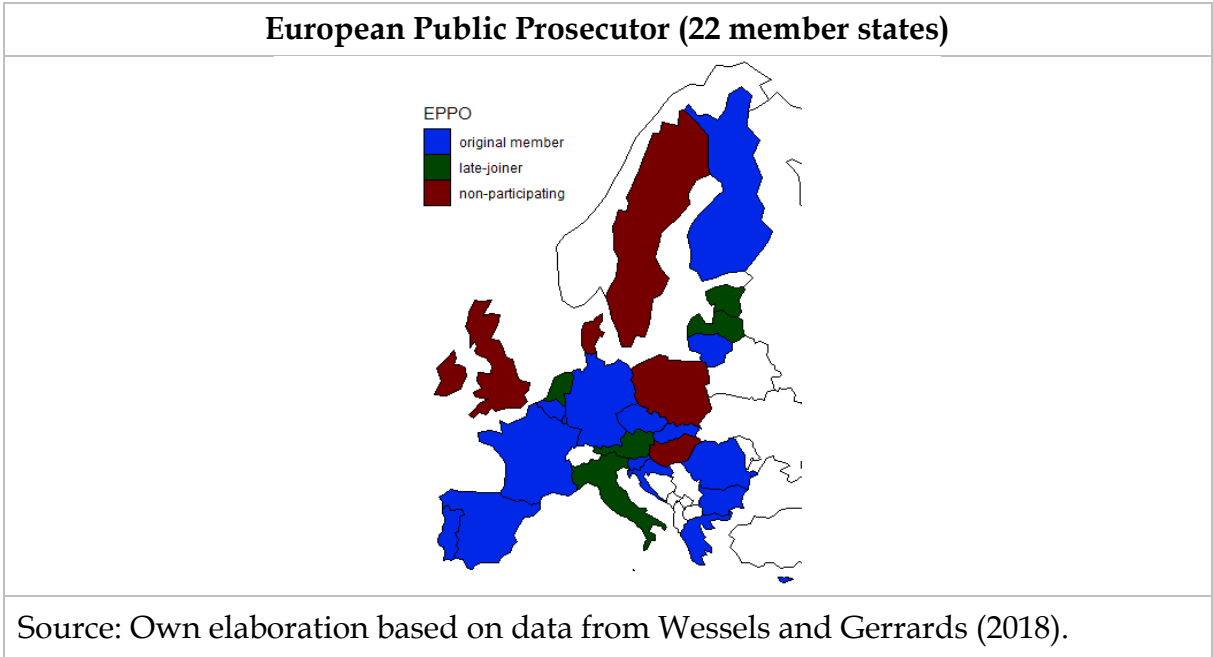


Figure 1: Participation in the EPPO

Currently, scholars argue that differentiated integration (DI) has become a permanent feature in the EU (Leuffen, Rittberger and Schimmelfennig, 2013). Some member states have secured opt-outs and not all member states are part of the monetary union or Schengen agreement. Furthermore, there are many examples of policies which are only applicable in some member states and not others, for example due to enhanced cooperation. This has been conceptualised as 'horizontal differentiation' (Leuffen, Rittberger and Schimmelfennig, 2013).

Enhanced cooperation is becoming an increasingly available tool for deepening integration among a subgroup of willing and able member states. Still, its use has remained limited since the approval of cooperation on matters of the law applicable for divorce of international marriages was established with enhanced cooperation. Yet, the fact that it has been used is relevant enough to research the instances of enhanced cooperation (Wessels and Gerards, 2018). Scholars have paid considerable attention to understanding the causes of differentiation however, authors have not researched enhanced cooperation as a type of DI. There is a sizable gap in our understanding of enhanced cooperation that this paper aims to contribute to; enhanced cooperation deserves more attention by DI scholars. The literature review section of this report identifies clearly this gap in the literature on DI and enhanced cooperation.

Secondly, the purpose of this research is to contribute to the debate on the future of European integration which has been recently reopened. Brexit reopened the debate on the future of the EU and differentiated integration. Authors argue that the debate on the future of Europe was initially reopened during the negotiations between the UK and the EU member states ahead of the Brexit referendum (Chopin and Lequesne, 2016). These negotiations led to an agreement that included the possibility for the UK to opt-out from the preamble of the treaties 'ever-closer union' in the case that the majority of UK citizens voted to remain in the EU (Chopin and Lequesne, 2016; Cardwell, 2019; De Witte, 2019; Leruth, Gänzle and Trondal, 2019). Contributions to the debate continued after Article 50 was triggered and 'Brexit' was certain. A major contribution to the debate came with the Declaration of Rome at the celebration of 60 years since the European Coal and Steel Community was established. This declaration stated that the EU is 'undivided and indivisible' but also that member

states 'will act together, at different paces and intensity where necessary, while moving in the same direction, as we have done in the past, in line with the Treaties and keeping the door open to those who want to join later' (De Witte, 2018).

The debate on the future of the EU was officially structured when the European Commission (the Commission) published its 'White paper on the future of Europe: Reflections and scenarios for the EU27 by 2025' (European Commission, 2017). This paper outlined five scenarios for the future of the EU: first, 'carrying on', second, 'nothing but the single market', third 'those who want more do more', fourth 'doing less more efficiently', and lastly, 'doing much more together' (European Commission, 2017). Again, the theme of differentiated integration appeared in the scenarios. The third scenario is explained as a 'coalition of the willing' which proceeds at an increased speed in fields chosen by the member states in the coalition of willing, such as defence, internal security, taxation or social matters (European Commission, 2017). In 2019, the Commission expanded on the White Paper from 2017 with a proposal dedicated to the third scenario which highlighted the rarely used procedure of enhanced cooperation as the way forward for this scenario. Enhanced cooperation is suggested by the Commission because realising the third scenario with enhanced cooperation would not require changes to the treaties.

The political discussion of DI, in fact, goes back to the many proposals from EU leaders ahead of every enlargement round or as a way out of crises. For example, the report from the Belgian Prime minister Leo Tindemans (Tindemans, 1976), which proposed ideas of two-speed or multi-speed European integration or the call for a 'Europe of Concentric Circles' from French Prime minister Balladur ahead of the 2004 enlargement (Kerremans, 1997). There seems to be little connection between the academic research on DI and the political discussions about the future of the EU. Thus, this report, by understanding the motives behind deciding to participate or not to participate in enhanced cooperation initiatives, advances the research on differentiated integration in the EU. In turn, the results can also inform the debate at the political level, where more and more governments and publics express concern for the fragmentation of the EU (Leuffen and Müller, 2020). The

conclusions of this study can shed light on the question that de la Serre and Wallace posed, when close cooperation was included in the treaties: is enhanced cooperation a placebo or a magic cure for the disease of heterogeneity among member states(1997)?

In this report, first I review the literature on differentiated and integration and enhanced cooperation which involves scholars writing in political sciences and legal studies. After identifying the gap in the literature, I develop a theoretical framework from the theories of European integration and DI to explore why some member states participate in the enhanced cooperation initiative to set up the European Public Prosecutor's Office (EPPO). A methodology section follows where the research design is explained and the choice to use qualitative comparative analysis (QCA) is motivated. Then, I analyse the results from the crisp-set QCA and assess the validity of the hypotheses derived from the theoretical framework. Lastly, I conclude and identify further avenues of research for DI scholars.

Chapter 2

Conceptualising Enhanced Cooperation within the Differentiated Integration Literature

In this chapter, I place the research on enhanced cooperation within the subfield of DI, by defining and categorising enhanced cooperation as a type of DI. I begin discussing the evolution of the definitions and conceptualisations of differentiation in European integration that have been developed by scholars. The conceptualisation of DI was developed mostly by scholars trying to understand and categorise the growing number of examples of differentiation in the EU. I follow this discussion with an exploration of the literature on DI, focusing mostly on the demand side and on the explanatory approaches attempting to diagnose the causes of differentiation. The review then, includes a selection of authors who engage in the normative debate of DI. After finding important concepts in the study of DI and explanations of the causes of calls for differentiation, the chapter turns to literature on enhanced cooperation. A significant part of the relevant research on enhanced cooperation comes from the field of legal scholarship. However, I find that political science and European studies scholars have increasingly studied the instances of enhanced cooperation and evaluated the effects of this form of integration on the process of EU uniform integration.

2.1 Conceptualisations of differentiation in the EU

Since differentiated integration has become a burgeoning field of research in the last two decades, the definitions and conceptualisations of differentiated integration are many. Since the 1970s a plethora of terms proposed by academics and mostly politicians have composed the vocabulary of differentiated integration. Despite the fact that the amount of definitions and conceptualisations could give commentators ‘semantic indigestion’ (Stubb, 1996), in this section I locate the enhanced cooperation procedure within the existing conceptualisations of DI.

Defining DI is not an easy task, it is a broad concept that has been often over-stretched by scholars (Dyson and Sepos, 2010). Scholarship on DI grew and became more relevant to the field of European studies as examples of differentiation increased. It became a prominent subfield of research on the EU, prompting scholars to devote entire articles to answer the question ‘what is differentiated integration?’ (Andersen and Sitter, 2006). Similar to the many definitions of ‘European integration’, definitions of DI include explanations of DI as a process, as an outcome or as a function or strategy in the toolbox of diplomats in EU negotiations.

One of the first definitions of DI as a function was coined by Alexander Stubb (1996). He understood differentiated integration as the general mode of integration strategies which tries to reconcile heterogeneity within the EU (Stubb, 1996). There are also other examples of scholars who understand differentiation as a tool or strategy to manage heterogeneity in the EU (Ciceo, 2012). Other definitions of differentiated integration concentrate on the outcome of differentiation from an institutional-legal perspective and share the basic understanding of differentiation as the situation where EU member states have different rights and obligations in regards to specific policies (Kölliker, 2001a; Bellamy and Kröger, 2017).

Many scholars define DI as a process which leads to an outcome of different rights and obligations for EU member states (Dyson and Sepos, 2010). Their definition highlights DI as ‘the process whereby European states, or sub-state units, opt to move at different speeds and/or towards different objectives with regard to common policies. It involves adopting different formal and informal arrangements (hard and soft), inside or outside the EU treaty framework (membership and accession differentiation, alongside various

differentiated forms of economic, trade and security relations’ (2010, p. 4). Also defining DI as a process, De Neve argues, that the process of differentiation has replaced the process of unified integration (2007). He coins the term *European Onion*, a multi-layered system of concentric circles that resembles the structure of an onion, and proposes it as the “‘ideal” term for multiperspectival polity’ that the EU has become as a result of the process of differentiated integration (de Neve, 2007).

One of the most comprehensive accounts of differentiated integration by Leuffen and colleagues (2013) also defines differentiated integration as a process with consequences for the EU as a polity. They argue that DI is a permanent and defining feature of the process of EU integration. Thus, the EU should be conceptualised as a system of differentiated integration (Leuffen, Rittberger and Schimmelfennig, 2013). The authors distinguish between several types of differentiation. There is vertical differentiation, concerning the differing level of centralisation of policy areas and horizontal differentiation, meaning the differing territorial expansion of cooperation in policy areas among states. Moreover they argue there is a distinction between internal differentiation among EU member states and external differentiation, which refers to cooperation that includes non-EU member states (Leuffen, Rittberger and Schimmelfennig, 2013; Schimmelfennig, Leuffen and Rittberger, 2015). Their conceptualisation is, together with Stubb’s, one of the most influential in the field to this day. In a later contribution, Schimmelfennig completes the definition of DI proposed earlier with a pair of opposite concepts (2018). EU integration can be a process of differentiated or uniform integration, but as Brexit made evident, the process of EU integration can include integration and disintegration (Schimmelfennig, 2018). His definition thus, includes a focus on the process: ‘of unequal integration growth. Whereas the level, scope, or membership of the EU increase overall, individual states do not (fully) participate’ (Schimmelfennig, 2018, p. 1156).

While different definitions of DI highlight on different parts of the phenomenon, they are largely compatible, and scholars generally agree on what DI refers to. There is, however, more disagreement among scholars of DI when it comes to specifying categories of DI instances. This is, in part, due to the abundance of terms associated with the idea of DI that have proliferated since the initial calls for differentiation. Studies

have been dedicated to creating taxonomies of the vernacular of differentiated integration attempting to keep up with the ever-growing number of terms coined (Holzinger and Schimmelfennig, 2012). Categorising instances of DI has proven a complex exercise, as it involves assigning fixed terminology to fuzzy concepts. Moreover, it involves making sense of terms which are proposed and used by politicians, who often have diverging views on what terms, like 'Europe à la carte', mean.

Authors have repeatedly reorganised the vocabulary and created new categorisations of examples of DI (Stubb, 1996; Holzinger and Schimmelfennig, 2012; Leuffen, Rittberger and Schimmelfennig, 2013; Bellamy and Kröger, 2017). Stubb categorised the vocabulary of differentiated integration according to three variables: time, space and matter of the policy (1996). First, temporal differentiation is the type under which Stubb categorises the idea of a multi-speed Europe. Temporal differentiation involves a core of member states which are willing or able to lead integration projects, expecting the rest to join later, as they all share the same long-term objectives (Stubb, 1996, p. 287). Second, territorial differentiation includes the proposals for a Europe of variable geometries or concentric circles, where member states share a less ambitious set of common objectives and recognise irreconcilable differences. Territorial differentiation thus, allows for permanent differences in member state's participation in integration projects (Stubb, 1996, p. 288). Lastly, differentiation according to policy refers to the proposal of a 'Europe à la carte'. This category of DI is seen when member states share no common objectives and proposes so all policy areas are items in a menu from which states choose if they want to participate or not to participate (Stubb, 1996, p. 288).

Stubb's categorisation has remained influential in the literature but it has also been questioned and revised, most prominently by Holzinger and Schimmelfennig (2012). They argue that the most crucial take away from Stubb's conceptualisation is the difference between temporal and permanent differentiation, because all differentiation instances include an element of territorial (space) and sectoral differentiation (policy). Their proposal for a categorisation of DI is more comprehensive and encourages scholars to consider six dimensions to categorise instances of DI. The six dimensions to keep in mind are whether DI is (1) permanent or temporary;

(2) territorial or purely functional; (3) across nation states or multi-level; (4) within the EU treaties or outside EU law; (5) at the EU level or at regime level; and (6) among EU member states or including non-EU member states (Holzinger and Schimmelfennig, 2012, p. 297). Other categories proposed by Kölliker include actual vs. potential differentiation and differentiation categories according to the cause: differentiation due to (a) unwillingness of the 'outs', (b) the unwillingness of the 'ins', (c) the inability of the 'outs', and, (d) the inability of the 'ins' (Kölliker, 2010, pp. 41–42).

Bellamy and Kröger contribute to a normative research programme about DI and categorise it according to its different functions and types of heterogeneity that causes it (2017). Firstly, instrumental DI is motivated by economic and social heterogeneity among member states. Instrumental DI includes cases of differentiation where member states opt out or are excluded from integration steps that generate collective goods (Bellamy and Kröger, 2017, p. 627). Secondly, constitutional DI applies to cases where the non-participation of member states is motivated by conflicts of EU rules with domestic constitutional norms or cultural practices. Therefore, states opt-out to protect their domestic norms (Bellamy and Kröger, 2017, p. 629). Lastly, legislative differentiation accounts for derogation or variation in standards. This type of differentiation can be explained by heterogeneity of economic, social or cultural realities (Bellamy and Kröger, 2017, p. 629). Similarly, Schimmelfennig and Winzen have developed two logics that explain differentiated integration in primary law (Schimmelfennig and Winzen, 2014, 2020a). Instrumental differentiation is likely to follow from the enlargement of the EU, likely to be temporal and likely to relate to market policies. Constitutional differentiation is, on the contrary, likely to follow from treaty revisions, likely to be long lasting, sometimes permanent, and likely to cluster on policies addressing core state powers. Thus, it is more likely to be pursued by Eurosceptic governments (Schimmelfennig and Winzen, 2014, p. 365).

Authors categorising instances of DI rarely focus on enhanced cooperation. Their definitions and categorisations proposed by scholars, however, are helpful to understand enhanced cooperation as an instance of differentiated integration.

The enhanced cooperation procedure was introduced as a legally based form of differentiated integration in the treaty of Amsterdam. To categorise it with the categories of the DI proposed by scholars I will take enhanced cooperation as it is described in the treaties (see introduction). Starting by analysing enhanced cooperation with Stubb's categories of DI, it can be categorised as temporal differentiation (multi-speed). This is because enhanced cooperation initiatives must remain open for all member states to join. Furthermore, the Commission and participating member states must encourage as many members to join as possible. However, as advanced in the introduction, certain enhanced cooperation initiatives have been more successful than others in attracting laggards. Thus, in practice, enhanced cooperation can also be categorised as a form of territorial differentiation, as it is a procedure that allows for variable geometries to be established within the EU.

Moreover, following Holzinger and Schimmelfennig's framework, enhanced cooperation can be categorised as a procedure that allows differentiation which is temporary, although sometimes permanent. Also, it is territorial differentiation as there are different groups of countries participating in the enhanced cooperation initiatives authorised thus far with not much overlap (Wessels and Gerards, 2018). Enhanced cooperation can only be requested by member states, thus it is a form of differentiation at the state level and only within the territory of the EU member states (Holzinger and Schimmelfennig, 2012). In Kölliker's categorisation, enhanced cooperation can be defined as actual differentiation, inside the EU law and EU borders, concerning narrow issues, due to the unwillingness and/or inability of 'outs', and conditional (in theory), almost permanent (in practice) (2010). In the categories proposed by Leuffen and colleagues, enhanced cooperation can be understood as an example of horizontal, internal differentiation (Leuffen, Rittberger and Schimmelfennig, 2013).

2.2 Explaining differentiated integration

Other than the focus from scholars on the conceptualisation of DI, much attention has been paid by scholars to explaining the causes of differentiation (Burk and Leuffen, 2019, p. 1397). The literature explaining differentiated integration (DI) has grown significantly since the early

1990s (Leruth, Gänzle and Trondal, 2019, p. 1283). Scholars especially focused on researching differentiation in primary law, which is often referred to as opt-outs. As EU integration deepened in the 1990s and more countries secured opt-outs in crucial treaty negotiations, scholars turned their attention to the causes of both the demand for differentiation (Schimmelfennig and Winzen, 2014, 2019a; Leruth, 2015) and, more recently, the supply of differentiation (Holzinger and Tosun, 2019). The diverse approaches to research the causes of differentiation in primary law are discussed in what follows. The already quite developed collective understanding of why states opt not to integrate in certain policy areas will be useful for developing my research design and analysis later.

Most scholars offer and test explanations derived from different theories of European integration. A prominent contribution to the literature on this front is the volume authored by Leuffen and colleagues in 2013. Leuffen and colleagues systematically test conjectures derived from intergovernmentalism, neofunctionalism and social constructivism (2013). They engage with the different theoretical approaches to explain vertical and horizontal differentiation with policy-level hypotheses and county-level hypotheses. Their analysis is structured by policy area, focusing on core-state areas including the single market, the economic and monetary union, the area of security and defence and the area of freedom security and justice (Leuffen, Rittberger and Schimmelfennig, 2013). They develop a synthetic framework to explain vertical and horizontal differentiation in different policy areas.

In a later publication Leuffen and colleagues propose interdependence, a factor highlighted by both (liberal) intergovernmentalist and neo-functional accounts, as a driver of integration. They also propose politicisation, a factor perceived as constraining integration by constructivist and post-functionalist theories, as a cause of differentiated integration (Schimmelfennig, Leuffen and Rittberger, 2015, p. 771). Alternative explanations proposed by Schimmelfennig posit the level of 'good governance' of member states compared to the EU average, or the EU governance standard, as the explanatory factor for some countries refusing to integrate in certain policy areas ('refusers') and others being 'refused' from participation in those policy areas (Schimmelfennig, 2016b).

