Report on differentiation, dominance and democracy

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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 establishing an analytical framework on political differentiation and the spectre of dominance (work package 1). The report edited by John Erik Fossum and Magdalena Góra synthesises the findings across workpackages and sets out to outline a theory of differentiation and dominance and democracy.

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Introduction

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Introduction

The purpose of this report is to present and discuss findings from a series of examinations of differentiation – dominance – democracy. We have analyzed the conditions under which differentiation is conducive to dominance, and the conditions under which differentiation is conducive to democracy. That required developing an analytical framework that would enable us to identify forms of differentiation-driven dominance, with particular emphasis on the ones understood to be the most problematic. The framework also had to be devised such as to allow us to establish those forms of differentiation that are conducive to or at least not detrimental to working democracy. The assessment included both the EU-internal and the EU-external dimension (enlargement, affiliated non-members, Brexit and potential external hegemons). We traced the historical roots and external sources of those forms that we identified as pathological differentiation in order to establish how well-entrenched they are in the EU's structural make-up. These undertakings included comparison of the EU with other forms of political entity (states and regional organisations) in order to establish whether or the extent to which the EU is unique or distinctive. Given the EU's complex and ambiguous democratic character, the democratic assessment was not confined to rights, structures and institutions but included examinations of popular perceptions and bases for understanding and accepting differentiation. As

part of that we scrutinized what reforms parliaments and civil society proposed for overcoming forms of differentiation-caused-dominance. To that end we have developed a database of future of EU reform proposals (the nature and contents of which is reported in Part II of this report).

The report draws on the findings from the EU3D project (Differentiation, dominance and democracy in the European Union[1]), which ran from early 2019 until mid-2023. The report is divided in two main parts. The first part provides a brief summary of the research that has been conducted under the auspices of the project. As such, it provides a mixture of more overarching - synthesizing - remarks that are combined with summaries of more specific research themes or angles that the project has examined in depth through comparative and single case studies as well as through survey research. The second part of the report complements the first part by summarizing some case studies each of which points to specific research themes that the project has covered reflecting research initiatives undertaken within all Work Packages. This brief selection provides more in-depth information on some of the more specific research themes that are outlined in part 1. Part 2 is illustrative of some of the themes that are in need of more in-depth research but also how new research agendas emerged. The first chapter presents a study that is back-ward looking and directs attention to the historical background with emphasis on non-majoritarian forms of governance (Rune Møller Stahl and Ben Rosamond). The following chapter directs the attention to the EU's efforts to deal with the corona pandemic and the green transition and analyses emerging forms of intra-EU conditionality and ensuing dominance effects (Jozef Bátora). These two chapters both reflect research undertaken within the context of Work Package 2. The chapter by Christopher Lord is proposing to treat Brexit as a legitimising exercise for the EU and reflects research undertaken under the auspices of Work Package 3 on the EU's external dimension and EU external relations. The chapter by Max Heermann and Dirk Leuffen is focusing on the need for more research on how public opinion perceives and receives differentiated integration reflecting the research agenda of Work Package 4. This is followed up with a chapter focusing on the role of journalists as mediators of EU differentiation (also WP 4). The closing chapter is by Magdalena Góra, Sergio Fabbrini and

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[1] EU3D Front Page (www.eu3d.uio.no).

Tiziano Zgaga and is focusing on the future of Europe debate, what new narratives emerged, and what new polity models could be proposed, reflecting research conducted under Work Package 5. Part 1 of the report covers Workpackage 1 and synthesises findings from WPs 2-5.

Many more examples than those presented in Part 2 could have been elaborated on from EU3D's research. Part 1 contains brief summaries of these. The report will be converted into a book, which will contain a far more encompassing overview of the research that has been conducted and where the main directions for further research based on the project's analytical framework will be provided.

The rationale for this two-part manner of structuring this concluding report stems from the EU3D project's agenda-shaping design. The project represents the most comprehensive effort to date to clarify the relationship between differentiation – dominance – democracy within the European context.[2] This represents, as the report will show, a very broad and encompassing research agenda, which the project addressed through conceptual clarification and unpacking, and through applying the core concepts to the multilevel EU by means of a range of empirical analyses – (comparative and single) case studies and surveys. Given the broad scope of the research agenda, the empirical effort had to be very selective. Particular emphasis was placed on the EU's crises and challenges during the last decade or so.

The research undertaken under the auspices of the project only covers bits and pieces of the overall picture. It is therefore only possible to draw conclusions that are based on a limited - in space and time - selection of the relevant empirical substance. That is why this report presents the key elements of the analytical framework, proposes a range of synthetic statements from the overall corpus of research, and complements that with some select case studies that are illustrative of the existing body of empirical research conducted within the project. The report ends with an overview of the publications that the project has given rise to (both

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[2] The main non-EU3D contribution to this debate is Richard Bellamy's book *A Republican Europe of States* (2019), which will be further addressed in the below.

directly project-funded and inspired by the project but funded by other sources).

An important and unforeseen challenge we encountered during the course of conducting the research, was the emergence of new crises and challenges, especially the corona pandemic and the Russian full-scale attack on Ukraine and thereby on the liberal-democratic principles of governance promoted by the EU in the neighbourhood. These crises and challenges had to be incorporated into the research program, lest the research be outdated at the moment of its publication. Initial hypotheses and assumptions had to be adjusted accordingly. This however is in line with calls by political theorists to engage more in how a rapidly changing socio-economic-political landscape is impacting the way we conceptualize the research. Both aforementioned crises – Covid 19 and the Russian war of aggression on Ukraine – proved to be in many instances (and policies) new critical junctures for the EU. These are ongoing events whose long-term effects are shrouded in uncertainty. We have tried to incorporate them in our analytical framework and based on that sought to discern some conclusions, which must necessarily be preliminary.

Understanding the relationship between differentiation – dominance – democracy is a question that effectively concerns all political systems, but as the report will show, this question has taken on a special meaning and significance in the European Union (EU). The report therefore naturally focuses on the EU, but it pays attention to similarities and differences with other political systems. What is however important to underline is that the EU debate has certain distinctive features that are not very prominent in debates on other political systems. The federalism literature for instance would talk about asymmetrical federalism rather than differentiation (Kelemen 2021; see also Agranoff 1999; von Beyme 2005; Webber 1994).

The fact that there is no authoritative statement that declares what type of political system the European Union is – or what it should be – shapes all accounts, including the literature on differentiation, which is strongly focused on the nature, dynamics and direction of the integration process.[3]

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[3] Fossum (2019) notes that this could even be construed as a form of manipulation by the executives in charge of the process. Lack of polity clarity provides those in charge of the process great leverage to drive it in their desired direction.

Without an authoritative account to relate to - coupled with the fact that some of the EU system's architects refer to it as a polity *sui generis*, or even UPO (unidentified political object)[4] – effectively means that researchers must try to make up for the gap by formulating their own accounts of the EU as a system of governing. In a theoretically, ideologically, politically, culturally and linguistically pluralist scientific community (which reflects the situation in member states among politicians and civil society) such an undertaking will necessarily generate a plurality of (more or less different and conflicting) accounts. In this context, close study of the process offers vital information on the shape of the emerging polity. It also enables research to proceed without getting mired in endless battles on what type of polity the EU is. Thus, for both scientific and practical-political (and normative) reasons there is a strong temptation to focus on the nature and dynamics of process. Such a focus on process has coloured the research on differentiation.

The reasons stated above help to account for the EU literature's tendency to equate differentiation with differentiated integration. The research on differentiation is accordingly marked by a strong onus on the nature, dynamics and direction of the process of states coming together to form the European Union. That is one of the distinctive traits of the EU debate. It is also visible in findings from the comparative analysis of political actors' narratives on the future of Europe (Góra, Thevenin, Zielińska 2023). The other distinctive trait of the EU debate is the strong propensity to discuss differentiated integration in relation to EU law. This latter bias is hardly surprising given the central role of law in European integration. Analysts have long underlined the need to understand European integration as 'integration through law' (Cappelletti et al 1986). Nevertheless, as this report will show, these specific traits of the EU debate also come with important limitations, which the research undertaken under the heading of the EU3D project has tried to address.

The question of how differentiation, dominance and democracy are related requires clarifying what each term signifies. In effect, it requires pulling together a range of different debates that have thus far not been speaking very much to each other. There is, as noted, a distinct European

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[4] Speech by Jacques Delors (Luxembourg, 9 September 1985) available: cvce.eu

debate on differentiated integration[5]; there is a largely political theory-oriented debate on dominance given particular impetus by the many writings of Philip Pettit (1997, 2012); and there is a large and multifaceted debate on constitutional democracy, which has a strong anchorage in legal, political and normative theory, as well as within empirical studies of parliaments, parties, civil society, public sphere, mini-publics, rights and constitutional arrangements etc. Each of these three strands of debate contains different theoretical and normative stances on each of the three core terms. Hence a complete rendition would require several book-length volumes simply to give a full account of the three broad phenomena involved. All of that would be before considering how the terms are related at the theoretical and analytical level and even more so at the empirical level, in other words how the phenomena they depict interact in the complex European setting. It follows from this that there is a strong need for unpacking each term, as well as for simplification and selection.

The task of simplification was complicated by certain distinct EU-related challenges. There is as noted above a lack of an authoritative script or conception of the EU qua polity. That means that the very process of calibrating differentiation – dominance – democracy in polity terms requires making choices that will be contested by at least some researchers. And yet, we cannot leave the issue of the EU's character qua polity in abeyance. There are quite different model conceptions of the EU around, from intergovernmental organisation to supranational organisation to fledgling federal state (Fossum 2021; see also the many contributions from the LUISS team[6]). These different understandings come with different readings and renditions of what forces and factors drive the EU and in what direction the EU is developing. We will get very different assessments of the relationship between differentiation – dominance – democracy if we consider the EU as some version of an intergovernmental organisation versus as some kind of fledgling federal state or as some form or version of supranational organisation. This polity

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[5] See, in particular, Leuffen et al. 2013, 2022; Schimmelfennig and Winzen 2020; De Witte et al. 2017; and Chapters 2 and 3 of Bátora and Fossum 2023 for overviews of this large body of literature.

[6] List of EU3D publications see pages 191-197.

ambiguity will therefore necessarily affect how we unpack the three core terms, differentiation, dominance and democracy.

In the following which forms Part I of the report we start by explicating the key terms and thereafter discuss how they are related with reference to EU3D project findings.

Part I: Unpacking and assessing differentiation, dominance and democracy

As was noted above, there is a clear tendency in the mainstream EU debate to equate differentiation with differentiated (dis)integration. We therefore start by unpacking differentiated integration and move on to differentiation, which is the more encompassing notion.

The notion of **differentiated integration** is multifaceted. One core facet refers to the nature and dynamics of the EU integration process, understood in macroscopic or polity shaping terms. It is underlined that integration can take place through multiple speeds, in other words that all member states do not integrate at the same pace. They may still eventually reach the same destination. If they do not, we may face a situation wherein some EU member states move towards core Europe, whereas others are left out or do not want to be part of such a core. A further option is the notion of variable geometry, which means that states' involvement in EU arrangements and programs may vary along both functional and territorial lines.[7] A particularly pronounced such version is the notion of Europe à la carte.

The notion of differentiated integration also encompasses specific policies, rules, and regulations. Analysts, such as Schimmelfennig and others, have documented how differentiated integration manifests itself in legal terms: in primary and secondary law; in institutional structures and constitutional arrangements; and in the range and application of policy instruments.[8] Differentiated integration may then refer to states obtaining opt-ins or opt-outs, and exemptions or exceptions from EU legal provisions. These may be in the realm of primary or in the realm of secondary laws. The provisions may be permanent or temporary. From

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[7] Some analysts have also developed or re-invented new terms. See Schmitter 1996, 2000, on "condominio" and "consortio".

[8] See, for instance, Schimmelfennig 2014; Schimmelfennig and Winzen 2014, 2020.

the above we see that analysts assess differentiated integration with reference to the EU as a political system (polity); they discuss it with reference to the politics of EU integration (and disintegration); and they discuss it with reference to EU policymaking and implementation.

The financial-turned-Eurozone crisis brought up the spectacle of EU unravelling and gave impetus to a debate on EU disintegration and **differentiated disintegration**.[9] With regard to differentiated disintegration analysts refer to the EU becoming less integrated. Differentiated disintegration is distinct from disintegration in the sense that a process of reversed integration does not take place in a uniform or unified manner, but rather in an uneven and differentiated, manner. Under this heading we can consider structural fragmentation; pressures and actions by various actors or institutions bent on rolling back integration in a differentiated fashion; member states may seek to alter their membership status, through such means as looser permanent affiliations, spill-back, and permanent opt-outs or derogations with binding effects on other members.

EU3D's point of departure was to question the EU literature's strong focus on differentiated *integration* as the most apt point of departure for assessing the relationship between differentiation – dominance – democracy (Fossum 2019). EU3D has underlined the need for a wider conception of differentiation that is more attentive to the EU as a multilevel system of governing. We believe this notion offers a better means of reconciling attention to structure and process and to properly engage with the question of democracy than the extant literature's focus on differentiated integration.

Our approach to **differentiation** has taken us back to classical contributions to political macrosociology, associated with such analysts as Talcott Parsons, Emile Durkheim, Max Weber and Stein Rokkan. This notion of differentiation reflects the manner in which modern societies have become increasingly differentiated along territorial, functional, social, economic, cultural, and political lines. Key ingredients here are

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9 See, for instance, Jones 2016; Vollaard 2014, 2018; Webber 2014, 2018; and Zielonka 2014.

patterns and dynamics of functional and role *specialisation*.[10] This notion thus underlines that as the EU integrates it will necessarily be more functionally differentiated, and the lines of territorial division change as a consequence of more tasks being organised or coordinated from the EU-level as the political centre. What is important to keep in mind is that there is no *a priori* assurance that the process of EU-integration will be entirely even or proceed in an equal manner and measure across all functional realms. That in turn means that we cannot assume that EU legal integration will necessarily yield an EU that is evenly integrated across policy fields. Legal integration even if unified may still *amplify built-in biases and path dependencies* in the EU structure, for instance through fostering market-making without a commensurate system of market regulation (Scharpf 2010).

Legally driven integration can create several types of questions in a differentiated system. While a constitutional court's role such as the ECJ's is to guarantee the homogenous application of law in a political system, is increasing legal and judicial differentiation blocking its actions? Two main sources of differentiation in the legal and judicial realm of the EU exist. On the one hand, differentiation results from national courts resisting the constitutionalisation of European law, which has fed constitutional pluralism. On the other hand, differentiation is linked to the fact that national governments have departed from the notion of a European rule of law homogenously applied on the EU territory, introducing specific types of differentiation – vertical and horizontal – with the aim to offer the member states a way out of a negotiating deadlock, and/or preserve member state sovereignty (Saurugger and Terpan, 2022a).

A further challenge is that legally driven integration can be overextended and generate pathological effects (Joerges 2022). There are limits to the socially integrative effects of law. Establishing what these limits are requires more systematic attention. If over-extended legal integration can itself have pathological effects and engender dominance. In addition, as noted above, law may be undermined – from within as well as from without – with dominance effects. These observations underline the need

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[10] Talcott Parsons' (1951) notion of role differentiation is very instructive in this regard: he shows how modernity is associated with distinct roles and patterns of role differentiation.

for research on differentiation not to confine itself to differentiated integration within law (which marks so much of the extant literature), but to understand law's role (including legal backsliding) within the broader multilevel EU differentiation configuration (Terpan and Saurugger, 2022a, more on this below).

These observations raise questions about the appropriate vantage-point for assessing differentiated integration. EU3D has addressed this problem by developing the notion of *differentiation configuration* as the relevant source of benchmarks for discerning dominance. The term refers to how territory, function, governing hierarchy, and citizens' rights and obligations are configured and combined (Fossum 2021). Differentiation configuration is about the (multi-level) system's structural-institutional make-up, with particular emphasis what this entails in differentiation terms. The term has been developed to serve as a useful heuristic for understanding differentiation's relationship to democracy, especially institutionalised democracy.

EU3D's focus on democracy does not stop there, however, the project has also examined citizens and their organisations and political representatives' views and opinions on the shapes and directions of the EU's structure, its developmental trajectorie(s) and the power shifts during the last decade and a half of poly-crisis. In response to scholarly calls for including more nuanced political sociological understandings of such processes (Kauppi 2018; Büttner, Eigmüller, and Worschech 2022; Kauppi and Trenz 2021; Georgakakisa and Weisbein 2010), we addressed these conceptually and empirically. On the latter we studied citizens, civil society organisations and politicians' perceptions of different aspects of differentiation and of dominance.

This notion of differentiation is therefore, as EU3D research has shown, very useful for detecting built-in biases and patterns of path-dependence in the EU construct (including the notion of the EU as a segmented political order).[11] In effect, EU3D has drawn on it in its assessments of the EU system's functional reach across issue-areas, how relations between levels of governing are structured and operate, what this tells us about how the EU's structural make-up shapes demand and supply of

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[11] Fossum 2019. On EU as a segmented political order, see Bátora and Fossum 2020.

differentiated integration, how the EU interacts with its surroundings, and how it structures its relations with non-members.

It bears repeating that this focus has not meant that EU3D has sought to replace differentiated integration with differentiation. The EU has, as the EU literature has shown, important traits of differentiated integration, as reflected in the Eurozone, Schengen, PESCO etc. Nevertheless, the distinctive traits of the EU's differentiation configuration shape the nature and dynamics of differentiated integration in the EU, and with that dominance and democracy dynamics. We will elaborate more on this in the below when we spell out in more detail what EU3D research has uncovered about the nature of the EU's differentiation configuration.

With regard to **dominance**, when unpacking the term, it is natural to take as our point of departure a relationship where one party or actor has power over another. Dominance in that sense entails the ability to make an actor do something that the actor would not have done on his/her own volition (Dahl 1957; Lukes [1974](2005)). Philip Pettit notes that this definition includes having control of someone's agenda and realm of choices (Pettit 1997, 2012).

The literature on dominance is by now a broad church.[12] Christopher McCammon (2015) in his overview of this body of literature spells out four different categories of analyses. He labels the first non-moralised. With that he refers to those analyses which "identify domination without reference to theories of the right or the good" (McCammon 2015: 13). The second category refers to what he terms as moralised analyses. These are clearly evaluative, in the sense that the analyst focuses on the normative problems and negative effects of domination. Moralisation is not depicted as norm-dependent.[13] The third category is termed non-moralised norm-dependent. This category is one where dominators seek to justify patterns of domination with reference to social norms and rules whose normative status may be problematic. Patriarchy is a case in point. The fourth category refers to moralised, norm-dependent theories. Domination is

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[12] For overviews see MacCammon 2015; Klein 2020. See also Eriksen 2019; Lovett 2022; Pettit 1997, 2012; Shapiro 2012, 2016; Young 1990.

[13] McCammon links this category to basic or best interest approaches, for instance, those of Lukes and Shapiro.

understood here as "a specific kind of morally illegitimate authority". (McCammon 2015: 27) This brief overview shows that the relevant phenomena to be included in our list depends upon whether we focus mainly on relations of power (first: non-moralised); or normatively front-load dominance, and do so with reference to basic interests (second: moralised); or focus on those instances in which the powerful seek to justify domination with reference to prevailing social norms and mores (third: non-moralised norm-dependent); or whether we assess dominance with reference to normative standards and normative evaluations (fourth: moralised, norm-dependent theories).

EU3D as an agenda-shaping project has operated as a broad church in dominance terms. Nevertheless, we generally associate dominance with something that is pathological. In that sense we veer towards the moralised end of the McCammon scale.[14] We have tried to understand how dominance manifests itself with reference to the dimensions in the differentiation configuration so as to connect dominance and differentiation as closely as possible. In addition, we are interested in subjective perceptions of dominance, and as the report will show, this forms an important element of the empirical research that we have undertaken.[15]

The project as such has not attached itself to any one school of thought on dominance but has instead sought to outline the most relevant repertoire of forms of dominance and has examined where and to what extent these are found within the EU or in the EU's relations with the external world. The intention throughout has been to link dominance as closely as possible to various forms of differentiation. That clearly sets the project apart from more conventional analyses of dominance. It is also important to underline that the focus on differentiation (which is so closely associated with structure) has important implications for our

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[14] Our approach in particular in relation to democracy is normative analytical not normative evaluative, in the sense that we seek to establish the presence or absence of defining traits of democracy; we do not systematically evaluate the *quality* of democracy in relation to a set of predefined normative standards.

[15] We did not have resources to conduct any systematic evaluation of the factual and normative veracity of those subjective perceptions of dominance that we have detected.

understanding and analysis of dominance. We accordingly need to pay special attention to structural forms of dominance.[16]

In addition, the focus on crises and the EU's handling of these has meant that there was a need to pay attention to the dominance aspects associated with governing techniques.[17] Modern governance is supposed to be facts-based and as part of that relies heavily on various types of indicators. Economic governance relies on economic indicators, which are intended to rein in discretion and thus increase accountability. As such, economic indicators can be understood as tools for reining in the scope for dominance understood as unwarranted forms of discretion. However, that may not always be the case. In his article entitled 'Numerical rules or political government, that is the (European) question', Agustín Menéndez notes that 'resort to economic indicators to define the operative part of legal rules does not do away with discretion, but merely changes the way in which discretion is exerted. This is so because economic indicators are not sources of objective and impartial economic knowledge, but social constructs, open indeed to be articulated in different forms. The curious case of the structural deficit as defined in the Stability and Growth Pact illustrates the point quite vividly. The need to resort to discretion in the process of application of numerical rules should be explicitly acknowledged instead of denied. Otherwise, the result will be the cloaking of discretionality, which breeds arbitrariness' (Menéndez 2022: 631). The issue is clearly not whether economic indicators should be used but how such indicators should inform governing. Discretion is not coterminous with dominance. It is when discretion is either somehow concealed or when it is not reined in by rules and transparency that we find dominance. That puts the accent on arbitrariness not discretion when discussing dominance.

Arbitrariness and arbitrary forms of rule, illicit forms of rule, inequality in formal and legal status, and structurally embedded forms of deprivation are all forms of dominance. Their effects may be material and/or emotive. They may pertain to collectives (authoritarian and autocratic states;

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[16] EU3D contributions on dominance include: Stahl and Rosamond 2022 Special Issue in Comparative European Politics; Bátora and Fossum 2023; Zgaga 2023; Gora et al. 2023. See also overview of EU3D publications.

[17] This resonates with Foucault's notion of governmentality.

democracy on democracy forms of domination); groups; and individuals. They may shape a collective's, group's, or person's sense of self-worth; they may constitute undue impositions; and/or they may involve various forms of exclusion.[18] When discussing structural forms of dominance, we cannot avoid addressing the issue of intention and intentionality, the role of which is of course also widely discussed in the dominance literature (see footnote 12 above and Bátora and Fossum 2023). Precisely where to draw the line is difficult given that structural arrangements that were devised with a certain set of intentions can change as circumstances change. What at one point was oriented at solving a given problem can at a later point turn pathological. What is socially accepted and therefore left unchallenged may vary with time. A case in point is patriarchy.

One possible response could be to note that dominance is often intended, but it can also be the (largely) unintended effect of actions and structural arrangements.[19] Failure to act and non-decisions are interesting in this context. It is difficult to establish whether failure to act is intentional or simply a matter of oversight. The Eurozone crisis represents an interesting case for establishing when and under what conditions a failure to act counts as an act of dominance. When accounts of the negative effects of crisis handling became apparent, the actors in charge of the measures were left with the choice of whether to take remedial action or not. If they do not take remedial measures when faced with compelling evidence of dominance effects, we can establish that their actions were intentional. And yet, the financial crisis also showed how actors' interpretative frames shaped their evaluations of who was to blame, from Northern European creditor nations and many of their citizens' emphasis on moral hazard, to Southern European debtor nations and their citizens' emphasis on

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[18] For an excellent overview of these forms, see Young (1990).

[19] 'A structure may produce negative effects that were not anticipated when the structure was established or changed. This is then clearly a case of unintended effects. If those in charge of the structures receive complaints that document ill effects, then they face a choice. If they reject the complaints and/or fail to act, we need to consider their reasons for doing so in order to establish if that constitutes deliberate domination or not.' Fossum and Bátora 2023, p. 17.

exposure to volatile financial markets, structural flaws in the Eurozone and lack of solidarity.[20]

This observation directs us to the important role of subjective perceptions of dominance. That is an aspect of dominance that EU3D has placed considerable emphasis on. EU3D has through its comprehensive analyses of parliamentary debates, future of Europe proposals (a database consisting of 950 EU3D-defined proposals) and survey analyses uncovered subjective perceptions of dominance. It has enabled us to uncover how political and social actors perceive institutional relationships within the EU as unjust, problematic, unaccountable, and imposing. We have also found that some political and social actors direct their critique at the EU for its lack of capacity to undo forms of injustice wrought by states and others. These analyses enrich our knowledge of political and social actors' assessments of the EU polity and how citizens and their representatives want to reconfigure it (Czerska-Shaw et al. 2022; Góra, Thevenin, and Zielińska 2023a). It also enabled us to unpack the Eurosceptic views that are using the references to dominance as legitimising practices undermining the EU in the eyes of citizens. This however raises additional questions pertaining to how to treat subjective perceptions of dominance specifically if these are not grounded in factual assessments of actual relationships within the EU system. It allows as well to nuance the typical blame games that Eurosceptic actors use against specifically the European Commission (Schlipphak and Treib 2017; Czerska-Shaw et al. 2022). EU3D results on perceived dominance raise important questions of relevance for further research on dominance within the EU.

The complex multilevel EU constellation, EU3D research has shown, has the potential for generating dominance along a number of lines that may be separate, or that may interact: a) as something that takes place within the context of EU-Member State relations; b) in EU-external state(s) relations; c) in state-citizen relations; and d) in relations between private persons (see contributions in Bátora and Fossum 2023, for these forms).

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[20] For twitter debates in Germany and Greece see Michailidou and Moland in Bátora and Fossum 2023.

It is also important to underline that whereas the EU can be a source of dominance; it can also be dominated. Even efforts to counter dominance for instance during the Eurozone crisis can have EU-internal dominance effects! (Bátora and Fossum 2023). In the extension of this, it proved necessary to include explicit attention to the notion of *vulnerability* because it provides us with important information on the degree to which an actor may be susceptible to dominance.[21] This term, as we shall see, is very relevant for the EU, because it has weak own capacities, is highly dependent on the member states for effectuating its decisions, and as was seen during the Eurozone crisis, was highly vulnerable to the vagaries of the financial markets. The EU is also geographically speaking highly exposed to unstable regimes, to the South and the East. Russia, as a highly unstable regime, and on a more structural level China, have tried to de-stabilize the EU; hence, the EU's vulnerability to such pressures must figure in the overall question of dominance in Europe.[22]

EU3D has also sought to develop new terms that capture the dynamic interaction between differentiation and dominance. A key such term is the notion of *differentiating shock*, which refers to when a sudden change alters the differentiation configuration with dominance effects (Fossum 2023). It has been widely observed that the financial crisis shook the EU's system of economic governance, and especially the Eurozone, with differentiating effects. The issue EU3D has examined is when and under what circumstances shocks with differentiating effects have clear or discernible dominance effects (more on this in the below).

EU3D, as noted above, also zooms in on the relationship between **democracy** and differentiation, as part of its broader assessment of the interaction of differentiation – dominance - democracy. Democracy refers on the one hand to governing capacity and capability, and on the other to the notion of citizens as self-legislating. Citizens must be able to understand themselves as the authors of the laws that they are subject to,

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[21] The term was initially introduced by Keohane and Nye (2001). Kirby (2006) usefully associates vulnerability with two dimensions: external threats, and internal coping mechanisms. He notes that an increase in external threat and/or a decline in internal coping mechanisms yields an increase in vulnerability, in other words, a susceptibility to dominance.
[22] On China see Pelaudeix 2021; Pelaudeix 2023.

and they must be able to control those governing bodies that are capable of putting laws and rules into effect. Democracy presupposes a system of rights that provides citizens with private and public autonomy (Habermas 1996). With democracy we therefore refer to constitutional democracy. The constitution enables and constrains majoritarian rule, because it is intended to balance majority rule with minoritarian protections.

This brief unpacking of the three core terms – differentiation, dominance and democracy – has mainly focused on spelling out the relevant analytical dimensions: the many manifestations that differentiation can take, the different ways in which dominance can manifest itself, and the relevant dimensions of constitutional democracy. The unpacking may create the impression that these can be combined in many different ways. Modern political practice and political and legal theory however ties these terms closely to the nation-state and the global system of states, especially democracy and differentiation. For our purposes, the institutional anchorage of democracy in the nation-state strongly colours the political and normative imagination. It is therefore natural to keep in mind how constitutional democracy is imagined in differentiation terms, and take that as our point of departure. This notion of how democracy is institutionalised is important in order to build a bridge between the general principles that democracy builds on and differentiation in its various forms and facets.

Differentiation configuration: unpacked and justified

The notion of differentiation configuration serves as a key heuristic device for understanding and empirically analysing how differentiation is related to dominance but also how differentiation is related to democracy.

We have already noted that in order to understand the EU as a system of governing we need to distinguish between differentiated (dis)integration and differentiation. The latter term underlines that differentiation is an intrinsic element in the development of modern political systems of governing. As noted above, the main dynamic is not deviation or departure from a uniform or unified process of integration, but functional and role *specialisation*. There is an important democratic justification for including attention to differentiation along these lines, given that modern

democracy relies on distinguishing between legislative, executive, and judicial power. In addition, the complex requirements of modern governing presuppose functional specialisation. Thus, modern democracy relies on a comprehensive administrative system that gathers specialist knowledge in separate government ministries and agencies. This is obviously relevant for the EU, in the sense that as it consolidates and takes on more tasks, it becomes more functionally specialised and differentiated; differentiation is thus an intrinsic element of EU integration.[23]

We have as noted above introduced this distinction between differentiated integration and differentiation not to argue for the need to shift attention from differentiated integration to differentiation but to underline how the phenomena that the two terms denote relate to each other. In this sense both meanings offer relevant depictions of (aspects of) the EU. They do however present us with two very different accounts of the relationship between differentiation and integration. Differentiated integration, as currently analysed in the extant literature, focuses on aberrations or deviations from what would otherwise be a uniform and unified process of integration, wherein states are coming together to form a new political system. The latter, differentiation, refers to how the emerging political system becomes more functionally specialised as the process of integration unfolds. As part of the integration process, new constellations of territorial governing emerge, as relations between the different levels of a multilevel architecture are worked out. Differentiation is therefore a necessary element of integration, but it is far from synonymous with integration. In a democratic federation the constitution entrenches a given territorial-functional pattern of differentiation that exerts a profound path dependence on the polity's subsequent development.