Additionally, scholars have tested insights from historical institutionalism to explain variation in the membership in the Banking Union of euro-area countries and non-euro area countries (Schimmelfennig, 2016a). Alongside these factors, scholars, employing post-functionalism, have paid attention to the impact of domestic politics on demands for differentiation. These authors emphasise the need to better understand the role of Eurosceptic forces within national environments to explain the demand for differentiated integration (Leruth, 2015; Winzen, 2019). Leruth argues for the need to reconsider the categorisation of Eurosceptic parties according to their positions on differentiated integration to improve the operationalisation of the impact of Euroscepticism in research on DI (2015). Building on the Euroscepticism scale employed by the Chapel Hill expert survey, he proposes a more nuanced categorisation of party preferences by analysing party documents and conducting interviews (Leruth, 2015). He focuses on the cases of Sweden, Finland, and Norway. His analysis entails taking into account the governing coalition's outlook on EU integration and differentiated integration as the explanatory factor (Leruth, 2015). Winzen qualifies the constraining power that post-functionalist accounts give to Euroscepticism at the level of governments but also at the public opinion the level (Hooghe and Marks, 2009), by arguing that it is only when Eurosceptic parties are in office that they have an impact on that country's demand for differentiation at the treaty level (2020).

Attention has also been paid to primary law differentiation in the form of transitory agreements after enlargement rounds (Schimmelfennig and Winzen, 2017). In fact, interest in differentiated integration among scholars of EU studies has grown with every enlargement round, as the enlargement of the EU is seen as the main source of heterogeneity among member states. Authors have, furthermore, investigated differentiation in EU secondary law, which concerns exemptions from EU Regulations or Directives (Duttler, 2016; Duttler *et al.*, 2017; Winzen, 2019). These scholars aimed to provide data to test explanations from European integration theories of differentiation in secondary law and compare the trends in secondary law to the research on primary law differentiation (Duttler *et al.*, 2017). Most research in this field thus, relies on the EUDIFF2 dataset (Duttler, 2016). Duttler derives a set of hypotheses from intergovernmentalism theory, supranationalism theory and social

constructivism theory to analyse secondary law differentiation patterns (2016). The findings of scholars explaining differentiation in secondary law include that differentiation in EU legislation varies considerably by member state and policy area (Duttler *et al.*, 2017, p. 419). Particularly, they establish that the extent of secondary law differentiation varies across policies which address non-core state powers, with less differentiation, and core-state policies where states demand more differentiation also in secondary law (Duttler *et al.*, 2017). Additionally, they observe that the level of differentiation in secondary law is similar among countries which joined the EU in the same accession round (Duttler, 2016).

Using the EUDIFF2 data set, Winzen focuses on the wealth of member states and the sovereignty-seeking behaviour of countries where Euroscepticism is widespread, as possible explanations for differentiation in secondary law (Winzen, 2016). His analysis leads him to explain differentiation in non-core state policy areas with varying degrees of wealth and governance capacity as explanatory factors (2016). He, furthermore, finds that differentiation in policies of core state powers can be explained with diverging levels of the exclusiveness of national identities among member states (2016).

Other scholars have developed accounts to explain differentiation through game theoretical perspectives and spatial models (Jensen and Slapin, 2012). Their account is one of the few publications which sets out to understand not only why states demand differentiation but also, why states oppose differentiation. They investigate the preferences for or against differentiation of would-be core countries, of laggards, and of the EU institutions (Jensen and Slapin, 2012). Their study applies broadly rational choice theories which argue that preferences of member states on differentiation are dictated by cost-benefit analyses comparing uniform integration to integration in smaller groups (Jensen and Slapin, 2012, p. 783). They study the cases of the Economic Monetary Union and the Schengen agreements, although their model could be applied to enhanced cooperation, as it is another mechanism for differentiation within the treaties (Jensen and Slapin, 2012, p. 783).

Another example of the application of game theory to understand differentiation in the EU is the recent article by Holzinger and Tosun (2019). Their contribution focuses on theorising the supply-side of

differentiated integration in the EU and thus explores the role of EU institutions in allowing differentiation (Holzinger and Tosun, 2019). More specifically, their contribution concerns the circumstances under which the EU is willing to grant internal differentiation after the request of EU member states and incentivise external differentiation among non-member states. They propose that EU negotiations are games characterised by asymmetric information, meaning that member states have more information about their position than the EU. They conclude that the EU allows for too much DI internally, which might be damaging in terms of the singleness of the common market for example, or climate legislation, and rewards too much the regulatory alignment of non-member states (Holzinger and Tosun, 2019). Schimmelfennig and Winzen also include the supply-side of DI in their theory of DI (Schimmelfennig and Winzen, 2020b). They include the size of insiders and outsiders, the type of externalities that DI would produce and the institutional context as factors for explaining when DI happens (Schimmelfennig and Winzen, 2020b, p. 37).

In the current state of the art of research in DI the supply side of DI and the explanations of not only support for differentiation but also opposition to differentiation are issues that need to be further explored. Game theoretical explorations are fit for addressing these questions. As the next section will show, they have also been developed to explain the phenomenon of enhanced cooperation.

2.3 The effects of DI and the normative discussion

Most publications concerning DI offer insights regarding the effects of DI on the overall EU integration process. One can find as many scholars who warn of the potential detrimental effects of DI for the future of European integration, as the ones who see DI as the solution to resolving deadlock in EU negotiations. Among the few scholars who have researched the effects of differentiation, some are interested in its effects on the EU legal order (Chatzistavrou, 2014; De Witte, 2019). Other authors consider the effects of DI on the member states participating and not participating. For instance, Chopin and Lequesne (2016) argue that differentiated integration is a double-edged sword and identify the different practices of differentiation that groups of member states have developed. The

approach deviates from the quantitative emphasis of previous contributions in the literature (Chopin and Lequesne, 2016). An alternative approach is proposed by Leuffen and Burk, who develop a quantitative approach to measuring the potential outcome that British membership of the common currency would have yielded (2019).

Considerably, more attention has been paid to the countries which secured permanent opt-outs from areas such as the European Monetary Union, Schengen or the area of freedom security and justice (Adler-Nissen, 2009, 2011; Naurin and Lindahl, 2010). Scholars approaching these issues research the trade-off that countries with opt-outs face between autonomy and influence. These authors test assumptions from sociological institutionalism which include the importance of the logic of appropriateness and the determining role of socialisation and identities (Adler-Nissen, 2009). Their findings show that the perceived loss of influence is, in practice, not felt by diplomats because national officials in Brussels manage opt-outs, and opt-ins, pragmatically (Adler-Nissen, 2011). Moreover, Naurin and Lindahl conduct an analysis to measure the network capital of diplomats from opt-outs on monetary union (2010). With their findings they discredit the free-rider hypothesis (Naurin and Lindahl, 2010).

Kölliker proposed a theory to explain whether differentiation would have centripetal or centrifugal effects (Kölliker, 2001b, 2006, 2010). The study deals with the effects of DI and develops a theory of public goods to answer: 'Does institutional flexibility lead to a positive dynamic of integration, to a negative dynamic of disintegration, or to uneasy and lasting divisions within the Union?' (Kölliker, 2001a, p. 126). His hypothesis summarised is that utility and opportunity costs motivate member states to join initiatives where they initially opted-out of.

On the effects of DI for the EU integration process a few contributions explore the legal constraints and legal pathways for differentiation in the future to explore whether the formation of a 'core Europe' is likely, especially after Brexit (De Witte, 2018). De Witte argues that 'it is likely that we will, in the coming years, see a further mushrooming of differentiated integration projects, using the various legal pathways described above, and in a wide variety of policy domains' (De Witte, 2018, p. 248). One of those pathways is enhanced cooperation thus rendering

this report relevant also to the discussions in the literature on the effects of DI on EU integration.

While the literature which empirically tests the effects of differentiation remains limited (Burk and Leuffen, 2019), the field has attracted the attention of multiple contributors who approach the issue of what differentiation could and should mean for European integration from a normative perspective. Therefore, scholars put a special focus on its implications for democracy (Fossum, 2015; Lord, 2015). On the one hand scholars have offered a democratic justification for differentiated integration as a promise for enhancing the legitimacy of the EU by embracing heterogeneity (Bellamy and Kröger, 2017, 2019). On the other hand, scholars also have investigated differentiated integration and its relation with patterns of dominance, specially focusing on the response to the financial crisis which meant the signing of several extra-EU *inter se* agreements (Eriksen, 2019). Eriksen acknowledges that differentiation is 'a means to managing diversity between member states' but warns of the conditions under which political differentiation raises the problem of hegemony and dominance (Eriksen, 2019, p. 220).

2.4 Literature on enhanced cooperation

While enhanced cooperation can be categorised as a form of DI, so far, legal scholars have paid more attention than political scientists to the cases of enhanced cooperation. Contributions have studied the reluctance of states to use enhanced cooperation and have pointed to the rigidity of the conditions set out in the treaties as the reason for the limited use of the procedure, which was not used until 2010 (Böttner, 2017).

The institutionalisation of 'closer cooperation' in the treaty of Amsterdam received much attention from legal scholars who analysed the negotiations and scrutinised the legal provisions in the treaties from a practical and normative perspective (de la Serre and Wallace, 1997; Ehlermann, 1998; Gaja, 1998; Missiroli, 1998; Walker, 1998; Philippart and Edwards, 1999; Stubb, 2002; Warleigh, 2002). The interest arose primarily because closer cooperation was the first legal pathway for flexibility within the EU. Moreover, it was a legally based tool that allowed differentiation not in the form of exceptions for reluctant member states,

but instead created the opportunity for states to deviate from the level of integration in an 'upwards' direction (Böttner, 2017, p. 77).

Scholars writing after the institutionalisation of closer cooperation offer valuable insights with their evaluation of the provisions and conditions in the treaty, but also with their assessment of the impact that closer cooperation could have on EU policy and the EU as a polity (Walker, 1998). To do that, some authors analysed the essence or philosophy of the system of closer cooperation (Philippart and Edwards, 1999) and the problems that might arise from the trend towards differentiation, including the social legitimacy of a Europe of 'Europes' (Walker, 1998). Additionally, these early studies analysed the principles that govern the enhanced cooperation procedure, such as the 'last resort' condition, the open-door principle for non-participating states and the acceptance of the *acquis* by the late-joiners (Philippart and Edwards, 1999).

With every treaty revision that changed the enhanced cooperation procedure, scholars returned to analyse the legal provisions of the procedure. After the Nice amendments to the provisions on enhanced cooperation, some authors argued that the open-door principle is the key for the compatibility of enhanced cooperation and the unity of the EU legal order (Thym, 2005). Still, however, as the procedure had not been used, scholars warned that there were too many issues with it for late-joiners requesting to participate (Amttenbrink and Kochenov, 2009). Also, many contributions pointed to the rigidity of the rules and the conditions as the reason for why the enhanced cooperation procedure was not used for so long, motivating treaty revisions in Nice and Lisbon relating to the procedure (Böttner, 2017). Amttenbrink and his colleagues argue that the following factors hinder the possibility of initially reluctant member states to eventually join. These are the vagueness of the procedure, the unnecessary complexity in the process of requesting to participate and the conditions that accession is subject to (Amttenbrink and Kochenov, 2009). They warn that these conditions undermine the participation of as many members as possible which is the objective of enhanced cooperation (Amttenbrink and Kochenov, 2009, p. 9).

These contributions form part of the strain of literature in legal scholarship which explores the 'strange animal that enhanced cooperation is' (Zeitzmann, 2017). Despite the incremental use of enhanced cooperation

in the last decade, many point out that implementing enhanced cooperation remains delicate, as it means rethinking the balance between uniformity in the EU and the need to increase the systems flexibility (Constanta, 2015).

Legal scholars have paid relatively more attention than other scholars to the cases of enhanced cooperation producing commentary, recommendations or criticism of the initiatives as more enhanced cooperation procedures have been authorised. This literature most often takes the form of case studies which approach the issues of appropriateness, legality of enhanced cooperation, effectiveness of the solution to the problem, and the consequences for non-participating members.

As the enhanced cooperation procedure was used, authors explored the specific cases of enhanced differentiation from different angles. The Rome III regulation on conflict of divorce law for international couples for international couples was the first case of enhanced cooperation, authorised in July of 2010. This development prompted legal scholars to evaluate the appropriateness of enhanced cooperation (Boele-Woelki, 2009; Fiorini, 2010; Peers, 2010; Federico Fabbrini, 2012; Kuipers, 2012; Lemoine, 2017). Authors were interested in understanding this case as it was the first time the procedure was used and thus, conducted studies using process tracing methodologies (Fiorini, 2010; Peers, 2010; Lemoine, 2017). In most cases, authors that researched the use of enhanced cooperation for the Rome III regulation aim to explore why enhanced cooperation was used for this specific instance, given that there were other policy areas where unanimity was lacking but were not solved by requesting enhanced cooperation. Authors were especially interested in the symbolic aspect of using enhanced cooperation for the first time and in the area of family law. The issue of divorce was a highly divisive topic among member states with different traditions as well as conceptions of divorce and of the application of foreign law domestically (Fiorini, 2010; Peers, 2010).

In light of this historic reluctance by member states to use the enhanced cooperation rules, it is interesting to speculate as to why a sufficient number of member states now wanted finally to embark

upon enhanced cooperation, and why an even bigger number of member states was finally willing to authorize it.

(Peers, 2010, p. 357)

Studying the process of enhanced cooperation, Kuipers offers insights into the factors that could have influenced the decisions of some member states to join or not to join (Kuipers, 2012). The author highlights the importance of non-material factors for the choices of states to join or not to join the enhanced cooperation. National values and legal tradition ranked higher than benefits of the citizens of those countries affected, while there were no costs to bear by those excluded (Kuipers, 2012, p. 218). The several accounts of the decisions by some member states to join the 'pioneering group' are relevant for the purpose of this research and will prove an important source of secondary literature (Kuipers, 2012; Böttner, 2018).

Furthermore, many of the scholars go further than outlining the process of authorising enhanced cooperation, which took over four years (Wessels and Gerards, 2018, p. 29), and evaluate the appropriateness of using enhanced cooperation (Boele-Woelki, 2009; Federico Fabbrini, 2012; Kuipers, 2012). These authors question whether all the conditions for establishing enhanced cooperation outlined in the treaties were fulfilled in the instances enhanced cooperation was used. Specifically, Kuipers argues that enhanced cooperation was not appropriately used to establish the Rome III Regulation. Since the disagreement among member states was not on whether to act or not, but rather about the content of the Regulation because of diverging views on divorce law and the controversial application of foreign law in domestic courts (Kuipers, 2012). Lastly, he takes issue with the participation of Malta in the enhanced cooperation on Rome III, as the intention of the country when joining the group of requesting countries was to ensure that divorce rules would not apply in Malta, where divorce was illegal at the time of the negotiations. In his view the 'Maltese clause' 'violated the spirit, if not the letter, of enhanced cooperation' (Kuipers, 2012, p. 222). Moreover, some authors compare the rhetoric about authorising enhanced cooperation that framed the discussion at the time (Boele-Woelki, 2009; Fiorini, 2010). Enhanced cooperation was perceived as either an innovation on the part of the participants or, a step too far that would divide the EU creating a

two-speed Europe on the side of the non-participants (Boele-Woelki, 2009, p. 789).

The enhanced cooperation to establish the European Unitary Patent, authorised in March 2011 received much attention because it was the first time the European Court of Justice was involved in the authorisation of an enhanced cooperation (Lamping, 2011; Fabbrini, 2013; Ullrich, 2013; Pistoia, 2014; Hilty *et al.*, 2017). The language regime for the unitary European patent divided member states and made reaching an agreement impossible. In 2011, after declaring insurmountable differences, 25 member states were authorised by the Council to proceed with enhanced cooperation. Spain and Italy, not participating in the enhanced cooperation, opposed the authorisation and questioned the legality of enhanced cooperation at the level of the European Court of Justice (Lamping, 2011; Fabbrini, 2013; Ullrich, 2013; Pistoia, 2014; Hilty *et al.*, 2017). Authors argued the condition of 'last resort' was not properly established (Fabbrini, 2013; Ullrich, 2013). Additionally authors argued that the fact that two states claimed a violation of Article 20(1) TEU amounted to a challenge to the very role of enhanced cooperation in the integration process (Pistoia, 2014, p. 257). Therefore it is another case in which authorising enhanced cooperation forced scholars to question the legality and the effects of dividing member states and possibly harming the unity of the single market (Ullrich, 2013).

Concerning the enhanced cooperation on the property regimes of international couples, scholars noted the difficulty in finding consensus in the Council. The issue was linked to discrepancies over the application of foreign law by institutions of member states where same-sex marriages and or registered partnerships were not legally recognised (Böttner, 2018, p. 17). The enhanced cooperation on this issue is thematically similar to the cooperation on solving conflict of divorce law rules (the Rome III Regulation). However, scholars find that the group of participating countries in both enhanced cooperation projects overlaps only in part. This potentially means a lack of inter-enhanced cooperation dynamics of opting-in (Böttner, 2018; Wessels and Gerards, 2018).

The most recent case of enhanced cooperation led to the establishment of the European Public Prosecutor Office (EPPO) in 2017. After much debate, dating back to the late 1990s, the decision to use enhanced cooperation for

establishing the EPPO, triggering article 86 TFEU, has received attention by legal scholars as well (Spencer, 2012; Pawelec, 2015; Wolfstädter and Kreilinger, 2017). Scholars scrutinised the developments in establishing the EPPO focusing especially on the choice to use the enhanced cooperation procedure. However, accounts of the choices of member states to participate or not are lacking (Erkelens, Meij and Pawlik, 2015; Bachmaier Winter, 2019). The EPPO is a case where enhanced cooperation has been authorised to delegate national competences and create a new body at the EU level. The new body is in charge of protecting the financial interests of the EU, a symbolic power deeply related to the core-state powers of member states (Wessels and Gerards, 2018, p. 28). Because of the novelty of the case, resulting in there is a lack of literature on the membership patterns in the EPPO, so this is the case of enhanced cooperation I have chosen to study.

2.5 Explaining enhanced cooperation

Most of the existing explanations of enhanced cooperation deal with why enhanced cooperation happens. There are also examples of comparative research in the literature. Su, compares enhanced cooperation to the 'path finder initiatives' which are a possible decision-making tool within APEC (Su, 2007) and Fabbrini compares enhanced cooperation with the 'compact clause' of the Constitution of the United States (2012).

Moreover, as a result of the big bang enlargement of the EU, researchers and politicians returned to the topic of enhanced cooperation as a possible solution to increased preference heterogeneity in the enlarged EU. Thus, in the mid 2000s a school of economist set out to apply economic approaches, such as Buchanan's theory of clubs (1965), to evaluate how optimal the enhanced cooperation model is for the EU. As the provision on enhanced cooperation can be equated to the creation of clubs within the club (the EU), scholars applied concepts from club theory to determine the optimum size of enhanced cooperation procedures and to evaluate the potential use of enhanced cooperation (Bordignon and Brusco, 2006; Brandi and Wohlgemuth, 2006; Ahrens, Ohr and Zeddi, 2007). These scholars discuss which membership rules should apply to enhanced cooperation and EU integration (Harstad, 2006). Authors explore the effects of conditions for joining an enhanced cooperation initiative on non-

members, under the rule of no-veto and no-exclusion of enhanced cooperation (Bordignon and Brusco, 2006). Others argue for the desirability of flexibility in EU policy making that club theory conclusions support, given increased heterogeneity in an EU post 2004 enlargement (Brandi and Wohlgemuth, 2006).

Attempting to model enhanced cooperation, Gomes de Andrade (2005) proposes the eccentric ellipses model to conceptualise the variation in participation of member states in enhanced cooperation projects. He explains the pull-effect of countries to participate in enhanced cooperation with the economic interdependence that exists between member states and political considerations (Gomes de Andrade, 2005). It is important to keep in mind that these contributions to the literature pre-date the use of enhanced cooperation in the EU. Hvidsten and Hovi (2015) developed a model that explains why differentiation in the form of enhanced cooperation, while demanded by member states and often praised by politicians as a more desirable alternative to unity, is not more common in the EU.

The main contribution explaining enhanced cooperation was published in 2015 by Kroll and Leuffen. Defining enhanced cooperation as a form of secondary law differentiation, they tackle the questions of when, how and why enhanced cooperation is the outcome of intergovernmental negotiations in the EU (Kroll and Leuffen, 2015, p. 354). Building on the economic theory of goods and the work of Kölliker (2001, 2006, 2010), they argue that states opt for enhanced cooperation or choose a different legislative outcome depending on three factors (Kroll and Leuffen, 2015, p. 355). First, they identify the institutional conditions that determine the use of enhanced cooperation which include legal possibility and the requirement of unanimity. Later studies have confirmed that all enhanced cooperation procedures followed a failed special legislative procedure (Wessels and Gerards, 2018). Second, they argue that a specific constellation of member states' interests must exist. This constellation must include a relatively homogenous subgroup of member states that drives the process but faces opposition from hesitant member states (Kroll and Leuffen, 2015, p. 355). Lastly, the main explanatory factor is the externality structure of the good that the policy concerns. According to their model, whether the externality structure of the good is positive,

neutral or negative has implications for the preferences of both the drivers and the laggards of enhanced cooperation (Kroll and Leuffen, 2015, p. 356).

Even though the paper by Leuffen and Kroll is the first comprehensive study of enhanced cooperation in the realm of political science, it does not address the question of membership patterns in enhanced cooperation. Additionally, several developments in the authorisation of enhanced cooperation since the paper was published weaken the fit of their model, for example the successful establishment of the EPPO with enhanced cooperation. According to Kroll and Leuffen's assumptions, goods with a positive externality structure for outsiders, such as the EPPO, can allow for free riding by non-participating member states. Thus, the authors predicted that setting up the EPPO with enhanced cooperation would not be likely (Kroll and Leuffen, 2015, p. 358). Shortly after their work was published, however, the EPPO was established via the enhanced cooperation procedure after the request of 16 member states (Böttner, 2018). Lastly, as the authors mention, their model prioritises parsimony and does not include variables such as 'domestic politics, the salience of issues and the ratio of drivers and laggards' (Kroll and Leuffen, 2015, p. 367).

Later work addressing enhanced cooperation includes attempts from scholars to assess the overall effect of the use of enhanced cooperation for insiders and outsiders (Ciceo, 2012; Kubin, 2017; Böttner, 2018; De Witte, 2018; Wessels and Gerards, 2018).

The report by Wessels and Gerards, requested by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, offers a concise overview of many issues relating to enhanced cooperation in practice (2018). They explore the dilemma that enhanced cooperation poses for member states who have to balance on the one hand 'community orthodoxy' in the EU meaning political unity, legal homogeneity and institutional coherence, and on the other hand the need to solve collective action problems (Wessels and Gerards, 2018). In their view, enhanced cooperation can solve the aforementioned dilemma by suggesting 'structured flexibility' (Wessels and Gerards, 2018, p. 8). Regarding accounting for 'late-joiners' that are persuaded to join the core of member states, they rely on explanations of rational choice theory,

especially those proposed by Kroll and Leuffen (2015). They also identify cleavages between the ins and outs in the different enhanced cooperation initiatives based on issues of national autonomy and jurisdiction (property regimes of international couples) or different legal traditions and cultural legacy (Rome III). While the authors argue that the most noteworthy takeaway from the enhanced cooperation initiatives thus far is that enhanced cooperation has finally been used, ‘without many consequences for the EU as a whole’ they contend that an attitude shift is happening in terms of Member States being less afraid of dividing into sub-groups to solve problems where there is no uniform agreement (Wessels and Gerards, 2018, p. 35).

After meticulously reconstructing the process of the cases when authorisation of enhanced cooperation has been granted, Böttner highlights similar issues raised by scholars (2018). Most interestingly, he notes how enhanced cooperation appears to be ‘the only viable solution to overcome (political) stalemates in the Council if agreement by all members is required’ (Böttner, 2018, p. 19). He remains ambivalent as to what this means for the practice of enhanced cooperation and the countries which do not participate. On the one hand, he concludes that the regulations adopted as a result of enhanced cooperation still contain elements that caused disagreement, thus it is not likely that unwilling member states will join later (Böttner, 2018, p. 19). On the other hand he argues that the accession of ‘late joiners’ shows that ‘a good implementation of enhanced cooperation can indeed have a pioneering effect, including the first-mover advantage for the cooperating Member States’ (Böttner, 2018, p. 19).

2.6. The gap in the literature

While scholars have developed conjectures and tested hypotheses explaining DI on cases of primary law differentiation and secondary law differentiation, the case of enhanced cooperation has been neglected by scholars studying DI until recently. Moreover, while legal scholars have shown interest in the legal aspects of enhanced cooperation, the politics of enhanced cooperation have not been explored by political science scholarship. Leruth and colleagues highlight the topic of enhanced cooperation as an area which needs more attention as it has become an

‘increasingly available tool’ for member states (Leruth, Gänzle and Trondal, 2019, p. 1393). Moreover, explanations proposed to account for the use of enhanced cooperation either were developed before it was ever authorised, or do not include relevant developments, especially the case of the EPPO.

Additionally, the aforementioned explanations of demand of differentiation in primary or secondary law presented above have not been tested to account for the variation in participation of member states in enhanced cooperation projects. This is an issue that authors researching enhanced cooperation believe ‘certainly needs attention in the future practice of flexible integration’ (Böttner, 2018, p. 20). Thus, applying the existing theoretical explanations of DI to the case of enhanced cooperation can contribute to better understand the dynamics that enhanced cooperation generates among member states and it can contribute to refining theoretical explanations of DI. This study therefore address calls in the field for more research on patterns of participation in enhanced cooperation (Böttner, 2018, p. 20). For example, Zeitzmann noted: ‘Enhanced cooperation has been pretty often ignored in the years of its existence, by academics, practitioners and lawmakers alike. If we consider its impact on the European Union since 1999, we can see this is not justified’ (Zeitzmann, 2017, p. 105).

Exploring the motivations behind member states preferences to join or not to join enhanced cooperation initiatives can, moreover, address the concerns voiced by scholars such as de Witte, who argues that in the post-Lisbon era ‘it is more likely that those who want more will do more without expecting others to follow later’ (2018, p.37). Additionally, understanding the dynamics of enhanced cooperation can offer practical advice and contribute to the recent interest in enhanced cooperation by EU institutions exemplified by the reports commissioned by the European Parliament on differentiated integration (2018) and enhanced cooperation (2019). Insights about the motivations of states to join or not to join enhanced cooperation initiatives can contribute to determine whether the participation patterns lead to an EU with a hard-core of member states driving integration further. Alternatively, enhanced cooperation may contribute to the creation of ‘a ‘soft-core’ of ‘multiple clusters of member-

states, in which any duo or trio of member-states would take leadership in any given policy community' (Schmidt, 2019, p. 295).

Drawing from this discussion of the literature on DI and enhanced cooperation, the next chapter will outline the theoretical framework and the factors that will be studied to explain the membership pattern in the establishment of the EPPO using enhanced cooperation.

Chapter 3

Theory: Explaining membership patterns in the enhanced cooperation establishing the European Public Prosecutor's Office

As with most approaches in the literature, this report builds its theoretical framework with the conjectures of the mainstream theories of European integration which have been increasingly applied to explain DI. The most recent contribution to theorising DI posits that heterogeneity is at the source of both the demand and supply of DI (Schimmelfennig and Winzen, 2020). Different European integration theories highlight alternative sources for this heterogeneity.

Intergovernmentalist approaches to European integration include contributions from realist intergovernmentalism (Hoffman, 1966) and liberal intergovernmentalism (Moravcsik, 1998, 2018). These approaches assume states to be the primary actors driving the process of European integration because it is the outcome of intergovernmental negotiations. Moreover, intergovernmentalist scholars assume states to be unitary actors whose 'interests, identities and preferences are taken as a given and stable over time' (Schimmelfennig, 2003, p. 19). Furthermore, states act to 'increase their own utility under conditions of international interdependence' (Schimmelfennig, 2019a, p. 179). Lastly, integration is voluntary, meaning that states can choose to join or not (Schimmelfennig, 2019a). Recently, intergovernmentalist theories have been reframed to

explain differentiated integration (Schimmelfennig, 2019b). Schimmelfennig theorises that the heterogeneity of preferences between states, interdependence and capacity can explain the demand for differentiation from EU member states (2019). Heterogeneity of the preferences between states for further EU integration can stem from material or ideational factors, as well as, from societal or governmental forces (Schimmelfennig, 2019a).

In the liberal intergovernmentalist theory, material factors, mainly the economic interests of interest groups and societal actors, shape national preferences (Moravcsik, 1998, 2018; Schimmelfennig and Winzen, 2019b). This holds in cases for which the effects of integration have 'relevant and certain' implications for national wealth, specifically in market-making or market-correcting policies (Leuffen, Rittberger and Schimmelfennig, 2013). As enhanced cooperation is restricted to areas where the EU does not have full competences and it is not an option for resolving disagreement in policies which would discriminate or create negative effects for non-participating member states, the assumptions of liberal intergovernmentalism are not suited to explain membership patterns in this study.

Since realist intergovernmentalism focuses on sovereignty, it is better suited for this study. According to the realist intergovernmentalist theory, national preferences vary among member states which have different concerns regarding the loss of sovereignty (Schimmelfennig and Winzen, 2020, p. 27). Scholars following Hoffman (1966) argue that national preferences on EU integration are determined by the national interest of the states. Since realists conceive of states as autonomy-maximisers, their national interest is to preserve or increase autonomy or influence (Leuffen, Rittberger and Schimmelfennig, 2013). Leuffen et. al. specifically argue that 'national preferences on the EU thus depend on how beneficial or detrimental integration is to national autonomy' (2013, p. 56). They argue that 'small states are more integration-friendly than large states' because smaller states see cooperation as an opportunity to increase their autonomy and reduce the autonomy of larger states (Leuffen, Rittberger and Schimmelfennig, 2013, p. 46). Similarly, when dealing with cooperation on fighting transborder crime, the size of a country determines the availability of resources said country possesses to

effectively pursue and prosecute transborder crime. Cooperation in this area would thus, prove more beneficial for smaller states with smaller public administrations. Realists consider the overall resources and capabilities of states to classify large and small states (Schimmelfennig and Winzen, 2020, p. 27). Often realist measure 'the size of the territory, the population, and the economic output' (Schimmelfennig and Winzen, 2020, p. 27). Their arguments and this reasoning lead me to hypothesise that smaller EU member states are more likely to participate in the enhanced cooperation to establish the EPPO.

H1: Smaller member states are more likely to participate in enhanced cooperation than bigger states.

Referring to the heterogeneity of dependence, intergovernmentalist theorists posit that international cooperation proves more beneficial for states which are highly interdependent (Leuffen, Rittberger and Schimmelfennig, 2013). Leuffen et. al argue that 'two countries that are highly interdependent develop a stronger demand for integration than two countries with low interdependence' (2013, p. 53). I argue that asymmetric issue-specific interdependence can also explain horizontal differentiation and thus, the membership patterns of enhanced cooperation projects. Additionally, high interdependence between countries makes member states more susceptible to the negative externalities of not participating in closer cooperation (Kroll and Leuffen, 2015). Neofunctionalists also highlight this factor albeit giving it a different name: geographical spill-over (Leuffen, Rittberger and Schimmelfennig, 2013, p. 76). Scholars found asymmetric interdependence to be a relevant factor in explaining primary as well as secondary law DI (Schimmelfennig, Leuffen and Rittberger, 2015; Duttler, 2016). Therefore, I posit that it will also influence membership patterns in enhanced cooperation.

H2: If a state faces high issue-specific interdependence, then it is more likely to participate in enhanced cooperation.

Additionally, authors developing intergovernmentalist theory have claimed that the sovereignty concerns of states vary according to whether the policy subject to integration is a core-state power or not (Genschel and Jachtenfuchs, 2016; Schimmelfennig and Winzen, 2019a). They build on

Hoffman's division of policies in 'high politics' and 'low politics' (1966). Integration is more difficult in areas of high politics, which concern the 'core of statehood, above all the state's coercive powers in the area of internal and external security and its fiscal powers in the area of taxation and redistribution' (Schimmelfennig, 2019, p. 181). In fact, researchers argue that primary law differentiation, or opt-outs in core-state powers, such as monetary policy or justice and home affairs, is driven by sovereignty concerns (Schimmelfennig, 2019, p. 183). The EPPO is considered to concern core-state powers as it falls into the area of security and justice. Authors have also attributed a sovereignty-seeking rationale to demands of differentiation in secondary law adoption by member states (Winzen, 2016).

The application of the intergovernmentalist theory to explain differentiation proposes that heterogeneity of capacity creates sovereignty concerns that lead states to demand differentiation (Schimmelfennig and Winzen, 2019a). Therefore, I expect that differences in governance capacity among EU member states explain membership patterns in enhanced cooperation projects. The explanatory power of heterogeneity in governance capacity has been explored to account for opt-outs (Schimmelfennig, 2016b). Schimmelfennig found that countries with higher governance standards often 'refuse' EU integration in some areas (2016b). Asymmetric governance capacity has also been tested to explain secondary law differentiation (Winzen, 2016). Winzen tested the relevance of differences in governance capacity across member states by analysing differences in wealth among EU member states (2016). In wealthier states the EU is not seen as a better legislator, thus governments from those countries 'fear being locked into common rules with countries and their state agents, which they perceive to be inferior legislators' (Winzen, 2016, p. 104). The establishment of the EPPO concerns the area of criminal justice, which means that sovereignty concerns are likely to be a prominent source of disagreement among member states, dividing them into those who are more likely to participate and those who are less likely to participate. Similarly, states with higher governance standards in the field of prosecuting fraud domestically, are less likely to participate in enhanced cooperation to establish such an office at the EU level. Due to this argumentation based on intergovernmentalist theory, I hypothesise:

H3: If a state's governance standard is superior to the EU's standard, then it is less likely to participate in enhanced cooperation.

Concerning the motivation of sovereignty-seeking behaviour of member states demanding differentiation, scholars propose alternative explanations based on social constructivist theory and the post-functional theory of EU integration (Leruth, 2015; Schimmelfennig, Leuffen and Rittberger, 2015; Winzen, 2016, 2019).

Post-functional scholars have theorised the causes and effects of the politicisation of EU integration (Hooghe and Marks, 2009, 2019b). Politicisation can have many causes, among them post-functional scholars link politicisation of EU integration with exclusive national identities (Hooghe and Marks, 2009; Kuhn, 2019). Thus, the application of post-functionalism in the literature focuses on collective identities at the level of public opinion as an explanatory factor for the lack of permissive consensus that can prevent integration (Risse, 2010). Exclusive national identities are perceived as incompatible with other collective identities, in this case European identity (Kuhn, 2019). Hooghe and Marks argue that deeper EU integration activates identity issues, since the process of EU integration means quick jurisdictional changes but slow identity changes (2009, p. 12-13). In the cases of member states in which exclusive national identities are widespread, governments are reluctant to accept deeper integration because it would mean the pooling of sovereignty to the EU level (Hooghe and Marks, 2019a). This is one possibility in which politicisation of European integration constrains government's actions concerning deeper integration (Hooghe and Marks, 2009).

Particularly, the integration of policy areas concerning core-state powers, as in the case of the EPPO, is likely to result in sovereignty concerns. This is because these policy areas are linked to national symbols or national institutions which define national identities (Schimmelfennig and Winzen, 2019b). Thus, scholars have argued that the variation in exclusiveness of national identities across EU member states can explain demands for differentiation in some member states (Aydın-Düzgit, Kovář and Kratochvíl, 2020). Also, as an alternative to wealth or governance standards, included in the third hypothesis, scholars often test the role of exclusive collective national identities explaining sovereignty concerns in member states which demand differentiation (Winzen, 2016). Given that

scholars have explored the relevance of this factor in explaining opt-outs (Schimmelfennig, Leuffen and Rittberger, 2015) and secondary law differentiation (Duttler, 2016; Winzen, 2016), it is worth examining its explanatory power for the membership patterns in enhanced cooperation projects. From these assumptions I derive the following hypothesis:

H4: If a state's national collective identity is characterised by exclusiveness, then it is less likely to participate in enhanced cooperation.

The post-functionalist theory proposed by Hooghe and Marks (2009) has proven very influential for researching differentiation in the EU. The theory builds on the idea that the 1990s meant a significant deepening for EU integration and that this had implications regarding the consent that governments needed from their citizens to pursue EU integration. The authors argue that the failure of several referendums to ratify the Maastricht Treaty signified the end of the era of 'permissive consensus' that allowed governments and national elites to proceed with the deepening of EU integration (Hooghe and Marks, 2009, p. 5). An era of 'constraining dissensus' has replaced the permissive attitudes of citizens and has been facilitated by the mobilisation of anti-EU integration feelings which political parties have mobilised among the 'losers' of EU integration (Hooghe and Marks, 2009). This, in turn, means that public opinion assumes an unprecedented role in shaping the EU integration preferences of national governments.

Applying these assumptions to DI, scholars have turned to exploring the effects of politicisation and public discontent with the EU on the demand for differentiation by examining the effects of Eurosceptic political parties and societies (Leruth, 2015; Winzen, 2016, 2019). Winzen tests which form of Eurosceptic politicisation of EU integration explains differentiation in primary law (2019). Conceptualising EU member states as systems of delegation, he finds that Eurosceptic parties in government are more likely to effectively demand differentiation than other Eurosceptic forces, such as parliamentary Eurosceptic opposition (Winzen, 2019). Similarly, Leruth finds that governments, which are more in favour of EU integration, tend to not demand opt-outs from integration in policies regarding monetary union or justice and home affairs (2015). Additionally, as DI becomes a prominent feature of the debate on the future of Europe, national political parties have formed positions in

favour or against a multi-speed Europe. From these theoretical assumptions and findings in explaining the demand for differentiation, I derive the following hypothesis for explaining membership patterns in enhanced cooperation projects.

H5: If a state's government is Eurosceptic, then it is less likely to participate in enhanced cooperation.

Post-functionalist theory also posits that if EU integration is politicised in national debates and/or public opinion, this politicisation, while not directly shaping policy-making decisions, can constrain government actions once the issue of EU integration has entered the arena of mass politics (Hooghe and Marks, 2009). Therefore, scholars explaining differentiation have tested the role of Eurosceptic public opinion to explain states demanding treaty opt-outs (Schimmelfennig, Leuffen and Rittberger, 2015) and states demanding differentiation in secondary law (Duttle, 2016). The factor of Euroscepticism at the public level could seem equivalent to the factor of exclusive collective identities (H4). However, Euroscepticism has many causes, and scholars argue that it is often driven by economic rationality (Hooghe and Marks, 2004; Khun, 2019, p. 1215). Moreover, research on public attitudes of EU citizens concerning DI confirms that views vary significantly across member states and that identity does not always shape the views on differentiation (Leuffen and Müller, 2020). Therefore, I argue that variation in participation in enhanced cooperation can be explained by higher levels of popular Euroscepticism and diverging popular views on differentiation across member states. The hypothesis follows:

H6: The more Eurosceptic the broad public is in a member state, the less likely this member state will participate in enhanced cooperation.