From the above we see that the establishment of a governing system at EU level is a matter of territorial consolidation by a political centre and, at the same time, a case of territorially differentiated governance, as the governing systems at different levels (Member State and EU level) divide

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[23] This does not necessarily mean that the system becomes more democratic as functional specialisation can create ist own problems of lack of oversight and coordination, or even the rise of technocracy.

the functions and competences between them. 'Thus, whereas the former account of differentiation is mainly focused on differentiation as forms of deviation from uniform or unified integration, and places the accent on developments at EU level, the latter is about the *broader patterns and processes of territorial, functional, and hierarchical structuring of the multilevel polity, and the system's constitution of persons as citizens'* (Fossum 2023, italic in original). This approach as noted above enables paying attention to built-in biases and path dependencies in the EU's basic setup that will not be easily detected simply by focusing on differentiated integration.

We have highlighted the distinction between differentiated integration and differentiation to underline that the EU has a distinct differentiation configuration. In the following, drawing on Fossum 2021, we will unpack what we mean by differentiation configuration in such a manner that it can form a benchmark for how we understand and assess institutionalised democracy. Deviations from such patterns can then be discussed in terms of whether they are pathological and may engender dominance.

The ensuing unpacking is therefore in synch with the normative-democratic imagination. This imagination as noted above is coloured by the association between democracy and the nation-state. Our unpacking has sought to 'lift out' the relevant differentiation dimensions so that we can apply them to non-state contexts such as the EU without losing the connection to institutionalised democracy.

Table 1 provides a brief outline of this heuristic device, which has informed much of EU3D research (Fossum 2019; 2021; 2022; Góra, Thevenin, and Zielińska 2023c; Czerska-Shaw and Warat 2023). The configuration is open-ended in the sense that it does not prescribe any one correct way of institutionalising democracy, because it depends on the nature of the political system. Even within states there are different ways of combining the different dimensions of differentiation in the overall polity configuration. Each actually existing polity will therefore most likely harbour democratic dilemmas.[24] The advantage of this notion of differentiation configuration is that it provides us with an overview of the main differentiation dimensions and allows us to detect both dominance

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[24] For an incisive EU3D-contribution on differentiation within the European Parliament, see Heermann and Leuffen 2020.

pitfalls and democratic potentials - as well as dilemmas/trade-offs. Given the scheme's comprehensive nature it is especially useful for clarifying how the various dimensions are related and interact within any given type of polity.

Table 1: The key dimensions of differentiation configuration

Decisional or law-making differentiation refers to division of power and law-making. Democracy depends on some institutional differentiation to guide and steer the law-making process. Democracies vary in terms of how well-entrenched this mode of differentiation is. High levels of de-differentiation through concentration of all three functions within one governing branch are democratically deleterious. For instance, will executive dominance mark an overly strong concentration in the executive; a concentration in the judiciary is associated with untrammeled juridification; and an overly strong concentration in the legislature is associated with un-governability.
Competence-based functional differentiation reflects the fact that modern political systems are functionally differentiated. Modern democracy relies on functional differentiation, and the build-up and systematisation of specialist knowledge in order to improve problem-solving. Having said that, it matters how that functional differentiation is structured and configured, including who possesses the knowledge, how knowledge is brought to bear, what type of knowledge is available and where, how accessible expert knowledge is to democratic decision-makers, and whether expertise is properly subjected to democratic controls. Knowledge and expertise accumulation can increase governing capacity and capability and can add to legitimacy by making good decisions. At the same time, an overly strong specialisation that is not subject to proper democratic controls can engender technocracy; undermine coordination; generate and entrench strong epistemic biases; and as such undermine governing effectiveness and legitimacy.
Territorial differentiation refers to the fact that every political system is territorially based and bound to a given space. That in turn has two aspects: the former pertains to internal-external relations; the latter to vertical relations across levels of governing. An important consideration is how permeable the political system is to its surroundings, and how well the governing arrangements are able to regulate exit and entry to the system (of ideas, persons, groups and territories). The more permeable, the greater the scope for cross-border law-making and functional and territorial differentiation. High permeability violates the democratic norm of congruence between what the governing institutions relate to and how, on the one hand, and the citizenry's ability to instruct and hold the governments to account, on the other hand. It follows that the greater the amount of interdependence and interweaving of territorially based governing entities, the more complex the democratic challenges. The other aspect reflects the fact that all sizable modern political systems are based on some form of territorial differentiation. They vary greatly in structural composition and location of competence and authority. Allocation of competence varies from a continuum of unitary to federal systems: starting at central control and mere de-concentration, moving to delegation, which is about loosening control somewhat, and then moving to the situation of non-

centralisation, i.e. where each level has some forms of own competence (and there are forms of overlapping and joint competence) that is the hallmark of federal systems.

Citizen incorporation in the political system through the rights and obligations that we associate with citizenship is the fourth differentiation dimension and refers to the constitution of the person as a rights holder. Modern political systems differentiate the status and rights of persons in distinct manners. For one, the world is differentiated: it consists in territorially demarcated states with persons whose status, rights, and entitlements vary considerably across different types of states. The very definition of a person as a citizen is legally entrenched and designates a specific status that gives persons rights to territorial access, a repertoire of protective and participatory rights and entitlements, and access to government and representative institutions. Citizenship gives legal credence to the right to have rights. Since the world is divided into states, modern citizenship formalises and legalises a distinct personal status that in turn is used as the basis for distinguishing between members and non-members.

There are several further reasons for why it has been useful to operate with the notion of differentiation configuration. It provides us with a useful heuristic for establishing the distinctive character of the EU as a political system from a perspective that combines differentiation and democracy without necessarily being tied to the nation-state and its sovereignty presuppositions. This intuition has coloured EU3D research since its inception.

We need an open-ended scheme to assess the EU because it is a composite of supranational and intergovernmental traits (Fabbrini 2015, 2019; Fossum 2019; 2022). The EU does not only lack an authoritative account of what type of polity it is (or should be); present-day EU exhibits a profound institutionally entrenched tension between two principles of governing, one steeped in intergovernmentalism, the other steeped in supranationalism.[25] Further, the EU integration process is not only about

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[25] Federal systems also have similar tensions but generally speaking have constitutions that provide assurance of autonomy for each main level of governing and also equip the national – federal – level with capacity to sustain itself. Neither of these two elements is properly in place in the EU. Fabbrini (2023) observes how the two principles supranationalism and intergovernmentalism have changed from the sovereign debt crisis of the early 2010s to the economic consequences of the Covid-19 pandemic crisis. He refers to 'how the European Council had to move from an "unconstrained intergovernmental" to a "constrained supranational" approach, exactly for neutralising the domination implications of intergovernmentalism, and the populist reaction to them' p.372.

the development of a system of governing at the EU-level but equally as well about how this development in turn *transforms the member states*[26], including generates altered relations and dynamics within member and affiliated states. EU3D has included some attention to this important sub-national development which has not received much attention in the extant differentiated integration literature.[27]

We need to keep in mind that in addition to differentiating and centrifugal dynamics, there are also powerful isomorphic pressures at work, and member states and institutions copy from and emulate each other and learn from each other (Fossum 2019). These dynamics (top-down and bottom-up) are discussed in the Europeanisation literature but with little explicit attention to differentiation. EU3D research has through its focus on the various aspects of the EU's differentiation configuration and how that has been transformed through the Eurozone crisis especially (see in particular the contributions in the Comparative European Politics Special Issue edited by Møller-Stahl and in Bátora and Fossum 2023) shown that the EU-level's development is clearly not a carbon-copy of the development of the member states.

Further, our distinction between differentiated integration and differentiation as functional specialisation has been useful in order to understand better how, where and in what sense the EU deviates from the basic differentiation template that we associate with the nation-state. This distinction as noted above has proven useful for detecting built-in biases and patterns of path dependence that are *not traceable back to differentiated integration* but rather to the EU's overall functional-territorial configuration. This will be further elaborated in the following section which provides a brief overview of key features of the EU's differentiation configuration. The remainder of the report will specify this in further detail, both with regard to EU-internal and EU-external dimensions.

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[26] Bickerton (2012) refers to how the states change from nation to member states. There is a burgeoning body of literature on top-down and bottom-up Europeanisation.

[27] See Schoenlau (2021); Zielonka (2022).

The EU's differentiation configuration – a brief overview

An important key for understanding the distinct traits of the multilevel European differentiation configuration is to look more closely at how the EU transforms sovereignty in Europe. As Robert Keohane has noted:

> [s]tates that are members of the European Union have broken sharply with the classical tradition of state sovereignty. Sovereignty is pooled, in the sense that, in many areas, states' legal authority over internal and external affairs is transferred to the Community as a whole, authorising action through procedures not involving state vetoes […] Under conditions of extensive and intensive interdependence, formal sovereignty becomes less a territorially defined barrier than a bargaining resource.

> (Keohane 2002: 748)

Three important implications follow. (1) For one, since the EU is not a state, it does not exercise the amount and type of territorial control that we associate with state sovereignty (Bartolini 2005). (2) For two, that does not prevent the EU from increasingly shaping the differentiation configurations across levels of governing in Europe, keeping in mind that the EU is structured according to levels, where the EU-level and the member state level are the two main ones (there is also a regional level but it is institutionally and constitutionally speaking highly diverse - given the different character of states ranging from unitary to federal – and it is far less present at the EU-level). The EU-level institutions do not shape the member states independently from the member states. The prominent participation of national officials in key EU-level bodies such as the Council and the European Council entails that member states also so-to-speak act upon themselves through the EU-level. It is this inter-imbricated system that increasingly sets the terms of states, markets, citizens and groups' interactions across Europe. (3) For three, EU membership is less about exclusive territorial control (that we are accustomed to from the world of states) and more about the imperative of participating in joint rulemaking so as to set the terms of own and other actors' interactions. This has bearings on the account of democracy and how it relates to differentiation: any account of democracy that aims to take the EU seriously must take into consideration the centrality of being present in

EU-level institutions given that these increasingly set the terms of activities across Europe, at all levels and scales of European governance. This we shall see in the next section on EU external relations matters a lot for third countries and is a theme that EU3D has researched to a great extent.

The EU's differentiation configuration combines the functional and territorial dimensions in a highly distinctly – unprecedented – manner. To put it differently, the EU combines horizontal separation (of functional spheres: the supranational Community versus the Intergovernmental realm), with vertical fusion (of levels) (Fossum 2020). This combination represents a unique form of differentiation, in the sense that functional spheres are horizontally separated and operated by different institutional arrangements, one with a strong supranational tenor, the other with a strong intergovernmental tenor (the two arrangements also somewhat overlap). This is combined with a strong vertical fusion of levels; in other words, the EU institutions are tightly interwoven with the member states (Wessels 1997), but the nature and strength of interweaving systematically differs between the supranational Community and the Intergovernmental realm, which helps account for the fact that there is quite limited differentiated integration in the former albeit quite considerable in the latter (Fabbrini 2019). This distinctive institutional configuration prevents or constrains horizontal coordination, market correction and fiscal stabilisation at EU-level, because, as Fritz Scharpf (2010) has underlined, the EU decision procedures in the institutions bent on market-making are majoritarian, whereas the member states can exercise a veto in those institutions bent on market correction, and fiscal and tax harmonisation.

This EU mixture of supranational and intergovernmental traits represents a form of built-in bias that is of critical importance for understanding the EU qua polity. Some EU3D researchers have drawn on that observation to assert that there are good grounds for labelling the EU a *segmented political order* (Bátora and Fossum 2019; Bátora and Fossum 2022); a system of governing that operates on the basis of stabilized constellations of actors across multiple domains (EU-institutions, member states' governments, interest groups, private enterprises and NGOs that is organizing in particular policy solutions and organizing out alternative ones). This implies that the EU as a segmented political order is seriously biased in

functional terms, given that the polity-constitutive aspect of the EU is the internal market (Fossum 2022). EU of today is functionally speaking a very encompassing entity, which is involved in most functional realms albeit to different degrees. This involvement is not only functionally uneven; it varies considerably in capacity and institutional terms, with the internal market (and competition law) playing an important shaping role. As a segmented political order, the EU is also qua polity highly constrained, in normative and material terms. This suggests that there are important built-in biases and patterns of path dependence in the EU that shape its development and the relations with the member states. An important implication is that the more pronounced the built-in biases in the EU construct when considered in relation to the differentiation configuration we associate with viable institutionalized democracy, the more problematic it becomes to assess differentiated integration simply with reference to EU-law, because EU-law may sustain such built-in biases. The notion of differentiated integration as a deviation from uniform and unified EU law is therefore a bit of a misnomer. There is at present no assurance that EU-law will generate an EU-level system of governing that is unified in terms of being functionally symmetric. That is in any case what we have come to assume from the nation-state context, (due to the notion of sovereignty as territorial control across all functional realms).

In the EU context, three sets of asymmetries are in play: a horizontal asymmetry in the EU construct stemming from the unequal functional weight of the EU's internal market versus fiscal and social policy. Second is a vertical asymmetry stemming from the manner in which the EU-level system of governing mirrors (or not) the member states. This asymmetry is amplified through the sheer institutional, constitutional, cultural etc. diversity of the member states. The third asymmetry stems from the EU's relations with third countries. Here there is also considerable asymmetry in the degree of third countries' involvement in EU programs. In the next section on EU external relations, we provide a table that shows how gradated this involvement is. The EEA-EFTA states stand out in their incorporation given that they are full participants in the EU internal market and within the Schengen system of EU border controls (these countries are inside the EU's external border and are responsible for EU border controls). In general, we may assume that the more diverse EU's

relations with third countries are, the greater will be the asymmetrical pulls on the EU.

What we see in contemporary Europe is a situation whereby there is a clear de-linking of the four differentiation dimensions from the framework of state-based territorial sovereignty. The development of a European level legal framework that provides individuals with rights against their states (European Convention on Human Rights (ECHR) and EU) is a powerful reflection of a certain rescaling of the citizens incorporation dimension. States' constitutional arrangements are imbricated in this rescaling process (Fossum and Menéndez 2011). EU citizenship is different from national citizenship. EU citizenship serves to de-couple national citizenship. Contemporary developments suggest that there may be an increased differentiation in statuses across Europe, including forms of exclusion (see Olsen's chapter in Bátora and Fossum 2023).

To sum up, the EU-level differentiation configuration deviates in important respects from all four dimensions of the differentiation configuration derived from nation-state-based democracy (Table 1). The post-war process of juridification associated with supranational and international legal integration (that Jan-Werner Müller (2011) labels as 'democracy constrained') operates at European and national levels and has implications for law-making differentiation, at all levels. That process combined with agencification has implications also for functional differentiation, not least in terms of how well (or not) democratic bodies can control courts, expert bodies and agencies. The growing inter-imbrication of levels of governing has implications for territorial differentiation. The distinctness of the EU's reconfiguration of sovereignty shows up in how the EU places far less onus on exclusive territorial control than do states. EU membership in that sense places the main onus on participation in common EU-level institutions (Fossum et al. 2020). Finally, EU integration reconfigures citizenship and citizen incorporation. How distinct this configuration is, depends on a host of factors, including the nature and development of the multilevel EU configuration – and what that entails for the three asymmetries listed above (horizontal, vertical and EU-external).

The remainder of this section on EU-internal developments will query what more specific and targeted EU3D studies have uncovered in terms of the relationship between differentiation and dominance. We start with a historical account and proceed to the EU's poly-crisis, with particular emphasis on the financial-turned-Eurozone crisis. This examination will continue in the next section on EU external relations.

Historical background

This portion of EU3D research was intended to trace the historical roots of those forms that we identify as pathological differentiation in order to establish how well-entrenched they are in the EU's structural make-up. The research centred on the Eurozone crisis, because that was the EU-internal crisis that brought forth the most prominent dominance accounts, both in terms of the effects of EU austerity policy and in terms of the EU's vulnerability to the vagaries of the financial markets. Analysts sought to establish possible sources of dominance, pertaining to ideology,[28] the structure of economic governance, technocracy and the role of non-majoritarian institutions. How or to what extent are these factors historically rooted?

The EU3D main contribution to the understanding of the historical context of differentiation and dominance in the EU is the special issue in Comparative European Politics that was co-edited by Rune Møller Stahl and Ben Rosamond (see also Møller Stahl and Rosamond's chapter in Part Two of this report). The special issue contains a multidisciplinary cast of authors and consists in nine contributions in total. The special issue editors in their introduction note: "(t)he contribution of this special issue is to trace the historical origins of the rules and practices at the operational heart of EU economic governance, and to demonstrate how they, directly and indirectly, contribute to forms of domination that potentially pose threats to democratic legitimacy…. The special issue explores a series of

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[28] Møller Stahl and Rosamond argue in their chapter in Part II, 'recent economic governance in the EU seems to be ideologically driven, reflecting the dominant causal ideas and normative beliefs of economic policy elites in supranational and international economic institutions and core Eurozone governments (Blyth 2013, Dawson 2015, Maatsch and Cooper 2017).'

deep historical questions that, once addressed, should add to existing understandings of the evolution of the EU regime of governance. It considers the extent to which tendencies toward non-majoritarian and depoliticized domination are rooted in the global development of economic ideas or in specific European institutional path dependencies. The special issue asks whether technical and normative claims about the economy and appropriate modes of economic governance have been operationalized into international economic law in Europe, and if so how and when? It further considers how, to what extent and in what ways, particular forms of economic expertise have been enlisted into both the design and the functioning of European-level regimes of economic governance."(Stahl and Rosamond 2022:627-8).

With regard to the specific contributions, Magnus Ryner takes as his point of departure a notion that was bandied about during the financial crisis, namely that the design of European monetary governance was inherently neoliberal. He examines that with reference to the so-called Locomotive Conflict of the late 1970s, which could be considered a formative moment in the development of monetary union. The finding is that the period was marked by several understandings of monetary integration; hence alternative options could have been selected. From this it is reasonable to assert that research should focus on why a given path was chosen and when and under what conditions that choice became cemented rather than think of some 'original sin'.

Agustin José Menéndez in his article, which was cited above, examines how particular numerical performance indicators became standardized in EU-level monetary governance. He traces the emergence of these rules to the particular ideational conjuncture that took shape in the 1970s. This, he notes is 'the result of the return of the regulatory ideal of neutral government in the 1970s (powered by the amalgamation of ordo-liberal and neoliberal ideas into what may be called neo-ordo-liberalism) and the search for solutions to the contradiction at the heart of European integration after 1971: the will to have a common currency without the will and institutional means to ensure its political government.'(Menéndez 2022: 631) This choice of indicators has dominance implications through how and by whom discretion is exercised.

In their joint article, Rune Møller Stahl and Ben Rosamond 'connect the recent fashion for economic governance through non-democratic institutions to deep currents in liberal political thought that, while amplified and processed in the neoliberal turn of the 1970s and 1980s, have a rather deeper lineage. They suggest that the interest in the idea of 'militant democracy' in mid-century liberal thought may have played a very important role in shaping the formative institutional designs of European integration in the early 1950s' (Stahl and Rosamond 2022:629).

Troels Krarup also harkens back to the formative moment of the Treaty of Rome (1957) and compares the text of that to the Lisbon Treaty (2007). He finds 'conceptual tensions, uncertainties and contradictions—related to 'the market'. I demonstrate that the decidedly negative determination of 'the market' (the absence of barriers to competition) has remained stable in the treaties. While acknowledging the substantial changes in policy and regulation that took place in the period, I argue that the problematic constitution of the market in the EU implies fundamental conceptual instabilities, for example, regarding the limits to competition. Moreover, I suggest that this problem is likely to emerge in market integration processes. Rather than forming a causal mechanism determining historical outcomes, such conceptual instabilities may be the basis for recurring problems across different domains and aspects of market integration' (Krarup 2022:671).

Ingrid Hjertaker and Bent Sofus Tranøy query whether the Eurozone crisis and the negative effects it engendered could have been avoided. This requires counterfactual analysis which they embark on through analysing three discourses on economic governance: 'on financial stability, fiscal policy and on growth. Each discourse came with pathologies: they did not sensitize decision-makers to crucial negative consequences of the policy choices they privileged at decisive points in the sequence of boom, bust and (policy engineered) painfully slow recovery. The ECB has quietly changed its ways, but unwillingness to confront the crisis head-on as a policy fiasco can obstruct learning opportunities that are important for the EU and the Eurozone going forward' (Hjertaker and Tranøy 2022: 770). The authors note that the European system of economic governance was structurally speaking particularly vulnerable but at the same time they

also underline that European policies were not unique. They resonated with a larger epistemic community that stretched well beyond Europe.

Malte Frøslee Ibsen in his article draws on political theory in his effort to capture the dynamics of Eurozone governance and introduces the notion of 'creditor dominance'. He notes that "two conditions, one institutional and one structural—related to the institutionally incomplete European monetary union and a structural transformation in international finance— conspired to render periphery member states in the eurozone vulnerable to creditor domination, to which they were manifestly subject in the euro-zone debt crisis. The article also argues that the EU's pandemic response "NextGen EU" represents a fundamental change in Europe's politics of sovereign debt, which, even if only a temporary vehicle for debt mutualisation, has rendered member states much less vulnerable to creditor domination due to the pandemic's economic fallout. Finally, the article discusses Richard Bellamy's proposal for a "republican Europe of states" and argues that Bellamy's proposed reforms, while insufficient to overcome the conditions of creditor domination in the eurozone, point to a dilemma for republicans, who may risk emancipating European citizens from creditor domination only at the cost of subjecting them to the dominating power of a weakly legitimated supranational fiscal authority" (Ibsen 2022: 689).

Muireann O'Dwyer in her article focuses on one of the key shaping texts of EMU, the so-called Delors Report of 1989. Using a feminist optic, O'Dwyer is drawn to an analysis of what is not said— the 'strategic silences'—and, in so doing, begins to show how monetary union (in its EU variant) is a profoundly gendered construct. She 'draws on feminist political economy concepts of the strategic silence, the deflationary bias, and the measurement bias to illustrate the gendered underpinnings of this key document, and key moment. As a result, this paper offers a corrective to gender-blind histories of EMU, as well as providing a basis for a more historically informed feminist analysis of contemporary economic governance in the EU' (O'Dwyer 2022:654).

Filippa Chatzistavrou in her analysis of the politics of Greek accession argues that Greece was assimilated into European integration on broadly neoliberal terms. She argues that 'there was a comprehensive neoliberal consensus to a fairly large extent among Greece's ruling class and

European establishment that Greece's integration should be based on a strongly unequal supply-chain relationship. It further provides historical and archival evidence about the formation of transnational ideational structures taking place over time and explain how intra-EU dependency became an implicit guiding precept of enlargement governance toward the South. In this perspective, the Greek case gives interesting elements about the historical and intellectual development of the integration in the South revealing how dependency and differentiation are strongly interrelated. It shows that differences in production structures and export composition between the core and the Southern country fed asymmetric relations that once ensured by law allowed particular forms of political differentiation' (Chatzistavrou 2022:749).

This collection of historically oriented articles, to different degrees, draw lines up to the present by comparing and contrasting ideas and ideological stances, current and initial EU treaties, policy responses, programs and institutional structures. The collection of historically oriented studies, some of which track developments to the present forms a valuable source of background material for EU3D's main empirical research thrust, namely the investigation of the interaction among differentiation, dominance and democracy during the last decade and a half, from the financial crisis to the present (what is also referred to as the EU's poly-crisis to underline that they are related).

Crises and challenges

The EU is no stranger to crises. In effect, Jean Monnet famously stated in his *Memoirs* that:" I have always believed that Europe would be built through crises, and that it would be the sum of their solutions."(Monnet 1978: 46) The assertion can be construed as a claim to the effect that the EU is a resilient organization because it is assumed that the EU is not only capable of weathering crises but actually grows from them. In many ways this optimistic assertion of crises has been put to several serious tests in the last decade and a half.

It is widely held that the financial-turned-Eurozone crisis was an existential crisis for the EU (Menéndez 2013). The German Chancellor at the time, Angela Merkel then also said that 'if the Euro fails, Europe

fails'.29 There are different renditions of the present predicament. Ian Manners (2023) argues that the "Eurozone sovereign debt crisis, refugees, ethno-nationalist/Brexit movements, COVID-19, and Russian invasion of Ukraine are part of a planetary organic crisis (POC) of economy, society, ecology, conflict, and polity." This predicament, Manners notes, undermines the European Communion and paves the way for dominance. This is the strongest statement to the effect that the various crises are closely related if not integrated. Other analysts argue that present-day Europe is confronted with both 'slow-burning' and 'fast-burning' crises (for these notions see Seabrooke and Tsingou 2019) or that different crisis situations have different effects on European integration when analysed empirically (Saurugger and Terpan 2016).

EU3D has engaged extensively in theoretically informed empirical research on the differentiation and dominance nature and effects of the EU's crises, especially the financial and refugee crises which marked the agenda when the project was conceived. The most comprehensive publication on the crises is the book that was co-edited by Jozef Bátora and John Erik Fossum entitled *Differentiation and Dominance in Europe's Poly-Crises*, (Routledge, forthcoming). The book notes that there were two accounts of how the financial and refugee crises affected the EU. The first saw the crises as amplifying an intergovernmental turn, and a concomitant strengthening of the European Council (a separate study of the European Council as an agent of dominance is referred to in detail in the below). Sergio Fabbrini in his chapter in the book refers to this as a case of unconstrained intergovernmentalism. Dia Anagnostou in her chapter discusses whether the responses to the refugee crisis would engender fragmentation. The other supranational strengthening account holds that the crises reinforced the EU's supranational institutions, notably the European Commission and the European Central Bank. The latter represented a strengthening of bodies not subject to democratic accountability and even representing a build-up of illicit forms of hierarchy at EU-level and in the Member States (see Chapters by Piattoni & Notermans; Bátora; Hjertaker & Tranøy; and Chatzistavrou). Several chapters discussed whether the main issue is EU vulnerability to authoritarian influences (see chapters by Ostatník and Pelaudeix). The

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29 Angela Merkel 'If the euro fails, Europe fails' available: BBC News (https://www.bbc.com/news/av/business-14827834)

contributions have sought to clarify what types of combinations of differentiation-domination have manifested themselves. Taken together, we see both elements of illicit hierarchy and tendencies towards fragmentation during the Eurozone crisis and during the 2015-16 migration crisis. Fragmentation it is important to note can also engender dominance through undermining law-based coordination and cooperation and opening scope for untrammelled power politics.

The contributions to the book show that the two most recent crises and challenges facing the EU (the Covid-19 pandemic, and the war in Ukraine) suggest that there is less focus on the challenges associated with differentiated integration, given the EU's ability to fashion coherent responses. The book shows what kind of implications the EU's differentiation configuration has had on how the EU responds to crises, and what organisational and institutional mechanisms are required to achieve unified responses and the delivery of sustained, unified policy solutions over time (e.g., as Chapter Five (Bátora) shows, the Covid-19 Resilience and Renewal Plans in Member States are hinged upon a set of innovative administrative arrangements which are connected directly to the administrative units set-up inside the European Commission administration to oversee the processes of reform implementation within the Member States, or as the chapter by Ostatník shows, the EU's unified response to the Ukraine crisis was facilitated by procedures (e.g. constructive abstention in CFSP decision-making) and innovative structures set up in efforts to stabilize Ukraine (e.g. Support Group for Ukraine). The implications of such developments will become clear, as long as we bear in mind the shift in focus that this book advocates, namely, to focus on clarifying the nature of the multilevel EU's differentiation configuration as the natural reference for the assessment of domination.

The book has shown that both structural and relational manifestations of domination can be traced back to the distinctive features of the multilevel EU's differentiation configuration, because certain patterns and processes of differentiation can serve to embed dominance. What has, however, been lacking in the present vocabulary is a term that helps us to see how such patterns come about and become entrenched in structural arrangements. One contribution of the book is thus to introduce new terms to increase our understanding of the relationship between

differentiation and domination. The book has argued that the EU has a distinct differentiation configuration, which refers to a distinct configuration of territory, function, hierarchy, and citizens' rights. The EU-level differentiation configuration is marked not only by a combination of supranational and intergovernmental traits, it is, as Chapter Fourteen (Fabbrini) shows, also a mixture of modified or altered versions of supranationalism ad intergovernmentalism.

A further contribution of the book is to underline that the notion of the differentiation configuration, as defined here, includes citizens' rights, citizenship, and the public sphere as intrinsic elements. These are arrangements that have hardly ever been discussed under the heading of differentiated integration in the EU, but they matter for the analysis of patterns of domination and the interaction between differentiation and domination. Chapter Nine (Olsen) points to the increased differentiation of personal statuses in the EU, and, with this, new forms of exclusion. Chapter Ten (Moland & Michailidou) analyses whether the social media landscape has become less differentiated in the context of crises but finds that there is still a strong nationally-defined pattern of differentiation.

The EU's recent crises and challenges show that sudden changes can have important structural ramifications in the sense that they alter the patterns and processes of differentiation. By framing a term such as "differentiating shock" to depict sudden changes in which differentiation and dominance come together, we increase and sharpen our intellectual toolkit. "Differentiating shock" refers to a sudden change that alters the differentiation configuration with dominance effects (Fossum 2023). Shocks can have differentiating effects, but only some shocks have clear or discernible dominance effects. It is important to identify them both for our understanding of differentiation and for our understanding of dominance.

A further implication - in dominance terms – that the book has brought forth is that the structural-institutional make-up of the EU renders it both vulnerable to, and prone to, domination. The EU's non-state nature is a major constraint on its ability to achieve unified actorness in the light of crises. At the same time, paradoxically, this very constraint – the EU's non-state nature – allows the EU to do what states usually cannot do, i.e., set up various types of innovative structures between and outside standard

institutional boundaries. These kinds of *interstitial bodies* – examples of which include the European Stability Mechanism or the European Border and Coast Guard – enable the EU to achieve actorness and policy co-ordination despite high degrees of differentiation (see Bátora 2020, 2021). The challenge is that this comes with the cost of various types of dominance, including illicit decisions and the exclusion of actors – including actors from within the Union and from third states.

In addition, it appears that, in such a setting, increased vulnerability – that is, external threats to EU coherence or a weakening of EU-internal coping mechanisms – can produce policies and actions with dominance effects. This was apparent during the Eurozone crisis and especially in relation to Greece in the 2010s. The irony is that the EU's susceptibility to domination through reliance on unpredictable financial markets would then be a source of EU domination! This shows how complex the relations of dominance can be, and how important it is to analyse specific cases and track developments over time.