Social constructivist theories of EU integration emphasise non-material factors and adopt a non-rationalist view to explain state's choices for participating or not participating in the integration of certain policies (Checkel, 1999). Thus, offering alternative explanations to rationalist accounts of the membership patterns of enhanced cooperation projects (Christiansen, Jørgensen and Wiener, 2001). Other than the importance of the constitutive role of national identities for national preferences of states, social constructivist theories argue that states act according to a logic of

appropriateness, as opposed to the logic of consequentialism that rationalist accounts assume (March and Olsen, 2004). States behave according to what the institution, which acts as a community of states, deems legitimate and complies with the norms and rules which have been agreed to by its members (Leuffen, Rittberger and Schimmelfennig, 2013). Social constructivism, moreover, argues that the preferences and identities of states are likely to change the more they engage with this international community of states, in this case the EU (Leuffen, Rittberger and Schimmelfennig, 2013, p. 96). Socialisation is not theorised to change identities or interests overnight. Still, the process can contribute to changing identities, interests and expectations of national officials to demand less differentiation. The type of differentiation explored in this report, enhanced cooperation, is only permitted as a last resort, thus reiterating that uniform integration remains the norm of EU integration. Duttie finds that older member states, which have had longer exposure to EU rules, are less likely to demand differentiation (2016). Lastly, it has been established that the extent of differentiation in primary law of states from the same enlargement round is similar (Schimmelfennig, Leuffen and Rittberger, 2015). Therefore, I hypothesise the following:

H7: The longer a country has been a member state of the EU the more likely it is that it will participate in enhanced cooperation projects.

Scholars on both rationalist and non-rationalist sides of the debate have highlighted the importance of national veto players in determining the extent that states demand differentiation or stay out of cooperation ventures in certain policy areas (Leuffen, Rittberger and Schimmelfennig, 2013; Duttie, 2016). Therefore, I argue that the condition of constraining domestic veto players can explain membership patterns in enhanced cooperation. These veto players consist of domestic political institutions, such as parliamentary chambers or national courts, and are seen as relevant from intergovernmental and post-functional perspectives on EU integration (Leuffen, Rittberger and Schimmelfennig, 2013, p. 160). The proposal from the European Commission to establish the EPPO in 2013 generated intense debates in national parliaments. In 2013, 14 chambers officially questioned the compliance of an EPPO with the subsidiarity principle and issued 'yellow cards' (Wessels and Gerards, 2018). Therefore, I hypothesise the following:

H8: If domestic veto players are opposed to participation, then the members state is less likely to participate in the enhanced cooperation project.

This chapter has included a wide range of the theoretical perspectives to build a theoretical framework that allows to explain the preferences of EU member states regarding enhanced cooperation. As explaining national preferences is a complex endeavor, I have built a theoretical framework that includes material and non-material factors for this project. Unlike recent publications (Leuffen, Rittberger and Schimmelfennig, 2013; Schimmelfennig and Winzen, 2020), the objective of the research project is not to synthesise my theoretical framework to create the theory that explains the demand for differentiation. The aim of this project is to test assumptions and hypotheses from the main theories of European integration by applying them to the rarely studied phenomenon of enhanced cooperation. The next section of the report details the methodology employed to test the above-mentioned hypotheses. The analysis section of this report includes a discussion, based on the findings, of the applicability of the grand theories of EU integration to the case of enhanced cooperation.

Chapter 4

Methodology and research design

The goal of this study is to systematically assess the relevance of the previously stated conditions for explaining the participation patterns of EU member states in enhanced cooperation initiatives. While the conditions mentioned above should be tested in all instances of enhanced cooperation, the scope of this research project allows to research only the enhanced cooperation to establish the European Public Prosecutor's Office. To accomplish this, I will apply the qualitative comparative analysis method (QCA) developed by C. Ragin (1987) and use the software fsQCA². In this chapter, I motivate the case selection and specify the advantages of using QCA for this research project. Then, I detail the sources of my data to calibrate the conditions. Some limitations of the research design are also addressed in the end of the chapter.

4.1 Case selection: the European Public Prosecutor's Office

The scope of this report limits the number of cases of enhanced cooperation that can be analysed. However, as the total number of enhanced cooperation initiatives authorised so far is small, analysing only one of them will already substantively contribute to our knowledge of

² Ragin, Charles C. and Sean Davey. 2016. *Fuzzy-Set/Qualitative Comparative Analysis 3.0*. Irvine, California: Department of Sociology, University of California (<http://www.fsqca.com/>).

membership patterns in enhanced cooperation. Furthermore, this study can be recreated in order to investigate other enhanced cooperation cases. I have chosen the establishment of the European Public Prosecutor's Office as the case to study because it is the most recent case of enhanced cooperation. Therefore, the literature is lacking a comprehensive study of this case of enhanced cooperation. Moreover, it is identified by Wessels and Gerards (2018) as the enhanced cooperation with the largest number of member states that requested to participate after the initial request of enhanced cooperation to establish the EPPO.

For practical reasons, the fact that the enhanced cooperation was quickly authorised, through the fast-track provision in article 86 TFEU makes the recording of conditions simpler as it is not necessary to design a longitudinal study. Additionally, the use of enhanced cooperation with an accelerator clause is interesting in itself and can be studied as another example of the enhanced cooperation procedure in comparative analyses but also as a case of specific nature which is interesting in itself (Pawelec, 2015). Lastly, the case concerns a topic which was debated publicly as it divided member states in favour or against establishing the EPPO. As commentators noted during the negotiations: 'the move is largely procedural but also symbolic for an EU currently debating the possibility of a so-called multispeed Europe, where some countries can forge ahead with deeper integration' (Nielsen, 2017). The highly symbolic nature of the EPPO makes the case relevant to test conditions derived from theories considering not only material issues but also ideational concerns.

The case chosen determines the timeframe from which data will be collected. The proposal from the European Commission to establish the EPPO dates from 2013. Negotiations in the Council to establish the enhanced cooperation date back to the beginning of April 2017. The enhanced cooperation was authorised the 12th October 2017. All relevant sources from the period of negotiations and the developments that followed the authorisation of the EPPO will be included in the analysis. The scope of this analysis includes all EU Member States except the countries with opt-outs in the area of Freedom Security and Justice, namely the United Kingdom, Ireland and Denmark (Fromage, 2016). Also, data was not available for several conditions for the country of Cyprus, thus it is not included in this study either.

4.2 Qualitative Comparative Analysis

Qualitative comparative analysis (QCA) is a methodology developed by scholars in the field of the social sciences in the late 1980s who wanted to propose ‘a new way of conducting social research, especially research focused on the study of cross-case patterns’ (Ragin, 2014b, p. xxiii). Attempting to overcome the limitations of comparative quantitative research, Charles Ragin advanced a new template for conducting comparative analysis which was later developed by other scholars (Rihoux and Ragin, 2008, 2009; Haesebrouck, 2016). In the first edition of *The Comparative Method* Ragin presented the QCA methodology and contrasted QCA with conventional social science research strategies. QCA is based on set theory meaning it explores the relations of conditions to explain an outcome instead of testing the impact of single variables (Ragin, 1987). A set is a ‘collection of objects that share a common property’ (Dusa, 2019, p. 48).

The epistemological assumptions that support QCA allow the researcher to calibrate the presence or absence of the conditions in which he is interested. Thus, the role of the researcher is substantive in determining the set membership scores for each case and condition. Using QCA a researcher investigates which set-theoretic relations between the absence or presence of conditions lead to a qualitative outcome. For this, software designed for conducting QCA, like fsQCA, uses Boolean algebra and the operators of Negation, AND and OR to conduct the analysis (Ragin, 2014b, p. 93). Thus, the analysis produces ‘causal recipes’ meaning combinations of conditions that produce an outcome, rather than conclusions based on the net effect of isolated variables (Ragin, 2014b, p. xxiii). These features of QCA make it an attractive methodology for this research project. Additionally, the ontological understanding of causation that QCA adopts, is an asset of this methodology. QCA understands causation as something multiple and conjunctural, thus acknowledging the complexity of causation in cases such as member state’s preferences for EU integration. The idea of equifinality, meaning that different conditions can lead to the same outcome, is therefore central to the choice of QCA for this research project. This research project benefits in multiple ways from this ontological view of causation, as it allows to tackle complex issues of the social world that cannot be understood or explained

by a single factor. The decision of an EU member state to join the EPPO is an example of such complex issues. Thus, the ability to understand complexity is one of the biggest assets of this method. As the theoretical framework of this project includes a multitude of causal factors, the basic assumptions of equifinality and complexity are very well-fit for this project. Moreover, causation is seen as not symmetrical in QCA, thus I will study which set of conditions explains participating and which set of conditions explains not participating in the EPPO. The understanding of causality as something conjunctural is another major advantage of QCA.

Therefore, the decision to use QCA is first and foremost, motivated by the nature of this research being case-oriented and thus concerning a medium number of cases and observations. The present study analyses one instance of enhanced cooperation, including 28 member states' choices to participate or not to participate in the EPPO. The main purpose of QCA is to combine the advantages of case-oriented research, such as, understanding cases as a whole instead of as combinations of variables or including case-specific knowledge that can explain contradictions and outliers with the best features of variable-oriented research (Ragin, 2014b). The synthesis proposed by Ragin allows for the study of intermediate to large-n projects with the focus on assessing the complex patterns of multiple and conjunctural causation that explain the outcome (Ragin, 2014b, p. 71). Therefore, this methodology accommodates to the number of cases included in this research being too few for statistical analysis and too many for case-studies.

The research design chosen furthermore, allows for testing hypotheses derived from the main theories of EU integration, as the aim of QCA is to discover patterns of causal necessity and sufficiency. In fact, the use of QCA has proven useful for researching cross-national dynamics in EU studies (Rihoux and Ragin, 2008). For example, it was successfully employed for researching member states preferences on EU policies, such as Foreign and Security Policy (Koenig-Archibugi, 2004). Moreover, QCA allows for testing both the necessity and the sufficiency of conditions or of combinations of conditions. This is an often-underestimated asset of the methodology but can substantially add to the findings of this research by identifying conditions which are necessary while not sufficient for a country to join the ENC to create the EPPO.

Lastly, the data sources needed for this report combine numerical data and non-numerical data to measure the conditions included. The data used for the analysis stems from Council minutes, official declarations, press releases, media reports, on the one hand, and indexes on good governance or public opinion survey reports, on the other. QCA allows researchers to combine these two types of data and account for both qualitative and quantitative phenomena (Rihoux and Ragin, 2008, p. 13). Thus, the method allows for the inclusion of all the data I have gathered to understand participation in enhanced cooperation initiatives.

The first step when designing a QCA study is to select the type of QCA that best fits the objectives of the research project. This means choosing between conducting a crisp-set QCA study and a fuzzy-set QCA study. Both modes of QCA share the same ontological assumptions and employ Boolean algebra as well as truth tables in the analysis. However, using crisp-set QCA requires more simplification by the researcher, as she needs to code the data gathered into dichotomous variables. Crisp-set QCA works with data that indicates whether the conditions studied are fully present or fully absent in the cases of interest. Fuzzy-set QCA was developed later with the intention of including in the research conditions and data which do not neatly fit dichotomous variables.

The decision to use crisp-set QCA or fuzzy-set QCA depends on the understanding of the outcome I wish to explain. The outcome for this research project is the choice of member states to participate or not to participate in the enhanced cooperation to establish the EPPO. That makes the outcome for this QCA study a dichotomous condition. Thus, as the outcome I am aiming to understand concerns a condition which is easy to code as fully present or fully absent for each member state a crisp-set analysis is most useful.

Generally, the decision to employ crisp-set QCA or fuzzy-set QCA is open to the researcher. Scholars advise to find the appropriate method by assessing how specific the data for allocating membership scores is for each of the conditions one is interested in testing. As my data allows for general indications of the membership score for each case in the conditions but does not provide detailed enough information for scoring each case very precisely, I will employ crisp-set QCA. Crisp-set QCA allows me to code for full participation (1), and non-participation (0). Next

in the chapter I detailed the method for calibration that I used for each condition and discuss the thresholds I set for allocating the score of full membership or no membership.

4.3 Conditions, data sources, and calibration

When it comes to the outcome condition, I am studying the initial decision to participate or not in the establishment of the EPPO of the previously listed member states via enhanced cooperation. I am more specifically studying the initial decision of member states to participate in the enhanced cooperation. In April 2017, a group of 16 member states notified the EU institutions of their intention to pursue integration to create the EPPO with enhanced cooperation in a European Council meeting.³ Those states that requested the enhanced cooperation procedure after coordinating are considered as the participating member states in the study: Belgium, Cyprus, Bulgaria, Czechia, Croatia, Finland, France, Germany, Greece, Lithuania, Luxemburg, Portugal, Romania, Slovakia, Slovenia and Spain. Additionally, with the goal of accuracy, I consider the four countries that joined the initiative in the following months as initial participants. These four countries are: Latvia, requested to join on the 24th of May 2017, Estonia and Austria in early June 2017 and Italy in late June 2017. While the decision to count them as participating initially decreases the diversity in the data, it increases the accuracy of the study since considering those countries as non-participating would lower the reliability of the findings. Also, as QCA is heavily case oriented research I include a specific section in the analysis where I detail how the final QCA solution applies to these four cases. I assigned the score of 0, meaning non-participating, to the cases of the Netherlands and Malta, even if they finally joined the EPPO one year after the enhanced cooperation was requested. In these cases, there was an initial decision not to join which was later reversed. Lastly, still today Sweden, Poland, and Hungary, remain outside of the EPPO cooperation therefore also have a score of 0.

3 Notification to the European Parliament, the Council and the Commission with a view to establishing enhanced cooperation on the draft Regulation on the establishment of the European Public Prosecutor's Office in accordance with the third subparagraph of Article 86(1) of the Treaty on the Functioning of the European Union ('TFEU').

QCA requires the operationalisation of the conditions which allows to determine whether certain conditions are present or absent for each case. This step is called calibration and was carried out according to the recommendations from the scholars who practice QCA (Ragin, 2014a). After calibrating all the conditions, I created a data matrix which can be found in Analysis chapter in Table 1. Thresholds for each condition were found primarily, with theoretical considerations and with attention to natural breaks in the data. In cases where this was not sufficient, descriptive statistical tests were used, mainly measures of spread of the data like the median and the quartiles. In the following section, I detailed the data sources and calibration criteria for all the conditions included in the study.

When it comes to my first explanatory condition, hypothesis one concerns the size of states. The EU member states can be categorised according to the size of their population with data from official sources such as Eurostat. Specifically, I used Eurostat data from 2015 on the population of each state.⁴ According to the distribution of states by the size of their populations, I demarcate states with a population smaller than 10.5 million inhabitants as small member states. The condition of being a small member state is labeled 'SMS' in the analysis chapter.

The second hypothesis tests the relevance of interdependence. Scholars have previously operationalised interdependence in economic terms, using data from the IMF Directions of Trade database (Duttle, 2016). Additionally, geographical proximity is another way to operationalise interdependence (Leuffen, Rittberger and Schimmelfennig, 2013). As the EPPO was established to fight cross-border crimes against the EU budget and cross-border VAT-fraud, economic interdependence would be a relevant condition to study in relation to its establishment. However, there is a limited amount of data on vat fraud in the EU and cross-border fraud as noted in the preparatory documents of the Commission for establishing the EPPO (European Commission, 2013b). Therefore, for this research project I use data relating to the geographical position of states, from more central to more peripheral location, to calibrate the interdependence condition. The less borders the country shares with other EU member

4 Eurostat data on population is available here: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Population_and_population_change_statistics .

states, the less it scores in interdependence. Specifically, I established three shared borders with other member states or less as the cut-off point for non-highly interdependent countries. The condition of high interdependence is labeled 'I' in the analysis chapter. The shortcomings of reducing this condition to geographical proximity are taken into account as the results are discussed and generalised.

Hypothesis three concerns the governance capacity and quality of the member states. Previously wealth has been taken as a proxy measure by scholars interested in this factor (Winzen, 2016), while others have used data from the World Bank's Governance Indicators (Schimmelfennig, 2016b, p. 800). Similar to Schimmelfennig (2016b), I use the World Bank's Worldwide Governance Indicators (WGI) which measure voice and accountability, rule of law, political stability, government effectiveness, regulatory quality as well as control of corruption and compare the mean score of each country to the mean of the EU average (Schimmelfennig, 2016b)⁵. More specifically, I use the ranking of the control of corruption for the year 2016 because it provides information about how the control of corruption situation is in EU member states in relation to each other. Moreover, I established that countries that ranked in position 77 or higher could be considered part of the set of countries with good governance, and I gave them the score of 1. Countries ranking lower than 77 were considered to not be part of the set of countries with good governance. The condition good governance is labeled 'GG' in the analysis chapter.

With the aim to conduct a robustness test and have a second indicator for good governance (H3), I also recorded country-specific data on the number of cases that the European Anti-Fraud Office (OLAF) referred to national justice ministries. This data was also mentioned in the 2013 Commission proposal for establishing the EPPO (European Commission, 2013a). The data I used is from the OLAF report from 2015 (European Anti-Fraud Office (OLAF), 2015). If the member states had followed up on over 30 per cent of the cases, I considered those countries to have a better than average ability to deal with the types of crimes that OLAF investigates, which before the EPPO acquires its mandate, includes the

5 World Bank Worldwide Governance Indicators, available: <https://info.worldbank.org/governance/wgi/Home/Documents>.

crimes against the financial interest of the EU. In the analysis chapter I, allude to the results of the tests using both indicators for testing hypothesis three. This condition is labeled 'OLAF_GG' in the analysis chapter. Data on the compliance with EU legislation preserving the financial interests of the EU, the so-called 'PIF Directive' could also have been used. However, with the two sources of data used it is possible to have a general idea of the governance standard (GG) and specific governance practices in the area of protecting the financial interests of the EU (OLAF_GG).

The fourth hypothesis concerns collective national identities. The most common operationalisation of the exclusiveness of national identities in the context of EU studies is based on data from the Eurobarometer survey's 'Moreno question'. This question has been an item of the survey since the early 1990s and has been asked to respondents in member states since twice per year. The question asks respondents 'in the near future, do you see yourself as...?' and offers the answers: nationality only; nationality and European; European and nationality; European only and don't know. For measuring how widespread exclusive national identities are in each country, the percentage of respondents which answer 'nationality only' is a good indicator. I used the average of the percentage that answered 'only nationality' from the years 2015, 2016 and 2017. The EU average percentage of 'only national' respondents for the data I recorded was 37,25 per cent. Thus, countries in which the percentage of respondents that chose 'only national' was 40 per cent or higher are considered to be part of the set of countries with exclusive collective national identities. Countries in which the percentage was lower than 40 per cent, are part of the set of countries with non-exclusive collective identities. The condition of exclusive collective identities is labeled 'EXID' in the analysis chapter.

Hypothesis five concerns Eurosceptic government parties. Regarding governing party Euroscepticism, I used data from an expert-survey conducted by the European Council on Foreign Relations, the EU Coalition Explorer Survey in 2016.⁶ Question 16 of the ECFR Coalition Explorer Survey asks experts to assess the level of cooperation or

⁶ ECFR EU Coalition Explorer 2016, available: <https://ecfr.eu/special/eucoalitionexplorer/>.

integration that their national government prefers for specific policies of the EU. Respondents can choose from 'all EU member states', 'legally bound core of member states', 'coalition of member states' or 'only national level'. I recorded data on the percentages of experts that chose each level for the average of all policy areas to measure general Eurosceptic governments. I also recorded the percentage that chose 'only national level' for the area of Justice and Home affairs for a measure of issue-specific Eurosceptic government views.

For general Euroscepticism, I selected ten per cent or more of the respondents choosing the 'only national level option' as the cut-off point, based on the natural distribution of the data and the third quartile number. Thus, with ten per cent or more for 'only national' a country is a part of the set of Eurosceptic government countries. Less than ten per cent of responses on that option meant that member state was not a part of that set. The condition Eurosceptic government is labeled 'E_GOV' in the analysis chapter. In the case of the issue-specific Euroscepticism on justice and home affairs the threshold was 20 per cent of respondents, as the average was 18 per cent for all member states. This indicator, however, serves for conducting robustness tests mainly. The condition Euroscepticism in the area of Justice and Home Affairs is labeled 'JHA' in the analysis chapter.

To test hypothesis six, I measure popular Euroscepticism. Popular Euroscepticism is often studied with the results of the Eurobarometer item which asks: 'generally speaking do you think that (OUR COUNTRY)'s membership of the EU is...?' and gives 'a good thing', 'neither a good thing nor a bad thing' and a 'bad thing' as possible responses. Most scholars measure net support for EU integration at the popular opinion level by subtracting the percentage of responses of 'a bad thing' from the percentage of responses for 'a good thing' (Duttler, 2016; Winzen, 2019). I use the data from Eurobarometer waves commissioned by the European Parliament to categorise states with more Eurosceptic public opinions and those with less Eurosceptic public opinions. I used data from the European Parliament Eurobarometer 86.1 from the 2016 wave.⁷ More precisely my indicator measured the percentage of respondents that

⁷ Parlameter Analytical Overview, available: https://www.europarl.europa.eu/pdf/eurobarometre/2016/parlemetre/eb86_1_parlemeter_synthesis_en.pdf.

answered a 'bad thing'. Following the indication of measures of spread like the IQ3 range which was 17 per cent, I determined that countries where the percentage was higher than 17 per cent belonged to the set of countries with Eurosceptic public opinion. Countries with 17 per cent or less were not considered a part of the set. The condition public Euroscepticism is labeled 'PO' in the analysis chapter.

The seventh hypothesis concerns socialisation. To measure socialisation the length of membership can be measured in years since accession and can help in dividing states between older and newer member states. Countries that became member states in the 2004, 2007 and 2013 enlargement rounds were considered new member states. Being a new member state is labeled 'NMS' in the analysis chapter.

The last hypothesis involves domestic veto players. For the purpose of this study, I included in the set of countries with opposing veto players the countries where at least one parliamentary chamber issued a reasoned opinion in response to the 2013 European Commission Proposal. I found data on the yellow card process that followed the 2013 European Commission Proposal and documents from national parliaments in the Platform for EU interparliamentary Exchange (IPEX).⁸ This condition will be discussed further in the analysis as it caused some contradictory results in the truth table analysis. I complement this information with reports on the opinion of national public prosecutors' networks in the discussion of the findings. The condition opposing veto players is labeled 'YC' in the analysis chapter.

4.4 Analytical steps

The next step in my analysis included some descriptive analysis of the data matrix, in particular, I conducted a test to analyse the necessity of the conditions for the outcome. Authors advise to conduct a test of necessity of each condition before conducting the sufficiency analysis (Schneider and Wagemann, 2010). A condition or combination of conditions is deemed necessary, if it is a superset of the set of countries that display the outcome. Thus, the fsQCA programme tests in how many cases, in which the outcome is present, a condition is also present and produces two

⁸ IPEX Website: <https://secure.ipex.eu/IPEXL-WEB/home/home.do>.

measures of fit to assess the extent to which a condition is necessary or not. The first measure is consistency, which measures the proportion of cases where the condition, and the outcome are present. The second is coverage, which indicates the empirical relevance of the consistency score. The recommended consistency threshold for the necessity analysis is higher than the one used for the truth table analysis, which measures sufficiency (Schneider and Wagemann, 2010; Ragin, 2014b). For conditions to be determined as necessary the consistency score of the analysis should be 0.9 or higher.

When conducting a QCA analysis the cases in which the outcome is 1 and the cases in which the outcome is 0 need to be studied separately because causation is not considered to be symmetrical while applying this method of comparative research. Thus, I first tested whether the presence or absence of the conditions, or a combination of them, could be deemed necessary to explain joining the enhanced cooperation to establish the EPPO. Then, I studied whether the presence or absence of conditions could be deemed necessary to explain not joining the EPPO. For this first step of my analysis, I disregard the direction of my hypotheses. I do so, to discover whether the absence or presence of a condition could be a necessary condition to explain not joining even if the theory would suggest that it should be a factor to explain the choice to join. In this way, I am more flexible and allow the analysis to contribute to testing and engaging with the theories I have presented above.

After conducting a test of necessity, I move on to conducting the truth table analysis for both the outcomes of joining and not joining the EPPO. With the truth table analysis, I can test the sufficiency of single or combined conditions for explaining the outcome of joining or of not joining. The process of truth table analysis begins with selecting the outcome and the conditions that will be included in the truth table. Then, the software fsQCA produces a truth table with each combination of conditions possible and the number of cases it matches. Each combination of conditions in the truth table is called a truth table row. The table includes all possible combinations of the presence or absence of conditions. Thus, some coincide with the cases included in the analysis while others do not. The truth table rows which do not coincide are called logical reminders. As I have included many conditions, there are many

logical reminders in the truth tables produced in this analysis. Additionally, as the number of cases was limited a large number of logical remainders is to be expected.

The truth table output also includes the scores of the parameters of fit relating to consistency and coverage. The next step in the analysis involves the score of consistency. I only selected truth table rows with a consistency score of 75 per cent or higher for the following process of logical minimisation. The direction of the hypothesis formulated is important for this part of the analysis, as it is crucial information to minimise the solution that the software produces. I proceeded with the analysis by conducting the logical minimisation and solving contradictory rows when it was necessary.

The logical minimisation process allows us to discuss the sufficiency of conditions, or combination of conditions, to explain the outcome. I use the FsQCA 3.0. version for this analysis which applies the Quine-McCluskey algorithm for the process of logical minimisation. The standard analysis with FsQCA produces three solutions: a complex, a parsimonious and an intermediate solution. FsQCA produces a conservative solution, the complex solution, for which no assumptions about logical remainders are made. It also produces a parsimonious solution, for which all simplifying assumptions are included in the analysis. Lastly, it produces an intermediate solution for which only simple counterfactuals are taken into consideration (Rihoux and Ragin, 2008; Schneider and Wagemann, 2012, pp. 175–177). Researchers suggest focusing on the intermediate solution because it includes simple counterfactuals and is a good middle ground between the complex and parsimonious solutions. For each analysis I discuss the outcome of the truth table analysis in the following chapter reporting on the complex, intermediate and parsimonious solution with their parameters of fit.

Scholars debate on which solution could be most enlightening, but Ragin has argued that the intermediate solution ‘strikes a balance between parsimony and complexity’ (Ragin, 2009, p. 175). Given that the intermediate solution uses only easy counterfactuals, it is easier to interpret and to apply to the cases for the second part of the analysis. Thus, I will focus on the intermediate solution and the cases covered by it for explaining each outcome, participating or not participating in the

enhanced cooperation. In order to better understand the results of the QCA study I rely on secondary literature throughout the discussion of the results.

Solving contradictory rows involves deeper knowledge of the cases studied. Thus, for instance including the condition of domestic veto players which I operationalised with the yellow card procedure initiated by at least one national parliamentary chamber created contradictory rows in the outcome of the truth table. I explain in the analysis the case of the yellow card for the case of France where I solved a contradictory row. Otherwise, I did not have to solve more contradictions.

4.5 Limitations to this research design

The operationalisation of the conditions to test the hypotheses derived from the grand theories of European integration in this study has limitations that relate to the availability of data, the scope of the research project and the unavailability of complex indexes to measure concepts like European collective identity or strong interdependence. Creating such indexes myself was not possible within the short time frame of this report. The study could be replicated in the future employing fuzzy-set QCA to leverage the data and conduct statistical analyses to determine causation differently.

The setting of thresholds to calibrate the conditions could raise concerns regarding the reliability of the study. QCA has been praised for allowing researchers to apply theoretical knowledge and case-knowledge to the calibration step of the analysis. This means, however, that a different researcher might determine different thresholds to calibrate the same conditions using the same data. Therefore, the reliability of this study could be questioned, as it would be difficult to replicate. This drawback is considered when interpreting the results of the analysis. To curb this limitation, I have been as transparent as possible with the procedure of setting thresholds.

Thus, the results of this study should be considered in the light of the limitations of this research design. Still, the results are a first attempt to research participation in enhanced cooperation projects, an under-researched phenomenon in the current literature.

Chapter 5

Analysis: findings from QCA analysis and discussion

In this section, I report the findings from each analytical step that I took to answer the research question. I start by discussing the findings from my analysis of necessity. Then, I proceed by discussing the truth table analysis and assessing the sufficiency of the conditions as well as their combinations. Next, I apply the intermediate solution back to the cases concerned and discuss the contradictions that the analysis highlighted. While doing so, I specially focus on the countries whose decision to join or not to join the enhanced cooperation is not explained by the solution terms from the truth table analysis. In the discussion of the findings, I return to my hypotheses and analyse whether they can be confirmed or should be discarded.

Throughout the reporting of the findings and the discussion of the analysis, I will use Boolean operators to spell out the solution formulas. Authors suggest that using the Boolean operators is a way to avoid confusion with 'false friends' from quantitative methodology (Schneider and Grofman, 2006). I use the numerical symbols to write out the solutions, they are + for 'OR'; * for 'AND'; ~ for 'NOT'. Table one depicts the data matrix that resulted from calibrating the explanatory conditions

and the outcome condition following the process detailed in the previous chapter.

The data matrix (Table 1) provides some insights about the cases and the relationships between conditions. Poland, the Netherlands, Sweden, Hungary, and Malta did not join by the day the regulation establishing the EPPO was adopted. Thus, they display a zero in JOIN.

Country	JOIN	SMS	I	GG	OLAF_GG	EXID	EGOV	JHA	PO	NMS	YC
Germany	1	0	1	1	1	0	0	0	0	0	0
France	1	0	1	1	0	0	0	0	0	0	1
Italy	1	0	1	0	0	1	0	0	1	0	0
Spain	1	0	0	0	0	0	0	0	0	0	0
Poland	0	0	1	0	0	0	1	1	0	1	0
Romania	1	0	0	0	1	1	0	0	0	1	1
Netherlands	0	0	1	1	1	0	0	0	0	0	1
Belgium	1	0	1	1	1	0	0	0	0	0	0
Greece	1	0	0	0	0	1	1	1	1	0	0
Czech Republic	1	0	1	0	0	1	1	1	1	1	1
Portugal	1	1	0	1	1	0	0	1	0	0	0
Sweden	0	1	1	1	1	0	0	0	0	0	1
Hungary	0	1	1	0	0	0	1	1	0	1	1
Austria	1	1	1	1	1	1	0	0	1	0	0
Bulgaria	1	1	0	0	0	1	0	0	0	1	0
Finland	1	1	0	1	1	0	0	0	0	0	0
Slovakia	1	1	1	0	1	0	0	0	0	1	0
Croatia	1	1	0	0	0	0	0	0	1	1	0
Lithuania	1	1	0	0	1	1	0	0	0	1	0
Slovenia	1	1	1	0	0	0	0	0	0	1	1
Latvia	1	1	0	0	0	1	0	0	0	1	0
Estonia	1	1	0	1	0	0	0	0	0	1	0
Luxembourg	1	1	0	1	1	0	0	0	0	0	0
Malta	0	1	0	0	0	0	0	0	0	1	1

1 = Presence; 0 = Absence; JOIN = joined the Enhanced cooperation before June 2017; SMS = Small Member State; I = Interdependent State; GG = Good Governance; OLAF_GG = Good Governance Olaf; EXID = Exclusive Collective National Identity; EGOV = Eurosceptic Government; JHA = Eurosceptic Government in the Area of Justice and Home Affairs; PO = Eurosceptic Mass Public Opinion; NMS = New Member State; YC = Opposing Veto Players.

Table 1: Data matrix results of the calibration step

As a robustness check, I included two indicators for the condition of good governance to test hypothesis three. The Data Matrix above shows that both indicators (GG and OLAF_GG) provide a similar picture of the countries with better-than-average good governance as both conditions

are present for most of the countries in the sets. The incongruent cases where only one is present are France, Romania, Slovakia, Estonia, and Lithuania.

Looking at the indicator for an overall Eurosceptic government (EGOV), only three countries display this condition. These are Greece, at the time the governing party was Syriza; Hungary, where Fidesz led the coalition government and Poland, where the party Law and Justice (PiS) led the coalition government.⁹ In comparison, all countries with an overall Eurosceptic government are also included in the set of countries with Eurosceptic views in Justice and Home affairs (JHA). The Czech Republic and Portugal also display this condition. Furthermore, contrary to what we might expect, the presence of a Eurosceptic government, in general or in JHA, is not always mirrored with the presence of a Eurosceptic mass public opinion (PO). The cases of Austria, Croatia and Italy display this pattern. This initial finding will later contribute to understand the causal paths.

Additionally, the assumptions about the influence of Eurosceptic mass public opinion on the member states' governments attitudes towards the EU can be questioned based on this initial finding. Thus, from the calibration step, it is clear that the relationship between Eurosceptic publics and governments is complex. As QCA accommodates causal complexity, it this initial finding should not draw the results of the analysis into question. Furthermore, the relation between the countries displaying a Eurosceptic mass public opinion (PO) and a predominately exclusive national identity (EXID) should be revisited. As the data matrix shows, in some cases both conditions are present (Italy, Greece, the Czech Republic and Austria) but in others we observe the presence of one but not the other (Bulgaria, Croatia, Lithuania and Latvia).

5.1 Analysis of necessity

When using QCA, it is good practice to conduct an analysis of the necessity of conditions before analysing the sufficiency of the conditions. A necessary condition is one which alone does not bring about the outcome, but needs to be present for the outcome to occur (Dusa, 2019).

⁹ ParlGov: <http://www.parlgov.org>

As I have developed in the methodology part of this report, QCA studies require that the presence and absence of the outcome of interest, for this case participating or not participating in enhanced cooperation, are studied separately given that causality is not conceived as symmetrical. First, I will report the findings from the analysis of necessity to determine the participation of member states in the enhanced cooperation. Then, I will address the findings of the same analysis for understanding which conditions are necessary for explaining that some states do not join the enhanced cooperation initiative.

To determine if a condition is necessary for a specific outcome, the developers of QCA recommend to set high consistency score thresholds (Ragin, 2014b). The recommended threshold is 0.9, which means that in 90% of the cases with a certain outcome the condition is present. When I conducted the necessity tests, I was conscious of this and only considered as conditions that were necessary for the outcome the ones with a consistency score of 0.9 or almost 0.9.

Table 2: Necessity test for joining the EPPO

<i>Conditions tested</i>	<i>Consistency</i>	<i>Coverage</i>
Interdependence	0.4210	0.6666
Small Member State	0.5789	0.7857
Small Member State + Interdependence	0.8421	0.7619
~EGOV	0.8947	0.8500
~Eurosceptic gov JHA	0.8421	0.8421
~Exclusive Identity	0.5789	0.6875
~Good Governance	0.5263	0.8181
~OLAF_Good Governance	0.2105	0.5714

Outcome = JOIN; Only relevant rows included.

Table 2 summarises the results of the necessity test for participating in EPPO. The results indicate that the conditions of being a small member state (H1) or an interdependent state (H2) on their own are not necessary

on their own, as they both have consistency scores lower than 0.9. This suggests that hypotheses 1 and 2 propose conditions which, in the case of the EPPO, do not seem to be necessary for states to join the initiative. However, the formula Interdependent state + Small member state obtained a consistency score of 0.842. As this consistency score is close to the threshold suggested by authors who employ QCA, I accept it as an indication of necessity in the framework of this report. Thus, the conditions that a state is highly interdependent, and a small member state are necessary for explaining the participation in the enhanced cooperation to set up the EPPO. This lends support to hypotheses one and two.

I obtained a similar consistency score when testing the necessity of the absence of the member state's government being Eurosceptic (H5). Both the results with the indicators from the ECFR survey on general government Euroscepticism and the indicator for JHA government Euroscepticism obtained similar consistency scores. For the general Eurosceptic government condition, I found that not having a Eurosceptic government, produced a 0.894 consistency score. In the case of specific Euroscepticism of the government in the area of Justice and Home Affairs the consistency score was 0.842. These results indicate that not having a Eurosceptic government is, also, a necessary condition for participating in the enhanced cooperation initiative to establish the EPPO. Thus, hypothesis five suggests a condition that should not only be considered for understanding not joining the enhanced cooperation as well. Rather, the role of Eurosceptic governments is important for understanding joining the enhanced cooperation. The results of the presence of this condition as necessary for explaining not participating will be presented later in this chapter.

Regarding the other conditions I tested, the presence of neither of the operationalisation of the indicators for good governance (H3) have high enough consistency scores to be considered necessary conditions to explain participating. Same goes for the absence of good governance. Similarly, for the presence or absence of the conditions exclusive national identity (EXID) and Eurosceptic public opinion (PO), the consistency scores were not high enough to consider them necessary for explaining joining the enhanced cooperation.

Table 3: Necessity test for not joining the EPPO

<i>Conditions tested</i>	<i>Consistency</i>	<i>Coverage</i>
Yellow Card	0.80000	0.50000
Good Governance	0.80000	0.26666
New MS	0.60000	0.25000
Eurosceptic PO	0.00000	0.00000
Exclusive identity	0.00000	0.00000
Eurosceptic Gov.	0.60000	0.60000
Eurosceptic Gov. + Eurosceptic JHA	0.60000	0.50000
Eurosceptic PO + Eurosceptic Gov. + ExID	0.60000	0.25000
~I + ~SMS	0.60000	0.15789

Outcome ~JOIN; only relevant rows included

Table 3 summarises the results of the necessity test for explaining the outcome not participating. In the case of not joining, the test of necessity suggests that having domestic veto players and being part of the set of countries with a higher-than-average standard of governance give consistency scores close to 90%. This is an indication that hypotheses three and eight suggest conditions which are almost necessary for explaining not joining the enhanced cooperation to establish the EPPO. Still, the coverage scores of these conditions are quite low, meaning the conditions of opposing veto players (YC) or Good Governance (GG) are not as relevant as the consistency score suggests. The scores for the combination of not interdependent + not small member state show that QCA rightly assumes that causation is not symmetrical, as the presence of these factors is likely necessary for explaining the outcome join but the absence of them is not necessary for explaining not joining.

Moreover, contrary to what the literature suggests, being part of the subset of countries with a generally Eurosceptic public opinion or with a rather exclusive collective national identity does not seem to be a necessary condition to explain not participating in the enhanced

cooperation to establish the EPPO. The truth table analysis will contribute to assessing whether the presence of these conditions can be considered a sufficient condition to explain why some states did not participate in the initiative. The necessity test for the outcome of non-participation did not yield very noteworthy results.