A critical question facing the EU is whether the current sequence of crises leads to the entrenching of a new politics of emergency. The book has shown that we can trace this issue in the nature and development of the EU's distinct differentiation configuration. The issue is then whether, or to what extent, the differentiation configuration serves to entrench a mode of emergency governance and render it impervious to change. The general focus in the literature has been to think of emergency governance as a situation marked by executive dominance. Jonathan White (2019) adopts a somewhat different tack and refers to emergency politics as a mode of governance. The book co-edited by Bátora and Fossum suggests that it is very useful to discuss emergency politics as a mode of governance in relation to the specific nature of the multilevel EU differentiation configuration.

Emergency politics provides its own dominance and multilevel dynamics. Consider Chapter Five (Bátora) on the EU's conditionality requirements in the Recovery and Resilience Facility (RRF), and how these affected the patterns of dominance in Slovakia. The national setting to implement the Recovery and Resilience Plan (RRP) exhibited various forms and mechanisms of executive dominance, as well as various counter-strategies by actors seeking to escape its effects. The implication was a situation in

which the national RRP was both a source of governance stability in the light of a highly turbulent domestic political environment and a source of technocratic dominance as financial support *tranches* were made conditional upon the achievement of pre-defined reform deliverables. The result was a situation in which processes related to RRP were, in effect, removed from the realm of democratic politics, making a series of fundamental reforms in the Slovak economy and society *de facto* the realm of the exceptional, in Carl Schmitt's sense. Any crisis management is emergency politics which is, by definition, in the realm of the exceptional. What is less often appreciated is that EU Member States vary considerably in terms of their abilities in handling crises, which also relates to differences in the quality of their democratic governance institutions and processes. The case of Slovakia shows that the relationship between the EU's framework and the national executive's handling of the crisis-response measures is important to clarify in terms of where dominance is specifically located. The broader implication which requires more research is what level of national capacity and capability - in terms of democratic procedures and in terms of efficient administration - is required, especially to prevent emergency politics situations from exacerbating domination. What does appear certain is that a certain level of national action capability is necessary in order to prevent domination.

Sergio Fabbrini in his important chapter in the book compares the EU's response to the financial crisis with the response to the corona pandemic. He finds that the former, with its focus on the European Stability Mechanism (ESM) reflects a form of "unconstrained intergovernmentalism", while the latter, with the EU's Recovery and Resilience Facility (RFF), he refers to as "constrained supranationalism". This is an important change. The question is whether it was a one-off or will eventually manifest itself in a different EU approach to fiscal and economic governance.

The book co-edited by Bátora and Fossum noted that the new intergovernmentalism figured significantly in the accounts of the EU's handling of the crises. The actor that is centre stage in this account as well as in EU emergency governance is the European Council. It is therefore appropriate to query what dominance implications we can discern from this. In the report entitled 'The European Council: Actor and Arena of

Dominance?' (2023), Tiziano Zgaga, Andrea Capati and Dora Hegedus studied the question of dominance, with specific focus on the European Council. The authors highlighted two fundamental dimensions of dominance: intra-institutional and inter-institutional. The former encompasses dominance between the members of an institution. The latter refers to dominance exerted by an EU institution over one or multiple other institutions.

Empirically, the report examined the occurrence of patterns of dominance in three recent crises – the socio-economic costs of the COVID-19 pandemic (since March 2020), the rule of law controversy (since July 2020) and Russia's invasion of Ukraine (since February 2022) – with different natures (exogenous vs. endogenous), distributional effects on the member states (symmetric vs. asymmetric) and involving different decision-making methods (Community method vs. intergovernmental coordination vs. mixed governance). These crises, however, all touched upon policy areas falling within the realm of so-called 'core state powers' (Genschel and Jachtenfuchs, 2014), that is policies traditionally at the heart of national sovereignty: money, security, and values.

The research showed that – regardless of the specific policy area and the decision-making regime involved – patterns of dominance involving the European Council tended to emerge when core state powers were involved. Member states pushed to shape the EU's reaction against crises at the highest decision-making level. To do so, in spite of diverging national interests, they agreed on establishing the European Council as a key crisis-manager. Therefore, the other institutions had to find ways to counterbalance it. This led to degrees of inter-institutional dominance of the European Council not only vis-à-vis the Commission and the EP (as occurred during the COVID-19 pandemic and as part of the rule of law controversy) but also with regard to the Council (Russia's aggression against Ukraine). Patterns of inter-institutional dominance created a breeding ground for intra-institutional dominance. Whereas in the case of the euro crisis, a minority of powerful member states (France and Germany) imposed their own unilateral solutions to the crisis, the case studies examined here testified that also a minority of smaller and comparatively less powerful member states can trigger intra-institutional

dominance by threatening to block solutions to a crisis, thus de facto holding the European Council hostage.

Overall, this research confirmed that the upward trend of European Council's empowerment – started with its formal institutionalisation with the 2009 Lisbon Treaty and consolidated during the euro crisis – continues. The lowest common denominator of the European Council's empowerment across these crises is its progressive shift from an executive institution supposed to issue general political guidelines to a quasi-legislative institution that enters into the details of specific decisions – to the detriment of the other (supranational and intergovernmental) institutions, none of which are fully able to counterbalance it. As such, the European Council is a dominating actor. At the same time, the unanimity requirement makes the European Council the most attractive institution for both large and small member states to negotiate outcomes in line with their preferences. As such, the European Council has become an arena of dominance. In both cases, serious issues of accountability emerge: inter-institutional accountability with regard to the EU as a system of multiple, yet equal institutions sharing power, and intra- institutional accountability with regard to the EU as a system of different, yet formally equal, member states that need to coordinate their positions in order to produce effective and legitimate decisions for the EU as a whole.

European Council's dominance de facto further differentiates the EU's decision-making system beyond the Community method and the intergovernmental regime – and more generally beyond what the EU treaties foresee. As such, the dominance of the European Council revealed a grey zone between the classic EU decision-making regimes which is shaped by the European Council's entrepreneurship vis-à-vis other institutions (inter-institutional dominance) or the power dynamic between governments within the European Council (intra-institutional dominance). Ultimately, this results in a pathological differentiation of the EU's decision-making system.

The account thus far shows that a major source of dominance during the EU's poly-crises, not the least as exemplified by the case study of the European Council, is the rise of informality in the system of EU governing. In that connection an interesting test case is made up of administrative networks because they are meant to ensure uniformity, thus reduce

differentiation. Does this come at the cost of lack of accountability? How to ensure accountability under such circumstances is important to establish. Two EU3D Working Papers have been issued on the role of such administrative networks. The first paper by Dorte Sindbjerg Martinsen, Ellen Mastenbroek, Reini Schrama and Ana Carolina Soares entitled 'European Administrative Networks and Differentiated Implementation' examines whether or to what extent European Administrative Networks (EANs) can address challenges associated with differentiated implementation. The authors note that there is little information on how numerous they are, what characterise them, what their functions are and how they actually function. The paper accordingly undertakes a systematic mapping of EANs across five policy areas: internal market, health, social protection, asylum and immigration, and environment, and examines the functions and functioning for a subset of networks. The authors find that 'EANs have increasingly become part of the European Administrative Space but vary when it comes to formalisation and independence as well as functions and functioning. While EANs stand out as important instruments to reduce differentiated implementation, they do not do so equally across the board.' The second paper by Ana Carolina Soares is entitled 'European Administrative Networks in-between audiences: accountability dilemmas in multi-level EU governance' and focuses more explicitly on EANs and the problems of accountability and develops an analytical model of accountability that is applied to EANs. The author notes that: '(d)espite previous literature identifying the main shortcomings of EANs in terms of accountability - namely, their insulated work mode, membership, informal and opaque nature -, we do not know how wide-spread these accountability issues actually are and whether they have any ramifications for the functioning of EANs. This paper takes a first step to uncover and assess the multi-level accountability webs EAN members are embedded in by looking at the exchanges of information and best practices at the Head of Environmental Protection Agencies Network (EPA Network). Through the application of social network analysis to unique survey data, the intra-network interactions are traced, and the underlying structure of the network is assessed in terms of whether it reflects predominantly horizontal collaboration or hierarchical control. The findings show that despite being a voluntary and informal network without a formal steering actor, the EPA Network presents an underlying hierarchical structure centred around key members. The dynamics within

the network have thus strong implications for the assumption of peer accountability within EANs' (Soares 2023).

Terpan and Saurugger (2022a) analyse another aspect of informality in focusing on the relationship between soft law, differentiation and the prospects of integration/disintegration. Based on three assumptions, first that the EU is facing a context of increasing political and economic turbulences, second that territorial differentiation has indeed increased since the 1990s, and finally that EU policies rely more and more on soft law, the authors develop three scenarios. In the first scenario, soft law leads to more territorial differentiation; in the second, it leads to initially more differentiation followed by more integration; and in the third, soft law triggers integration. A detailed empirical analysis shows that the likelihood of these scenarios is dependent on the inherent specificities of soft law (not all soft law has the same characteristics) and on those of specific policy areas in the EU's political system. Hence differentiation in this context is not seen as a pathology but as a fact whose occurrence is dependent on a series of polity and policy related factors.

Another aspect of internal differentiation with regard to non-majoritarian institutions is the role that the Court of Justice of the EU (CJEU) plays in a context of differentiation. This study has been mentioned in the above but is further elaborated here. Saurugger and Terpan (2022a) analyse the place of the CJEU in the increasingly differentiated political system of the EU. If a constitutional court's role such as the CJEU's is to guarantee the homogenous application of law in a political system, is increasing legal and judicial differentiation blocking its actions?

In their chapter, the authors distinguish two main sources of differentiation in the legal and judicial realm of the EU. First, differentiation results from the resistance of national courts to the constitutionalization of European law, which is associated with constitutional pluralism. A second source of differentiation is linked to the fact that national governments have departed from the notion of a European rule of law homogenously applied on the EU territory, introducing specific types of differentiation – vertical and horizontal – with the aim to offer the member states a way out of a negotiating deadlock, and/or preserve member state sovereignty.

Confronted with these dynamics, the Court has actively developed instruments to restrict legal and judicial differentiation through its activism in fields where its competences are limited at best and through the establishment of the sociological instrument of judicial dialogue. Using approaches stemming from legal, sociological as well as network studies traditions, the authors show that while legal differentiation is indeed increasing, the CJEU has reacted in order to try to limit this process.

This section of the report has concentrated on EU-internal actors, structures and dynamics with a view to establish how and in what ways specific actors and aspects of the EU's differentiation configuration are associated with forms of dominance. The accent has been on the differentiation – domination examination, which indirectly also says something about democracy, or its absence. Some of these features can be traced back to aspects of differentiated integration, others to the manner in which the EU is territorially and functionally configured, more broadly speaking. And yet others also refer to ideational and ideological facets. The next section turns to the EU's external relations as sources of differentiation and dominance and their interaction. As the next section will show we cannot understand the drivers of dominance in the EU context by simply looking at EU-internal actors and factors. The EU as a distinctly configured multilevel system of governing is highly dependent on the member-states and their distinct external links and affiliations, and the EU is itself highly vulnerable towards the external world.

EU-external relations and dynamics

External conditions are important for the nature and resilience of the EU's differentiation configuration. They are also important determinants for dominance and democracy. In the following, we start by outlining what we have identified as the key principles governing the EU's external relations. That served as an important first step towards understanding the distinct character of the EU's differentiation configuration. An obvious point of departure was to look at the EU treaties and the legal provisions guiding EU external relations. That dovetails with what was said above about the central role of law in fostering European integration. It is well-known that the EU champions a legally regulated and law-abiding world

order. An approach to legal integration within-EU that is at the same time extended to the EU's relations to the external world can have important de-differentiating effects in the sense that operating conditions are as similar as possible despite the external-internal divide. Such an approach to extending legal uniformity to the external world has marked the EU's approach to enlargements and also to a considerable extent its close relations with third countries.

We expect this approach to legal uniformity to mark the EU's relations to the external world and in particular its relations with affiliated third countries, including post-Brexit UK. At the same time, it is important to underline that the EU also as a consequence of a round of enlargements has developed into a near-continent-wide political system which has borders with a wide range of unstable, authoritarian and poorly functioning regimes. The EU cannot isolate itself from this volatile context, which can serve as a source of internal EU instability as well as fissiparous and fragmenting impetuses. Complex external relations and dynamics can breed internal forms of differentiation.

These preliminary reflections suggest both de-differentiating and differentiating impetuses to mark the EU's external relations. These tensions will be considered in more detail in the below. Before proceeding with that an important contribution to EU3D research by Kalypso Nicolaidis (2021) has sought to somehow reverse the gaze by applying the differentiation lens from the EU to the global level of inter-state cooperation. The approach proposes an explicit *relational* view of differentiated cooperation, which starts with characterising the relations between actors rather than the actors themselves. The author explores four sets of questions that form the basis for this analytical framework: "(1) *Whether* differentiation is desirable and for whom if we seek to maximise democratic congruence, including vertical and horizontal non-domination. (2) *What* types of differentiated relations constitute the landscape of forms of differentiation, presenting a relational typology consisting of selection, recognition, distinction and discretion. (3) *Why* delves into the many categories of causes or factors explaining why states engage in differentiation at the EU and the global level – reading functional and political drivers as indicators of patterns of relations, distinguishing in particular between states that are un-able,

unwilling or unamenable when considering joining integration schemes. And finally the last section (4) *How* offers a few preliminary thoughts on how or under what conditions, DI/DC can pass the democratic congruence test." The analytical framework that is here proposed presents a range of interesting suggestions for reducing democracy-undermining forms of incongruence under international conditions of interdependence.

The remainder of this section is mainly structured from the vantage-point of the EU but there are explicit references to third countries, which underlines the need for a relational view.

We start with the general principles guiding the EU's relations with the external world, move on to the formal arrangements, and finally look more closely at practical reality across different relations.

EU-external relations: key principles and formal arrangements

The report entitled 'The EU's non-members: Key principles, underlying logics and types of affiliation' by John Erik Fossum, Monica Garcia Quesada and Tiziano Zgaga with contributions from Guntram B. Wolff examines the basic principles that the EU has established for structuring and conducting its relations with non-member states. The relevant source is the EU treaties. The report shows that the basic principles are general or universal in orientation. That means that the principles are the very same for those states that are seeking to associate with the EU, as well as for states seeking to disassociate with the EU, even if the latter are far less explicitly articulated than the former. Nevertheless, we can surmise from Article 50 TEU that the EU is committed to uphold its general principles, also in relation to a state that is exiting the Union. The general principles that the EU espouses are universal in character. This approach dovetails with how the EU seeks to reconfigure sovereignty in Europe, as part of the attempt to legally regulate interstate relations and render them subject to democratic rules and norms. As noted above, the EU-led political order in Europe is one that places the onus on states pooling and sharing sovereignty in common institutions, which in turn places a strong premium on the need for states (and citizens) to participate in those joint forums wherein sovereignty is pooled and shared (Keohane 2002). The EU's general principles are compatible with cosmopolitan democracy and non-domination through a legally embedded system of rule. The EU seeks

to promote these principles through a set of distinct mechanisms summed up in what we have termed the 'conditionality – access/participation nexus'." This nexus is presented in Table 2:

Table 2: Access/Participation Scale

			Member states	Non-members
Mode of inclusion	Political decision-making	Co-decision (political participation)	Key determinant of EU membership	N. A.
		No co-decision (limited access, no voting rights)	Opt-outs or when not meeting requisite criteria	Various forms of access without voting rights
	Full market participation	Single market as a seamless web (full market participation)	All member States	Some affiliated non-members: EEA-EFTA and small states
	Limited market access	Segments of the single market: not as a seamless web (limited market access)	N.A.	Switzerland, ENP states, Turkey

The different categories in this report by Fossum et al. should be read in the following manner. With regard to the first level, we see that a distinguishing feature of EU membership is that member states have **full participation in the single market and in the EU's decision-making bodies**. Participation in decision-making implies voting rights and co-decision power. Member states can have opt-outs etc.

With regard to the second level, this is marked by **full market participation; but combined with only very limited political decision-making access**. Here political and economic (market) access is clearly separated. This category is foremostly made up of the EEA-EFTA states and micro-states. The EEA-EFTA states participate in the single market with only very minor limitations, in a manner closely resemblant of EU members' market participation. These non-members have limited forms of access to EU institutions, such as the Commission's preparatory committees. This form of political and administrative access is referred to

as 'decision-shaping' because it does not involve participation in popularly elected EU decision-making bodies.

The third level is **limited single market access, even more limited access to EU decision-making**. We define access as an arrangement that is delimited because it does not extend to full market participation (so-called 'WTO+ terms'), 'like no or lower tariffs, as well as a reduction of non-tariff barriers to trade or the recognition of professional qualifications etc.' (Baur 2019: 25). No comprehensive *acquis* extension (e.g. financial services passports) to the non-member is foreseen.

The table does not include what we may refer to as a fourth level which refers to **no access.** This category is not relevant for our examination, because the number of such relations is very limited, indeed.

The report underlines that the conditionality access/participation nexus works best under conditions of asymmetry, in other words where third countries are significantly weaker than the EU and are therefore more disposed towards accepting convergence with the EU mainly on terms set by the EU, as is the case with the EEA-EFTA states. Brexit represented a case where the UK as a larger state sought to impose its own terms of affiliation on the EU (through a bespoke arrangement). It failed to do so. The EU displayed a remarkable show of unity, but the outcome cannot only be attributed to the EU; the UK proved unable to work out a solution that would command majority support within the UK, and was also riven by internal tensions.

Thus, the Brexit story does not really refute the fact that the EU is a lopsided international actor. It is a major market power with weak own resources and with basically no own control of the basic state means of coercion, military and police power. The EU's power is therefore not very fungible (not easily translatable to core state power), and the EU is highly dependent on member state willingness and ability. These factors make the EU vulnerable, especially in a world that is turning towards power politics. The report also showed that the EU's exposure and vulnerability to the external world and great powers have bearings on its relations with non-members and is marked by a paradox. The report notes that: "(t)he EU is highly externally vulnerable and at the same time often referred to as a (form of unwilling) hegemon in relation to non-members. This

situation has the potential to generate a vicious circle whereby increased EU vulnerability (in relation to power politics and volatile markets) may reinforce the EU's appearance as a hegemon in relation to affiliated non-members. Faced with external fissiparous pressures the EU may be less accommodating to affiliated non-members. The assessment of the EU's specific relations with non-members showed a wide range of arrangements, and even if there were local adaptations, the basic logic was the same: The EU sought to uphold the conditionality – access/participation nexus through adapting its affiliations to the specific circumstances of the states; hence the different levels on the scale. In this context, we find both democratising and domineering tendencies. EU external differentiation can therefore both be associated with democracy and dominance. The mixes are found by close scrutiny of specific cases and relations. With regard to the conditionality – access/participation nexus, the states with the closest EU affiliations scored the highest on participation and faced the strongest sanctioning mechanisms (level two on the scale). Less committing forms of involvement with the EU end up lower on the scale (level three) and came with weaker sanctioning mechanisms. At the same time, we saw that EU conditionality did not set member states on an irreversible democratising path; there are clear instances of serious backsliding, especially in Hungary and Poland."

The notion of voluntary submission was further examined by Sabine Saurugger and Fabien Terpan in the EU3D Working Paper entitled "Escaping the Court: Supranational adjudication and the EU/UK relationship" (Terpan and Saurugger 2022b). The working paper analyzed the reasons for the specific relationship model that resulted from EU-UK Brexit negotiations - with specific focus on Court of Justice of the EU (CJEU) competences. While the EU-UK Trade and Cooperation Agreement (TCA) excludes the jurisdiction of the CJEU in favour of a dispute settlement system more respectful of British sovereignty, an exception is made for the situation of Northern Ireland. The paper argues that the balance between conditionality and access/participation did now allow for the application of the EEA model of voluntary submission to the CJEU: if market power Europe has explained several aspects of EU's external relations, it is of little use in the case of the UK's relation to the CJEU. Hence, the paper explores two other possible explanations. The first one, drawing on the disintegration literature, argues that voluntary

submission is more likely to happen in a context of integration than of disintegration. In other words, when the relationship between the EU and the affiliated government unfolds in a context of disintegration, where both partners seek to keep their advantages, ad hoc arrangements outside the legal framework of the EU seem plausible. However, disintegration alone is not a sufficient framework to explain the precise situation in which the CJEU is replaced by an ad hoc litigation settlement. Negotiations took place in a context of uncertainty regarding what the precise consequences of the negotiated result might be. A context of uncertainty is particularly germane to power politics, which can reinforce the asymmetries in patterns of complex interdependence. The second explanation then focuses on domestic politics as the main determinant: the EU may push in favour of voluntary submission, but this model can only be chosen if it serves the purpose of the third state's political power and is accepted by the governed.

EU – third country relations in practice

EU3D has examined EU's relations with all forms of affiliated states, including the United Kingdom as the first case of an EU ex-member state; the EEA-EFTA states (with particular emphasis on Norway as the by far largest state in this group) as the group of states with the closest EU affiliations; current applicant states (with emphasis on the Western Balkans); and historical instances of enlargement. All of these cases have been analysed with the purpose of discerning implications for our understanding of the relationship between differentiation, domination and democracy. We start with the UK's exit from the EU, the so-called Brexit.

We can seven years after the UK's decision to exit the EU note that Brexit is in effect a **substitution of external differentiation for internal differentiation**. Before withdrawing from the European Union, the UK was the most opted out member state. After Brexit the UK adds significantly to what Schimmelfennig calls the EU's 'voluntary non-members': or, in other words, forms of external differentiation constituted by rich, highly developed economies and societies with high state capacity that would have little difficulty in satisfying the tests for membership but have chosen not to be a part of the Union. But the UK has not fitted in easily to existing forms of external differentiation employed by those

European democracies that are also 'voluntary non-members'. It has followed neither the Norwegian nor Swiss models but chosen instead a solution closest to the Canadian model without being identical with it.[30]

All that raises several questions that have preoccupied EU3D researchers. These questions are to different degrees addressed in already published work. An important research challenge in relation to Brexit is that this instance of a state exiting the European Union is unprecedented. The uncertainty that ensues from this circumstance is if anything amplified by UK-internal tensions and a volatile European and international context. Hence, it is difficult to draw hard and firm conclusions. We therefore list the questions that have informed our research and the publications that have thus far emanated therefrom. This long list of research questions refers to a research agenda where some results have been reported but where the research has to continue in order to furnish answers that stand the test of time.

EU3D's analytical framework has been important in structuring the research agenda. The interest is clearly not only in the nature and dynamics of EU – UK relations, as we have shown in our research, Brexit has implications for EU – third country relations, in general. Further, the instance of exit of a member state provides an important vantage-point for the analysis and understanding of the EU. How the EU responds to the loss of a major member tells us a lot about its internal coherence and resilience.

The more specific questions that have animated our research on the UK's exit from the EU are as follows: Is Brexit really sustainable without a softer form of external differentiated integration that would follow the Norwegian model in enabling the UK to participate in the single market without being a member of the EU? How far has Brexit increased our understanding of constraints on the relationships that the EU can offer non-members, given its own character as a distinctive form of political association? How far does it matter to how it relates to the EU from the outside that the UK is not just a non-member but an ex-member?

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[30] These three models have been discussed by Sandra Lavenex (Switzerland), John Erik Fossum (Norway) and Nanette Neuwahl (Canada) in Fossum and Lord (2023).

Brexit and domination. How far does the option of exiting the EU provide member state democracies a protection against domination? Or does Brexit show that withdrawal from the Union is just too difficult for non-exit to be an indicator of legitimacy or even consent? How good a test case is Brexit of the ease of exit? Does Brexit, to the contrary, show that exits from the Union are more likely to create problems of domination? Do exits create new risks of EU 'ins' and 'outs' dominating one another by weakening shared frameworks aimed at preventing democracy-on-democracy domination through the imposition of negative externalities or free-riding on the provision of positive externalities by others? Are there intrinsic difficulties to avoiding domination: in structuring relations between those European democracies that are inside and outside the EU so that the citizens of each are fully in control of their own laws as equals?

Brexit and Democracy. Does withdrawing from the EU allow a European democracy control of its own laws? Or, given forms of interconnectedness in contemporary Europe, are exiting-members just likely to end up as rule-takers, unilaterally approximating many laws of others? Might sovereignty pooling – where democracies commit, in some areas, to make their laws together – even offer each European democracy better of its own laws than withdrawal from the Union?

We have thus far explored these questions through the following publications: **The Handbook on the European Union and Brexit** edited by John Erik Fossum and Christopher Lord (2023). In a major undertaking we brought 33 expert contributors to 29 chapters aimed at understanding Brexit as of foremost significance to the European Union and the wider international order, not just the UK itself. The volume includes chapters on EU law and Brexit; on Brexit and the European Council, the European Commission, the European Parliament, EU agencies and the Committee of the Regions; on member states and Brexit, including France, Germany, Ireland, Poland; on affiliated non-members and Brexit, including Norway, Switzerland and Liechtenstein; and on Brexit beyond Europe, including Australia, Canada, China, and the United States.

A further contribution is the Routledge Mini-series entitled **'Dealing with Europe'**[31], which includes contributions from both EU3D and other scholars. The books in the series examine possible modes of affiliation for the UK from Switzerland's, Norway's and Canada's experiences. The books do not simply focus on the third countries' formal EU affiliations but delve into the third countries' political, social, economic and cultural experiences with their EU affiliation in order to get a clearer sense of the implications that these modes of external differentiation have for democracy and dominance in these countries. EU3D researchers Fossum and Lord have together with a number of Norwegian researchers completed a book manuscript entitled 'Norway's EU Experience and Lessons for the UK - On Autonomy and Wriggle Room'[32] that establishes an analytical framework for analysing third countries' relations with the EU. We are particularly interested in the autonomy and wriggle-room that such affiliations offer to third countries. Norway's experience is assessed in legal-institutional as well as in substantive terms (climate and energy; primary industries; trade and development aid; foreign and security policy) and with regard to citizenship. Such notions as autonomy and wriggle-room are useful for understanding the nature and effects that different forms of EU external differentiation has on third countries. The book then also seeks to discern lessons for the UK from the analysis of Norway's EU experience.

The UK's Norwegian Option: Also in preparation is a book by EU3D researchers Christopher Lord and Asimina Michailidou on Norway as a Benchmark for the relationship the UK could develop with the EU as a non-member. This explores the 'strange death' of the Norwegian model in British politics: what had been presented as the main alternative to UK membership before the referendum largely disappeared from the public debate after the referendum. That notwithstanding, the book demonstrates that the Norwegian model remains a key benchmark and counterfactual to Brexit: first, as a softer form of Brexit that would have allowed the UK to participate in the single market as a non-member; was

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[31] Dealing with Europe, Book Series, Routledge & CRC Press (https://www.routledge.com/Dealing-with-Europe/book-series/DWP).

[32] Fossum et. Al, (forthcoming) *Norway's EU Experience and Lessons for the UK: On Autonomy and Wriggle room*, Routledge.

rejected might have been; second, as the form of Brexit closest to the *status quo ante*; and third as a different way of balancing markets and sovereignty to that followed by the UK since the Brexit referendum.

Exit as Legitimacy. In his contribution to Part II of this report, Lord considers the argument that rights of exit can shape political orders and their legitimacy. The first part of the chapter examines the connections between exit, legitimacy and consent. The idea that not leaving a political order can be a source of consent to it is a good deal more plausible in the case of whole democracies choosing not to leave the EU than in the case of individuals choosing not to leave states. On the other hand, Brexit also demonstrates limits to the ease with which member state democracies can leave the EU. In the case of the UK exiting has been constrained by markets; by the partial Europeanisation of the UK's own constitution (Bogdanor 2019); by the UK's own historic responsibilities and by continued demands for sovereignty pooling in an interconnected world.

John Erik Fossum has written extensively on the so-called Norway model with a view to discern the dominance and democracy implications. Fossum (2022) notes that "(t)he more the EU transforms sovereignty in an open and inclusive manner, the greater the scope for third country presence, participation and influence. For the EU, the greater the presence and influence of third countries, the more pressing the democratic incongruence. For third countries, the better included and the more they participate, the less incongruent their affiliation, and the more similar to members they become. These considerations depend on how the EU structures its relations with third countries and the nature of the EU's political order. It is in the EU's internal market and flanking areas that the pooling and sharing of sovereignty is the most pronounced. The conundrum facing third countries and the EU is that the internal market is central to the EU's constitution as a political system." The article proceeds to outline some of the democratic dilemmas facing third countries such as Norway that want as close an EU-affiliation as is possible without becoming an EU-member but at the same time also seek to retain formal sovereignty. Fossum (2023) has also examined how different possible EU developmental trajectories will affect the role of third countries. The author notes that both a clear move in the direction of EU intergovernmentalism and a clear move in the direction of EU

supranationalism will reduce the scope for EU inclusion and participation that closely affiliated third countries such as Norway presently have. The former EU intergovernmental route will increase the scope for large-state dominance and reduce the sheltering effect of the EU affiliation; the latter supranational route will present third countries with a more firmly consolidated EU that will be more concerned with its sovereignty.

One of the conclusions we have discerned from our research is that the EU post-Brexit has become more insistent on the member – non-member distinction and by implication will be less inclined to offer states tailor-made arrangements to suit their purposes. For instance have Fossum and Vigrestad (2021) showed that third countries such as Norway under the shadow of Brexit reaffirmed the importance of their EU affiliation and are not inclined to view Brexit as an example to emulate, also because Brexit took the UK in a far more neo-liberal direction than Norwegian Eurosceptics are comfortable with.

What will happen to EU – third country relations requires paying attention to the effects of the Russian war against Ukraine, what the EU's commitment to Ukraine especially amounts to, and whether the European Political Community initiative will amount to anything substantive, just to mention some factors.

The next section will zoom in on the issue of EU vulnerability in its external relations, as an intrinsic element of EU3D's focus on the relationship between differentiation – dominance - democracy in EU's external relations.

EU external vulnerability

The EU is now situated in a more hostile international environment that is prone to aggressive moves by various adversaries. The acts of bare aggression on EU's neighbours such as Russia's full-scale attack on Ukraine in February 2022 have significant impacts on intra-European affairs and are elevating the level of threat among states and citizens alike (Steiner et al. 2022). The adversaries such as Russia and China were also utilizing for quite a substantial period of time the instruments of sowing disunity within the EU. For instance, in the first ECFR power audit of relations between the EU and Russia from 2007 it was clearly

demonstrated how various clusters of member states are formed when it comes to relations with Russia and how the latter facilitates that (Leonard and Popescu 2007). The key area where Russia acted as a differentiating agent is energy policy (Goldthau and Sitter 2020; Siddi 2020). In the case of China such initiatives as 17+1 and Belt and Road Initiative (BRI) represent clear attempts at building up leverage on a group of countries within the EU or relevant for the EU (Pavlićević 2019; Harnisch, Bersick, and Gottwald 2015; García-Herrero 2020; Brattberg and Le Corre 2020; Kavalski 2021; Kavalsky and Mayer 2019). China's strategy towards the EU is also analysed from the perspective of divergent strategies employed (Pelaudeix 2021).