5.2 Analysis of Truth Tables

Now that the results of the necessity tests have been discussed, the next section reports the results of the truth table analysis. First, it addresses the results for the outcome participating, and then, it presents the results for the outcome non-participating. Bearing in mind that more cases have the outcome of participating, the results for the truth table analysis of this outcome include a rather ‘long’ intermediate solution.

Explaining participation in the EPPO

From the displayed truth table in Table 4, I derive some initial findings. First, it is important to point out that the limited diversity of the data and the limited number of cases means that there were many rows which did not correspond to cases. However, the abundance of logical reminders is not unusual in small-n studies. Out of all possible combinations of conditions (28=256 possible combinations), 19 rows find combinations of conditions that match the cases. Out of them, 14 rows are linked to outcome of joining the EPPO. There is one contradictory row covering the cases of the Netherlands, which initially did not participate, and France, which did. There are four rows linked to not participating in the enhanced cooperation to set up the EPPO. A first glance at the truth table adds to the previous analysis of necessity, as it also suggests the necessity of the conditions ‘Small Member State’ + ‘Interdependence’ for explaining the decision of member states to join. This combination of conditions is present in all but two rows that produce the outcome.

Table 4: Truth Table for joining the EPPO

SMS	I	GG	EXID	EGOV	PO	NMS	YC	N	JOIN	CASE	RAW CON	PRI CON	SYM CON
1	0	1	0	0	0	0	0	3	1	PTFNLUX	1	1	1
0	1	1	0	0	0	0	0	2	1	GER BE	1	1	1
1	0	0	1	0	0	1	0	3	1	BGLTLV	1	1	1
0	0	0	0	0	0	0	0	1	1	ES	1	1	1

0	1	0	1	0	1	0	0	1	1	IT	1	1	1
1	1	1	1	0	1	0	0	1	1	AUT	1	1	1
0	0	0	1	1	1	0	0	1	1	EL	1	1	1
1	1	0	0	0	0	1	0	1	1	SK	1	1	1
1	0	1	0	0	0	1	0	1	1	EE	1	1	1
1	0	0	0	0	1	1	0	1	1	HR	1	1	1
1	1	0	0	0	0	1	1	1	1	SI	1	1	1
0	0	0	1	0	0	1	1	1	1	RO	1	1	1
0	1	0	1	1	1	1	1	1	1	CZ	1	1	1
0	1	1	0	0	0	0	1	1	C	NEL FR	0	0.5	0.5
0	1	0	0	1	0	1	0	1	0	PL	0	0	0
1	1	1	0	0	0	0	1	1	0	SE	0	0	0
1	0	0	0	0	0	1	1	1	0	MT	0	0	0
1	1	0	0	1	0	1	1	1	0	HU	0	0	0

The contradictory row covers two cases which are both part of the sets good governance (GG) and opposing veto players (YC) but have different outcomes. While France joined the enhanced cooperation, the Netherlands did not at that point in time. In order to solve the contradiction, it is important to return to the cases and rely on case-knowledge. Thus, I utilise secondary literature on the yellow card process and the reasoned opinions that national parliaments sent to the European Commission in this instance (Fromage, 2016). While both countries’ parliaments sent reasoned opinions about the European Commission proposal to establish the EPPO, it appears that the motivation for the reasoned opinions was different in the two cases (Wieczorek, 2015). According to Fromage, both of the Dutch chambers engaged with the early warning system to express discontent with the proposal of establishing the EPPO and sent the reasoned opinion (Fromage, 2016). The French chambers engaged with the Commission via the framework of political dialogue. The French Senate expressed concerns with the proposed design of the EPPO by sending a reasoned opinion. Yet, at the same time, the French chambers expressed their support for establishing the EPPO (Fromage, 2016, p. 15). This leads me to resolve the contradiction for the next steps of the analysis by re-coding the French score on opposing national veto players (YC) to zero.

Table 5 displays the solutions for explaining the outcome of joining the EPPO. I present the results for the model that includes the conditions GG and EGOV. I conducted robustness tests and run the analysis also with

the other indicators I collected to measure good governance and Euroscepticism. The results of the logical minimisation process with the alternative measurements of OLAF_GG and JHA can be found in the annex. Interchanging the variable of GG for OLAF_GG did not yield different results and neither did the interchanging of EGOV for JHA.

The complex solution does not allow for studying the sufficiency of the conditions as it is merely descriptive. Moreover, the complex solution tends to not be clear enough to be interpreted in a theoretically meaningful manner. The complex solution to explain joining elicits eleven causal paths. Most of the countries are covered by a unique causal path, or solution term. Out of all the solution terms, four cover more than one member state that joined. The solution terms that cover more than one member state reinforce the finding of the necessity of the presence of either the conditions SMS or I. As the eleven causal paths are very complex and do not allow for much discussion of the findings, I move to the second formula, the parsimonious solution. The parsimonious solution includes the minimal formula and is computed including complex counterfactuals from the logical reminders of the truth table (Rihoux and Ragin, 2008, p. 60).

Table 5: Logical minimisation for explaining joining

<i>Solution term</i>	<i>Cases covered</i>	<i>N</i>	<i>Raw cov.</i>	<i>Unique cov.</i>	<i>Consit.</i>
Complex solution					
SMS*~I*GG*~EXID*~EGOV*~PO*~YC	Portugal Finland Estonia Luxembourg	4	0.210526	0.210526	1
SMS*I*~GG*~EXID*~EGOV*~PO*NMS	Slovakia Slovenia	2	0.105263	0.105263	1
~SMS*~I*~GG*~EXID*~EGOV*~PO*~NMS*~YC	Spain	1	0.0526316	0.0526316	1
~SMS*I*GG*~EXID*~EGOV*~PO*~NMS*~YC	Germany France Belgium	3	0.157895	0.157895	1
~SMS*I*~GG*EXID*~EGOV*PO*~NMS*~YC	Italy	1	0.0526316	0.0526316	1
~SMS*~I*~GG*EXID*EGOV*PO*~NMS*~YC	Greece	1	0.0526316	0.0526316	1
SMS*~I*~GG*EXID*~EGOV*~PO*NMS*~YC	Bulgaria Lithuania Latvia	3	0.157895	0.157895	1
SMS*~I*~GG*~EXID*~EGOV*PO*NMS*~YC	Croatia	1	0.0526316	0.0526316	1
~SMS*~I*~GG*EXID*~EGOV*~PO*NMS*YC	Romania	1	0.0526316	0.0526316	1
SMS*I*GG*EXID*~EGOV*PO*~NMS*~YC	Austria	1	0.0526316	0.0526316	1
~SMS*I*~GG*EXID*EGOV*PO*NMS*YC	Czech Republic	1	0.0526316	0.0526316	1
Solution coverage: 1; Solution consistency: 1					

<i>Solution term</i>	<i>Cases covered</i>	<i>N</i>	<i>Raw cov.</i>	<i>Unique cov.</i>	<i>Consit.</i>
Intermediate solution					
~GG*~NMS*~YC	Italy, Spain, Greece	3	0.157895	0.157895	1
I*~GG*EXID*NMS	Czech Republic	1	0.0526316	0.0526316	1
SMS*~EXID*~EGOV*~PO*~YC	Portugal, Finland, Slovakia, Estonia, Luxembourg	5	0.263158	0.210526	1
SMS*~GG*~EXID*~EGOV*~YC	Slovakia, Croatia	2	0.105263	0.0526316	1
SMS*I*~EGOV*~NMS*~YC	Austria	1	0.0526316	0.0526316	1
~GG*EXID*~EGOV*~PO*NMS	Romania, Bulgaria, Lithuania, Latvia	4	0.210526	0.210526	1
I*~EXID*~EGOV*~PO*~NMS*~YC	Germany, France, Belgium	3	0.157895	0.157895	1
SMS*I*~GG*~EGOV*~PO*NMS	Slovakia, Slovenia	2	0.105263	0.0526316	1
Solution coverage:1; Solution consistency: 1					

<i>Solution term</i>	<i>Cases covered</i>	<i>N</i>	<i>Raw cov.</i>	<i>Unique cov.</i>	<i>Consit.</i>
Parsimonious solution					
I*~GG*~EGOV	Italy, Slovakia, Slovenia	3	0.157895	0.0526316	1
EXID	Italy, Romania, Greece, Czech Republic, Austria, Bulgaria, Lithuania, Latvia	8	0.421053	0.105263	1
~NMS*~YC	Germany, France, Italy, Spain, Belgium, Greece, Portugal, Austria, Finland, Luxembourg	10	0.526316	0	1
~EGOV*~YC	Germany, France, Italy, Spain, Belgium, Portugal, Austria, Bulgaria, Finland, Slovakia, Croatia, Lithuania, Latvia, Estonia, Luxembourg	15	0.789474	0.105263	1
Solution coverage: 1; Solution consistency: 1					

The parsimonious solution identifies four solution terms:

$$I*~GG*~E_GOV + EXID + ~NMS*~YC + ~E_GOV*~YC \rightarrow \text{Outcome (join)}$$

This solution can be translated as follows:

A member state participates in the enhanced cooperation initiative if

- (1) The condition of high interdependence is present (I) while the conditions of good governance and Eurosceptic government are absent ($\sim GG^* \sim E_GOV$).
- (2) The condition of exclusive national collective identity is present (EXID)
- (3) The country is not a new member state ($\sim NMS$) and, its parliamentary assembly did not send a reasoned opinion within the early warning system ($\sim YC$).
- (4) The country is not governed by a Eurosceptic government ($\sim E_GOV$) and its parliamentary assembly did not send a reasoned opinion ($\sim YC$).

Table 5 indicates that the first solution term covers three countries, the second solution term covers eight, the third covers ten countries and finally the last solution covers 15 countries. There are concurrent causal paths for several countries, especially Italy. The second solution term, having an exclusive national identity, questions the theoretical expectations of post-functionalism and hypothesis four. It is also the solution term with the most coverage. Additionally, the absence of opposing national veto players is present in two solution terms, meaning it seems relevant for explaining joining. Even though QCA assumes that causality is not symmetrical, in the cases of domestic veto players and Eurosceptic governments their absence explains joining while their presence explains not joining in the case studied.

The intermediate solution, which has been calculated including simple counterfactuals (Ragin, 2014b), yields eight solution terms.

$$\begin{aligned}
 & \sim GG^* \sim NMS^* \sim YC + \\
 & I^* \sim GG^* EXID^* NMS + \\
 & SMS^* \sim EXID^* \sim E_GOV^* \sim PO^* \sim YC + \\
 & SMS^* \sim GG^* \sim EXID^* \sim E_GOV^* \sim YC + \\
 & SMS^* I^* \sim E_GOV^* \sim NMS^* \sim YC + \\
 & \sim GG^* EXID^* \sim E_GOV^* \sim PO^* NMS +
 \end{aligned}$$

$$I^* \sim EXID^* \sim E_GOV^* \sim PO^* \sim NMS^* \sim YC +$$

$$SMS^* I^* \sim GG^* \sim E_GOV^* \sim PO^* NMS \rightarrow \text{Outcome (join)}$$

When conducting the logical minimisation, I set presence of the conditions small member state (SMS) and Interdependent state (I) as contributing to the outcome. I set the rest of the conditions, as not contributing to the outcome: $\sim GG$; $\sim EXID$; $\sim E_GOV$; $\sim PO$; $\sim YC$. The intermediate solution for this truth table includes many solution terms. This could be due to the high number of conditions included or the high number of cases. Moreover, the presence of uniquely covered cases, the Czech Republic and Austria, indicates that the cases included in the analysis vary considerably.

The intermediate solution can be read and interpreted as follows:

In three countries (Italy, Spain, and Greece) the absence of a better-than-average good governance standard, the absence of being a new member state, and the absence of opposing domestic veto players explain the choice for joining the EPPO. The cases of Romania, Bulgaria, Lithuania, and Latvia can be explained by a combination of conditions: they are newer member states with predominantly exclusive national identities, without a superior standard of good governance and without Eurosceptic governing parties or mass public opinion.

The Czech Republic is a uniquely covered case, for which participation is explained by high interdependence, combined with the lack of a high standard of good governance, the presence of a predominantly exclusive national identity and being a new member state. Austria is the other uniquely covered case. According to the intermediate solution, the participation of Austria can be explained by the fact that it is a smaller, highly interdependent, and an older member state without a Eurosceptic government or veto players.

In five cases (Portugal, Finland, Slovakia, Estonia, and Luxembourg) the decision to join can be explained by the fact that they are smaller member states where national identity is not exclusive, where neither the government nor the mass public opinion can be characterised as Eurosceptic, and the national chambers did not send a reasoned opinion meaning no opposing domestic veto players. The cases of Slovakia and

Croatia are both explained by the same solution, they are small member states without a superior good governance standard their collective national identity is exclusive, their governments are not Eurosceptic, and the national legislative chambers did not send a reasoned opinion to trigger the yellow card procedure. The participation of Germany, France and Belgium is explained by the absence of an exclusive identity, a non-Eurosceptic government, and no Eurosceptic mass public opinion as well as the absence of veto players combined with the presence of high interdependence and not being a new member state. Additionally, the cases of Germany, France and Belgium are covered by a solution term that shares the combination of $\sim\text{EXID}^*\sim\text{E_GOV}^*\sim\text{PO}^*\sim\text{YC}$ with Slovakia and Croatia. When manually factoring the last three solution terms, it is possible to reduce the last three solution terms to the following expression that covers ten cases.

Figure 2: Factoring Intermediate Solution for Joining the EPPO

$$\begin{array}{l} \text{SMS} \\ \text{I}^*\sim\text{NMS} \end{array} \left. \vphantom{\begin{array}{l} \text{SMS} \\ \text{I}^*\sim\text{NMS} \end{array}} \right\} * \sim\text{EXID}^*\sim\text{E_GOV}^*\sim\text{YC}^* \left\{ \begin{array}{l} \sim\text{PO} \\ \sim\text{GG} \end{array} \right. \rightarrow \text{Outcome (join)}$$

The expression can be read as the joining the EPPO is explained by either the presence of the condition small member state or presence of interdependence but the absence of new member state and the lack of exclusive identity, lack of a Eurosceptic government and no opposing veto players combined with either a non-Eurosceptic public opinion or a governance level lower than the average. The expression covers ten cases, which is remarkable given the large number of conditions included in the analysis. Moreover, the expression contributes to the assessment of the hypotheses proposed in chapter three.

The first and second hypotheses tested assumptions from intergovernmental theories that aimed to explain the participation of member states in deeper EU integration. The truth table analysis suggests that these two conditions are relevant for explaining why member states joined the EPPO. The intermediate solution includes the presence of either the small member state condition (H1) or highly interdependent state condition (H2) in most of the solution terms. The manual factoring of solution terms, displayed in Figure 2, provided an expression that covers

10 out of the 18 countries that joined the EPPO. In line with the first hypothesis, the size of the member state is, for some countries in combination with other conditions, a necessary and sufficient condition for explaining the outcome of joining the EPPO. The second hypothesis is partly supported by the presence in the explanation of France, Germany, and Belgium and the two uniquely covered cases, Austria and the Czech Republic. The sufficiency of interdependence is not as clear from these results as the sufficiency of small member states. Thus, interdependence, while necessary for explaining joining, is not a sufficient condition. However, when combined with not being a new member state, it becomes an important part of the solution term that covers some of the main proponents of the EPPO.

Moreover, the cases of Spain, Italy and Greece illustrate that for some countries that joined, rather than the presence of conditions from hypotheses one and two, it is the absence of the conditions from the remaining hypotheses that contribute to explaining the choice. The factored solution also points to this assessment, as the combination of conditions shared is the absence of Eurosceptic governments, exclusive national identity and opposing veto players. Lastly, the fact that the solution terms cover countries that have similar geographical characteristics, like Spain, Italy, and Greece, or Romania, Bulgaria, Lithuania, and Latvia, supports the results of the logical minimisation as it groups countries that usually share interests and EU positions under the same explanations for why they joined.

Overall, the high number of participant member states contrasts with the assessments of scholars that have theorised the likelihood of enhanced cooperation projects to succeed. Indeed, the success of the enhanced cooperation procedure to create the EPPO in 2017 weakens the fit of the theoretical model developed by Kroll and Leuffen (2015) who explain the feasibility of differentiation by analysing the externality structure of the goods created. As the EPPO created a non-excludable network good, the theory of Kölliker (2001), later applied to enhanced cooperation by Kroll and Leuffen (2015), would expect that the incentives for free riding are too high for member states that are unwilling to join. Scholars were sceptical that there would be at least nine member states that would support moving forward with enhanced cooperation for the EPPO (Schutte, 2015,

p. 195). Despite this, there was a large number of member states that initially requested the fast-track authorisation of the enhanced cooperation to establish the EPPO.

The QCA analysis has provided indications about the relevance of interdependence and size of the member state for explaining the choice of most member states to join the EPPO. Additionally, authors highlight the symbolic value of joining the EPPO as a possible explanation for the high number of member states that initially or eventually joined the EPPO (Wessels and Gerards, 2018, p. 32). As protecting the financial interests of the EU is a good cause to support, the pro-integration attitudes of the governments who were driving the enhanced cooperation could overcome the fears of non-participants free riding, and even of the competitive advantage that non-participating member states would gain by remaining outside of the EPPO. Moreover, the symbolic nature of the EPPO, as a crucial step in the integration in the area of justice and home affairs, could have determined the will to join of states that want to secure an image of being ‘good Europeans’ as well as their spot at the core of EU integration. For instance, Aydın-Düzgüt and colleagues have found that concerns in the Czech Republic of being ‘bad Europeans’ for maintaining an ambivalent position towards EU integration influence the attitudes towards DI (2020, p. 17). It is possible that similar fears influence the decision of governments in the newer member states towards adhering to the uniform integration norm and join in this instance of enhanced cooperation.

A particularly interesting case is France, where the fact that the initial proponent of the EPPO was a French lawyer, Mireille Delmas-Marty, who participated in the corpus juris project can further qualify the explanation for the choice to join (Spencer, 2012, p. 368). This is despite the French Senate sending a reasoned opinion to the European Commission after the proposal. The choice of both France and Germany to participate can be related to the Franco-German tandem driving EU integration, one of the patterns of differentiation that Wessels and Gerrards found (2018). The core of member states they identify, participates in the EPPO project, except the Netherlands. This indication also confirms the recent assessment of Schimmelfennig and Winzen that differentiated integration is path dependent (Schimmelfennig and Winzen, 2020a).

The impact assessment summary indicated that most states who responded were in favour of creating the EPPO, with Spain, Italy and Greece expressing ‘clear support’ (European Commission, 2013b, p. 61). The cases for which the absence of better than average is part of the solution term are also identified by Schutte as countries where ‘existing national-level efforts fail to address properly the problem of fraud against the EU’s financial interests’ (2015, p. 196). For example, respondents to the European Commission consultation from the national prosecution services of Greece, Portugal and Italy identified issues like ‘understaffed prosecution offices, lack of interest by national authorities or excessive workload’ (2013b, p. 60).

It is interesting that the presence of the condition exclusive national identity is sufficient to explain why eight countries joined the EPPO according to the parsimonious solution. As it will be discussed in the following section, the expectations of the fourth hypothesis are contradicted by the QCA analysis. This has implications for this study, but also for the wider assumptions of post-functionalist theory.

Explaining not participating in the EPPO

Table 6 displays the truth table for explaining not joining the EPPO results in a row per country that did not join the EPPO. Thus, Poland, the Netherlands, Sweden, Malta, and Hungary are all uniquely covered cases. As there are fewer cases of countries that did not join and a large number of conditions included in the model, this outcome is not surprising. This also indicates that each case of the countries that did not join is slightly different. However, with the process of logical minimisation, some commonalities can be identified.

Table 6: Truth Table for not joining the EPPO

<i>SMS</i>	<i>I</i>	<i>GG</i>	<i>EXID</i>	<i>EGOV</i>	<i>PO</i>	<i>NMS</i>	<i>YC</i>	<i>N</i>	<i>NOT JOIN</i>	<i>CASE</i>	<i>RAW CONSIST.</i>	<i>PRI CONSIST.</i>	<i>SYM CONSIST.</i>
0	1	0	0	1	0	1	0	1	1	PL	0	0	0
0	1	1	0	0	0	0	1	1	1	NEL	0	0	0
1	1	1	0	0	0	0	1	1	1	SE	0	0	0
1	0	0	0	0	0	1	1	1	1	MT	0	0	0
1	1	0	0	1	0	1	1	1	1	HU	0	0	0
1	0	1	0	0	0	0	0	3	0	PT, FN, LUX	1	1	1
0	1	1	0	0	0	0	0	3	0	GER, FR, BE	1	1	1
1	0	0	1	0	0	1	0	3	0	BG, LT, LV	1	1	1

0	0	0	0	0	0	0	0	1	0	ES	1	1	1
0	1	0	1	0	1	0	0	1	0	IT	1	1	1
1	1	1	1	0	1	0	0	1	0	AUT	1	1	1
0	0	0	1	1	1	0	0	1	0	EL	1	1	1
1	1	0	0	0	0	1	0	1	0	SK	1	1	1
1	0	1	0	0	0	1	0	1	0	EE	1	1	1
1	0	0	0	0	1	1	0	1	0	HR	1	1	1
1	1	0	0	0	0	1	1	1	0	SI	1	1	1
0	0	0	1	0	0	1	1	1	0	RO	1	1	1
0	1	0	1	1	1	1	1	1	0	CZ	1	1	1

Table 7 displays the solution terms for the countries that did not join the EPPO, at least initially. The complex solution groups the cases of the Netherlands and Sweden with the same explanatory combination. As stated above, the complex solution is less relevant than the parsimonious or intermediate solutions. The parsimonious solution identifies four causal paths for explaining the choice to not join.

Table 7: Logical minimisation for explaining not joining

<i>Solution term</i>	<i>Cases covered</i>	<i>N</i>	<i>Raw cov.</i>	<i>Unique cov.</i>	<i>Consit.</i>
Complex Solution					
I*GG*~EXID*~EGOV*~PO*~NMS*YC	Netherlands, Sweden	2	0.4	0.4	1
~SMS*I*~GG*~EXID*EGOV*~PO*NMS*~YC	Poland	1	0.2	0.2	1
SMS*~I*~GG*~EXID*~EGOV*~PO*NMS*YC	Malta	1	0.2	0.2	1
SMS*I*~GG*~EXID*EGOV*~PO*NMS*YC	Hungary	1	0.2	0.2	1

Solution coverage: 1; Solution consistency: 1

<i>Solution terms</i>	<i>Cases covered</i>	<i>N</i>	<i>Raw cov.</i>	<i>Unique cov.</i>	<i>Consit.</i>
Intermediate solution					
GG*YC	Netherlands Sweden	2	0.4	0.4	1
~SMS*EGOV*~PO*NMS	Poland	1	0.2	0.2	1
SMS*~I*NMS*YC	Malta	1	0.2	0.2	1
EGOV*~PO*NMS*YC	Hungary	1	0.2	0.2	1

Solution coverage: 1; Solution consistency: 1

<i>Solution terms</i>	<i>Cases covered</i>	<i>N</i>	<i>Raw cov.</i>	<i>Unique cov.</i>	<i>Consit.</i>
Parsimonious solution					
EGOV*~PO	Poland, Hungary	2	0.4	0.4	1
~NMS*YC	Netherlands, Sweden	2	0.4	0.4	1
GG*YC	Netherlands, Sweden	2	0.4	0.4	1
SMS*~I*YC	Malta	1	0.2	0.2	1

Solution coverage: 1; Solution consistency: 1

A member state does not join the EPPO if:

$$EGOV^* \sim PO + \sim NMS^* YC + GG^* YC + SMS^* \sim I^* YC \text{ ' } \sim \text{ Outcome (not join)}$$

The cases of the Netherlands and Sweden are covered by two concurrent causal paths, combining the presence of Opposing Veto players (YC) and a better governance standard (GG) or being an older member state (~NMS). The cases of Poland and Hungary are explained by the same combination of conditions: having a Eurosceptic government but not a Eurosceptic public opinion (EGOV*~PO). Malta is covered by the solution combination of being a smaller member state which is not highly interdependent and has opposing veto players (SMS*~I*YC).

As discussed earlier, the intermediate solution is better suited to analyse and reflect on the relevance of conditions. I set the GG (H3), EXID (H4), EGOV (H5), PO (H6), NMS (H7), and YV (H8) as contributing to the outcome of not joining. I set the remaining conditions, I (H1) and SMS (H2), as not contributing to the outcome. The intermediate solution yields four solution terms. Below, I spell out each solution term and factor them to reflect on the relevance of the theoretical expectations.

The cases of the Netherlands and Sweden are explained by the same causal path: the combination of better than average good governance and opposing domestic veto players explain why the countries did not join (GG*YC). The presence of veto players in the chambers of representatives in both countries seems to have played a role also according to scholars who studied the yellow card procedure for the EPPO. Fromage argues that the reasoned opinions of the Dutch chambers, both sent a notice to the European Commission, expressed the discontent with the creation of the EPPO (Fromage, 2016, p. 14). In the case of the better than average governance standard, authors have found that ‘the Swedish Parliament also claimed that the EU should concern itself only with the Member States where prosecution is not efficient’ (Wieczorek, 2015, p. 1258). This is in line with the expectations of rejecting integration in areas where national standards are higher. Finally, the non-participation of Sweden

was announced via twitter¹⁰, which was not a surprise as it was one of the countries that opposed the proposal from the start despite efforts by the successive Council presidencies to include them (Council of the European Union, 2017). The solution for Sweden and the Netherlands also includes the condition of being an older member state which contradicts the socialisation hypothesis.

The cases of Hungary and Poland are explained by two different solutions that can be factored as follows:

$$\left. \begin{matrix} \sim SM \\ YC \end{matrix} \right\} *EGOV*\sim PO *NMS \rightarrow \sim \text{Outcome (not joining)}$$

The solution includes simultaneously the presence of a Eurosceptic government and the absence of a Eurosceptic public opinion. This outcome is puzzling, as the theoretical expectations of post-functionalism indicates that countries with Eurosceptic public opinions elect Eurosceptic governments that oppose further integration. The cases of Hungary and Poland are examples of situations where the attitude of the government towards the EU does not match the attitude of the majority of their citizens towards the EU. For instance, in Hungary there was even a campaign that collected 60,000 signatures protesting the decision of the government not to join the EPPO (Reuters, 2019). Moreover, the presence of the condition Eurosceptic government in the solution term explains not joining the EPPO which governments perceived as a ‘federal instrument’ that would deepen cooperation on criminal matters (Pawelec, 2015, p. 214). For authors, establishing the EPPO was a step to deepen integration in the field of criminal law after instances of disintegration (Mitsilegas and Giuffrida, 2017). Thus, governments which preferred to stop integration or roll it back would oppose it.

The condition of better than average governance is not present in the solution. Still, the perceived level of good governance can contribute to explaining the decision not to join as the impact assessment showed. Respondents in Poland justified their opposition to establishing the EPPO with the argument that the financial interests of the EU are equally

10 <https://twitter.com/SwedeninEU/status/822081490762825728>

secured by Polish legislation as the national financial interests (European Commission, 2013b, p. 59). Indeed, Hungarian and Polish respondents arguing it would lead to duplication (European Commission, 2013b, p. 61). Thus, the Polish and Hungarian governments would have had to admit that they are not sufficiently prosecuting crimes against the financial interests of the EU, something scholars predicted would be difficult, especially for Eurosceptic governments (Shutter, 2015). Conferring exclusive competences to the EPPO to prosecute crimes was also opposed by the Hungarian respondents to the consultation. Lastly, Polish respondents suggested in the impact assessment that the EPPO would only add value if it prosecuted 'fraud committed by EU officials or affecting funds managed by the Commission ' (European Commission, 2013b, p. 61). The presence of opposing veto players in the case of Hungary and the condition of being a bigger member state for Poland follows the expectations of the hypotheses. The fact that these countries are newer member states is also in line with hypothesis eight.

The same goes for the case of Malta, which is covered by the solution term: small member state, which is not highly interdependent, a newer member state and where there were opposing veto players (SMS*~I*NMS*YC). Malta was opposed to joining the EPPO initially and its national chambers issued a reasoned opinion arguing that criminal law is purely a national concern (Fromage, 2016, p. 19). Thus, it seems that structural factors like the size of the country and its interdependence are relevant to explaining the case of Malta however, as the section below will further discuss, the sovereignty debate could also explain why Malta did not join initially.

5.3 Returning to theory

Now that the results of the QCA analysis have been discussed, it is important to return to the theoretical framework to understand how useful the conditions proposed by the different theories of EU integration and DI were.

Hypotheses one and two were derived from intergovernmental approaches and included structural factors, namely the size of the states and their degree of interdependence. The tests carried out to explain joining suggested that the presence of one or the other condition is necessary for explaining the cases of countries that decided to join the

EPPO. The test of sufficiency, through the truth table analysis, suggests that for a large number of countries their relatively small size is a part of the explanation for joining the EPPO. Thus, the analysis has shown that intergovernmental approaches propose conditions that are relevant for explaining the decision of member states to pursue integration, even if it is differentiated.

Hypothesis three tested a factor that authors had found relevant in previous research on DI to explain the participation patterns in primary and secondary law. The study of the role of standard of governance in the case of the EPPO further contributes to establish capacity as a crucial factor to understand demand for differentiation. In the case of the QCA analysis to explain joining, the absence of a better than average standard of governance when it comes to prosecuting corruption, was part of one of the solution terms of the intermediate solution. The condition was also crucial in the explanation for why Sweden and the Netherlands did not initially join the EPPO, as the previous section showed. In fact, the most recent synthesis of DI theoretical frameworks includes heterogeneity of capacity for explaining the demand for DI (Schimmelfennig and Winzen, 2020a). It was also clear that the opposition to join in the cases of Hungary and Poland was justified with capacity arguments, thus, perceived capacity is as relevant as actual capacity.

The main finding with theoretical relevance is the puzzling results for hypotheses four, five and six. These hypotheses tested the relevance of contestation to the process of EU integration, at the governmental and popular level and the relevance of exclusive national identity. Theoretically they are linked to the concept of sovereignty, still empirically they do not capture it sufficiently, as a common feature of the non-participating member states is the absence of exclusive identity or Euroscepticism at the public opinion level. Yet, when studying each of the cases the issue of sovereignty is recurrent. In the case of the Netherlands there was a clear sovereignty discourse that was mobilised to justify opposition to join (Van der Hulst, 2016). Indeed, the sovereignty concerns were felt across political parties in the Netherlands with politicians warning that joining the EPPO would be ‘a direct attack’ on the sovereignty of nation states and a further shift of power to Brussels’ (Dutchnews.NL, 2017). In the case of Hungary and Poland the references

to sovereignty are also recurrent in the justifications for why not joining the EPPO (European Commission, 2013b). While the conditions of exclusive identity and Euroscepticism proposed by the theories tested in this report are related to sovereignty, they do not directly measure sovereignty seeking behaviour. This is why the conditions are not part of the parsimonious solutions for the non-participating member states. Thus, it is the political use of identity discourse which was used to justify opposition to joining the EPPO. More recent studies have attempted to capture the relevance of the level at which Euroscepticism matters in DI (Winzen, 2019) and the relevance of political discourses that tie national identity and sovereignty (Aydın-Düzgit, Kovář and Kratochvíl, 2020). This analysis has shown that the findings of Winzen (2019) are confirmed, as it is countries with Eurosceptic governments that chose not to join enhanced cooperation projects. However, when it comes to identity, this analysis and future research on enhanced cooperation, could benefit from studying sovereignty discourses that mobilise identity concerns, rather than collective identity. It would be interesting to include different measurement of the role of identity, for example the approach by with Aydın-Düzgit and colleagues' (2020) to test if it would have an impact on the results of similar studies.

The socialisation effects of longer membership were theorised to explain why older member states join and newer ones do not. In the case of the EPPO, there is not a clear division according to the experience as member state. For instance, the Netherlands which did not join the EPPO initially, is a founding member of the EU. Lastly, domestic veto players appear to be relevant in instances of DI based on the results for the case of the EPPO. As the cases of agreed enhanced cooperation are examples of failed legislative procedures (Kroll and Leuffen, 2015) national veto players play a role. In the case of the EPPO, national legislatures issued reasoned opinions. Still this kind of attempts to veto EU integration was more effective in some cases than in others, like in France.

The next section serves to conclude this report by providing an update on the developments in the establishment of the EPPO since 2017 and summarising the findings of the report. It also highlights areas within the DI scholarship and EU integration theorising that deserve more attention in the future.

Chapter 6

Conclusion

The introduction of the enhanced cooperation procedure to the Treaties led commentators to celebrate the possibility for legally-based, flexible integration as a ‘Copernican revolution’ but also to warn of the detrimental effects that it could have for the ‘uniform application for EU law’ (Thym, 2005, p. 1374). Contributing to the academic discussions on differentiated integration, this report has studied the case of the enhanced cooperation to establish the European Public Prosecutor’s Office. This report has explored the question, why do EU member states choose to participate in voluntary differentiated integration projects?. In order to do this, it has tested hypotheses from theories of EU integration and DI. As usual, explaining complex decisions, especially those pooling sovereignty in areas of core-state powers, requires a theoretical framework that accounts for many possible causal factors. The synthetic framework recently developed by Schimmelfennig and Winzen includes the three sources of heterogeneity that this analysis finds to be relevant to explain the membership pattern of enhanced cooperation projects (2020, p. 27). The authors identify heterogeneity of dependence, wealth and capacity, as well as identity to explain the demand for differentiation by member states (2020, p. 27). The findings of this study thus, contribute to the empirical research of these causal factors. At the same time, they show the applicability of theories of DI in primary law to cases of secondary law differentiation and enhanced cooperation.

To systematically analyse the decision of EU members to join or not to join the enhanced cooperation to establish the EPPO Qualitative Comparative Analysis (QCA) has been used. QCA facilitates an understanding of causality as something complex and multiple. This was beneficial in the effort to explain the decision of 25 different members of the EU. It also allowed for developing a research design that was case-centered. Lastly, the ability to calibrate the presence or absence of conditions, instead of measuring numerical indicators, contributed to the findings by reflecting the diversity of reasons why some member states joined the EPPO while others did not.

As for the findings, the size and the relative interdependence of EU member states are relevant factors that explain why some EU member states chose to join the EPPO. Having lower than average governance capacity did not always explain the decision of member states to join. Yet, having a higher-than-average governance capacity explained to a large extent the decisions the Swedish and Dutch governments to not join the EPPO. However, the later decision of the Dutch government to join the EPPO in 2018 puts the relevance of this factor into question. The role of actual and perceived capacity remains a puzzling aspect of theorising demand and supply of DI as the cases of Hungary and Poland showed. Euroscepticism, at the government level, was important to explain the reluctance of the governments of Poland and Hungary to join. However, it was not relevant at the public opinion level. The findings regarding the role of exclusive collective identities are puzzling as it is not included as a factor in the causal explanations of the member states that decided not to join. Yet, sovereignty concerns were present during the negotiations to join the EPPO as it represented a huge step of integration in the policy area of criminal justice at the EU level. Thus, in the future, scholars should pay more attention to the relation between collective identity and sovereignty concerns as well as the implications of this relationship. Likewise, more research is needed to understand the role that domestic veto players, especially national parliaments, play in the demand of some member states to stay out of DI initiatives.

The findings should be interpreted bearing in mind the limitations of this research. The sources of data for calibrating the conditions this kind of research of could be more targeted. In future studies, they should be

expanded to deepen the knowledge of the researcher about the conditions of interdependence or identity that are crucial for this study. The inclusion of more sources of data for these conditions could lead the researcher to better understand the role the relationship between identity and sovereignty that the findings show. For instance, including more textual data should be considered to understand another case of enhanced cooperation. The research recently published by Aydın-Düzgit et. al. (2020) is an example of an alternative strategy of measuring the effects of identity for explaining DI. The nature of the research design, conducting a case study, limits the generalisation potential of the findings. Thus, while the QCA study has shed light into the reasons for why some states decided to join the EPPO while others did not, the final causal recipes cannot be applied to other cases of enhanced cooperation.

Despite the limitations outlined above, this study contributed to closing the research gap on enhanced cooperation. The enhanced cooperation procedure was understudied in the political science literature, but this report aimed to bridge this gap by incorporating the knowledge about enhanced cooperation developed by legal scholars to the growing scholarship on differentiated integration in political science. While generalisability is limited when researching single cases, the contribution of this report to the field is nevertheless noteworthy, as there are only a few use cases of enhanced cooperation so far.

As expected, the decisions of member states to join enhanced cooperation projects are complex and should be explored as the combination of the presence and absence of determining conditions. This study has shown that both, material and ideological factors, are relevant for explaining such a decision. Future research should explore the demand of DI but also, the supply of DI. Furthermore, scholars of DI should reconsider explaining the effects of DI and the phenomenon of late joiners that is member states that were initially reluctant to join but later decided to participate in DI projects. Since the agreement to establish the EPPO was reached in 2017, two initially reluctant member states have joined the EPPO: the Netherlands and Malta. The reasons for joining DI projects after initially deciding not to participate remain puzzling. A potential factor explaining this decision is the change of governing party or governing coalition, as it appears to have contributed to the Netherlands joining (Mitsilegas and

Giuffrida, 2017). In the case of Malta, it seemed that public pressure in the aftermath of the assassination of journalist Daphne Caruana Galizia contributed to the decision to join the EPPO (Nielsen, 2020). The choice of two initially reluctant countries to join the EPPO indicates that the enhanced cooperation to establish the EPPO created centripetal effects despite the positive externalities its creation caused for outsiders. The theoretical work of Kölliker (2006) should be revisited to explain under what circumstances DI has centrifugal or centripetal effects.

Lastly, the results of this study are crucial for understanding the choices of member states to join enhanced cooperation opportunities or not to join enhanced cooperation opportunities and shed light on the demand for differentiation in EU secondary law. A main finding of this study is the complex relationship between Eurosceptic public attitudes towards EU integration, collective identities, sovereignty concerns, and governmental opposition to joining enhanced cooperation initiatives. These relations should be further explored to better understand the constraining effects of Euroscepticism at different levels in the future of the EU.