The adversaries (and partners and allies sometimes) are utilizing the fact that the EU is a vulnerable polity. The vulnerability has many sources. As stated above one is that the adversaries such as Russia and China develop strategic policies aiming at undermining EU's unity and curbing integration efforts. They utilize the EU's high external dependence on strategic commodities, specifically energy. But at the same time, one should not conclude that differentiation is automatically leading to higher external vulnerability. Regional organizations can use differentiation strategically in specific areas (such as security and defense policies) and create new institutional frameworks to reinforce cooperation (but not integration) with third countries, as Pelaudeix has shown in comparing the EU, ASEAN and Mercosur (Pelaudeix 2023).

A prominent source of EU vulnerability is the fact that the EU has a very high external exposure. The EU is encircled by many countries and as famously stated almost a decade ago – from a ring of friends it was growingly encircled by a ring of fire (Malerius 2015; Zubek 2019). None of the EU instruments and policies to either strengthening the friends or extinguishing the fire was fully successful and both the European Neighbourhood Policy as well as EU enlargement were criticised, revised and reinvigorated (Schumacher and Bouris 2017; Góra 2021; Aydın-Düzgit and Noutcheva 2022; Schumacher, Marchetti, and Demmelhuber 2017). These efforts are however not even near success in stabilising the EU's neighbourhood.

One of the most pressing consequences of de-stabilization first in the southern and then in the eastern neighbourhoods was the influx of

migrants and refugees (Thevenin 2021; Kiratli 2021; Thevenin 2023). In our EU3D research we specifically looked at how the migration crises of 2015/2016 in southern Europe, the one starting in 2021 on the Polish and Lithuanian border with Belarus and the refugee crisis following the Russian war of aggression in 2022 impacted the EU. (Thevenin 2023)

More broadly, tracking cases of domination shows that there is an important interaction between domination and vulnerability. The implication is that actors may resort to repressive measures not only out of strength, but also out of weakness. Elodie Thevenin in her chapter in the forthcoming book co-edited by Bátora and Fossum (2023) compares crises discourse on migration in the Polish Parliament in order to understand the different Polish responses to the 2015-16 migration crisis, the 2021 Polish/EU border crisis with Belarus, and the 2022 war in Ukraine, respectively. It is shown that security was an underlying concern during the 2015-16 migration crisis, which saw a very restrictive Polish stance. The rhetoric changed markedly with the Russian invasion of Ukraine in 2022, which highlighted the need for solidarity and inclusiveness. Nevertheless, underlying this apparent mood change was also the notion that Russia posed a severe security threat for both Poland and Ukraine. This example and the vulnerability exhibited during the Eurozone crisis show that conceptions of threat and vulnerability can have dominance effects. The relations of domination are, therefore, not simply dyadic - between a dominator and a dominated - as the relationship may also prompt the dominated to take actions with dominance effects on those dependent on it. In her contribution to the book co-edited by Bátora and Fossum (2023), Dia Anagnostou refers to instances of Greek EU rule-defiance under conditions of perceived vulnerability with fragmentation effects. The point was that Greece, as a frontline state, saw itself on the receiving end of an unfair and arbitrary EU asylum policy. In response, Greece liberalised its border controls to allow large numbers of migrants open passage to the North.

Another crucial vulnerability that the EU3D project studied employing the differentiation and dominance lens was how external differentiated integration (EDI) impacts relations with partner countries. The authors build on the widespread claim that building growing interdependence linking partner countries has become an answer to the failures of EU

enlargement in the case of Turkey and its problems in the Western Balkans, as well as to the destabilisation of ENP partner countries. In that sense EDI refers to a situation in which a non-EU member state is subjected to the legal rule of the EU, be that a policy, instrument or forum (Schimmelfennig and Winzen 2020). There are however substantial consequences from the fact that the EU relies on a legally regulated world and seeks external – internal congruence through close affiliations and increased, often policy-related interdependence. For instance, in the case of ENP as studied by Góra and Zubek (2021) actors in partner countries (and internally as well) seek the institutional and structural means that, through the introduction of a more legitimate partnership, can make these relations more resilient to dominance and in the end more mutually beneficial. In both studied cases of open structured consultations and international parliamentary fora actors provided compelling arguments for increased participation as well as describing concrete proposals for improvements to input and throughput legitimacy instruments (Gora and Zubek 2021). With critical change in the context specifically for the Eastern Partnership countries after the Russian attack on Ukraine, one can further analyse how the ENP partnership is different in quality from candidacy and how providing the latter by the EU is a powerful political move. Both mechanisms are relying on asymmetry, but enlargement reconfigures the asymmetry and dominance through identitarian schemes of belonging.

Since all partnerships that the EU forms with its neighbours are infused with an asymmetry of power – especially visible in ENP as described above and in case of EU candidates for membership – the concept of dominance proved to be especially potent in nuancing how and under what conditions asymmetry is accepted. In a historical study of the 2004 enlargement round Orzechowska-Wacławska, Mach and Sekerdej (2021) analysed how political actors narrated the voluntary submission characterising the vulnerability of candidates just before the entrance to the EU based on the Polish case. The study demonstrates that actors used three lines of argument: the problem of modernisation, democracy, and the imagination of common values as (de)legitimizing strategies for the EU enlargement (Orzechowska-Wacławska, Mach, and Sekerdej 2021). The first two however were used in an instrumental way, but the autotelic legitimitation referring to common shared beliefs and values was serving as a powerful argumentative scheme because: "Shared values created a

common framework within which the relations between sides of the negotiations, asymmetric as they were, could be developed legitimately" (Orzechowska-Wacławska, Mach, and Sekerdej 2021: 27).

The current process of EU enlargement was also covered by EU3D by Dia Anagnostou in order to conceptualise EU conditionality through the prism of dominance theory and secondly to explore the extent to which the unprecedented participation of civil society in the formal accession process, strongly promoted by the EU (regularly seeking input from CSOs and to build their capacity), enhanced its legitimacy domestically. It was assessed in the context of EU accession in the Western Balkans (WB). In the report 'Countering dominance, enhancing legitimacy? The role of civil society in EU accession in Serbia and the Western Balkans' Anagnostou showed that enlargement in the WB has been profoundly shaped by a structural condition of dominance and power asymmetry vis-à-vis the EU. This progressively eroded EU legitimacy in the region, including in the state that presumably is a frontrunner in this process (Serbia). Key to understanding this condition of dominance is the EU's increasing emphasis on regional stability and geopolitical considerations at the expense of democracy and rule of law. Highly demanding accession conditions related to cooperation with the International Criminal Tribunal for former Yugoslavia (ICTY) and Serbia's relations with Kosovo, with very limited EU reciprocity in the short- and medium-term, fostered widely held perceptions of injustice and undue interference with basic aspects of national sovereignty. Combined with a highly uncertain membership perspective, they engendered a situation (and perceptions) of domination in the Western Balkans and erosion of the EU's legitimacy. The EU's legitimacy suffered, even among its strongest supporters, above all because it prioritised stability over consistent support for rule of law norms and democratic practices in the country.

In addition, research on the role of civil society in the EU accession process of Serbia demonstrated that the EU significantly increased opportunities for the participation of civil society in conditionality-related reforms, as a deliberate strategy to counter dominance and enhance its contested legitimacy in the region. This procedurally empowered many pro-EU organisations (input legitimacy). Yet, the EU fell short of providing sustained support for institutionalising their incorporation and

substantive influence in Serbia's political system (throughput legitimacy) that became increasingly centralised and illiberal. The research also demonstrates that the EU conditionality and accession process became increasingly dissociated from democracy and rule of law. Alongside the lack of reciprocity in short- and medium-term on the part of the EU, it exacerbated dominance as a structural condition. Indeed, they reinforced a "double dominance" both external (from EU vis-à-vis candidate states) and internal (authoritarian leaders towards citizens). Civil society representatives, who were at the forefront of the EU accession process and dedicated their work to the pursuit of democratisation reforms domestically, see the EU as betraying the very values that it required from candidate states to abide with.

The next section reports on the research that was conducted comparing the EU with states and non-state organisations alike. That is important both to bring out parallels and differences and is an important potential source of lessons.

Comparisons of the EU with other states and regional organisations

EU3D has conducted two sets of comparative analyses, which encompass on the one hand comparisons with federal states and on the other hand a comparison of the EU and two other regional organisations, ASEAN and Mercosur. The former EU versus states comparison has placed particular emphasis on the role of executive officials, the second has examined the questions of resilience and autonomy in the face of Chinese influence among three different regional organisations with different types and degrees of differentiation.

EU – US comparison

Sergio Fabbrini in the Working Paper entitled 'Executive Power and Political Accountability: Assessing the European Union's Experience' (2021) has focused on comparing and contrasting the political accountability of the EU's executive power with federal systems. The author starts by discussing the main EU integration theories, showing their analytical unilateralism in identifying the EU's executive power and in conceptualising its accountability patterns. The author proceeds to analyse the issue of accountability of executive power in democratic

federal systems, comparing coming together federations, where executive power's political accountability is institutional, with holding together federations, where executive power's political accountability is electoral. The paper investigates the EU executive power, focusing on two basic decision-making regimes (supranational and intergovernmental) to deal with different policy areas. Using a comparative federalism perspective, the paper argues that the executive power's accountability is institutional in the supranational regime (although it manages issues of low political salience), it is neither institutional nor electoral in the intergovernmental regime (which manages issues of high political salience). The EU's decision-making structure is not only differentiated (as in none of the current federations), but this differentiation disincentivises executive accountability in crucial policy realms.

EU – Canada comparison

In the Working Paper entitled 'On the search for viable governance in contested federal-type settings: the European Union and Canada compared', John Erik Fossum focuses on two contested federal-type entities, Canada and the EU. There is a curious paradox in that both have been depicted as failed (Canada) and as virtually impossible (EU) nation-building projects, but also as vanguards in terms of handling national and other forms of difference and diversity. The paper on the one hand sought to substantiate the claim that the two form a distinct subcategory of federation, poly-cephalous federation.[33] That is a type of entity that is highly prone to executive dominance. The category was developed due to clear limits to prevailing depictions of the EU and Canada (such as multinational federation and system of multilevel governance, respectively). The second purpose of the paper was to consider what form of democratic federalism (if any) such a structure may give rise to. An important challenge was precisely to see how such complex and contested entities could reform to reduce the strong element of executive dominance. The case of Canada underlines the need for adequate federal-level capacity including in rights-granting/enforcing when reforming such systems in a democracy-enhancing manner (during the so-called Charter Revolution).

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[33] This notion was initially spelled out in Fossum 2017, but then only very sketchily for Canada.

EU – Mercosur – Asean comparison: three regional arrangements

Within the context of EU3D this line of research is summed up in the book manuscript "Differentiated regionalism and China's global agenda: how do resilience and strategic autonomy fit in? EU, ASEAN, Mercosur" authored by Cecile Pelaudeix. The author has compared the responses of three differentiated organisations: the EU, ASEAN and Mercosur, with respect to their specific merits in relation to resilience and strategic autonomy vis-à-vis Chinese influence. It shows that the three ROs have followed very distinct paths in terms of types of differentiation and external cooperation. *Vertical differentiation* is only used by the EU which makes a significant use of supranationalism. ASEAN and Mercosur are not constraining China's influence, even in strategic sectors. *Internal differentiation* is seldomly used by the three ROs with the notable exception of the EU with PESCO. *External cooperation* is more extensively used by the EU and ASEAN than regional instruments in contrast to Mercosur. ASEAN is highly dependent on external cooperation, in particular with China. The EU-Mercosur agreement remains the most relevant agreement in the context of the growing influence of China to allow Mercosur to avoid dominance. One significant limitation to RO's resilience vis-à-vis China is the complacent position that ROs can have towards Russia, whereas China is siding with Russia in the war in Europe.

Three models of differentiated regionalism emerge. (1) First, an *expanding centralized differentiated regionalism*, exemplified by the EU which strengthens integration and its external partnerships with a normative agenda. The European Political Community is a singular development in that regard, and constitutes yet another form of differentiation, something along the lines of a 'co-differentiation project'. (2) A *low institutionalised and constrained regionalism* exists in the case of ASEAN which only leads to a medium resilience and the absence of strategic autonomy since it situates ASEAN in a situation of deep dependence on external cooperation with China and on great and middle size powers. (3) A *functionally and geographically limited regionalism coexisting with multiple (overlapping) ROs* in the case of Mercosur which strives to strengthen resilience but has no clear agenda regarding China – save for member states.

Differentiation might thus be an option for managing heterogeneity in the context of the Chinese global agenda, to complement external cooperation, but it cannot be effective without a deepening of integration. This does not mean adopting an EU model of regionalism, but this could equate to 'upload more of state prerogatives: policy instruments, institutional and constitutional arrangements from the state to the regional level' (Fossum 2019). One risk of not doing so, with regard to resilience, is to be progressively controlled or taken over by China's own cooperation mechanisms, bypassed either by China, by external partners (favouring a more efficient minilateralism) or even by member states of the RO which can favour regional cooperation mechanisms offering commercial agendas more attractive and less demanding political requirements.

The next and final section turns to the part of EU3D research that has explicitly focused on the relationship between differentiation and democracy. This is arguably the theme that has been least explored in the extant literature on differentiated integration. This theme is therefore an intrinsic part of EU3D's research agenda shaping undertaking.

Democracy and differentiation

This final part of the report focuses more explicitly on the democracy – differentiation dimension. The overview of the specific features of the EU's differentiation configuration has already shown some important democratic defects. The same applies to the forms of dominance that were uncovered in the analysis of the more specific institutional arrangements. These analyses in no way refute the fact that there is a commitment to EU democracy, as stated in the treaties and as reflected in the presence of popularly elected institutions, directly popularly elected in the European Parliament and nationally elected in the Council and the European Council.

The EU context of democracy itself represents a range of interesting dilemmas and trade-offs. How or to what extent is there any assurance that a process of democratically controlled integration – including through popular referenda as the case is in many of the EU's member

states – will yield a democratically viable arrangement at the EU-level? Full-fledged EU democratization requires national democracies to take a leap of faith and be willing to submit to an EU-led arrangement. Hence the resilience of the intergovernmental temptation to argue for the need to strengthen forms of national parliamentary representation at the EU-level with Richard Bellamy (2019) as one of its foremost champions.

These comments reflect the still unsettled situation of EU democracy, and the ongoing contestation over different models of democratic governance. That is as our overview of the EU's differentiation configuration has shown not an abstract contest over analytical or theoretical models, but institutional reality given that the EU is a composite of supranational and intergovernmental traits and arrangements. In this circumstance it is easy to encounter dilemmas and trade-offs among competing principles rather than straightforward and normatively easily defensible arrangements. Consider the article by Max Heermann, Dirk Leuffen entitled 'No Representation without Integration! Why Differentiated Integration Challenges the Composition of the European Parliament'. The authors undertake a normative assessment of parliamentary representation in fields of differentiated integration in the European Union and conclude that "the current system of complete representation, while honouring the principle of equality, violates autonomy and accountability in areas of differentiated integration. We therefore advocate a model of partial representation: MEPs elected in opt-out states should not take part in EP voting but should be invited to participate in the deliberative stages of parliamentary decision-making. This reconciles the principles of autonomy, accountability and equality, at least as long as there is no truly European electoral system in place." An interesting question is whether such rectificatory strategies may in turn help cement the structure in place. That appears to be one of the conundrums facing advocates of differentiated integration.

The weight of EU3D empirical research on the democratic dimension has been configured to correspond with the research conducted in the previous sections, which sought to establish how and in what sense especially crises-induced changes in the EU's basic set-up have come with dominance effects and made the EU veer off the democratizing path that it had been pursuing since at least the 1970s (with the institution of direct

EP elections). The weight of EU3D empirical research is therefore aimed at investigating popular perceptions and the prospects for democracy 'to bounce back'. A further justification for this approach is that there is very little research in the extant literature on differentiated integration on how political actors and civil society perceive of differentiation, dominance and democracy and how the three relate. In the following we will refer to these studies only.

Civil society, media, public sphere and public opinion

The issue of how political actors in national parliaments and civil society received and perceive of the EU in differentiation, dominance and democracy terms is important both for our understanding of the EU as a system of governance and for our understanding of popular perceptions of democracy in today's Europe in more general terms.

Understanding citizens' perceptions is a natural requirement for getting a full grasp on the fourth differentiation dimension, the citizens incorporation dimension. We need to understand how citizens relate to a differentiated Europe, both in terms of specific forms of differentiated integration and with regard to the broader multilevel EU differentiation configuration. The analyses cover survey research and more qualitative analyses of parliamentary debates as well as the composition of a comprehensive database consisting of 950 entries.

With regard to survey research Heermann & Leuffen in their chapter in Bátora and Fossum (2023) focused on EU citizens' perceptions of "democratic backsliding" as a form of differentiation with distinct dominance effects. When a Member State seeks to shirk away from or undermine EU law and citizens' rights, we see a clear instance of dominance-related differentiation. The question that Max Heermann and Dirk Leuffen asked was what citizens in other Member States thought of this. The authors show that the citizens' reactions were to support the withholding of funds from such a state. Citizens, accordingly, have relatively clear conceptions of what forms of differentiation are normatively acceptable and what forms are not. More research is needed to establish how wide-encompassing this understanding is in terms of the many forms and facets of differentiation.

Complementing the research on citizens' perceptions of policies in the Union, Bátora and Baboš (2023) have explored how citizens think about the EU. Using relational class analysis, they analyzed their own survey of 6000 respondents in six EU member states (France, Germany, Hungary, Italy, Poland and Slovakia). Building on Goldberg's (2011) approach, the point was to identify *thought communities* – i.e. groups of citizens sharing similar scripts when thinking about the Union. Interestingly, they have shown that a state-script (citizens labeled as 'statists') is present relatively evenly in every member state – i.e. in about 20-24% of the population. The other thought community are the pragmatists – citizens open to the notion of policies delivered by the Union but not necessarily expecting a specific state-like governance structure emerging in the Union. There is, thus, a fair amount of cognitive flexibility among EU citizens when it comes to structural arrangements put in place in support of EU governance. In other words, the majority of EU citizens (as represented by the sample from the six above mentioned member states), do not necessarily expect the EU qua polity to copy the Westphalian state, and they are open to alternative structural arrangements as long as policies are delivered.[34]
Further, within EU3D researchers have undertaken a major systematic assessment of how differentiation-democracy-dominance was present in debates on the future of Europe between 2015 and 2022.

Political actors' contributions to the debate on the EU's future were captured in a comparative study of 11 national parliaments and the European Parliament. An in-depth analysis focused on what aspects of differentiation were debated, what rectifying measures for improving democracy were proposed and by whom and who and how dominance was perceived within the EU (Góra, Thevenin, and Zielińska 2023c). The group of researchers analysed 196 plenary debates in selected member states and in Norway and manually coded 4633 statements on the future of Europe. The study reveals three key developments. Firstly, the national debates on the future of Europe rarely focus on the polity aspects of the reforms of European integration – law-making differentiation. However, the debates were often focusing on vertical differentiation concerning the division of powers between member states and the EU and often

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[34] An important exception are the Germans where the state-script seems to be strong even among the pragmatists (see Bátora and Baboš 2023).

revolving around sovereignty. In addition, coherent and detailed visions of integration were seldom displayed by partisan actors. However, in all national cases EU3D researchers presented how in specific national settings the key elements of the differentiation-democracy configuration are structured displaying the richness of the debates. Secondly, the national debates were primarily driven by specific issues relevant for local constituencies. They were linked to crises that impact the local populations – two of these crises - migration and eurozone - were the most important and visible almost in all researched cases. The results also reveal how debate on the future of Europe was also structured by domestic political conflicts. This was specifically visible in highly polarised (and polarising) cases such as in Poland where the issue of European integration has been one of the main aspects of the political bargain in the analysed period (Góra, Thevenin, and Zielińska 2023b). Thirdly, apart from typical ways of narrating the future of Europe in terms of intergovernmental or federal visions, a new and prominent sovereignist narrative is on the rise in almost all the contexts that were studied. This overlaps with in-depth analysis conducted by EU3D researchers unpacking the notion of sovereignism (Fabbrini and Zgaga 2023; Góra and Zielińska 2023; Orzechowska-Wacławska 2023) (more on this in Chapter 6 in Part II of this report).

Finally, we also looked at how dominance was featured in debates. Interestingly, dominance was rather prominent in debates (almost 20% of all FoE speeches) but also "political actors across parliaments were mostly critical of a perceived illicit hierarchy within the EU, whereby some member states dominate others, mostly with regard to the Union's decision-making process. The perceived illicit hierarchy was disapproved of on both sides of the political spectrum" (Góra, Thevenin, and Zielińska 2023a, 33). In each of national case studies authors delved into in-depth analysis on what was meant by dominance and how it was differently framed depending on – for instance – position within the EU.

Similar themes were captured using a modified but complementary coding scheme within the EU3D database on reform proposals that consists of 950 proposals on the future of Europe presented between 2015 and 2022 (Góra and Zgaga 2023). In the EU3D database researchers from partner institutions gathered proposals made by actors at European and

national level as well as wide range of civil society actors active at both national and European level. The main aim of the exercise was to systematically map the debate on the future of Europe. The analyses based on the EU3D database demonstrate that "overall, for all the proposals differentiation is often mentioned, but the most common are references to issues of EU's capacity to act (functional differentiation) as well as issues connected with the competences between member states and EU institutions (vertical differentiation). Even though the debate on FoE aimed specifically at institutional reforms of the EU and the status and future of differentiated integration understood as formats of cooperation allowing likeminded states to deepen integration (without the need to include all EU member states), the EU3D dataset demonstrates that these aspects of differentiation (lawmaking differentiation and territorial differentiation) were raised less often." The least debated was the area of citizens' rights, even if very relevant reforms were raised" (Góra and Zgaga 2023). The database is assisted with chapters covering national debates in which researchers analyse specific dynamics of differentiation-democracy-dominance. These cover France, Germany, Italy, Spain, Hungary, the Czech Republic and Slovakia, Poland, Sweden and Norway. In addition, the specific themes and narratives were unearthed by focusing on civil society actors. In a report edited by Karolina Czerska-Shaw and Marta Warat (2023) researchers present how political and social actors debate further the differentiation-democracy configuration. The selected CSOs covered both typical proponents of European integration such as gender equality organisations and these working on the protection of refugees and migrants. EU3D also covered more Eurosceptic actors such as faith-based organisations, anti-gender organisations and Eurosceptic think tanks (more on specific dynamics by these actors – see chapter 6 in Part II of this Report). Overall, the key finding of the study on civil society actors is that albeit conveying substantial proposals regarding reforming policies, they still shy away from clear positions regarding the future shape of the EU polity. However, a significant aspect of the proposals concerns the relationship between the member states and the EU institutions. In another study that focused specifically on how civil society actors were perceiving dominance within the EU researchers demonstrate that actors on both sides of the pro- and anti-EU spectrum are using refences to dominance but for very different reasons. Eurosceptic actors often "utilise the references to dominance by the EU

and its institutions to more convincingly present the EU's threatening position toward the nation state and national sovereignty. Since at the same time they also present the EU as weak and incapable of dealing with crises as well as managing daily affairs, dominance becomes a useful construction because it focuses on abuse by EU institutions (and the EC in particular) of their competences rather than on who is more powerful"(Czerska-Shaw et al. 2022, 25). While pro-European CSOs are doing so in order to push the EU and its institutions to act in defense of specific groups or treaty-based rights vis-à-vis member states and their agencies. Overall, analysing dominance proved to be a potent tool to detect how these actors locate injustice in their views of the exercise of power relationships within the EU polity. This helps to nuance our knowledge of the practice-based experience of those operating within the system – of those in much less privileged positions than governmental actors.

Explicit research was also devoted to the role of right-wing populist parties. That line of research gave rise to the notion of sovereignism. In their Working Paper entitled 'Sovereignism and its implications: The differentiated disintegration of the European Union', Sergio Fabbrini and Tiziano Zgaga to investigate nationalism in the post-Brexit period (2016- 2021). Because of the political and economic costs triggered by Brexit, European nationalisms have had to redefine their positions on remaining in the European Union (EU), a necessity made even more stringent by the pandemic crisis and the Russian aggression on Ukraine. The authors conceptualize as 'sovereignism' the attempt to endogenise nationalism in the EU. The research has thus identified commonalities and differences in the sovereignist narrative of western and eastern EU member states. All sovereignists criticized the supranational character *(institutional sovereignism)* and the centralized policy system *(policy sovereignism)* which has developed within the EU. However, sovereignists differed on the rationale of their criticism, based more on an economic discourse *(economic sovereignism)* in western Europe and more on a cultural discourse *(cultural sovereignism)* in eastern Europe. The sovereignist narrative had clear opportunistic traits, whose outcome, if successful, would lead to the differentiated disintegration of the EU. The cultural sovereignism was further analysed by Magdalena Góra and

Katarzyna Zielińska (2023) demonstrating how religious themes serve to substantiate the appeal of sovereignist claims.

A differentiated public sphere – mainstream and social media analyses

A robust public sphere is fundamental to the dynamics of democracy, wherein citizens derive their sense of self-governance and authorship of law. This collective conscience is intrinsically tied to the public sphere's ability to connect civil society discourses with the political system. The public sphere also forms a linchpin for the success of transformative initiatives and reform processes, with a shared narrative or collective understanding proving paramount. This connection between the public sphere, media narratives, and political system is particularly evident in studies on European Union (EU) affairs, ranging from traditional media analyses to the impacts of social media on European integration.

In this context, one foundational EU3D piece that revolves around the importance of a shared narrative is the working paper 'You'll Never Talk Alone: What Media Narratives on European Reforms Reveal About a Polity in the Making'. The authors, Emmanuel Mourlon-Druol, Henrik Müller, Giuseppe Porcaro, and Tobias Schmidt, delved into the nationally differentiated discourses on European Union (EU) reforms. Their research centred on three leading national business newspapers – Handelsblatt from Germany, Il Sole from Italy, and Les Echos from France. Through a comprehensive database, they investigated several key questions, revealing intriguing insights. The authors found a relative degree of synchronicity in reform debates across the three countries and similar reporting patterns, especially during periods of crisis, hinting at the tentative emergence of a shared narrative about crises. Notably, however, the discussion in Germany leaned more towards European issues than national ones compared to France and Italy. The authors further highlight that bringing conflict and contestation back into European discussions may help stimulate wider interest in European matters.

In a parallel yet interconnected exploration, Asimina Michailidou, Hans-Jörg Trenz and Resul Umit investigated how professional journalists represent differentiation in their reporting of EU affairs, particularly when they cover Justice and Internal Affairs topics. Differentiation, a pivotal but contentious aspect of European integration, carries varying perceptions,

with some viewing it as a tool for democratisation and others, a path towards dominance. Accordingly, the manner in which it is portrayed by media can influence public knowledge and sentiment about the EU. In their article 'A Cross-Country Analysis of News Reports on Differentiation in the European Union', the authors evaluated news reports from Denmark, Germany, and the UK published between 2015 and 2020. They discovered that journalists covering EU affairs were effective in presenting complex EU processes and legislation accessibly. However, national interest often dictates the criteria for newsworthiness and framing, and in-depth journalistic analysis of EU's differentiated integration appeared infrequently. Nevertheless, the capacity for critical analysis was not entirely absent, affirming that professional journalists could still facilitate deliberative discourse in the European public sphere based on common narratives, amid external professional pressures.

Further extending both the scope and format of the public sphere to the digital realm, Martin Moland and Asimina Michailidou's EU3D research paper titled 'News, Misinformation and Support for the EU: Exploring the Effect of Social Media as Polarising Force or Neutral Mediators' probes the potential polarising impacts of social media on public opinions about European integration. They applied Eurobarometer data from 27 EU member states to explore correlations between social media use, trust in the EU, consumption of fake news, and polarisation. Interestingly, their study found no substantial correlation between social media usage and increased Euroscepticism at the aggregate level, suggesting a need for future research to incorporate measures of social media effects at both individual and societal levels. This insight, though born out of a European context, holds significant implications for future social media research in the context of the democratic public sphere and demonstrates the complexities of understanding the role of digital platforms in shaping public opinion.

In a separate investigation, Martin Moland and Asimina Michailidou explored the potential of social media platforms to foster a unified European public sphere and identity, particularly among younger generations. This research highlighted the complex dynamics at play, given that social media offer opportunities for cross-border debates and collective mobilisation, while also serving as platforms for misinformation

and polarisation. These platforms, particularly Twitter, provide a window into understanding the digital public sphere's impact on discussions regarding the EU.

Moland and Michailidou delved into the interplay between national and transnational perspectives, focusing on Germany and Greece as opposites in terms of how different recent crises have impacted and been experienced by their populations, analysing discussions on Twitter during the migration crisis and the Covid-19 pandemic. Despite the potential of Twitter to foster transnational debates - which is confirmed by the manner in which English-language tweets are formulated in the two countries - the findings revealed that users retained a national perspective in their discussions when using their native language to communicate, signifying a differentiated European public sphere characterized by diverging national frames of understanding.

In sum, these diverse yet interlinked investigations illuminate the essential role of media, both legacy news and social, in shaping public opinion and facilitating discourses on European affairs. They reveal the complexities and nuances inherent in media narratives, and how these narratives can either foster a shared understanding or fuel polarisation. It is through these explorations that we gain insights into the development and impact of a differentiated public sphere in the context of the European Union. These investigations it goes without saying are vital ingredients in the overall understanding of the EU's differentiation configuration.

Concluding theoretical reflections

How to draw this work and these findings together into a theoretical model that spells out the conditions under which differentiation is associated with dominance and the conditions under which differentiation is associated with democracy? The report has shown that the complex and composite nature of each core term – differentiation, dominance and democracy - and the fact that their meaning and significance vary with theory and academic discipline (law versus political science) entail that it is inherently difficult to develop a single unified theory of differentiation – dominance – democracy that applies across cases and contexts. That as the report has shown does not mean that

we cannot discern more general principles and benchmarks that make up the bare bones of such a theory. Such a theory relies on establishing the proper conceptual and empirical vantage-points.