Chapter 7

Bibliography

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Annex

Annex A: Model OLAF_GG and JHA

Truth table

<i>SMS</i>	<i>I</i>	<i>OLAF_GG</i>	<i>EXID</i>	<i>JHA</i>	<i>PO</i>	<i>NMS</i>	<i>YC</i>	<i>N</i>	<i>JOIN</i>	<i>CASES</i>	<i>RAW CONSIST</i>	<i>PRI CONSIST</i>	<i>SYM CONSIST</i>
1	0	1	0	0	0	0	0	2	1	FI, LUX	1	1	1
0	1	1	0	0	0	0	0	2	1	GER, BE	1	1	1
1	0	0	1	0	0	1	0	2	1	BG, LV	1	1	1
0	0	0	0	0	0	0	0	1	1	ES	1	1	1
0	1	0	0	0	0	0	0	1	1	FR	1	1	1
1	0	1	0	1	0	0	0	1	1	PT	1	1	1
0	1	0	1	0	1	0	0	1	1	IT	1	1	1
1	1	1	1	0	1	0	0	1	1	AU	1	1	1
0	0	0	1	1	1	0	0	1	1	EL	1	1	1
1	0	0	0	0	0	1	0	1	1	EE	1	1	1
1	1	1	0	0	0	1	0	1	1	SK	1	1	1
1	0	1	1	0	0	1	0	1	1	LT	1	1	1
1	0	0	0	0	1	1	0	1	1	HR	1	1	1
1	1	0	0	0	0	1	1	1	1	SL	1	1	1
0	0	1	1	0	0	1	1	1	1	RO	1	1	1
0	1	0	1	1	1	1	1	1	1	CZ	1	1	1
0	1	0	0	1	0	1	0	1	0	PL	0	0	0
0	1	1	0	0	0	0	1	1	0	NEL	0	0	0
1	1	1	0	0	0	0	1	1	0	SE	0	0	0
1	0	0	0	0	0	1	1	1	0	MT	0	0	0
1	1	0	0	1	0	1	1	1	0	HU	0	0	0

Logical minimisation for outcome Join the EPPO

<i>Solution term</i>	<i>Cases covered</i>	<i>N</i>
Complex Solution		
~SMS*~OLAF_GG*~EXID*~JHA*~PO*~NMS*~YC	France (1,1), Spain (1,1)	2
~SMS*I*~EXID*~JHA*~PO*~NMS*~YC	Germany (1,1), France (1,1), Belgium (1,1)	3
SMS*~I*OLAF_GG*~EXID*~PO*~NMS*~YC	Portugal (1,1), Finland (1,1), Luxembourg (1,1)	3
SMS*~I*~OLAF_GG*~EXID*~JHA*NMS*~YC	Croatia (1,1), Estonia (1,1)	2
SMS*~I*EXID*~JHA*~PO*NMS*~YC	Bulgaria (1,1), Lithuania (1,1), Latvia (1,1)	3
~SMS*I*~OLAF_GG*EXID*~JHA*PO*~NMS*~YC	Italy (1,1)	1
~SMS*~I*~OLAF_GG*EXID*JHA*PO*~NMS*~YC	Greece (1,1)	1
SMS*I*OLAF_GG*~EXID*~JHA*~PO*NMS*~YC	Slovakia (1,1)	1
SMS*I*~OLAF_GG*~EXID*~JHA*~PO*NMS*YC	Slovenia (1,1)	1
~SMS*~I*OLAF_GG*EXID*~JHA*~PO*NMS*YC	Romania (1,1)	1
SMS*I*OLAF_GG*EXID*~JHA*PO*~NMS*~YC	Austria (1,1)	1
~SMS*I*~OLAF_GG*EXID*JHA*PO*NMS*YC	Czech Republic (1,1)	1
Intermediate Solution		
~OLAF_GG*~NMS*~YC	France (1,1), Italy (1,1), Spain (1,1), Greece (1,1)	4
EXID*~JHA*~PO*NMS	Romania (1,1), Bulgaria (1,1), Lithuania (1,1), Latvia (1,1)	4
I*~OLAF_GG*EXID*NMS	Czech Republic (1,1)	1
SMS*~EXID*~PO*~NMS*~YC	Portugal (1,1), Finland (1,1), Luxembourg (1,1)	3
SMS*~OLAF_GG*~EXID*~JHA*~YC	Croatia (1,1), Estonia (1,1)	2
SMS*I*~JHA*~NMS*~YC	Austria (1,1)	1
I*~EXID*~JHA*~PO*~NMS*~YC	Germany (1,1), France (1,1), Belgium (1,1)	3
SMS*I*~OLAF_GG*~JHA*~PO*NMS	Slovenia (1,1)	1
SMS*~EXID*~JHA*~PO*~YC	Finland (1,1), Slovakia (1,1), Estonia (1,1), Luxembourg (1,1)	4
SMS*~JHA*~PO*NMS*~YC	Bulgaria (1,1), Slovakia (1,1), Lithuania (1,1), Latvia (1,1), Estonia (1,1)	5
Parsimonious Solution		
EXID	Italy (1,1), Romania (1,1), Greece (1,1), Czech Republic (1,1), Austria (1,1), Bulgaria (1,1), Lithuania (1,1), Latvia (1,1)	8
~NMS*~YC	Germany (1,1), France (1,1), Italy (1,1), Spain (1,1), Belgium (1,1), Greece (1,1), Portugal (1,1), Austria (1,1), Finland (1,1), Luxembourg (1,1)	10
~JHA*~YC	Germany (1,1), France (1,1), Italy (1,1), Spain (1,1), Belgium (1,1), Austria (1,1), Bulgaria (1,1), Finland (1,1), Slovakia (1,1), Croatia (1,1), Lithuania (1,1), Latvia (1,1), Estonia (1,1), Luxembourg (1,1)	14
I*~OLAF_GG*~JHA	France (1,1), Italy (1,1), Slovenia (1,1)	3

Logical minimisation for outcome Not Join the EPPO

<i>Solution term</i>	<i>Cases covered</i>	<i>N</i>
Complex Solution		
I*OLAF_GG*~EXID*~JHA*~PO*~NMS*YC	Netherlands (1,1), Sweden (1,1)	2
~SMS*I*~OLAF_GG*~EXID*JHA*~PO*NMS*~YC	Poland (1,1)	1
SMS*~I*~OLAF_GG*~EXID*~JHA*~PO*NMS*YC	Malta (1,1)	3
SMS*I*~OLAF_GG*~EXID*JHA*~PO*NMS*YC	Hungary (1,1)	2
Intermediate Solution		
OLAF_GG*~NMS*YC	Netherlands (1,1), Sweden (1,1)	2
~I*~EXID*NMS*YC	Malta (1,1)	1
~SMS*~OLAF_GG*JHA*~PO*NMS	Poland (1,1)	1
~OLAF_GG*JHA*~PO*NMS*YC	Hungary (1,1)	1
Parsimonious Solution		
~NMS*YC	Netherlands (1,1), Sweden (1,1)	2
~OLAF_GG*JHA*~PO	Poland (1,1), Hungary (1,1)	2
~I*~EXID*YC	Malta (1,1)	1

Annex B: Model GG and EKECFR

Truth Table

SMS	I	GG	EXID	EKECFR	PO	NMS	YC	N	JOIN	CASES	RAW CONSIST.	PRI CONSIST.	SYM CONSIST.
1	0	1	0	0	0	0	0	3	1	PT, FN, LUX	1	1	1
0	1	1	0	0	0	0	0	3	1	GER, FR, BE	1	1	1
1	0	0	1	0	0	1	0	3	1	BG, LT, LV	1	1	1
0	0	0	0	0	0	0	0	1	1	ES	1	1	1
0	1	0	1	0	1	0	0	1	1	IT	1	1	1
1	1	1	1	0	1	0	0	1	1	AUT	1	1	1
0	0	0	1	1	1	0	0	1	1	EL	1	1	1
1	1	0	0	0	0	1	0	1	1	SK	1	1	1
1	0	1	0	0	0	1	0	1	1	EE	1	1	1
1	0	0	0	0	1	1	0	1	1	HR	1	1	1
1	1	0	0	0	0	1	1	1	1	SI	1	1	1
0	0	0	1	0	0	1	1	1	1	RO	1	1	1
0	1	0	1	1	1	1	1	1	1	CZ	1	1	1
0	1	0	0	1	0	1	0	1	0	PL	0	0	0
0	1	1	0	0	0	0	1	1	0	NEL	0	0	0
1	1	1	0	1	0	0	1	1	0	SE	0	0	0
1	0	0	0	0	0	1	1	1	0	MT	0	0	0
1	1	0	0	1	0	1	1	1	0	HU	0	0	0

Logical Minimisation for outcome Join the EPPO

Solution term	Cases covered	N
Complex Solution		
SMS*I*~GG*~EXID*~EKECFR*~PO*~YC	Portugal (1,1), Finland (1,1), Estonia (1,1), Luxembourg (1,1)	4
SMS*I*~GG*~EXID*~EKECFR*~PO*NMS	Slovakia (1,1), Slovenia (1,1)	2
~SMS*~I*~GG*~EXID*~EKECFR*~PO*~NMS*~YC	Spain (1,1)	1
~SMS*I*GG*~EXID*~EKECFR*~PO*~NMS*~YC	Germany (1,1), France (1,1), Belgium (1,1)	3
~SMS*I*~GG*EXID*~EKECFR*PO*~NMS*~YC	Italy (1,1)	1
~SMS*~I*~GG*EXID*EKECFR*PO*~NMS*~YC	Greece (1,1)	1
SMS*~I*~GG*EXID*~EKECFR*~PO*NMS*~YC	Bulgaria (1,1), Lithuania (1,1), Latvia (1,1)	3
SMS*~I*~GG*~EXID*~EKECFR*PO*NMS*~YC	Croatia (1,1)	1
~SMS*~I*~GG*EXID*~EKECFR*~PO*NMS*YC	Romania (1,1)	1
SMS*I*GG*EXID*~EKECFR*PO*~NMS*~YC	Austria (1,1)	1
~SMS*I*~GG*EXID*EKECFR*PO*NMS*YC	Czech Republic (1,1)	1
Intermediate Solution		

~GG*~NMS*~YC	Italy (1,1), Spain (1,1), Greece (1,1)	3
I*~GG*EXID*NMS	Czech Republic (1,1)	1
SMS*~EXID*~EKECFR*~PO*~YC	Portugal (1,1), Finland (1,1), Slovakia (1,1), Estonia (1,1), Luxembourg (1,1)	5
SMS*~GG*~EXID*~EKECFR*~YC	Slovakia (1,1), Croatia (1,1)	2
SMS*I*~EKECFR*~NMS*~YC	Austria (1,1)	1
~GG*EXID*~EKECFR*~PO*NMS	Romania (1,1), Bulgaria (1,1), Lithuania (1,1), Latvia (1,1)	4
I*~EXID*~EKECFR*~PO*~NMS*~YC	Germany (1,1), France (1,1), Belgium (1,1)	3
SMS*I*~GG*~EKECFR*~PO*NMS	Slovakia (1,1), Slovenia (1,1)	2
Parsimonious Solution		
EXID	Italy (1,1), Romania (1,1), Greece (1,1), Czech Republic (1,1), Austria (1,1), Bulgaria (1,1), Lithuania (1,1), Latvia (1,1)	8
~NMS*~YC	Germany (1,1), France (1,1), Italy (1,1), Spain (1,1), Belgium (1,1), Greece (1,1), Portugal (1,1), Austria (1,1), Finland (1,1), Luxembourg (1,1)	10
~JHA*~YC	Germany (1,1), France (1,1), Italy (1,1), Spain (1,1), Belgium (1,1), Austria (1,1), Bulgaria (1,1), Finland (1,1), Slovakia (1,1), Croatia (1,1), Lithuania (1,1), Latvia (1,1), Estonia (1,1), Luxembourg (1,1)	14
I*~OLAF_GG*~JHA	France (1,1), Italy (1,1), Slovenia (1,1)	3

Logical Minimisation for outcome Not Join the EPPO

<i>Solution term</i>	<i>Cases covered</i>	<i>N</i>
Complex Solution		
I*GG*~EXID*~EKECFR*~PO*~NMS*YC	Netherlands (1,1), Sweden (1,1)	2
~SMS*I*~GG*~EXID*~EKECFR*~PO*NMS*~YC	Poland (1,1)	1
SMS*~I*~GG*~EXID*~EKECFR*~PO*NMS*YC	Malta (1,1)	1
SMS*I*~GG*~EXID*~EKECFR*~PO*NMS*YC	Hungary (1,1)	1
Intermediate Solution		
GG*YC	Netherlands (1,1), Sweden (1,1)	2
~SMS*EKECFR*~PO*NMS	Poland (1,1)	1
SMS*~I*NMS*YC	Malta (1,1)	1
EKECFR*~PO*NMS*YC	Hungary (1,1)	1
Parsimonious Solution		
EKECFR*~PO	Poland (1,1), Hungary (1,1)	2
~NMS*YC	Netherlands (1,1), Sweden (1,1)	2
GG*YC	Netherlands (1,1), Sweden (1,1)	2
SMS*~I*YC	Malta (1,1)	1

Annex C: Model OLAF_GG and EKECFR\

Truth table

SMS	I	OLAF_GG	EXID	EKECFR	PO	NMS	YC	N	JOIN	CASES	RAW CONSIST	PRI CONSIST	SYM CONSIST
1	0	1	0	0	0	0	0	3	1	PT, FN, LUX	1	1	1
0	1	1	0	0	0	0	0	2	1	GER, BE	1	1	1
1	0	0	1	0	0	1	0	2	1	BU, LT	1	1	1
0	0	0	0	0	0	0	0	1	1	ES	1	1	1
0	1	0	0	0	0	0	0	1	1	FR	1	1	1
0	1	0	1	0	1	0	0	1	1	IT	1	1	1
1	1	1	1	0	1	0	0	1	1	AUT	1	1	1
0	0	0	1	1	1	0	0	1	1	EL	1	1	1
1	0	0	0	0	0	1	0	1	1	EE	1	1	1
1	1	1	0	0	0	1	0	1	1	SK	1	1	1
1	0	1	1	0	0	1	0	1	1	LT	1	1	1
1	0	0	0	0	1	1	0	1	1	HR	1	1	1
1	1	0	0	0	0	1	1	1	1	SI	1	1	1
0	0	1	1	0	0	1	1	1	1	RO	1	1	1
0	1	0	1	1	1	1	1	1	1	CZ	1	1	1
0	1	0	0	1	0	1	0	1	0	PL	0	0	0
0	1	1	0	0	0	0	1	1	0	NL	0	0	0
1	1	1	0	1	0	0	1	1	0	SE	0	0	0
1	0	0	0	0	0	1	1	1	0	MT	0	0	0
1	1	0	0	1	0	1	1	1	0	HU	0	0	0

Logical Minimisation for outcome Join the EPPO

Solution term	Cases covered	N
Complex Solution		
~SMS*~OLAF_GG*~EXID*~EKECFR*~PO*~NMS*~YC	France (1,1), Spain (1,1)	2
~SMS*I*~EXID*~EKECFR*~PO*~NMS*~YC	Germany (1,1), France (1,1), Belgium (1,1)	3
SMS*~I*~OLAF_GG*~EXID*~EKECFR*NMS*~YC	Croatia (1,1), Estonia (1,1)	2
SMS*~I*EXID*~EKECFR*~PO*NMS*~YC	Bulgaria (1,1), Lithuania (1,1), Latvia (1,1)	3
SMS*~I*OLAF_GG*~EXID*~EKECFR*~PO*~NMS*~YC	Portugal (1,1), Finland (1,1), Luxembourg (1,1)	3
~SMS*I*~OLAF_GG*EXID*~EKECFR*PO*~NMS*~YC	Italy (1,1)	1
~SMS*~I*~OLAF_GG*EXID*EKECFR*PO*~NMS*~YC	Greece (1,1)	1
SMS*I*OLAF_GG*~EXID*~EKECFR*~PO*NMS*~YC	Slovakia (1,1)	1
SMS*I*~OLAF_GG*~EXID*~EKECFR*~PO*NMS*YC	Slovenia (1,1)	1
~SMS*~I*OLAF_GG*EXID*~EKECFR*~PO*NMS*YC	Romania (1,1)	1
SMS*I*OLAF_GG*EXID*~EKECFR*PO*~NMS*~YC	Austria (1,1)	1
~SMS*I*~OLAF_GG*EXID*EKECFR*PO*NMS*YC	Czech Republic (1,1)	1

Intermediate Solution		
~OLAF_GG*EXID*~NMS*~YC	Italy (1,1), Greece (1,1)	2
EXID*~EKECFR*~PO*NMS	Romania (1,1), Bulgaria (1,1), Lithuania (1,1), Latvia (1,1)	4
I*~OLAF_GG*EXID*NMS	Czech Republic (1,1)	1
~OLAF_GG*~EKECFR*~PO*~NMS*~YC	France (1,1), Spain (1,1)	2
SMS*~EXID*~EKECFR*~PO*~YC	Portugal (1,1), Finland (1,1), Slovakia (1,1), Estonia (1,1), Luxembourg (1,1)	5
I*~OLAF_GG*~EKECFR*~NMS*~YC	France (1,1), Italy (1,1)	2
SMS*I*~EKECFR*~NMS*~YC	Austria (1,1)	1
I*~EXID*~EKECFR*~PO*~NMS*~YC	Germany (1,1), France (1,1), Belgium (1,1)	3
SMS*~OLAF_GG*~EXID*~EKECFR*NMS*~YC	Croatia (1,1), Estonia (1,1)	2
SMS*I*~OLAF_GG*~EKECFR*~PO*NMS	Slovenia (1,1)	1
Parsimonious Solution		
EXID	Italy (1,1), Romania (1,1), Greece (1,1), Czech Republic (1,1), Austria (1,1), Bulgaria (1,1), Lithuania (1,1), Latvia (1,1)	8
~EKECFR*~YC	Germany (1,1), France (1,1), Italy (1,1), Spain (1,1), Belgium (1,1), Portugal (1,1), Austria (1,1), Bulgaria (1,1), Finland (1,1), Slovakia (1,1), Croatia (1,1), Lithuania (1,1), Latvia (1,1), Estonia (1,1), Luxembourg (1,1)	15
I*~OLAF_GG*~EKECFR	France (1,1), Italy (1,1), Slovenia (1,1)	3
SMS*I*~EKECFR	Austria (1,1), Slovakia (1,1), Slovenia (1,1)	3
EXID	Italy (1,1), Romania (1,1), Greece (1,1), Czech Republic (1,1), Austria (1,1), Bulgaria (1,1), Lithuania (1,1), Latvia (1,1)	8

Logical Minimisation for outcome Not Join the EPPO

<i>Solution term</i>	<i>Cases covered</i>	<i>N</i>
Complex Solution		
I*OLAF_GG*~EXID*~EKECFR*~PO*~NMS*YC	Netherlands (1,1), Sweden (1,1)	2
~SMS*I*~OLAF_GG*~EXID*EKECFR*~PO*NMS*~YC	Poland (1,1)	1
SMS*~I*~OLAF_GG*~EXID*~EKECFR*~PO*NMS*YC	Malta (1,1)	1
SMS*I*~OLAF_GG*~EXID*EKECFR*~PO*NMS*YC	Hungary (1,1)	1
Intermediate Solution		
OLAF_GG*~NMS*YC	Netherlands (1,1), Sweden (1,1)	2
I*OLAF_GG*YC	Netherlands (1,1), Sweden (1,1)	2
~SMS*EKECFR*~PO*NMS	Poland (1,1)	1
~SMS*~EXID*EKECFR*NMS	Poland (1,1)	1
SMS*~I*NMS*YC	Malta (1,1)	1
EKECFR*~PO*NMS*YC	Hungary (1,1)	1
~EXID*EKECFR*NMS*YC	Hungary (1,1)	1

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Parsimonious Solution		
EKECFR*~PO	Poland (1,1), Hungary (1,1)	2
~EXID*EKECFR	Poland (1,1), Hungary (1,1)	2
~NMS*YC	Netherlands (1,1), Sweden (1,1)	2
SMS*~I*YC	Malta (1,1)	1
I*OLAF_GG*YC	Netherlands (1,1), Sweden (1,1)	2



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