The report has thrown doubts about using differentiated integration as the appropriate vantage-point because the EU has built-in biases and path dependencies that are not directly attributable to differentiated integration, in other words, that pertain to deviations or derogations in EU law, not even in terms of what Daniel Thym has referred to as supranational differentiation, which refers to uneven reach of EU law, or law's general non-application.[35] The rub is that EU law can operate in a unified manner to promote market integration and to inject market logic into other non-market functional spheres but in doing so it still reinforces built-in biases and path dependencies. The types of bias and path dependence that engenders effectively stymie law's ability to function socially integrative. The process is one of de facto functional de-differentiation (in terms of market thinking operating as the unifying operating logic across such fields as social welfare, education etc). Such a process fosters segmentation given the institutional and constitutional constraints that the EU is embedded within. The upshot is that both law and marketization have built-in limits in terms of fostering the political integration that is necessary for democracy to flourish. This observation underlines the need for adopting the multilevel polity's differentiation configuration as the appropriate benchmark for assessing the dominance pitfalls and democratic potentials of differentiation. The implication is that the theory must include the issue of EU-level – member state interaction, incorporation, mutual transformation and not the least some form of structural congruence/compatibility.

The report has shown the difficulty in deriving a theory that specifies when differentiation is associated with dominance and when it is associated with democracy directly from present-day EU given that it is a

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[35] He notes that "(d)ifferentiation in this meaning is defined by the limited geographic scope of Union law and the corresponding suspension of voting rights of the non-participating Member States in the Council. Monetary union, the Schengen law and the general mechanism for enhanced cooperation are the most prominent examples of supranational differentiation" (Thym 2017: 39).

composite of supranational and intergovernmental traits and as such struggles to reconcile these two principles within its workings. That fact brings up the question of whether it is enough to develop one single coherent theory of differentiation-dominance-democracy. Might two renditions be necessary, with one highlighting intergovernmentalism and the other supranationalism or preferably federalism? The most prominent instance of fashioning an approach steeped in intergovernmentalism ends up showing some of the limitations of such an exercise. Richard Bellamy sets forth his position in his important book *A Republican Europe of States*, wherein he seeks to extend Philip Pettit's republican approach to non-domination to the European Union context. The approach brings up the question of whether intergovernmentalism is an apt depiction of the EU. This report has underlined that the EU is a mixture of supranational and intergovernmental traits and is compelled to somehow seek to reconcile these in its workings. Another issue is that Bellamy's position basically treats the member states as black boxes and does not consider how or to what extent they have been transformed through the European integration process. As part of that we need to keep in mind that intergovernmentalism fails to take into consideration the constraints that the member states face from the fact that they are legally and institutionally constituted as a distinct level of governing within the EU multilevel structure (Fossum 2021). Member states do not only confront the EU-level as individual actors, which intergovernmentalists assume; they confront the EU-level as a legally constituted system of member states. This institutional fact is part and parcel of the two-way dynamic interaction between the EU-level and the member state (and regional/sub-national) level, which is captured by bottom-up and top-down Europeanisation dynamics. What is entirely left out in the intergovernmental account is the dynamic development of the multilevel EU configuration, including such dynamics as isomorphism, copying and emulation across levels and systems of governing and the patterns of path dependence and built-in bias that the development of the multilevel EU engenders, not only at the EU-level but also within and across EU member and affiliated states. In effect, intergovernmentalist accounts of present-day EU overstretch what possibly can be included of supranational elements in the meaning of intergovernmentalism. The upshot is that the EU's complex and composite character either requires setting out several polity models and discussing in what direction the EU is developing or

operating with a heuristic such as differentiation configuration and seek to discern democratically viable differentiation patterns and dynamics out of each dimension.

A further challenge to theory-building is the question of how to capture rapid and dynamic changes, including crises. A theory that presupposes a static context will not be very adept at capturing a world undergoing significant changes. At the same time, a theory that is well-suited to capture dynamics will render normative assessment very difficult.

One effort to link differentiation – dominance dynamics is the notion of differentiating shock. This notion was devised precisely to single out those instances of rapid – shock-like – change that at the same time came with dominance effects. The implication for theorising is that it should be possible to sort out certain instances of sudden changes with differentiating effects that also have dominance effects from those sudden shocks and changes that have differentiation effects but without those being associated with dominance.

These remarks suggest that theorising is possible even under conditions of dynamic change. This report further suggests that we can develop certain sets of key benchmarks to help specify when differentiation is associated with dominance and when it is associated with democracy. The benchmarks we have in mind are those that basically all positions on dominance to a greater or lesser extent will endorse. These are: illicit hierarchy, exclusion, status and rights denigration/deprivation. Further, we have a set of democratic benchmarks: rights-holding and self-legislating citizens. The report has also suggested some differentiation benchmarks, which are associated with the differentiation configuration. For each of the four dimensions of the differentiation configuration, we can assess whether any of the dominance benchmarks is present. The same can be done with regard to the two core democratic criteria: rights-holding and self-legislating citizens. Combining this yields a set of general criteria that can be applied to specific contexts. That yields a more nuanced framework through the application of criteria to context and the obverse.

One step towards generalisation would be to assert that we can develop criteria and conditions that apply to all instances of a given polity – we

may be able to develop benchmarks that apply to all states of a given shape or size. For the EU the criterion cannot be whether differentiation stymies integration or not, given that integration can be biased, and the EU is a multilevel system of governing with strong isomorphic pressures across levels. The benchmark for the EU must be *federal*: differentiation must be considered in relation to federalisation – and understood to be aligned along federalism's key tenets of shared rule – self-rule. The polity must ensure fundamental and constitutional autonomy for each main level of governing; there must be provisions to avoid shirking, transgression etc across levels of governing; and there has to be some form of complementarity of tasks/functions across levels. A critical issue: does it have to be across all functional domains and with exclusive territorial control?

The relevant benchmark here need not be the sovereign state but how differentiation is configured, along the four dimensions of the differentiation configuration. From there we can consider what constellation of differentiation is needed for ensuring that the EU protects basic constitutional-democratic rights and values and further what functions and competences must be assembled at the EU-level to enable national democracies to continue to function democratically. Such a structure it would seem would have to be federal but not necessarily a federal state.

In this context a further important issue pertains to the question of internal – external congruence: in what sense and how extensively? At a minimum it is important to avoid external vulnerability, and there is a need to avoid exerting external domination. These comments underline the need for EU capacity/capability to reduce its external vulnerability.

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Part Two: Selected studies of EU-internal differentiation, dominance and democracy

The second part of the report is made up of selection of case-studies each of which depicting in detail the broad range of research conducted within the project. The contributions draw on and complement the main theoretical and empirical contributions that EU3D has made and that were discussed in detail in the first part of the Report. All of the chapters looked into how the differentiation-democracy-dominance research agenda is instrumental to understanding the key processes within the EU and what new research agendas emerged in reaction to established theoretical frames as well as to crises that the EU has had to deal with: old ones such as the financial and migration crises and the challenge of Brexit. On top of that were new problems brought forth by the Covid-19 pandemic and the full-fledged Russian war of aggression against Ukraine.

The order of chapters is also reflecting research initiatives undertaken within and key findings from all Work Packages. WP1 key findings and contributions are largely discussed in the first part of this report. In the second part below two cases represent different research themes within WP2 on identifying and explaining problematic forms of EU-internal differentiation. In the first chapter Rune Møller Stahl and Ben Rosamond discuss the historical context and conditions for non-majoritarian forms of governance in the EU. Next, Józef Bátora is presenting a much more forward-looking case in that he directs the attention to the EU's efforts to deal with the corona pandemic and the green transition. WP3 of the EU3D project was analysing from a variety of perspectives and actors the issue of EU external differentiation and the question of dominance (and vulnerability) in EU external relations. This is illustrated by the chapter by Christopher Lord in which he is proposing to treat Brexit as a legitimising exercise for the EU.

WP4 and WP5 were devoted to tapping public sentiments and discerning and assessing democratic reforms. EU3D researchers analysed the social and institutional conditions for improving the EU's capacity and resilience as well as democracy within the EU. This research is illustrated in this Report by a detailed analysis of how public opinion perceives and receives differentiated integration by Max Heermann and Dirk Leuffen. And this is followed up with a chapter focusing on the role of journalists as mediators of EU differentiation by Asimina Michailidou, Martin Moland, Hans-Jörg Trenz and Resul Umit. Both these contributions reflect a broad research agenda of WP4 on Public opinions, debates and reforms. Finally, WP5 focuses on future of Europe debates and is represented by a chapter by Magdalena Góra, Sergio Fabbrini and Tiziano Zgaga in which the authors debate the key characteristics of debates on the future of Europe debate, present what new narratives emerged, and what new polity models could be proposed.

Chapter 1

The problem of non-majoritarian institutions in European economic governance: a historical reinterpretation of the EU's 'democratic deficit'

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Introduction

How should we understand the relationship between the past decade of EU economic governance and the long-standing idea that the European Union (EU) suffers from a 'democratic deficit'?[38] It is perhaps tempting to see these two facets of the EU as inhabiting different temporalities. The debate about the extent to which the EU's institutional design prohibits popular authorization of EU policies seems to come from an older pre-crisis epoch. It puzzles over Europe's odd constitutional asymmetry dating from the establishment of institutions of integration in the 1950s. It

asks us whether it is possible for a union of democracies to be itself democratic, given that (a) significant areas of policy-making within that union have been denationalized and (b) representative democratic institutions are only properly operational at the national level. The further anxiety is that this is not a static equilibrium, but rather that the consolidation of (a) over time will progressively weaken the possibilities of (b) being maintained. Thus, the democratic deficit is either a problem to be fixed through the addition of representative-democratic elements to the EU's institutional anatomy (cf Hix 2008) or a pathology that (in conjunction with the likes of 'globalization') threatens to render irrelevant nationally-based representative-democratic processes and practices. In this latter sense, the EU is understood as a form of international economic integration, which in turn forms one point in the augmented trilemma in which integration necessarily forces the downgrade of *either* the nation-state as the primary site of political organization *or* mass politics as the accepted mode of legitimation and decision making (Rodrik 2012).

If the democratic deficit was a puzzle of European *integration*, then the EU's prevailing economic policy over the past decade is typically understood as emblematic of post-crisis or emergency *governance*. While it was perhaps obvious from the initiation of monetary union in the early 1990s that Economic and Monetary Union (EMU) would default to a 'golden straightjacket' of centrally-imposed fiscal contractions in the face of a severe asymmetric shock (e.g. Godley 1992), the experience of the Eurozone crisis and the policy toolkit devised thereafter suggests a centralization of policy competencies that express a partial, albeit hegemonic, understanding how member state economies should be steered to secure stability and credibility. Put another way, recent economic governance in the EU seems to be ideologically driven, reflecting the dominant causal ideas and normative beliefs of economic policy elites in supranational and international economic institutions and core Eurozone governments (Blyth 2013, Dawson 2015, Maastch and Cooper 2017).

This is not to say that the issue of democracy has been missing from debates about crisis and post-crisis economic governance in the EU. Far from it. There has been outstanding work done on the recent phase of in- and post-crisis emergency governance, where the emphasis has been

placed firmly (and rightly) on the ways in which policy solutions have involved improvisation and experimentation (van Middelaar 2019, White 2019). Luuk van Middelaar (2020) pushes the argument that this recent phase has prompted a kind of metamorphosis in the EU, allowing it (and perhaps forcing it) to escape the legal straightjacket provided by Treaties. Jonathan White (2019), meanwhile, shows how the resort to emergency rule at national and supranational levels has been associated with not only the weakening of executive power, but also the erosion of democratic compacts. And these secular tendencies are also responsible for the emergence of a distinctive mirror-image counter-politics of emergency.

Our point is not to dispute the peculiar and impactful character of recent (post-crisis) tendencies in European economic governance, but rather to suggest that the patterning of post-crisis policy-making, the democratic exclusions that it threatens and the counter-politics it provokes are clearly foreshadowed in long-standing institutional and ideational path dependencies. We further suggest that these institutional and ideational 'fixes' are best understood as expressions of non-majoritarianism, a complex yet consistent theme in liberal thought since the 18th century. If we understand key aspects of the EU system in these terms, then it becomes obvious that post-2010 economic governance was always likely to provoke a tension between, on the one hand, non-negotiable policy solutions formulated at the supranational level and, on the other, domestically-rooted social compacts. Put another way, recent EU economic governance (through and beyond the Eurozone crisis) draws upon a legacy of institutional practices that are premised on the desirability of keeping democratic inputs into policy-making at arms-length. But this also requires a rethink (or at least a reinterpretation) of the character of the EU's democratic deficit. We explore the ways in which the democratic deficit is perhaps better conceived of as a feature rather than a bug of the EU system by exploring the kind of work that non-majoritarian institutions are designed to do, particularly in the realm of economic governance. We also consider the idea that non-majoritarian economic governance may be associated with forms of supposedly democratic backlash that themselves work from counter-democratic precepts.

Revisiting the 'democratic deficit' debate

As noted already, the growth and diversification of EU non-majoritarianism adds significant fuel to longstanding debates about the 'democratic deficit', particularly in the recent period of crisis governance. Put simply, non-majoritarianism is a form of governance by delegation. This in turn involves the transfer of decision-making authority away from actors and institutional sites that can be held politically accountable. As such, and by definition, non-majoritarianism is a form of *depoliticization* – 'a process whereby state managers … seek to place at one remove the politically contested character of governing', to borrow Burnham's formulation (2014: 189). In some accounts of European integration, which, it must be remembered, involves delegation *across* levels of governance as well as *to* new governing agents, this non-majoritarian turn is a means to the efficient and effective realization of the EU's mandate to create functioning and properly regulated single market (Majone 1998). In others, it is symptomatic of a democratic deficit (Føllesdal and Hix 2006). The former position reasons either that the original delegative act is, in itself, democratic (Moravcsik 2002) or that output legitimacy is more significant than input legitimacy in this case (since the performance of governing institutions should, in this view, be assessed by the extent to which the results of their actions correspond the mandate bestowed upon them by the Treaties and nothing else).

The experience of the past decade suggests that institutional depoliticization sits ill at ease with societal politicization. Perhaps this even sums up the central meta-dilemma of contemporary European integration. The domestic politicization of European integration, evident since the negotiation of the Maastricht Treaty, has accelerated in the period since the onset of the Eurozone crisis (Hooghe and Marks 2009, Hutter and Kriesi 2019, Kriesi 2016). This is precisely the same time frame in which we see the acceleration and, latterly, intensification of non-majoritarian forms of governance/dominance in the EU – a doubling down of depoliticization in other words. As such, this meta-dilemma manifests itself as a problem of legitimacy where the EU's preferred solution moves further away from any attempt at legitimation through the normal rule of electoral responsiveness (Mair 2013).

If we continue to frame this issue in terms of the EU's ongoing 'democratic deficit', then we miss important aspects of the role of non-majoritarian institutions in the EU, and their intellectual and political roots. The idea of the democratic deficit is typically framed in a way that EU is on a trajectory of democratization, but has not, for a variety reasons, completed the journey to a fully democratic *finalité*. Put another way, the democratic deficit represents, in this view, at worst a path dependent glitch that can somehow be fixed through treaty reform or, at best, evidence of a teleological trajectory where the erstwhile absence of democracy and transparency (an absence characteristic of traditional international diplomacy) will give way to the 'full democracy' of some sort of post-national state-like formation. Of course, neither understanding supposes that correction of the democratic deficit will be straightforward. Institutional reform, even if informed by a teleological logic, is subject to a variety of constraints and veto players that is as likely to yield stasis (and perhaps entropy) as it is to produce meaningful democratization.

This idea has several potential problems, of which two stand out. First, by framing the prevalence of non-majoritarian institutions as a purely negative thing – in terms of a democratic deficit – we miss the positive, normative and theoretical rationale for the prevalence of non-majoritarian institutions. This normative framework, with a weight on countering popular sovereignty has been described as 'neo-Madisonian' (Bickerton 2011). Second, by understanding the EU as primarily contrasted with the nation state and the institutions of national democracy, the continuities between EU and national institutional developments together with crosscutting trends are rendered obscure, if not invisible.

We argue that the prevalence of non-majoritarian institutions in the EU must be understood in terms of the longer trajectory of liberal theories about economics and governance (see Stahl and Rosamond 2022 for a detailed account). Here there has been a strong tradition of arguments and practices that seek to justify the constraint of popular governance by a range of non-majoritarian institutions, such as courts, independent central banks and upper houses,

The EU has, in this context been shaped especially by two successful waves of political liberal reforms for depoliticization in the latter half of the 20th century, namely the 'disciplined democracy' of post-war

liberalism, and the neoliberal wave of the 1980s onwards. Of course, these two waves coincide with the two big leaps of European integration: the foundation period of the 1950s and the push of the 1980s to early 1990s that led to the internal market and the Maastricht Treaty on European Union. Both of these periods of intensified integration were framed in distinctive intellectual contexts, but there are striking continuities across these epistemic moments in terms of the relationship between popular participation and non-majoritarian institutions. In other words, both of these waves are part of broader tendencies, that have been instrumental in the formation of both national and international institutions and draw on older liberal ideas of appropriate limits on democratic-popular rule, expressed as both technical and normative claims. These should not be seen as mere holdovers from earlier forms of international diplomacy, nor are they products of *sui generis* political processes in the creation of the EU as a supranational body.

The newest wave is perhaps the most familiar. The neoliberal wave from the 1980s was concerned with the liberation of markets from a variety of non-market constraints, of which representative democratic politics was perhaps the most egregious (Brown 2015, Slobodian 2023). This wave was about protecting the market and using different institutional frameworks to limit the damage democratic excesses had on economic and monetary stability. The paradigmatic institution of this wave was the independent central bank. In the EU's case, the European Central Bank (ECB) – perhaps the most functionally independent central bank in the world.

The older wave is centred on the post-war liberal idea of 'self-disciplined democracy' that emerged directly out of the experiences of World War II. With the roll out of democracy across western Europe came a distinct idea of the danger of an excess of popular sovereignty that in turn could post a serious threat to individual rights. In this line of thought, democracies needed the strong constitutional protection of juridical rights through non-majoritarian institutions, primarily courts, to limits the dangers of unshackled democracy (Stahl and Popp-Madsen 2022). This was introduced in the post-war period by the setup of powerful institutional courts, inspired by the US Supreme Court, with wide ranging juridical power. Prominent among these was the German Federal Constitutional Court (*Bundesverfassungsgericht*).

While these two waves were of course extremely different in both substance and form, we suggest that there are also clear similarities, leading to similar institutional solutions. Both waves have contributed to the founding of non-majoritarian institutions across the world, both in national and supranational contexts. As such the prominent role of non-majoritarian institutions in the EU context should not be seen as a purely negative 'lack of democracy', but rather a positive vision that is concerned to rein in democratic sovereignty, in favour of a guaranteed rules-based order. In this line of thought parliaments and electoral democracy must play a role, in order to avoid the dangers of totalitarianism and dictatorship, but their role must not be great enough as to allow for a tyranny of the majority. In the language of Carl Schmitt and Wilhelm Röpke, this amounts to securing dominium against imperium (Röpke 1950 [1942]). Of course, part of this tradition – associated in particular with the literature on consociationalism – maintains that non-majoritarian institutional designs are a key means to secure minority rights and thus insure against real erosions of substantive democracy (Lijphart 2000, Thielemann and Zaun 2018). This raises the important question of the extent to which, and the ways in which, the (neoliberal) idea of safeguarding the market from democracy (cf Friedman 2002) has been articulated to a tradition of thought that seeks to protect democracy from populist demagoguery.

That these justifications for non-majoritarianism display a similar discursive architecture is interesting, but ultimately they pull in quite different directions. The key is the matter of what it is that non-majoritarianism seeks to protect. The fear of the tyranny of the majority – the assertion of the 'will of the people' as measured by 50 per cent + 1 of any given community – is a rooted in a concern to protect the repertoire of rights upon which democratic politics is built. The version of non-majoritarianism espoused by market liberals of various stripes is premised on the idea that market society and democratic politics are ultimately incompatible – that the latter is likely to yield distributive decisions that are (in terms of market equilibrium) suboptimal. In this case, non-majoritarianism exists to protect the market from democracy – *any* kind of democracy, not simply the plebiscitary impulse that worries other liberals who fear mob rule as a form of democratic perversion. We will return to this point, but one of the striking features of contemporary European

politics is precisely the re-emergence of crude majoritarian understandings of democracy, often as a central feature of contemporary Euroscepticism (Weale 2018).

This bifurcation holds in contemporary politics, but the distinction is less obvious, the further we go back into the history of liberal political thought. In *Models of Democracy*, David Held describes classical liberal democracy as essentially a form of 'protective democracy' (Held, 2006, 99). This protection means, on the one hand, using the state to protect life and property against the mob, and, on the other hand, using the division of power, rule of law and (limited) representation, to protect individual against the state. Proponents of liberal democracy envisioned protective institutions as necessary in order to protect individuals against the state, and protect executive state power against democracy. This resulted in a set of anti-majoritarian institutions, such as powerful political courts with appointed (elite) officers and black letter constitutional limits to democracy.

Thus, the reinvention of liberal democracy in the wake of the Second World War owed a good deal to the self-same anti-majoritarian institutions that were so central to liberal thought in the 18th and 19th centuries, where the goal was to diminish direct popular influence on newly established constitutional states. What was different in the post-war period was that instead of conceptualizing these anti-majoritarian institutions as limits to the threat of a democratic majority appropriating private property, they were now construed as necessary safeguards for protecting democratic majorities against their own anti-democratic proclivities. At the same time, and as noted above, while the issue of minority protection was now cast in term of protections for ethnic and minority rights, the institutional solutions were, in large part, similar to the anti-majoritarian institutions that 19th century liberals had envisioned for protection of wealthy minorities.

Neoliberalism and the de-politicization of economic policy

While much of the discussion of neoliberalism has evolved round the issue of state versus market, it can just as well be seen in terms of debates about the supposed excesses of democracy in the post-war welfare state (Stahl 2020). This notion formed a central role in many of the prominent

neoliberal thinkers in the postwar era. Ordoliberal thinkers like Eucken (Böhm, Eucken, and Grossmann-Doerth 1989 [1936]) and Röpke (Röpke 1950 [1942]) identified the interwar crisis of the Weimar Republic as the product of the excesses of mass democracy, and construed the need for the construction of an 'Economic Constitution' to keep democracy from undermining private property and the competitive market system. Friederich Hayek first laid out the dangers of the unbridled economic consequences of the democratic welfare state in *The Road to Serfdom* (Hayek 1944), and his later *Constitution of Liberty* imagined a liberal constitution that would constrain direct popular influence on the rule of law, by – for example – removing the legislative capacity to an upper house with 15-year terms and highly restricted suffrage (Hayek 1960)

However, it was not until the 1970s that this economically focused critique of democracy became politically salient. The reason was the economic turbulence of the 1970s and the perceived inability of the prevalent instruments of Keynesian demand management to curb the rising economic threats of unemployment and inflation. The problem here was framed as one of inconsistency of democratic policies. As Kydland and Prescott laid it out, the problem of democratic governance of fiscal and monetary affairs was the inability of elected governments to make credible commitments (Kydland and Prescott 1977). Because of the ability of future governments to renege on promises made in the present and the natural short-term thinking of office seeking politicians, rational investors in the private sector would be forced to assume an expectation of rising taxation or inflation. This would in turn lead to lower levels of investment, depressing future economic growth. The solution was framed as one of removing discretion and setting up time consistent policy rules. However, as the likes of Jacqueline Best (2020) and Ben Clift (2019) have shown, the early attempts at implementing a strict rules-based form of governance met with relatively little success. A notable (and highly significant) exception was the emergence in the 1970s of a fiscal rules-based system as preferred solution to the puzzle of exchange rate management in the European Communities (Menéndez 2022, Ryner 2022).

The main way in which the idea of credible commitments survived into the 1980s was in the form of non-majoritarian institutions playing a central role in economic policy, especially in the delegation of monetary policy

authority to independent central banks). Giandomenico Majone (1996) lays this line of thinking out clearly. Democracies are naturally short term, and therefore have to delegate to non-majoritarian institutions. Majone is, of course, most associated with his influential characterization of the EU as a 'regulatory state'. One of Majone's central points is that this is not a *sui generis* feature of the EU, but rather evidence of a generalized tendency across advanced democracies (there are obvious connections to other influential ideas such as the 'competition state' or perhaps Streeck's idea of the 'consolidation state' – Streeck 2017). As Daniel Wincott (2006) has pointed out, Majone's discussion of the regulatory state should be read not only as a compelling analytical capture of how the EU works, but also as a clear normative prescription about how the EU *should* work.

As noted already, the 'regulatory state' position is typically defended via the claim that the EU secures democratic legitimation through its outputs (output legitimacy) or through the claim that, as a voluntary intergovernmental compact, the EU's actions are legitimized *by definition* since its member states are democracies (a form of input legitimacy). In other words, there are various answers to the perceived problem of non-majoritarianism in EU economic policy that effectively argue that the democratic deficit is a non-problem. Our point here, by revisiting these discussions and by thinking about the political and intellectual sources of non-majoritarianism, is to suggest that these answers are not complete solutions to anxieties about the democratic deficit. Rather we have sought to argue that the problem of the democratic deficit is bound up with an approach to economic governance that actively discounts the value of popular inputs, even (and maybe especially) when they are formulated through representative processes and are subject to constitutional protections and checks and balances.

Conclusion: Non-majoritarian governance and plebiscitary backlash

We conclude with some remarks about the connections between non-majoritarian economic governance solutions and the character of the domestic politicization of European integration. The intention here is not to suggest a provable causal connection between these phenomena, although it would certainly be possible to formulate testable hypotheses

about the impact of the former upon the latter. Nor do we want to imply that the erosion of representative democratic politics in EU member states is solely attributable to the character of economic governance undertaken by and through the EU, although there is a strong Polanyian rationale for thinking so. Rather, what is striking is the way in which the resort to non-majoritarian post crisis governance has coincided with the emergence of a populist political style that places excessive emphasis on brute majoritarianism as the *sine qua non* of democratic politics.

Brexit offers a stark example of how domestic politicization of the EU has yielded a form of differentiated disintegration (Gänzle, Leruth and Trondal 2020), but the character of that politicization is especially interesting. It became standard practice for those pursuing a hard Brexit to insist that the 2016 referendum (won by the Leave side by 52 to 48) represented the inviolable 'will of the people'. What this discourse also embraced was the idea that nothing – parliamentary deliberation, constitutional jurisprudence, expert judgement – should temper or qualify the outcome of that single plebiscitary moment. The struggle between this position and a broad coalition that sought to argue for the reinsertion of those safeguards into the processing of referendum result was vividly apparent between the elections of 2017-2019, a phase of minority government where parliamentary politics (especially) was characterized by a deep dissensus on whether or what kind of Brexit should be pursued. Put another way, the parliamentary rearguard against hard Brexit can be read as a struggle between two different understandings of democracy, one that sought to reassert representative procedures as a way to prevent Brexit being driven by a tyranny of the majority and the other that actively sought to promote a crude majoritarian reading of the referendum result.

Put more generally, the 'escape' from the straightjacket of non-majoritarian economic governance does not – in and of itself – mean that democracy is restored or that the democratic deficit is closed. Indeed, the recent experience of differentiated disintegration suggests that the repatriation of economic governance powers can actually augment and worsen pre-existing democratic deficits at the national level.

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Chapter 2

Post-Covid-19 Recovery and resilience plans in Slovakia and Austria: differentiated intra-EU conditionality?

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Introduction

This chapter argues that in the process of setting up the post-Covid-19 recovery and resilience plans (RRPs), a new type of intra-EU conditionality has been emerging in the EU. This is related to new ways of supporting economic reforms by EU-funds distributed to EU member states' government as grants in return for achievement of pre-specified deliverables, milestones and reform-measures. As this report demonstrates on the case of Slovakia's RRP, the implementation of national RRPs has been guided by a new set of organizational structures both on the EU-level and on the level of the member states. Moreover, new kinds of mechanisms were introduced prompting timely delivery of reform measures and deliverables. Still, these come at the cost of low public legitimacy and with various limitations in terms of accountability. Indeed, new forms of dominance – illicit decisions without properly involving those whom these decisions directly concern – have been characterizing the processes of implementation in the first three years of the RRP's operation.

Yet, as this chapter shows, the development in Slovakia is not necessarily typical or representative of the rest of the Union across all member states. The national RRPs have different forms and purposes in different member states. This is demonstrated on the case of Austria – a direct neighbour of Slovakia and a comparatively richer country with well-established institutions of democratic governance. As the initial findings of the comparative study of RRP implementation in Slovakia and Austria indicate, there are significant differences in how these two countries structure their RRP priorities and also how they organize RRP coordination and implementation.

Hence, this chapter proposes the hypothesis that there may be a pattern of *differentiated intra-EU conditionality and variations of dominance* emerging in the context of post-covid-19 recovery in the EU. This implies, in general, that wealthier member states with well-established institutions of democratic governance are likely to be exposed to 'lighter' forms of intra-EU conditionality and dominance than poorer member states with transitional and less stable democratic governance.

The chapter proceeds as follows. The first part outlines the traditional concept of EU pre-accession conditionality and discusses its limits in the post-accession period. The second part then outlines the EU's adaptation to the Covid-19 crisis including the new institutional structures and financial instruments introduced for countering the effects of the crisis. The third part then documents the mechanisms set up for implementation of the RRP in Slovakia and shows – based on evidence on macro-level data and micro-level practices – how the newly set-up mechanisms of intra-EU conditionality lead to various forms of dominance. The first two parts draw directly on Bátora (2023) providing *a)* a conceptual discussion of conditionality and its new intra-EU forms in the post-covid-19 era and *b)* an in-depth case study of Slovakia's RRP implementation processes. The third part then discusses processes of implementing RRPs in Austria and provides a comparative perspective on the processes in Slovakia. The conclusion of the chapter then summarizes the findings and discusses the emerging variation in RRP-induced intra-EU conditionality effects/dominance effects in member states relative to wealth and stability of democratic institutions. It also outlines an agenda for exploring the nature of what may be differentiated intra-EU conditionality and

dominance characterizing the EU in the wake of the implementation of Covid-19 reform measures.

Covid-19 adaptations in the EU and the institutional conditions for new intra-EU conditionality

Conditionality – essentially a process by which countries receive EU funding for reforms – has been a characteristic feature of EU enlargement for decades (Sedelmeier 2001; Schimmelfennig and Sedelmeier 2004, 2005, 2020; Vachudova 2005). It has been one of the ways the EU has been wielding its influence in its neighbourhood. Yet, in countries which became part of the Union, conditionality effects have been declining. In fact, over the last decade, a number of newer EU member states have been turning increasingly authoritarian and the quality of democracy and the rule of law has been in decline due to corporate and/or political state capture (Inis 2014, 2016, Kornai 2015, Bos 2018, Bozóki and Hegedűs 2018, Kelemen 2020). In this context, the EU's institutional adaptations to the Covid-19 crisis and the measures that the Union established in dealing with the effects of this crisis did introduce a new approach – support for economic recovery and resilience in return for reforms in economy and democratic governance (Bos and Kurze 2021).

Specifically, the EU set up *Next Generation EU* – a recovery fund worth 750 billion euros in 2020. To manage the fund and the distribution of the resources, *Recovery and Resilience Facility* (RRF) was set up as a temporary instrument. Taking the lead in managing the EU-wide reform effort, the European Commission set up Recovery and Resilience Task Force (RECOVER). This works as a central point of coordination and monitoring in relation to member states' governments and their reform efforts for which they receive funds from the RRF.[39] In cooperation with RECOVER, every member state has set up its own national Recovery and Resilience Plan (RRP). Based on these plans, the funds supporting member states reform efforts are disbursed in pre-planned tranches covering the period between 2021 and 2026. For resources to be provided to member states, they need to meet the pre-defined reform targets and milestones in all areas defined as pertaining to a particular reform period. In this way,

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[39] See https://ec.europa.eu/info/departments/recovery-and-resilience-task-force_en

arguably a new form of intra-EU conditionality was introduced – member states' governments need to prove that they implemented the pre-defined steps and RECOVER (and the European Commission more broadly) monitors these processes.

RRP in Slovakia: new forms of intra-EU conditionality and dominance

For its recovery, Slovakia was allotted 5.65 billion euro from the RRF. In its national RRP, Slovakia included five priority areas (with 18 components outlining specific reforms): 1) the green economy; 2) education; 3) research and innovation; 4) healthcare; and 5) public administration and digitalisation.[40] The financial breakdown included 2301 million Euro for green economy; 892 million Euro for education; 793 million Euro for science, research and innovation; 1533 billion Euro for healthcare; 1110 Euro for effective public administration and digitalization; which gave a total of 6575 million Euro.[41]

A process of broad-based consultations was initiated by the government in 2020 to collect input on RRP priorities from the public and various stakeholders. This included 6 roundtables with about 100 different stakeholders[42] and around 2500 changes were incorporated into the final draft of the national RRP drafted by the Ministry of Finance. This process was, however, not managed in a transparent way and while numerous inputs were collected and various stakeholders were involved, it was not clear how such inputs were actually incorporated and/or which were selected for inclusion and which ones not. The executive (in particular the officials in the Ministry of Finance) had the lead in drafting Slovakia's RRP.

To manage the RRP, the Slovak government established a central point of coordination – the Section for the RRP (S-RRP) in the Prime Minister's

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[40] See Analýza plánu obnovy 2021 available at:
https://www.planobnovy.sk/site/assets/files/1232/hodnotenie_planu_obnovy_sk.pdf, pp. 23-24

[41] Ibid., pp. 44-46.

[42] This included regional administrations, municipalities, entrepreurial associations and some NGOs. Yet, in the context of Slovakia where there are about 80.000 registered NGOs, the number of involved participants seems rather low.

office.[43] This was a unit with 50+ officials – most of them hired especially for the purpose of managing the RRP.

Implementing the RRP in Slovakia: mechanisms fostering dominance

In implementing the RRP, there were a number of mechanisms which, it could be argued, fostered dominance. First, was the *non-negotiability of the reforms and the allotted resources*. This meant that pre-defined reform-steps in the various priority areas and timed for delivery within a given time-slot had to be delivered. If such was not the case, the country would risk not receiving the allotted tranche of funding from the RRF. Arguably, such a situation was empowering the executive – even if perhaps for the period of implementation of the RRF (i.e. 2021-26) – as the legislative branch was not really in a position to re-open questions regarding reform priorities in the RRP period. This is an instance of a broader tendency in EU governance of solidification of vertically-integrated administrative structures across multiple levels in EU governance, which would contribute to executive dominance over legislative institutions in the member states (Fossum 2021).

The second mechanism was the *interconnectedness of reform steps as a condition of payments*. In this way, reform steps in widely divergent areas had to be fulfilled in parallel. As a result, parliamentary politics was thus effectively side-lined as the discussions on the various reforms could no longer focus on substance but on coordination of efforts of how best to achieve implementation on time. Bundling reform-steps in packages thus served as a way of turning processes into a technocratic exercise and side-lining politics.

Third, was *wielding of normative pressure on stakeholders*. This was done by launching a website by the PM's office called the 'Reform Traffic Light'[44] providing transparent information on what reform steps in a particular stage were already implemented (tagged by green light); what reforms were still in the process of being implemented and only with a small delay

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[43] The S-RRP was originally in the Ministry of Finance of the Slovak Republic but, when Eduard Heger – the then finance minister became prime minister, the S-RRP has migrated to the PM's office in mid-2021.

[44] See https://www.planobnovy.sk/realizacia/semafor/

(yellow light) and what reform steps were seriously delayed or undelivered (red light). In this way, specific ministries and their respective ministers could be publicly named and shamed and the traffic light was readily used by the PM's office as well as by the media in public criticisms of the reform laggards. Again, this was a way of framing the public debate with a focus on when a reform would be implemented and sidelining discussions about appropriateness of a reform proposal. This was the case for such fundamental reforms as, for instance, introduction of a new higher education law.

While some of the reforms did meet its purpose, in some areas, stakeholders were looking for ways to escape the intended effects. One of such strategies was *window-dressing*. As the example of the new higher education law shows, Slovak universities in cooperation with members of parliament found a way to circumvent the intended reform by passing a law proposal in Spring 2022 that nominally introduced a reform of university self-governance aiming for more accountability towards the taxpayers but, in practice, allowed universities to define their own systems of self-governance. This enabled the Slovak government to successfully claim that they fulfilled the intended reform target defined in the RRP and, thus, access the resources in the specific Spring 2022 financial tranche from the RRF. At the same time, it opened for continuity of the majority of practices in university self-governance that the proposed reform intended to change.

In sum, the case of Slovakia's implementation of the RRP shows that there are new kinds of intra-EU conditionality and – in some aspects – dominance emerging. Is this the case in other EU member states too? We can start exploring this question by looking at the case of Austria.

RRP in Austria: continuity in managing EU resources

Austria was allotted 3.75 billion euro in grants from the Recovery and resilience facility. 450 million euro was provided to Austria as pre-financing on September 21, 2023. The main priority areas for Austrian recovery were defined in two broad areas: Green Transition and Digital

Transformation.[45] Within the green transition area, the reform priorities were defined as follows: a) Refocusing the tax system to benefit the climate: this includes tax reforms supporting green technologies and low- or zero-emission products plus tax relief for companies and citizens in need; b) Emission-free transport: transition to zero-emission buses, rollout of electric vehicles and setting up charging stations for electric vehicles (€256 million); c) Circular economy: reform of the recycling systems and installing take-back systems in stores (€170 million); d) Energy efficiency for homes: supporting citizens in purchase and installation of sustainable heating devices and replacing oil and gas heating systems (€159 million); e) Environmental mobility: building up the electrified railway network across regions in the country (€543 million).[46] In the digital transformation area, the priorities were defined as follows: a) Improved digital connectivity: setting up high-speed internet connections (at least 100 Mbit/s) for at least 50% of Austrian households (€891 million); b) Easing access to digital education: providing school children with tablets and computers (€172 million); c) Boosting future-oriented, transformative and innovative Research with a focus on quantum computing (€107 million).[47]

A smaller portion of the RRF grants were also to be directed to support what was defined as 'Austria's Economic and Social Resilience'. This included measures such as: a) fairer pensions; b) more and better kindergarten places – enabling parents to work full time (€28 million); c) lifelong learning – aimed at re-skilling people who have become unemployed during the Covid-19 crisis (€277 million); d) business environment: introducing updated rules enabling easier set up and transfer of companies between owners and other parties; e) future oriented technologies: investments in micro-electronics and hydrogen production in 'project of common European interest'.[48]

When preparing the national RRP, the Austrian authorities have consulted with national and regional social partners and interest

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[45] See Laying the Foundations for Recovery: Austria. European Commission, June 2021 (https://commission.europa.eu/system/files/2021-06/austria-recovery-resilience-factsheet_en.pdf)

[46] Ibid., p. 1

[47] Ibid., p. 2

[48] Ibid.

organizations and conducted an 'intensive dialogue' with the European commission before the plan was formally submitted on June 21, 2021.[49] To conduct the public dialogue in a structured way, the Office of the Prime Minister published a guide-book in early February 2021 specifying questions and also principles of how citizens, interest organizations and other stakeholders could be involved (*Öffentliche Konsultation,* 2021). The deadline for submitting contributions to the public consultation was relatively short: all had to be delivered already on February 26, 2021 at 5pm (ibid., p. 5).

The Austrian government has also commissioned an analysis of the expected macroeconomic impacts of the national RRP by the Institute of Advanced Studies in Vienna – a leading economics research institute (see Reiter et al 2021). This included aspects such as growth in various sectors of the economy but also prospects for the development of specific research programs at universities and research institutions in the country or expected growth in the participation of women in particular types of newly created jobs (ibid.).

When it comes to coordination, the Austrian government did not go for a centralized solution building a central administration for the RRP. Instead, they opted for a de-centralized network model of coordination with specific organizational units and teams responsible for the implementation of sectoral policy aspects of the RRP in key federal ministries and in key public agencies such as the Austrian Chamber of Commerce or the Austrian Science Fund.[50]

The Austrian approach to RRP: concentrated investments and decentralized governance

As the above mentioned financial break-down of RRP investments indicates, the two main priority areas – green transition and digital transformation – take up the majority of Austria's RRP funding, while the resources for the third broadly defined priority area are relatively limited. In a comparative perspective, this is one of the key differences between

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[49] See https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility/austrias-recovery-and-resilience-plan_de

[50] See https://www.bundeskanzleramt.gv.at/eu-aufbauplan/kontakt.html

Austria and the Visegrad 4 (V4) countries in terms of the distribution of the RRP funds. While Austria keeps most of the funding in the two above mentioned priority areas, the V4 countries retain relatively large proportion of the funding in the broadly defined 'other' category (see Figure 1).
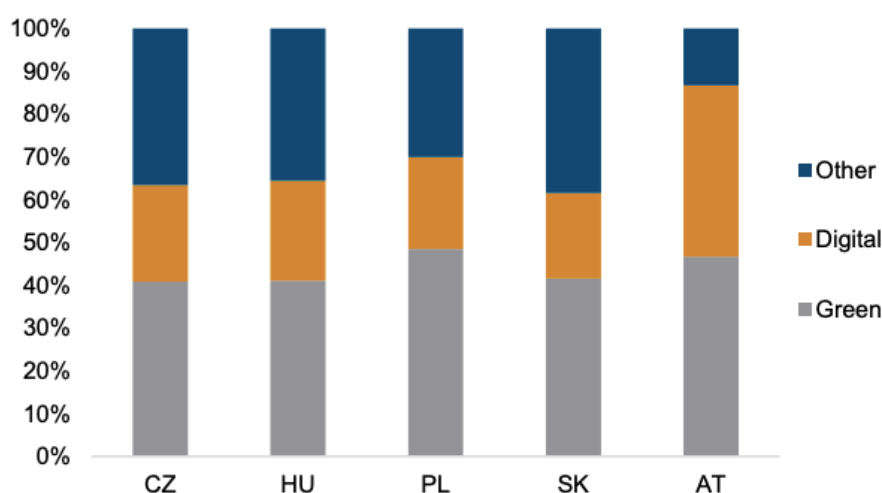
Figure 1: Spending priorities in national RRPs in the Visegrad 4 and Austria (source: Astrov et al. 2022:11)

The broadly defined 'other' category includes various types of measures and reforms ranging from public administration reforms, healthcare, education reforms, reform of the court systems etc. As we have seen in the Slovak case, this then makes up for significantly more complex coordination challenges in attaining the outlined reform milestones and deliverables which serve as conditions for accessing tranches of financial resources from the RRF. Compared to Austria, reform processes and measures need to be coordinated across a wider range of policy areas in the V4 countries. As the Slovak case shows, the need to deliver reforms under time-pressure creates the need for various forms of technocratic decision-making with dominance aspects.[51] This is not the case in Austria to the same extent. There, the decentralized model of RRP-coordination

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[51] As Astrov et al. (2022:12) point out, the far larger focus in Austria (and other Western EU member states) on digital transformation is creating conditions for a future digital divide between Western and Eastern EU members as the latter will likely lag behind in terms of digital transition and innovation potential in the field of digital technologies.

with various ministries involved provides for a more seamless integration of RRP-funding into the 'normal' operations of various ministries.

Conclusion: Differentiated intra-EU conditionality and dominance?

The EU's approach to the Covid-19 crisis has been marked by an attempt to create conditions for more coherence across the EU member states. The Next Generation EU plan has introduced a number of EU-level priorities that were to be addressed by the member states in their national RRPs. Yet, as the initial evidence from the implementation processes in Slovakia and Austria indicates, there may be locally conditioned differences in how countries go about implementing the reforms. Furthermore, these differences may be producing variations in terms of intra-EU conditionality and dominance.

Several differences could be recorded. First, when it comes to reform- and funding priorities in the national RRP, in the case of Slovakia, they were distributed across a wide spectrum of areas as many aspects in the society were considered as being in need of major modernization. In the Austrian case, most of the RRP funding was channelled into just two broadly defined but still quite coherent priority areas – green transition and digital transformation. Second, when it comes to governance and coordination of the RRP, Slovakia has developed a highly centralized system with a sizeable super-administration devoted to the management of the RRP in the prime minister's office. In Austria, no major structure was developed in relation to the RRP. Instead, a decentralized model was set up reliant on a network of units within key federal ministries and agencies. Responsibility for implementation is thus sectoral and there is no central body that would supervise implementation. Third, when it comes to mechanisms of implementation, the rules of the RRF disbursement of tranches of financial grants stipulate that all targets and milestones within a given period have to be met before funding is provided. In Slovakia, with a higher diversity of reform priorities, this generates an effect of issues included in the RRP becoming non-negotiable and, in practice, removed from politics and a matter of technocratic implementation. Even if governments have changed in Slovakia, and a caretaker government took over in May 2023, one of the main reasons for having a caretaker

government was to ensure the proper meeting of deadlines in the process of implementing of RRP. The head of the RRP Coordination Unit at the office of the Prime Minister has even become the Vice-Prime Minister in the caretaker government. In Austria, the fact that the RRP funding and priorities concentrated only on two main areas and even there on rather technical aspects such as funding laptops at schools, RRP has not really had a major effect on the operation of democratic politics. Finally, there were also differences when it comes to the role played by the RRP as a source of normative pressure and public naming and shaming of those actors who would be lagging behind in implementing reforms. In Slovakia, the Section for RRP in the PM's office was running a website with the so-called reform traffic light showing those reforms (and ministries) which were lagging behind and, by implication, endangering possibility of receiving funding from the RRF. In Austria, implementation was incorporated into the daily operations of the government and its agencies and there was no real significant visibility provided to the RRF or to the RRP. In other words, the RRP was not a source of normative pressure on actors in government.

When looking at these differences between Slovakia and Austria, several observations can be made. First, while more data would be necessary to cover the processes in both countries in more detail – in particular on the micro-level of individual ministries and/or actors receiving funding from RRP - this brief comparison indicates that there are significant differences in how the RRPs are implemented; in ways they affect the domestic political game; and also the emergence of dominance effects. Further comparative analyses would be needed looking at how EU member states implement the RRPs and what effects these processes have on the nature of democratic governance. Second, one of the reasons why Austria's approach to the RRP is different than that of Slovakia is that in the former case, the RRP constitutes a far lower percentage of the GDP in the years 2021-2026 than in the latter case. In other words, in countries where the RRP constitutes a major boost for the economy, it may be more likely that more stringent administrative arrangements ensuring implementation are introduced. Third, Slovakia set up an entirely new and quite sizeable centralized super-administration in the PM's office to oversee implementation of the RRP. No such move happened in Austria and the government instead relied on a decentralized approach relying on a

network of officials in various ministries and agencies of the federal government. Hypothetically, hence, countries with well-established democratic governance systems might be less likely to experience major shifts in their administrative systems including dominance effects due to RRP implementation.

In sum, this initial comparison of RRP operation and implementation in Slovakia and Austria – two neighbouring EU member states in Central Europe - indicates that there may, in fact, be variation in how member states organize their RRP and to what extent implementation processes lead to functioning of intra-EU conditionality and emergence of dominance effects. In general, poorer countries with weaker economies and unstable (or transitional) democratic governance would be more likely to be exposed to dominance than rich countries with well-functioning economies and stable institutions of democratic governance. A system of differentiated intra-EU conditionality and dominance could thus be emerging in the EU in the context of RRP implementation. Further comparative analyses would be required to test this hypothesis.

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Chapter 3

Exit as Legitimacy?

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The exit of a large member democracy might seem to be a failure in the legitimacy of the Union or at the least a failure to convince the 52 per cent who voted 'leave' that the EU was a legitimate source of law in the United Kingdom. The referendum was, after all, decided on a core question of political legitimacy: namely, who should have control of laws (Weale 2017).

Possibilities of exit can, however, have a more positive role in defining political orders (Hirschman 1970) and their legitimacy. Where exit is difficult and people have little choice but to live together they have more reason to search for a political order they can all recognise as legitimate. Yet, even where exiting is more straightforward, that too can be a source of legitimacy. Power relations are not so dominating where withdrawing from them is easy.

The idea that exit options can contribute legitimacy is an old one. John Locke (1924 [1690]: 177-8) held that anyone who has 'enjoyment' of a political system without leaving it consents tacitly to it, a claim no less famously ridiculed by David Hume (1748 [1987: 475]: *'Can we seriously say … that a man, by remaining on a vessel, freely consents to the dominion of the master, though … he must leap into the ocean and perish the moment he leaves?'* A right of exit can only confer consent and legitimacy where exit is feasible

and alternatives available. At what point does exiting a political order become so difficult that is not a right at all?

Maybe, however, whole democracies can leave the European Union more easily than many individuals can leave their political systems? Maybe the idea that not exiting is an indicator of continuing consent is plausible in the case of democratic states choosing to remain members of the Union. Brexit has, of course, blessed us with a test case. And it is a good one. As Kalypso Nicolaïdis (2019) remarks, if the 'Brits' can't do that, can anyone?' The UK is the world's fifth largest single state economy, a permanent member of the United Nations Security Council, a nuclear power and home to the world's international language. Since it was not in monetary union the UK did not need to tear up a currency on leaving the EU. Ease of exit was also a part of the case for Brexit. *"We hold all the cards,"* and that leaving would be *"the easiest negotiation in history"* were amongst the predictions of Brexiters in 2016, when the Brexit referendum took place.

The chapter has two goals: first, to develop a better theoretical understanding of where the right of a member state democracy to exit the Union might contribute to its legitimacy; second, to discuss what we have learned about the difficulties of exiting from Brexit. The first half of the chapter argues that the right to exit can help legitimate the EU by contributing to sovereignty pooling and to state consent. The second half looks at the ease of exit. It argues from the example of Brexit that constraints on how easily a member state democracy can withdraw from the Union at least include its political economy and markets; its constitution and internal political order; its interconnectedness with other states and democracies and associated negative and positive externalities; and its historical responsibilities.

Exit, Legitimacy and Consent

One way in which the ease with which member states can exit the Union might contribute to its legitimacy has to do with possible benefits of sovereignty pooling. Briefly summarised, sovereignty pooling is a form of reciprocation. Democracies have collective action problems they cannot solve individually, so they reciprocally commit to using their sovereignty

together and in ways that change how each uses its own sovereignty (Keohane & Hoffman 1991; Keohane 2002). Reciprocal commitment between sovereigns substitutes for the absence of a common sovereign.

However, there is a predicament to which any form of sovereignty pooling through the EU needs to find an answer. On the one hand, the close interconnectedness of European democracies may require national democracies to bind themselves to the common rules and procedures of some kind of European Union if they are to constrain negative externalities and provide positive externalities in ways needed for them to meet their own obligations to their own publics to secure rights, justice, security, welfare and democracy itself (Lord 2017a & 2021a). On the other hand, there may be equally important arguments of right, value and feasibility (Lord 2021a) for why the Union should remain sufficiently controlled by member democracies to draw a large part of its legitimacy from them. Even a fully federal Union would be one in which the legitimacy of making law together and the legitimacy of making law apart presuppose and constrain one another.

All that suggests the Union needs authorisation and control by its member state democracies (Bellamy 2019) but not in ways that prevent those same democracies using the laws and procedures of the Union to bind themselves in ways needed to avoid negative externalities and jointly provide positive externalities. Needed is a form of self-binding where citizens of member states and their representatives can control as equals the means by which their own democracies bind themselves to any rules and procedures needed to manage inter-democracy externalities. Each member state democracy needs to retain powers to scrutinise, revise, recall or exit, all on the assumption, none the less, that – as long as a democracy remains a part of any framework for managing externalities between member states - it binds itself to rules and meta-rules it has itself agreed.

Each member state agrees the powers of the Union. But it does not do so on its own and, above all, it cannot further revise the powers of the Union on its own. Each member participates intimately in the making of EU decisions from conception to implementation. But it accepts that is a collective oversight (Lindseth 2010) by all member democracies and not an individual oversight it can monopolise on its own. Each member has

decision-rights. But it only has those rights as shares in decisions that can only be made jointly with others. All that pooling of sovereignty limits how far any one member state can avoid considering the external effects of its own proposals, preferences and behaviours on others (Joerges 2006).

But, crucially, the right to exit 'back stops' any pooling of sovereignty. Consider who has the final say over EU laws. The EU has the final say in so far as its Court has established the primacy of EU laws and a monopoly final interpretation of Union law. Member states have the final say in so far as they reclaim powers by leaving the Union. To labour the point, the EU has the final say in its own rule-making as long as member states choose to remain inside the Union. The member states have the final say in so far as they can leave the game, the rules, and form of association created by membership. The Union has ultimate powers of decision within its EU order. Member states have ultimate power to decide whether to remain a member of the Union's political order. Member state democracies are able to bind themselves into shared rules and procedures for managing their interconnectedness. Yet each can also exit from the overall structure of rules and procedures by which members bind themselves through their membership of the Union.

Sovereignty-pooling is also a form of co-consenting, and, as the rest of this section explains, the option to exit is important to consent, which is, in turn, important to legitimacy. What matters about consent is that it is a performative – a publicly performed act of commitment to a political order (Beetham 2013: 19) – that goes some way to create the very relationship to which consent is given. Consent also helps solve the specification problem: from all the possible political orders that could have a right to exercise political-power consent-givers commit themselves to just some as having their permission or obedience.

Each member democracy has consented to the Treaties of the European Union using its own democratic procedures. Yet their individual consent is only a part of what matters. If, as seen, Union powers can help manage externalities in ways needed for member democracies to meet their own obligations to their own publics – or for citizens to use their own democracies to accord one another rights and control their own laws – the value to any one member state democracy in consenting to Union powers depends on the others doing the same. Member state democracies can be

understood as a political community of co-consenters who associate together on the basis of their shared consent: who give their consent on the understanding that all the others will also comply with those Union powers that are properly exercised within the agreed terms of their shared consent.

Yet, consent, let alone co-consent, does not straightforwardly confer legitimacy. Consent can be wrongly given and wrongly withheld (Estlund 2007). If given too long ago, consent can also become a kind of 'rule by ancestors': agreed by previous majorities, but experienced by subsequent generations as laws they cannot easily change or control. That could be a problem for the EU. Over-time Union decisions may cumulate into a vast and interdependent body of law that no one democracy can easily change on its own. Fritz Scharpf (2009) has observed that the Union has consensus decision-rules because it is a multi-democracy political order. Yet, as he puts it, the very procedures that are supposed to protect individual member state democracies from being arbitrarily dominated by majorities of other democracies only work the first time 'round'. The same decision-rules - unanimity for treaty change and over-sized majorities for many ordinary decisions - that make it hard to impose an unwanted policy or law can subsequently make it hard for a member democracy to change a deeply unwanted policy or law.

Of course, the solution to 'rule by ancestors' is some kind of 'living' or continuous consent. Most policies and laws made under the treaties exercised under the collective supervision of elected governments (Lindseth 2010) Moreover, once made, Union decisions are often further adapted over time to what member states are willing and able to implement on the ground (Sabel & Zeitlin 2008). The formal-legal consent of member states to the Treaties – and to the accumulation of laws under the Treaties – can, arguably, be supplemented through a continuous, 'real-time' agreement of member states to Union decisions that could perhaps allow for a closer democratic control by domestic parliaments and publics than is commonly realized (Lord 2021).

Yet processes needed to secure a continuous consent of member state democracies to Union policy and law may create legitimation problems of their own. Collective oversight by national governments is precisely what some see as executive domination of Union decisions to the exclusion of

public contestation, debate or parliamentary supervision. It risks substituting technocratic management of problems between states for democratic politics within states. Instead of supervising international bodies on behalf of their publics, governments may use international bodies to take decisions in ways their own publics and parliaments find hard to control (Bohman 2007). Hence, Habermas' (2012: viii) complaint that euro-crisis decisions were dominated by a 'self-authorising European Council…confined to heads of governments' who – far from being supervised by national parliaments - undertook to 'organise majorities in their own national parliaments under threat of sanctions' for failing to deliver those majorities.

The close involvement of national governments in Union decisions is a part of what needs justification, and not just something that can provide representation and legitimacy. The Union changes the very statehood of its member state democracies. To be a member state of the EU is to be a different kind of state (Bickerton 2012). Even the core powers (Genschel & Jachtenfuchs 2014) of member states are exercised in ways that are shaped by their membership of the Union. The EU changes the way in which its member states rule, even where it does not itself rule. Elected national governments become a part of a power relationship that did not exist before in which those governments a) meet at least some of their obligations to their own publics by b) managing externalities between themselves with the help of c) policies and laws they agree with other members states within the institutions and procedures of the Union, all d) with a commitment to enforce those decisions on their own citizens.

What needs legitimation, then, is not just the Union itself. Rather it is the entire structure of power relations shaped by Union membership. That includes those powers and practices of member states that are reconfigured by membership: notably, the huge empowerment of national executives through their active everyday participation in Union decisions; and their making of some of the rules by which they coerce their publics through a process of shared law-making that is quite different in its powers, procedures and participants to law-making within single democracies.

But it is at this point that exit comes in. For some in the Brexit referendum, 'regaining control' was meant as a protest against national elites quite as

much as the European Union. At least it points to the theoretical possibility that an exit from the Union by means of referendum can be a withdrawal of consent, and a recall of powers, not just from one democracy's membership of the Union but also from power relations within that member state that govern and control its participation in the EU. To the extent that is a form of exit available to a member democracy – but it chooses not to exercise it - it is perhaps plausible to argue that a right of exit not employed is a source of consent and legitimacy.

Economy and Welfare

However, to return to Hume's point, are difficulties of exiting likely to empty the right of exit of any plausibility? What are the lessons of Brexit for the cost and feasibility of exiting? Starting with economic difficulties, one lesson of Brexit is that much will depend on what a withdrawing state wants to exit. Does it just want to exit the EU, its constitutional commitments, its decision rules, its aspiration to an ever-closer union between the peoples of Europe? Or does it also want to exit the single market? For sure, the single market depends on the EU's constitutional principles. Yet, the European Economic Area, (EEA) demonstrates that it is possible for non-members to participate in the single market with lesser commitments to the EU's political and legal order. On the other hand, there is a huge difference between continued participation in the single market and the next closest economic relationship: namely, a free trade area. The latter only removes 'at border' restrictions to trade. A single market also removes 'behind the border' restrictions: notably, differences in laws that don't just regulate markets but create them.

Before 2016, many (Rogers 2017) assumed that the main threat to UK membership of the EU was a single currency it could neither join nor ignore. But what destroyed UK membership was the single market the UK had enthusiastically promoted. A single market is nothing if not a massive exercise in shared law-making. It was the huge increase in EU law needed to create a single market that made it possible for leavers to win the Brexit referendum on the claim that the UK had to exit the EU to regain control of its own laws. So, it is consistent with the outcome of the referendum

that the UK Government quickly committed itself to leaving the single market, as well as the European Union (Barnier 2021: 88)

There is little agreement on the economic effects of Brexit. Yet, for our purposes of discussing how easy it is to exit the Union it is perhaps sufficient to summarise arguments on either side of the debate. The reader can then decide. The following are amongst possible economic costs of exiting the single market as well as the EU.

1: Countries do most of their trade with their neighbours, and with those with similar GNPs *per capita*, and, therefore, similar patterns of supply and demand.

2: The argument that the UK needs to leave the EU to trade more globally may get things the wrong way round. Building up comparative advantage within a single European market may be important to a country's ability to develop more global markets.

3: It is one thing to trade finished products. Interdependence is of a different order where supply chains and production are integrated across borders, as they are in the case of the UK and EU.

4: By seeking free trade agreements – and rejecting the shared law-making needed for single markets – the UK is a service economy in pursuit of trading relationships more suited to a goods economy.

5: The EU's single market may be a 'natural monopoly' in market-making within the European region. Only it has the scale to reap the full benefits of continent-wide market integration or to set standards alongside the world's other global rule-makers (Bradford 2020: 25). If that means the UK ends up unilaterally approximating EU rules it could have less control of its own laws than as a member with full decision rights.

6: The UK is leaving a single market that became a key part of the political economy of the British state. The financial single market contributed massively to the UK's tax base in ways that helped the UK sustain a financial sector that was five times its GNP, not to mention the remnants of the UK's welfare state and social compromise.

Against, those arguments defenders of Brexit variously claim the following. Europeanisation was the past. Globalisation should be the UK's future. Brexit is happening at a unique historical juncture where transformations in economy and society are opening up new ways of cooperating between states and democracies. Brexit will help transform relationships in a world that is itself transforming. Are single markets always better and deeper forms of economic integration than free trade agreements? Doesn't that depend on the quality of the standard-setter? Hence, various claims that the rules and institutions on which the EU's single market is based are slow, one-size-fits-all, hard to change, meddling, soaked in a bureaucratic culture of rule worship, and prone to dysfunctional compromises as a cost of agreeing anything under EU decision-rules. For economic advocates of Brexit, free trade agreements with all parts of the world – with Europe itself and with rising markets of the future – could plausibly beat continued participation in the EU's single market. Whilst the EU struggles to decide much at all in its scarcely workable institutions, the UK could move quickly to sew up new agreements throughout the international trading system.

Shall we say, by way of a timid conclusion, that how far exiting is easy, or how far it is a 'plunge into an icey sea' (See earlier quotation from Hume), depends on arguments in the last paragraph trumping the economic costs identified earlier.

Constitution and political system

Another potential constraint on exiting is the constitution and political system of the withdrawing state. Again the UK illustrates. Precisely because it started from a strong conception of parliamentary sovereignty, the UK used its membership of the EU to transform its own internal political order by developing rights and devolving powers to Northern Ireland, Scotland and Wales in ways that would have been harder in a system of unqualified parliamentary sovereignty (Bogdanor, 2019).

A political system that had qualified parliamentary sovereignty in relation to the EU could more credibly commit to not using parliamentary sovereignty to alter rights or devolutions of power at the whim of changing majorities in the Westminster Parliament. The same constraints on the sovereignty of the British state, which convinced some that the EU

was a form of rule by others, came – during the course of the UK's membership – to be understood by key groups in Northern Ireland, Scotland and Wales as useful protections, if they were to be guaranteed roles in governing themselves within their parts of the UK.

Those constitutional constraints are, however, just one way in which the UK's exit from the EU has been complicated by a system of deeply divided politics. The UK is now divided along multiple cleavages. As well as territorial cleavages between its whole and its parts, the UK now has two distinct left-right cleavages: one preoccupied with markets, the other with immigration and identity. Brexit itself – and how it should be done – are contentious along all the multiple cleavages of the UK's new politics: on questions of economics, identity and territory. All that has made it hard to identify a stable equilibrium within British politics for any one version of Brexit.

An agreed democratic process should be able to settle even acute, complex and multi-dimensional disagreements. Instead, the divisions of Brexit have been deepened by the UK's conflictual political system. At 35%-40% – or a mere plurality and not a majority of the vote – a political party can win an overall majority of representatives and undivided control of parliament and government. Below 25%, a party can risk annihilation (unless its support is regionally concentrated). The result is an extraordinarily competitive system with strong incentives to politicise, seek controversy and decide without much compromise where a parliamentary majority can be secured on 40% (or sometimes even less) of the vote. The polarisation of opinion into leavers and remainers made it hard to use the political system to identify an agreed way of exiting the EU. Yet the political system further discouraged compromise by enabling, through the 2019 election, a form of Brexit that was at best supported by a plurality, not a majority.

Historic Responsibilities

By including Article 50 in the Treaties, the EU acknowledged a right of members to withdraw. By not requiring member states to have reasons for leaving, the Treaties imply it is enough for a withdrawing member to have its own reasons. It may just be that it no longer feels a part of the whole or that it wants to make its future alone or elsewhere. It owes no justifications

to others. Yet, in having their own reasons for leaving, ex-member democracies will be constrained by obligations from their own pasts (Miller 2007); or, at least, they will find it hard to affirm commitments going forward without acknowledging historic responsibilities. Unless the UK was now prepared to ignore continuing commitments to a process of reconciliation in Northern Ireland that had been facilitated by membership of the EU – and unless the UK was prepared to deny continuing commitments to 5 million citizens who had relied on rights of free movement which the UK had agreed through its membership of the Union – Brexit would need to avoid a border in the island of Ireland and guarantee the continued residency rights of free-movers not just in UK law but in the very system of EU law that the UK thought it was leaving. Historic responsibilities would turn out to be amongst the most important constraints on the UK's exit from the EU (Lord 2017b).

Conclusion. Interconnectedness and Democratic Self-Rule

Let's now return to where we started. Without being able to deal with inter-state and inter-democracy externalities, single state democracies will find it difficult to make adequate choices over security, financial systems, pandemics or climate change. Citizens will also find it difficult to use their own democracies to accord one another rights and obligations, to agree standards of justice, and to control their own laws, as equals (Lord, 2021a & b). After all, It is hard to develop rights and laws against polluters, monopolists, tax-evaders or terrorists, if those sources of domination are located in other states.

But that need not mean that Brexit is mistaken. To the contrary, if interconnected democracies need 'beyond-state' bodies to help them meet their own obligations to their own publics and their own standards of democratic self-rule, they may even have a duty to leave or dissolve those 'beyond-state' bodies if they can identify better ways to manage externalities between themselves. The worry, though, is that Brexit understands the control of laws in ways that rule out a form of sovereignty pooling based on self-binding to shared law-making with other democracies. Brexit is a risky bet that inter-democracy cooperation will

always be enough, without much in the way of shared laws and institutions. Given that everyone else might be wrong, it is important that any one democracy should be able to persuade the rest to cooperate in new ways. Yet, the architecture of cooperation also has to be a matter for all democracies. You can't play cricket when everyone else is playing football was amongst the most tiresome clichés of Brexit. The only problem is that it is true.

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Chapter 4

Differentiated Integration – The Citizens' Perspective[52]

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Largely considered a taboo up until the late 1980s (cf. Dahrendorf, 1979; Stubb, 2002), Differentiated Integration (DI) has, at least since the entering into force of the Maastricht treaty, become a reality of the EU institutional setup and its policies (cf. Leruth & Lord, 2015; Leuffen, Rittberger, & Schimmelfennig, 2022). Instances of DI in the area of secondary law are documented by Schimmelfennig and Winzen (2020), Duttle et al. (2017), and Winzen (2016). DI can be defined as an incongruence between 'the territorial extension of European Union (EU) membership and EU rule validity' (Holzinger & Schimmelfennig, 2012, p. 292); for a similar definition using the term differentiation, see Kölliker (2001, p. 127). As documented by Burk and Leuffen (2022), the literature on DI has been on a steady rise since the late 1990s, and has moved from mostly legal, conceptual and descriptive contributions to explanatory research. The focus of this latter strand has long been on the causes of DI (cf. e.g. Leuffen,

Rittberger, & Schimmelfennig, 2013), to some extent missing out on its consequences (Burk & Leuffen, 2019; Schimmelfennig, Leuffen, & De Vries, 2023). This shortcoming, which has been taken up by more recent research. However, before the onset of the four Horizon 2020 consortia (EU3D, InDivEU, EUIdeas, DICE), knowledge about public support of DI, has been less than scarce. This gap can be considered problematic, as the legitimacy of (differentiated) integration hinges on citizens' support.

In this chapter we report key findings on citizens' attitudes on DI, generated by the EU3D project. Most of our empirical results build on the Comparative Opinions on Differentiated Integration (CODI) dataset, constructed by Dirk Leuffen, Max Heermann and Julian Schuessler, in cooperation with Lisanne de Blok and Catherine de Vries (cf. Schuessler, Heermann, Leuffen, De Blok, & De Vries, 2023). However, we also report results from data provided by the Eurobarometer on support for a two speed-Europe item (Leuffen, Schuessler, & Gómez Díaz, 2022). CODI extends these insights, as it integrated different types of DI (e.g. a 'core Europe', an 'à la carte', a 'multi speed model' of DI, along with items on external differentiation, tapping into citizens' support of aligning non-EU-states into selected EU policies). Moreover, we have, for the first time, incorporated experiments into the study of public support for different models of DI (namely, we designed and implemented a conjoint analysis and a vignette study).

Our research reveals a strong variation at the individual and country levels for different types of DI, as well asover time. The perceptions of the risks and chances of DI, as well as its normative appropriateness, vary for citizens with different dispositions and political attitudes. Moreover, as citizens are embedded in different country contexts, their member state of residence also affects their preferences regarding DI. When evaluating DI scenarios, citizens typically consider two types of questions or dimensions: First, what are the implications of DI for the EU and European integration? Second, how does DI affect the EU's member states and their autonomy? Depending on how strongly citizens are in support of EU integration, and/or national autonomy they respond differently to different possible DI scenarios. Our research, for instance, highlights that a 'multi-speed model' is preferred by pro-EU citizens over an 'à la carte' model, which could be considered as undermining the EU's unity. At the

same time, we are able to show that there is a broad consensus against any forms of DI that would cause negative externalities (cf. also Lord, 2015, 2021) or freeriding – by fellow member states or outside states. Moreover, citizens are largely in favour of more inclusive forms of integration – in this respect, the enhanced cooperation procedure (Article 20, Treaty on European Union) resonates well with public sentiment. We take these two findings as an indication that DI is, in principle, appreciated by citizens as long as it does not exert dominance on EU member states. To be legitimate in the eyes of the public, a differentiated EU must find the right balance between respect for member-state autonomy and respect for the EU's common interests and norms. Lastly, our research highlights that when formulating positions on DI, citizens, at least to some extent, are able to abstract from DI's consequences for their own member state and take European fairness considerations seriously. This is good news for the idea to include citizens more closely into constitutional decision-making in the EU, for example through participatory instruments such as during the Conference on the Future of Europe.

Sketching out the problématique

On 8 December 2022, European Union justice ministers rejected Romania and Bulgaria's application to join the border-free Schengen Area, even though it was officially recognised that the two countries fulfilled the technical criteria for membership. This political decision was criticised as '*discriminatory*' and '*deeply unfair*' (Ulceluse, 2022). From the perspective of its critics, the decision cemented a two-tier European society and, in this respect, constitutes a pathological form of *differentiated integration.*

The European Commission's White Paper on the Future of Europe, published in 2017 in response to the shock of the Brexit referendum, relaunched the political debate about differentiated integration. One of the European Commission's '*scenarios for the EU27 by 2025*' explicitly suggested that '*those who want more do more*'. Political proposals for a more differentiated EU argue that differentiated integration would make decision-making and compromise-building easier in a diverse EU (Bellamy & Kröger, 2017; Bellamy, Kröger, & Lorimer, 2022; Stubb, 1996). However, Bulgaria's and Romania's Schengen experience illustrates that

differentiated integration may also lead to perceptions of unequal treatment of different member states.

CODI Dataset

We designed and implemented the CODI dataset to move beyond the 'two-speed Europe' item, regularly included in Eurobarometer surveys (from 2005 to 2007, and from 2011 onwards), acknowledging the semantic, descriptive and causal differences between different types of DI (cf. Holzinger & Schimmelfennig, 2012; Schimmelfennig & Winzen, 2020; Stubb, 2002). We here largely draw on Schuessler et al. (2023), which first introduced the CODI dataset.

CODI was designed as an online survey, fielded by the survey firm Respondi in February and March 2021 in eight EU member states (Denmark, France, Germany, Greece, Ireland, Italy, Netherlands, and Poland). The sample includes states that differ by size and by geographical location (East, North, and South). Together, the selected countries represent close to two-thirds of the EU population. There are around 1500 respondents in each country yielding a total maximal sample size of around 12,000. We used quota sampling with respect to national marginal distributions of age groups, gender, and sub-national regions.

Table 1 lists the battery of survey questions designed to operationalize the key DI concepts and logics. Our operationalizations aimed to cover most of the relevant DI types and procedures, while at the same time keeping formulations simple enough to ensure that respondents can understand them. We developed each item in a larger research group and pre-tested them to ensure that there were no excessive 'don't know' responses or obvious inconsistencies in response behaviour across the items. Support for each statement is measured on a 1 to 5 Likert scale; an exception is the binary 'two-speed' Europeitem, which we borrowed from the Eurobarometer.

Preferences for a 'multi-tier' ('core' Europe) conception are measured by support for the item: 'The idea of building a core Europe, bundling the most integration-friendly states, is a good idea'. The 'multi-menu' ('à la carte') conception is captured by the statement: 'Member states should generally be allowed to pick and choose from EU policies as they desire'.

We have decided not to design a new item for the 'multi-speed' model, but to instead replicate the binary Eurobarometer item:

As regards the idea of a 'Two Speed Europe,' which of the following comes closest to your personal preference? Those countries which are ready to intensify the development of a common European policy in certain important areas… (i) should do so without having to wait for the others or (ii) should wait until all Member States of the EU are ready for this.

This allows us to not only replicate the findings of previous studies working with the Eurobarometer item but also to validate the item in comparison with our own measures.

In addition to the grand models of DI, we inquired about respondents' support of procedural rules concerning the granting of opt-outs, as well as the exclusion of member states based either on their wealth or their (dis)respect for fundamental EU norms. We asked the respondents to react to the statement that 'Member states should be allowed to opt-out of specific policy areas only after receiving the consent of the other member states'. This item addresses support for institutional provisions designed to prevent a 'free-riding' behaviour of opt-out states. In other words, how do citizens trade off individual states' sovereignty aspirations and community interests in the case of exemptive differentiation? We operationalize discriminatory differentiation with the statement: 'No state should be excluded from common EU policies because it is less wealthy than most other EU member states'. Moreover, we investigate whether discriminatory differentiation should be used as a tool to sanction norm-violating states by asking about support for the statement: 'No state should be excluded from common EU policies even if it breaches some of the core norms and values of the EU'. This item relates to the current debate on how the EU should respond to processes of democratic DI grand models.

Finally, two items address external differentiation asking whether non-EU countries should be generally excluded from EU policies ('Non-EU states should generally be excluded from the participation in EU policies') or whether they may participate in selected policies if they contribute financially to the EU budget ('Non-EU states should be allowed to

participate in selected EU policies if they adequately contribute financially to the EU'). The latter item reflects the arrangements realized in the EEA.

We have also embedded two survey experiments in the CODI survey. First, a vignette experiment presented survey participants with a hypothetical DI policy initiative and asked to what extent they would support the initiative. We varied the following attributes of the DI initiative: (i) the reasons to opt for differentiated instead of uniform integration, (ii) the policy area, (iii) whether or not the respondent's home country would participate in the DI policy, (iv) whether the non-participating member states approve or disapprove of the DI initiative, and (v) the potential positive, neutral or negative external effects, which are expected to result from the proposal. The main aim of this vignette experiment was to see how citizens evaluate their own affectedness by DI externalities. The second experiment, a conjoint design, investigated citizens' preferences regarding the institutional design in which DI decisions should be taken. To do so, survey respondents evaluated different procedural options against each other.

Results

The results reported here are documented in greater detail in Leuffen et al. (2022), Schuessler et al. (2023), Heermann and Leuffen (2023, forthcoming), as well as in two still unpublished papers.

Leuffen et al. (2022) investigate support for the Eurobarometer's 'two-speed Europe' item. The article shows substantive variation at the individual and the country, or even macro-regional levels: supporters of a two-speed Europe model are marked by stronger liberal economic attitudes; in contrast to previous findings on the determinants of general EU support, we do not find robust correlations with socio-demographic variables. Moreover, the data reveal striking differences amongst macro-regions: in particular, today's support for a 'two-speed Europe' is much lower in Southern European states than in Northern or Eastern member states. Interestingly, the pattern was mirror-reverted in 2005 to 2007 – we attribute this shift towards opposition to a 'two-speed Europe' in Southern member states to negative repercussions of the Eurozone crisis. Citizens seem to be sociotropically concerned about potential negative implications of DI for their countries. Whereas this pattern is largely

corroborated by Schuessler et al. (2023), and de Blok and de Vries (2023), these latter studies also show that citizens with a more positive attitude towards European integration, are more inclined to support a 'two-' or 'multi-speed model' of integration.

Moving beyond the Eurobarometer item, Schuessler et al. (2023) use the CODI dataset to show that citizens are not in principle opposed to differentiated integration. There are relative majorities for the 'multi-speed', 'multi-tier' and – surprisingly – also for the 'multi-menu' model (*Figure 1*). However, it becomes clear that citizens have nuanced procedural preferences (*Figure 2*). In particular, citizens want consensual and inclusive differentiation. Citizens generally prefer larger integrating groups over smaller groups. Opt-outs should not be declared unilaterally; rather citizens want member states to agree collectively on opt-outs.

The conjoint analysis reveals that when it comes to the involvement of the European Parliament, citizens display a certain ambivalence. While they support giving the Parliament the right to propose differentiated integration, they oppose granting it a veto over differentiation choices. Thus, differentiation choices seem to be considered a prerogative of the member states.

Citizens also have nuanced opinions on the question of when it is permissible to exclude member states from common policies. Citizens oppose arbitrary exclusion, for example, based on how wealthy EU countries are. However, citizens are open to the exclusion of member states from common policies when they think that there is a legitimate reason to do so. For instance, a relative majority of respondents supports the temporary exclusion of member states that violate basic EU norms, such the rule-of-law (see also Heermann & Leffen, 2023, forthcoming). This corresponds to the finding that during the COVID-19 pandemic, German citizens were less supportive of providing economic support to EU countries accused of rule-of-law violations (Heermann, Koos, & Leuffen, 2022).
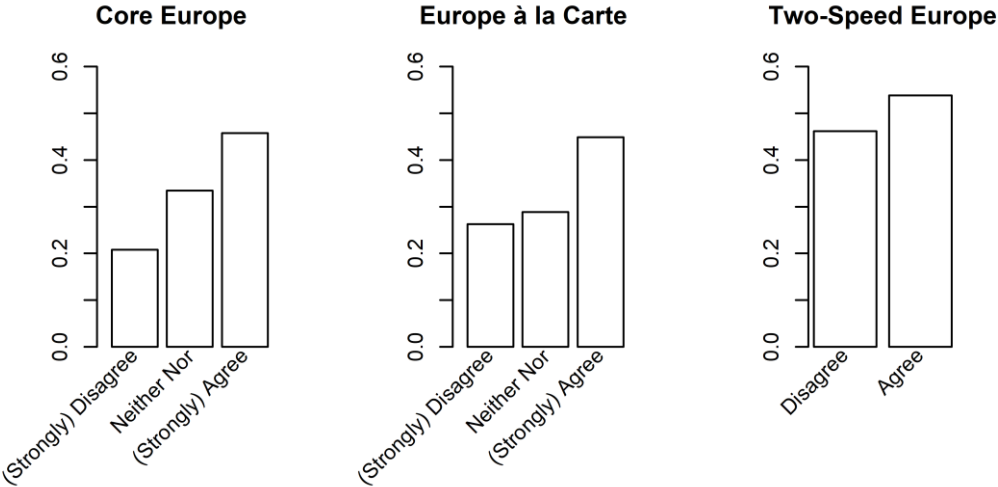
Figure 1: Public opinion on different models of differentiated integration
Core Europe: 'The idea of building a core Europe, bundling the most integration-friendly states, is a good idea.'
Europe à la Carte: 'Member states should generally be allowed to pick and choose from EU policies as they desire.'
Two-Speed Europe: 'Countries which are ready to intensify the development of a common European policy in certain important areas (I) should do so without having to wait for the others, or (II) should wait until all Member States of the EU are ready for this.'

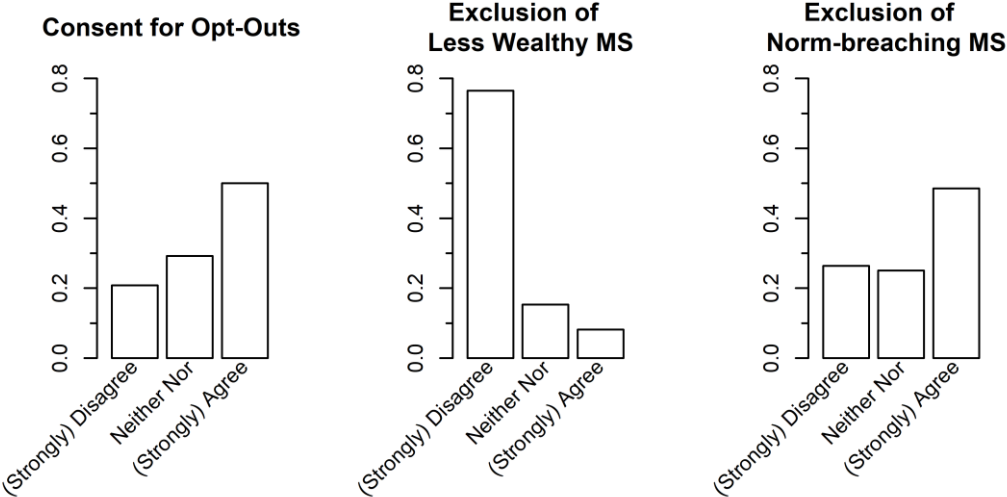Figure 2: Public opinion on procedural aspects of differentiated integration
Consent for opt-outs: 'Member states should be allowed to opt-out of specific policy areas only after receiving the consent of the other member states.'
Exclusion of less-wealthy member states: 'It should be possible to exclude member states from common EU policies because they are less wealthy than most other EU member states' (recoded item).

Exclusion of norm-violating member states: 'It should be possible to exclude member states, which breach core norms and values of the EU, from common EU policies' (recoded item).

The CODI data also shows significant variations between individuals and between countries or regions. On the individual level, EU supporters prefer temporary differentiation, and want to limit permanent opt-outs. In contrast, citizens who are sceptical about the EU are more likely to support an unconstrained pick-and-choose model.

We also find notable regional variation. Confirming Leuffen et al (2022), Schuessler et al. (2023) find that citizens in Southern Europe are less supportive of a 'multi-speed' Europe than Northern Europeans. Citizens in Southern Europe seem concerned about being excluded and left behind because of their home countries' struggling economies. Related research finds the same logic in Bulgaria and Romania, where continued exclusion from the Schengen Area has soured citizens' attitudes towards differentiated integration and the EU (Vergioglou & Hegewald, 2023; Winzen & Schimmelfennig, 2023).

These fears also explain why, in our survey, Greek and Italian respondents are less supportive of excluding norm-violating member states from EU benefits. They might have considered the Stability and Growth Pact as a part of the EU's core norms. Perhaps unsurprisingly, a majority of Polish respondents also object to the exclusion of norm-violating member states from EU policies, realising that their country might be a target of such a measure. More generally, the country differences make clear that citizens worry about how their home country might be affected by differentiated integration.

To more systematically test whether citizens evaluate differentiated integration primarily through the lens of how their home country will be affected, we asked survey respondents to evaluate hypothetical differentiation scenarios, in which we varied, among other things, the effects of differentiation on their home country and on the other EU countries. These survey experiments reveal a clear red line for citizens: differentiated integration should not leave the non-participating member states worse-off. In other words, differentiation should not impose negative externalities on those member states, which are not part of the

integrating subgroup[53]. This finding holds irrespective of whether the respondent's home country would be affected by these negative effects. This is good news for those who believe that European citizens can be trusted to contribute without a nationalist bias to the debate on the future of Europe.

Finally, our survey data also considers external differentiation (*Figure 3*). European citizens are in principle open to the participation of third countries in EU policies, provided that they contribute adequately to the EU's finances. Financial agreements with third countries, such as contributions to the EU's cohesion funds, are therefore considered appropriate by EU citizens. This finding is in line with the implications of our results for internal differentiation: citizens are willing to support differentiated integration if it is fair in terms of procedures and outcomes.
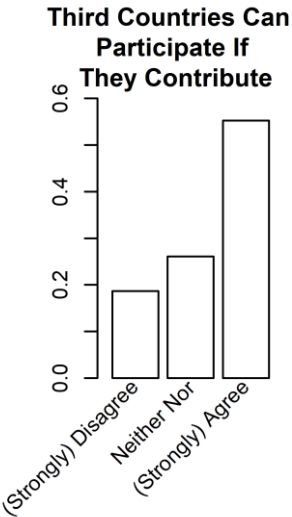
Figure 3: Public opinion on external differentiation

Conditional external differentiation: 'Non-EU states should be allowed to participate in selected EU policies if they adequately contribute financially to the EU.'

Conclusions

The EU is an increasingly differentiated political system. In a diverse Union of 27 member states, differentiation can be an instrument to: (a) respect national sovereignty concerns of individual members, and to (b) account for differences in member-state capacities. Moreover, external

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[53] This result corresponds nicely to analyses of differentiated integration in normative political science (Lord, 2021).

differentiation allows the EU to forge close and mutually beneficial cooperation with third countries in its neighbourhood. Yet differentiation also entails the risk of being perceived as discriminatory, creating the impression that some EU countries and their citizens are second-class Europeans, as in the case of Romania's and Bulgaria's failed attempts to join the Schengen Area.

Our research on public opinion on differentiated integration shows that European citizens are conscious of these risks and benefits. Citizens are able to distinguish between different forms and procedures of differentiated integration. In particular, our research shows that citizens evaluate differentiation based on two criteria: its perceived effects on (1) member-state autonomy and (2) the EU as a whole. While individual citizens may weigh these two criteria differently, our data shows that citizens care about the fairness of the procedures and outcomes of differentiation:

Differentiation should be open and inclusive: Citizens prefer larger to smaller integrating groups, and all EU countries should be able to join in over time. Individual opt-outs should require the consent of the other member states. In particular, citizens who want 'more Europe' prefer temporary to permanent differentiation.

There should be no arbitrary exclusion of member states from common policies. Citizens from less wealthy member states in particular worry about being left behind or discriminated against. Perceptions of discrimination can reduce public support for the EU in these countries. Temporary differentiation should therefore be designed and communicated in a way that will avoid perceptions of discrimination. Once member states fulfil agreed capacity criteria, they should not be prevented from joining in.

Not all instances of exclusion are perceived as arbitrary. Citizens are open to temporarily excluding member states that violate core EU norms – such as the rule of law – from the benefits of common policies. However, support for such sanctions is much lower among citizens of potentially targeted countries.

European citizens agree on a clear red line: differentiation should not make non-participating member states worse off.

Citizens welcome the conditional participation of third countries in select EU policies, provided that they contribute financially to the EU. External differentiation is considered a legitimate instrument in the EU external affairs toolbox.

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Chapter 5

EU differentiation in the digital era: Analyses of professional news coverage and Twitter debates

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Introduction

In this chapter, we report results from our analyses of the coverage of EU differentiation in both traditional and social media and discuss possible contributions to EU3D's theoretical framework. Differentiation is a central, yet controversial and complex aspect of European integration and the way EU policies and objectives are communicated to the citizens. Specialised journalists are often needed to comply with this challenge of public communication. In terms of traditional media coverage, EU correspondents are best placed to function as translators of EU technocratic and differentiated governance. Such a function is a prerequisite to critically assess the content and quality of decision-making,

when demands of national EU readerships for EU news are limited and resources for quality journalism restricted.

Our analysis contributes to extant research in the following ways. On the one hand, we zoom in on the role of the particular cohort of EU correspondents that is little studied, yet, as we have argued elsewhere (Michailidou and Trenz 2023), play a critical role in bridging the communicative gap between European publics and EU institutions, not necessarily by fostering a more positive public opinion of the EU polity, but by facilitating public opinion formation based on a plurality of opinions and knowledgeable discussion of the implications that EU governance and differentiated integration have for EU citizens' lives. Our focus on EU correspondents as key translators and critical watchdogs of EU differentiation comes at a critical juncture for democratic public spheres in Europe: Not only is the overall complexity of the EU institutional set-up and policies increasing, but the public communication capacities of the system decrease. This is in large part due to a generalised decrease in the supply of quality journalism (Piccard 2018). Nevertheless, in the case of the EU in particular, the effects of this decreasing availability of quality journalism are reinforced by the EU's failure to deliver on its own goal to invest in better and more efficient public communication (Rauh et al. 2020). EU correspondents are among few journalists who may still have both the in-depth knowledge and appropriate budget and access to EU institutional networks to be able to present and analyse the developments in the EU polity strcture in a manner that is accessible to as broad EU publics as possible. At the same time, this specific media perspective is largely missing from the EU differentiation literature. Schimmelfennig, Leuffen and de Vries (2022) document in detail both the, until recently, lack of knowledge on the public salience and assessment of differentiated integration and on the effects of differentiated integration on support for the EU; and the surge of studies focusing on precisely these aspects in recent years (Leuffen et al., 2022; Schraff and Schimmelfennig, 2020). Despite this growing body of data documenting the correlation of differentiated integration and public opinion regarding the EU, the lack of empirical findings regarding the ways in which differentiated integration is framed in news media persists, even though the role of media coverage in shaping public opinion about the EU has been extensively documented in the past three decades (indicatively, de Vreese and Boomgaarden, 2005;

van Spanje and de Vreese, 2014; Vliegenthart et al., 2008; Marquart et al. 2019).

As our main project contribution, we first theorise how this function of EU correspondents as a translator and critical watchdog of EU differentiation might materialise in a differentiated EU, and then test these theories with a cross-national analysis of news reports on differentiation in the EU. This is motivated by the idea that media coverage of differentiation can affect not only what the public knows but also what it thinks about the EU.

Mimicry, fragmentation, or decoupling? Three scenarios for the control function of EU correspondents

The case for support and protection of journalism in the digital era – often labelled as 'post-truth' – as a core element for national, European, and global democracy has been clearly and loudly argued both by scholars and government. Building on institutional approaches of professional journalism (Deuze and Witschge 2018) and normative arguments for universal standards of journalistic conduct (Auman et al. 2020; Frey et al. 2017; Ward 2008 and 2016), we focus here on the rather overlooked Brussels Press Corps. We discuss the function of high-quality professional journalism as a guarantor of democracy in the face of EU differentiated integration and growing complexity of governance. Caught between demands for expertisation and national segmentation, the Brussels Press Corps makes an ideal case not only to empirically examine the transformation of journalism work standards, funding pressures and role expectations at the transnational level, but also to normatively argue for the need to safeguard the independence and viability of specialist and transnational professional journalism bodies, even if these appear increasingly irrelevant from a commercial perspective.

EU technocratic governance and differentiated integration have challenged the capacities of EU actors and institutions to build the type of public understanding that is needed for democratic legitimacy. The complexity of EU governance (Bátora and Fossum 2019; Radaelli 1999; Stie 2015) cannot easily be translated into public parlance. Communicating the European Union poses an epistemological challenge of what could be called a meta-translation problem: new concepts need to be developed, but the explanatory force of the new vocabulary remains uncertain and is

often incongruent with the familiar terminology and imaginary associated with the nation state and with national democracy. Understanding the EU presupposes reflexivity, which however is inextricably related to unequally distributed social competence, power and opportunities for learning (Kauppi 2010). Communicating the EU further poses a pragmatic challenge of what could be called an 'every-day translation problem': With high levels of governance complexity, the language that is used by the EU bureaucratic apparatus in their every-day communication becomes more and more encrypted. Understanding the EU thus presupposes high specialisation and expertise in various policy fields.

At the same time as the overall complexity of the EU institutional set-up and policies increases, the public communication capacities of the system decrease. Not only has the EU not delivered on its own goal to invest in better and more efficient public communication (Rauh et al. 2020), but the available media and communication infrastructures that could provide translations are also weakened by the general decline of quality journalism (Picard 2018) with direct consequences for the availability and quality of EU news. To create a public understanding of EU governance, journalists are needed as specialists with expert knowledge in their daily monitoring of the performance of the EU and its institutions and with critical capacities to relate differentiation, dominance, and democracy. Journalists and especially, EU correspondents further play an important role as agents of unification of EU journalism in the way their news-coverage relies on collaborative schemes and shared interpretative frames that bridge national media systems and languages.

Regarding these two complementary functions of European journalism as experts of differentiated governance and as a unified voice of the public interest, the expectation has long been that European integration would lead to a convergence of national media and the public sphere media in the service of EU democracy (Fossum and Schlesinger 2007). What we witness instead over the last two decades is an increasingly tense and opposing relationship between EU institutions, journalism, the news media, and audiences (Michailidou et al. 2014; Frangonikolopoulos and Poulakidakos 2017). We thus observe two mutually reinforcing trends at work, which both shape and challenge the public communication capacities of the EU: the growing complexity of the EU political system,

on the one hand, and the systemic crisis of quality journalism going hand in hand with the fragmentation of the field of news production and consumption, on the other.

The challenges of covering the complexity of transnational governance require journalism to re-invent itself. Journalism is not only in need of a new business model to make quality news profitable; it also needs to build new capacities to 'go transnational' and act as a 'watchdog' of what their governments do abroad. Transposing the normative requirements for the journalistic profession and also the challenges it faces globally on to the EU political landscape, we use the case of the Brussels Press Corps to discuss three possible scenarios of how this re-organisation of journalism depends on alliances between specialised correspondents and institutions. The question of how such EU journalism can consolidate compliance with classical functions of journalism of information, control and political empowerment is still empirically open, but it is a question of institutional design and of normative choices that are taken by the various practitioners in the field: EU institutions, which build public communication capacities; and journalists, who build critical capacities to monitor the EU differentiated system of governance.

We have identified three scenarios anticipating the role of EU correspondents as translators of EU technocratic and differentiated governance: fragmentation, decoupling and mimicry. The plausibility and desirability of these three scenarios was discussed based on previous trends and evidence of journalism development and in light of the normatively driven expectation for EU journalism as a critical watchdog of EU differentiated governance. Subsequently, we have looked at first evidence for the materialisation of these scenarios in the current context of the Covid-19 pandemic and have assessed the most recent EU policy initiatives in support of EU journalism, plural media landscapes and informed news.

Fragmentation

A first possibility is that journalism differentiation distracts from the complexity of EU governance and does not provide any framework for the articulation of aggregated and targeted critique of the EU, its institutions and policies. The more journalism would differentiate into

news segments, the more EU news would become marginalised. Differentiated journalism would focus on random details but not provide the overall story or narrative of European integration. The EU news landscape would be fragmented by diverging news agendas or randomly selected news. Storylines would be lost. The attention of electorates would be dispersed at the price of a loss of power of control. The capacities of the Brussels Corps of EU correspondents to monitor EU governance would be diminished as their home offices would require them to apply news selection criteria, such as negativity and scandals that respond to fragmented audience taste. Ultimately, if fragmentation persists, EU correspondents would become irrelevant, as neither their home office nor national audiences would pay attention to their inputs. The fragmentation of journalism and the corresponding dispersion of EU news could however also easily be reverted if EU policies gain relevance and focus public attention. Such a reversal can be introduced by external events such as the Covid-19 pandemic with de-differentiating effects on both EU governance and journalism.

Decoupling

A second possibility is that journalism differentiation and EU differentiation are unrelated and do not speak to each other. Such a scenario is possible, because journalism differentiation follows mainly territorial lines, while EU differentiation follows sectoral lines. Consequently, the distance between the EU differentiated system of governance and the differentiated system of journalism would continue to grow. Journalists would become more nationalists with less economic and professional capacities to monitor EU governance, and EU institutions and actors would find it more and more difficult to respond to news criteria and make it into the news. The capacities of the Brussels corps of EU correspondents to monitor EU governance would thus diminish over time, while their national segmentation increases. EU correspondents would be a niche followed by a small transnational elite audience, while mainstream national journalism would serve exclusively national audiences and make use of nationalist discourses and frames of interpretation. The impact on EU legitimacy could be an overall increase of support for differentiated integration or utilitarian approach of EU membership, if not of outright Euroscepticism, as previous research on the

link between national framing of EU issues and public justifications suggests (e.g. de Vreese 2007; de Wilde et al. 2013).

Mimicry

A third possibility is that a differentiated EU journalism is an adaptation to EU differentiation in a way that journalists professionalise and specialize as experts of EU governance. This scenario would potentially enhance the control function of journalists who could carefully follow sectoral developments and monitor functions and malfunctions of EU-policy making. Specialised EU correspondents could closely follow the activities of EU agencies, institutions and differentiated cooperation schemes (e.g. authorisation of vaccines by the European Medicines Agency, monetary policies by the European Central Bank, agrarian policies by the European Commission DG Agriculture). The capacities of the Brussels corps of EU correspondents to monitor EU governance would be enhanced by socialization, professionalization and specialisation. They would act as a body with an established system of work division. Their work would contribute to the building of EU legitimacy through their focused information and specialised news agendas that serve the needs of niche audiences. Yet, such as a differentiated EU journalism would contribute only little to the formation of an informed public opinion and would have only reduced capacities to re-establish trust in journalism. EU differentiated journalism would develop monitoring capacities of EU differentiated policies, but it would not provide adequate solutions to overcoming the information deficit of average citizens.

A cross-country analysis of news reports on differentiation in the European Union

Design of the study

To shed light on the performance of EU journalism in communicating EU differentiation, we have designed a cross-country analysis of EU news coverage that sheds light precisely on the ways in which the EU correspondents mediate the complexity and controversy of the differentiated EU polity. To this end, we have opted for a qualitative research design, which allows us to conduct in-depth analysis of EU correspondents' work in the three EU member states with the highest degree of differentiated secondary legislation, namely, Denmark,

Germany and the UK. Our sampling period focused around six events spanning the years 2015 to 2020 allowed us to capture any developments or nuances in EU differentiated integration reporting over time. All events selected were| broadly related to the area of Justice and Home Affairs, which is one of the highest differentiated and most controversially discussed policy area in the EU likely to generate high visibility and intense media debates. To ensure robustness and reliability of analysis, we built on the qualitative coding experience of European parliament debates covering EU differentiated integration and based our coding scheme on the conceptual framework of the EU3D project (Fossum 2019). We were thus able to achieve high levels of inter-coder understanding / interpretation of the core concepts we used to analyse EU differentiated integration. Our findings, though not surprising in terms of the persistent anchoring of EU news on national frames, do leave room for restrained optimism regarding the capacity of EU correspondents to produce in-depth, yet accessible in terms of language and presentation, analyses regarding the implications of EU differentiated integration for the future of the EU polity.

Discussion of main results

Our study started from the premise that if citizens are to be in a position to make meaningful contributions to the debate about the future of the EU and the shape differentiation within it should take, citizens need to acquire knowledge about the multi-level governance system that characterises the EU, about the division of competences between member states and EU institutions and about the differentiated integration process. We have further argued that at this critical junction for the EU polity, high-quality professional journalists have a crucial role to play as a guarantor of democracy in the face of differentiated integration and growing complexity of governance. EU correspondents are best placed to function as translators of EU technocratic and differentiated governance, as they combine insights into the Brussels-based policy-making mechanisms with first-hand understanding of national politics and interests. We then set out to investigate how these two complementary functions of European journalism as experts of differentiated governance and as translators that make the EU understandable and accessible play out in the public sphere, when it comes to reporting on EU differentiation events or processes. We focused on EU correspondents' coverage in three 'most likely' EU

differentiation cases: Denmark, Germany and the UK. In our analysis, we did not go looking for evidence of blanket-neutral or unbiased coverage of the EU but rather for balance of voices given publicity; of points of view regarding differentiation; and of type of coverage (i.e. balance between purely informative reports and editorials or other types of journalistic or expert analysis regarding differentiation, democracy and legitimacy).

We were anticipating one of three possible scenarios: One possibility would be that journalists professionalise and specialise as experts of EU governance; but then they may not necessarily succeed in translating EU into public parlance, but rather they replicate the hard-to-relate-to Brussels jargon. A second possibility would be that journalists focus on random details instead of systematically monitoring EU differentiated governance, selecting click-bait EU news without providing a cohesive narrative or bringing audiences closer to understanding the system that produces these noteworthy news bites. A third possibility would be that journalists succeed in translating EU jargon into public parlance, but do so by differentiating along national lines and providing mainly news for national audiences and along national criteria of relevance.

Our findings point to the second and third scenarios as most likely developments when it comes to specialised EU reporting. On the one hand, and in line with numerous previous empirical studies, our analysis shows an absence of shared concern: EU-differentiated integration is not the same when explained to different national audiences as different issues and normative concerns are brought to the attention of national audiences. EU correspondents are succeeding in translating EU jargon into public parlance but the underlying criterion of newsworthiness remains the national interest, as does the framing, which is along national interest or politics lines. On the other hand, differentiation as a topic features irregularly and overall seldom in EU correspondents' work, an observation which points to a tendency to report on random details rather than consistently monitor the EU's integration/differentiation process. The implication of this pattern of reporting is that the normative-critical dimensions of the EU's differentiated integration appear only fleetingly in professional news reporting, which, from a quantitative perspective, raises serious doubts as to the potential of EU correspondents' work to facilitate evaluative-critical discourse on EU differentiation. Nevertheless,

the capacity for critical debate is not altogether absent – which is an indicator that EU correspondents are actually doing their job, to the extent that external pressures allow them so. To establish more concretely the effect that these critical interventions of EU correspondents have on public discourse/public opinion regarding EU differentiation, further research is needed, whereby critical pieces/op-eds are tracked in the public sphere, both as sources (i.e. the extent to which an op-ed is shared and replicated in other media, news or social) and as points of view (the extent to which we find the same opinion as that expressed by the journalist) is subsequently found/repeated by other public actors).

Recent developments in the way the Brussels Press Corps operates may further contribute towards higher visibility and influence of journalists' expert analyses of EU differentiation. Currently, the dwindling number of accredited Brussels correspondents, in combination with severe cuts in news media budgets across Europe, have meant that it is often one correspondent per news outlet - and sometimes only one for several news outlets or a whole country - who takes responsibility for the whole of the EU coverage. Involving other journalists who might also wish to cover EU stories and need to specialise (for instance, specialists on EU agrarian policies do not necessarily sit in Brussels but might be found working for national or regional newspapers) would contribute to broadening the specialist views available to EU citizens and increase the likelihood of critical journalistic pieces appearing alongside more informational reports. The recent opening up of virtual EU briefings and press conferences moves towards such a direction, even though it has been heavily criticised by existing accredited EU correspondents. Unlike EU differentiation as such, a move towards differentiated EU journalism could therefore arm the EUropean public sphere(s) with better capacities to deal with the complexity of EU differentiated integration.

'United, we tweet': Belonging and solidarity in German and Greek Twitter spheres

> The digital public sphere and social media in particular have captured the imagination of EU policy-makers about the possibilities of creating, top-down, a European public space that will foster European identity among the younger generations in particular, with funding directed to projects that will, for instance,

engage with young Europeans by creating curated online spaces that gather thought-provoking content around themes and topics that are discussed at EU level. These spaces should allow them to compare perspectives from across Europe and empower them to discuss and discover how their interests link to interests of youngsters in other countries, and to relevant EU initiatives.

(European Commission 2021)

Social media offer new oppoprtunities for transnational mobilisation, cross-country public debate, and border-transcending solidarity communication and action, but they can also foster polarisation, misinformation and the proliferation of nationalist, racist, misogynist, and other deeply reactionary and anti-democratic movements. This ambivalence of social media has inspired a new generation of researchers to resume the quest for the European public sphere and to understand the bottlenecks that prevent its emergence in the digital realm this time (Bouza et al. 2019; Hänska and Bauchowitz 2019; Karlsson 2021; Ruiz-Soler et al. 2019; Tuñón-Navarro and Carral-Vilar 2021).

Aware of the challenges in this field of research that arise either from a lack of cross-country comparative analysis or a tendency to conflate Facebook and/or Twitter with social media in general (Rivas-de-Roca and García-Gordillo 2021; Bennett and Pfetsch 2018), we contribute to this literature with a research design that allows us to capture language- and socio-cultural nuances, or the potential convergence in the ways the EU is discussed in the digital public sphere. To this end, we ask a) whether social media platforms facilitate the emergence of a de-differentiated public sphere, in which Europeans debate the same topics using common frames, during the EU's near-two decades of crises – also dubbed as the period of 'polycrisis'? (Gänzle et al. 2019; Riddervold et al. 2021; Zeitlin and Nicoli 2020); or b) whether the capacity that social media have for reinforcing attitudinal entrenchment has prevailed in this period of EU crises so that social media mirror the same kind of nationally specific discourses that we find in legacy media-driven public spheres? This question is important in the light of the discussion about the future of the EU spawned by the successive economic, migration, and Brexit shocks to the European political order (European Commission 2017): A more strongly federated European Union will place greater demands upon the coherence of the

public spheres of the Member States to sustain its democratic quality than what is the case for a more differentiated EU polity. Thus, the question of whether the EU Member States' public spheres are coherent or not is a question of how difficult it will be to sustain a less differentiated polity than that which currently exists.

While it is feasible that social media can act as a technological infrastructure for transnational debates, it may also be the case that the role of such platforms in spreading misinformation and attitudinal entrenchment (Karlsen et al. 2017; Theocharis et al. 2021) can lead to discourses characterised by polarisation and misinformation, thereby undermining the formation of a European public sphere. We turn our attention to Twitter, not because we consider it representative of all social media, but because its established role – in the pre-Elon Musk ownership era at least – as a conduit for different forms of political activity and as a core element of professional journalism in the digital era (Dagoula 2022; Segesten and Bossetta 2017; Waterson et al. 2022) means that it has greater capacity to influence the direction of a digital European public sphere.

A similar argument regarding the possibility of hindering, rather than enhancing, the emergence of a European public sphere can be made from a crisis-effects perspective, whereby certain crises that have hit the EU in recent times have resulted in 'differentiating shocks', because they have affected different EU Member States unevenly, contributing to the deepening lines of division between countries and regions in Europe, and consequently also enlarging divisions across and between the public spheres of the said countries and regions (Fossum 2023). We thus focus our analysis on two of these potential differentiation-accelerating crises, the 2015 refugee crisis and the Covid-19 pandemic.

It is in this context that we have investigated the extent to which the people participating in transnational debates regarding either of the two crises relate their contribution to the same national frames as those found in public discourses in legacy news media. Our analysis zooms in on two EU Member States, Greece and Germany, with their different experiences of both crises, upon which we focus. In both countries, however, we find that Twitter discourses converge at a topic level, whether the topic is migration or Covid-19. However, these discourses mostly reference

national events and frames of understanding, with very little discussion of transnational policies for the handling of either crisis.

Twitter's communication format is conducive to the type of brief, wide-reaching public messages that often form the core of political actors' communication strategies, even though these features are simultaneously responsible for the high incidence of incivility in the Twitter-sphere (Goritz et al. 2022; Jaidka et al. 2019).

With the digital medium held constant, we then proceed with a comparative design across three dimensions: sampling/case selection; language of content; methods of Twitter content analysis. In a first step, we select two country cases (Greece and Germany) that represent two distinct ends of European integration, in terms of institutional and geographical variation, variation in public Euroscepticism, the effects of and responses to the various crises of the past two decades, as well as the overall process of integration and the financial/economic measurements used to assess the success of this process (Maris and Sklias 2020; Maris and Manoli 2022; Roose et al. 2020). We then select two crisis periods (the refugee crisis and the Covid-19 crisis) with distinct features (one, a humanitarian-turned-political crisis; the other, a global public health crisis) and which were experienced very differently in the two selected EU Member States, both in terms of degree to which each country was affected by each crisis, and the measures taken to address it (Brändle et al. 2019; Fossum 2023; Kanellopoulos et al. 2021; Thomson et al. 2022). Subsequently, we divide our Twitter data in four language sub-sets: German language tweets; Greek language tweets; English-language tweets originating in Germany; and English-language tweets originating in Greece. This allows us to compare the discourses that were key to both crises in both countries, despite their differences, and to compare discourses that use both the native language of each country and English. This dual-language, inter- and intra-country comparison lets us test theoretical assumptions about the presence of a transnational public sphere, as well as how domestic and transnational discourses relate to one another. We deploy machine-learning assisted quantitative text analysis to analyse rigorously the discourses found within the resulting very large corpus of text, using a correlated topic modelling approach (Blei and Lafferty 2007) to model the topics of German and Greek Twitter-sphere

discourse surrounding the refugee crisis of 2015-2016 and the Covid-19 crisis of 2020-2021.

For the migration crisis, we use public tweets collected under the hashtags #migrationcrisis, #refugeeswelcome, #syrianrefugees, #lesvos and #refugees in 2015-2016. For the Covid-19 crisis, we used version 70 of Panacea Lab's dataset of tweets regarding the Covid-crisis (PanaceaLab - Covid19 Twitter Dataset Homepage, n.d.). We created sub-datasets of the English-language tweets from both Germany and Greece, in addition to a dataset of the Greek-language tweets. This allows us to investigate the convergence of topics between the English-language tweets in both countries and whether the themes of discussion converge between the English- and the Greek-language tweets in the Greek Twitter-sphere.

To identify tweets originating in Greece and Germany in the migration dataset, we filter for users stating that they are in either Germany or Greece. This sampling strategy is used extensively in the literature, and is often used to address the dual challenge that few users enable geo-location tracking and that the use of these presents ethical questions (Golder et al. 2022; Graham et al. 2014; Magkonis and Jackson 2019; Sloan and Morgan 2015). We chose this strategy because the data do not feature geo-location information that allows us to pinpoint exactly where the tweet was posted. We used the self-reported location of tweeters to develop our sample, using the location variable found in each set of data, searching for 'Greece' and 'Athens', and 'Germany' and 'Berlin', as well as their Greek and German equivalents, respectively, 'Ελλάδα*', 'Αθήνα*', and 'Deutschland'. We use Athens and Berlin, as the capital cities, to account for how those living in larger and more well-known cities might list only their city of location without also listing their country. However, our selection strategy means that tweets that include either the two words alone or together are included. While our approach increases our confidence that we are analysing tweets solely from Germany and Greece, it also reduces the sample size. For the Covid-19 data, we use the geo-location data to filter tweets from both Germany and Greece. The English-language Twitter data related to migration in Germany number 23,419 tweets. The English-language Greek data numbers 23,924 tweets, while the data includes 5,914 Greek tweets. The Covid data include 336 tweets from the Greek English-language Twitter data and 221 Greek-language

tweets. They also include 9,414 tweets from Germany relating to the Covid crisis written in English.

Our findings illustrate an important point: even where popular social media such as Twitter facilitate communication across countries, it is not necessarily the case that Twitter users will converge upon a shared understanding of an issue. Instead, it seems that a broad convergence of topics is found, but that the debate takes on a distinctly national cast. We thus fail to find the inter-country commonalities that our hypothesis assumed. Similarly, we do not find a greater prevalence of debates about transnational policies in the English-language Twitter-sphere of each country compared to the one relying on the respective native languages, as claimed by our second hypothesis. This may, as we have alluded to, illustrate that social media discourses surrounding both the migration and Covid-19 crises are de-differentiated in the sense that they feature many of the same topics. However, the same platforms also serve as the conduits of a differentiated public sphere at European level, in the sense that national and diverging frames of understandings help structure the debates in each country.

Contributions to EU3D's theoretical framework

Three scenarios for EU journalism and the concept of EU differentiated integration

Our article set out the conditions for an evolving EU journalism to assume either the role of catalyst of public sphere differentiation that develops in parallel with EU differentiation or of public sphere fragmentation in mismatch with journalism standards and principles of democratic control. On the one hand, experiences of an increasingly pressured and challenged journalistic profession in the EU put constraints on EU institutions to claim public legitimacy and on publics to develop a critical understanding of the Union. On the other hand, experiences of an increasingly dysfunctional and undemocratic EU governance can provide strong incentives for a re-organisation of EU correspondents in response to the expectations of critical publics. The EU differentiated system of governance is not simply to be held accountable for its public communication deficits but might as well become an experimental field for the institutionalisation of a new type of differentiated EU journalism

and its role for the promotion of new forms of democratic control beyond the confines of nationally segmented public spheres.

It is the subject of future research to empirically test the extent to which differentiated EU integration and the differentiation of public spheres driven by digitalization and marketization will converge to push the role of EU correspondents towards mimicry, fragmentation or decoupling. What is at stake in the case of each of these three possibilities is the capacity of EU correspondents to function as democratic entrepreneurs who provide a fair judgement of the performance of the EU differentiated system of governance, identify deficits, and bring EU publics together in support or opposition of European integration.

EU correspondents as key mediators of EU differentiated integration

EU correspondents are among few journalists who may still have both the in-depth knowledge and appropriate budget and access to EU institutional networks to be able to present and analyse the developments in the EU polity structure in a manner that is accessible to as broad EU publics as possible. The role of the particular cohort of EU correspondents that is little studied, yet, as we have argued elsewhere (Michailidou and Trenz 2023), play a critical in bridging the communicative gap between European publics and EU institutions, not necessarily by fostering a more positive public opinion of the EU polity, but by facilitating public opinion formation based on plurality of opinions and knowledgeable discussion of the implications that EU governance and differentiated integration have for EU citizens' lives.

Journalists, in general, are translators of the complexity of the world of politics that is explained in a common language understood by lay people. Journalists, therefore, often simplify complex political processes. They round up and summarise instead of covering details. Differentiation, in turn, means increased complexity. For EU news, a trade-off applies between the amount of details that would be required to inform about complex differentiation processes, negotiations or outcomes, on the one hand, and the simplification required to attract and maintain the limited attention of EU audiences. The efforts required to achieve such a balance reduces the likelihood that EU-differentiation will be covered in the news

in the same extensive and frequent manner that national political processes are covered. EU news coverage is thus likely to be de-differentiated based on selected episodes that are used for the building of sporadic news stories or building on the drama of the conflict of interests between the governments of the member states that is found to be most newsworthy. Differentiation can however also be seen as an opportunity for a specialised corps of expert journalists to fill a market niche for critical news about EU politics (Michailidou and Trenz 2023). This responds to specific demands for information and critical engagement by smaller segments of the audience. In response to EU differentiation, also media markets and audiences would differentiate. Especially EU correspondents would take a new role as driver of critical discourse about the EU and a watchdog of EU differentiated integration.

However, strengthening the watchdog function of EU correspondents may require rethinking just what an EU correspondent actually is. Instead of Brussels based specialized journalists with privileged access to EU-institutions, one could also think of EU journalists as critical ambassadors for building a decentralized EU knowledge base that enables the expression of EU concerns through various publication outlets. One way to encourage the dissemination and critical use of EU-information might be to further open forums like press briefings to journalists other than those accredited to the EU institutions. Doing so might both provide an alternative vantage point on EU institutions for European news consumers and allow journalists with non-traditional expertise to challenge European Union leaders. This might enlarge the control function of journalism beyond the limited scope of the EU press corps. However, this might also produce collateral effects of further differentiation. The attention of non EU-based journalists (understood now in the broad sense of all kind of national journalists, bloggers, free-lancers and others) would probably be sectoral and interest-driven. EU-information and news would be increasingly shared among sectoral publics. In parallel we would probably witness a stronger geographic differentiation of EU journalism and related news. The reason is that many of these journalists or bloggers would lack an EU socialization and would still mainly respond to national norms of journalistic practice. A likely outcome would thus be a stronger prioritization of national interest

frames restricted agendas of EU news following priorities of national audiences.

Social media as infrastructure for a transnational but differentiated European public sphere

The results of our analyses also tell an important story about the potential for social media to constitute the infrastructure for a European public sphere. Much as Trenz (2009) shows that digital media underpin primarily representational public spheres, the same seems to be the case for Twitter, which has risen to be one of the most influential social media platforms of the past two decades. The way EU concerns are framed and represented in social media typically reflects how they are framed in the national media. This could result in unintended transnationalisation effects, not towards an encompassing European Twitter sphere, but in the way national interpretative frames of EU issues would be allowed to reach broader, international audiences. This transnationalisation of nationally specific EU debates is not necessarily a disappointing or negative development: being exposed to other people's 'national frames' on Twitter could work as a first step towards mutual understanding, under the right conditions. However, as has also been shown by much of the previous literature, this infrastructure, which can be used as a mode of translation of national frames, can also be used to strengthen national divides, by appealing to national stereotypes or diffusing misinformation. Both the national re-framing of EU debates by Twitter users and the salience of misinformation in the Twittersphere with regard to EU news can be considered as a copying strategy to reinterpret the high complexity of EU-differentiated integration into the language of 280 characters that is requested by Twitter.

Our results also tell us something important about how citizenship and identity is negotiated within the context of a public sphere that is not fully transnational, but still interlinked in ways that transcend the nation-states. The representational nature of the public spheres may thus allow for a curiosity towards the lives of others which demoi-cratic conceptions of the EU see as necessary for the construction of any kind of transnational co-operation at European level (Bellamy 2019; Nicolaïdis 2015). However, the fact that these same topics are discussed with reference to national frames with very little discussion of pan-European politics suggests that this

communicative interlinking may not necessarily be enough to create a shared public sphere of opinion and democratic will formation.

In this sense, social media may not constitute a game changer as much as a continuation of the kind of Europeanisation dynamics of public communication already taking place across the European space (Risse 2014). The European Union may thus not be able to rely on the development of a new type of media and journalism for the promotion of EU knowledge and critical debate. Its attempts to enhance broader future of Europe debates that are meant to unite a European audience encounter the practical constraints of sectoral and geographical differentiation that continue to segment the public spheres for discussions about European politics.

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Chapter 6

Debate on the future of Europe. Narratives on and models of EU polity.

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In this report we outline key findings on the debate conducted by political and social actors across Europe on the future of European integration, which was initiated by the European Union's institutions in 2015 (European Commission 2015), and specifically two years later by the European Commission (European Commission 2017). The debate was then invigorated by the Conference on the Future of Europe (CoFoE), a unique experiment of deliberative democracy launched in 2021. Although it has not been without criticism, the CoFoE has produced an impressive, final report that summarises the views on EU integration that emerged in the debate.

Our contributions to EU3D's theoretical framework spell out the key narratives that social and political actors use in debating the EU polity. We also propose – based on extensive research on visions of the EU proposed by right-wing actors across the continent – a nuanced analysis of the sovereignist narrative on the EU and its broader ramifications for the integration processes.

Finally, we conclude by elaborating on what models for EU polity can be proposed based on our research.

Political and social actors' engagement in the debate on the future of Europe

Various actors engaged in the debate across the continent, from governments and leaders to civil society organisations and individual citizens, especially within the framework of the CoFoE (Alemanno and Nicolaidis 2021). Within the EU3D project we specifically looked at partisan actors in the national parliaments, which we argue were the prime arenas for such debate at EU member-state level (Góra, Thevenin, and Zielińska 2023c), as well as the social actors that were active during the entire analysed period, but specifically after the launch of the CoFoE (Czerska-Shaw and Warat 2023). We also mapped the European and national debates and created a EU3D database on reform proposals.

The debate – academic and political alike – focuses on democracy, which remains the pivotal concept featured in reflections on European integration. The actors reflected on how much democracy should be assured at the supranational level and whether that might happen at the expense of democratic standards at the national level. The novel approach used to analyse these actors' views was utilising differentiation as a key lens providing the nuances of the narratives on democratic solutions for the EU as well as the end form of the polity. As stated in the Introduction to this report, we also scrutinize what reforms parliaments and civil society propose for overcoming forms of differentiation-caused-dominance.

We conceptualised differentiation as embracing five aspects of the functioning of the EU and analysed across different datasets (partisan actors in national parliaments, CSOs, and in-depth national case studies) the ways in which political actors engage in suggesting reforms for these aspects of differentiated European Union. As presented in Table 1 below, the novel conceptualisation of differentiation allowed us to distinguish between various critical aspects of the tensions between the European and national levels. The detailed explanation of each type is provided in the Introduction to the Report.

Table 1. Key aspects of differentiation

Types of differentiation	Conceptualisation
Lawmaking (horizontal) differentiation	Interinstitutional relations within the EU political system. In particular, change in the relation between the executive, legislature and judiciary at a given level of government (EU level, member state level, regional level); functional organisation of power at a given level of governing (horizontally).
Functional (competence-based) differentiation	Aspects of the EU's capacity to act, specifically development of new policies and/ or policy instruments
Vertical differentiation (levels of competence)	Changes in competences between the EU and member states, allocation of powers and competencies across levels of governing (EU and member states).
Territorial (vertical) differentiation	Does the proposal mention territorial differentiation?
Persons' differentiated access and incorporation (citizens' differentiation of rights)	References to citizens' rights: altering citizens' rights and status in the EU, including changes to EU citizenship; transformation of political parties etc.

Source: Own compilation (elaborated in (Fossum 2021; Czerska-Shaw et al. 2023; Góra, Thevenin, and Zielińska 2023c).

Interestingly, the key EU3D finding as regards the aspects of differentiation is that the actors in question were primarily concerned with relations between national and supranational levels (vertical differentiation) as well as with the EU's capacity to act (functional (competence-based) differentiation) (Góra and Zgaga 2023; Czerska-Shaw and Warat 2023). Even if the debate was structured by the EU and its institutions to centre on institutional reforms, and specifically differentiated integration solutions, these were less debated; however, there is significant variance among the national cases (Góra and Zgaga 2023).

To illustrate, partisan actors mapped in 11 national parliaments did not focus so much on specific reforms. "Overall, across all national parliaments, reforms were mentioned in approximately 11.5% of FoE speeches. Some variation with regard to the demand for such reforms was noted. While some parliaments barely discussed institutional reforms (i.e. Greece, Poland and Sweden), calls for institutional reforms reached more

than 15% of FoE speeches in France, Norway and Slovakia" (Góra, Thevenin, and Zielińska 2023a, 46).

Interestingly, our research also demonstrates that partisan actors prefer to maintain the institutional status quo, which was the most often proposed solution. Almost 30% of all institutional reforms referred to the status quo, which was also favoured by conservative politicians (40% of all status quo references) (Góra, Thevenin, and Zielińska 2023a, 48). The meaning of these claims differs in national contexts (see the chapters analysing national debates in parliaments in (Góra, Thevenin, and Zielińska 2023c).

The debate on FoE was driven by suggested differentiated integration solutions. The EU3D research demonstrates that, even though citizens are developing views on DI (Heermann and Leuffen 2020, Heermann and Leuffen 2023), it was not the most relevant aspect of the overall debates. DI was mentioned in slightly more than 20% of FoE speeches across the national parliaments analysed. Neither was it the most important aspect for social actors (Góra and Zgaga 2023).

As much as differentiation was a useful concept in untangling the views of various actors regarding the future of European integration, focus on how dominance was perceived within the EU polity shed new light on how actors assess the EU polity. In addition to analysis of actual instances of dominance, the EU3D researchers also examined perceived dominance. We argued that actors' understanding of the democratic quality of the EU often focuses on what is dysfunctional and problematic within this system rather than on the prospective reforms. Therefore, using references to dominance permitted systematic assessment of such aspects of the debate (Czerska-Shaw et al. 2022). In our research, we define dominance as the unjust exercise of power and simultaneously "the relationship or a circumstance wherein an actor (be that a person, an organisation, or a collective) can be arbitrarily interfered with and/or manipulated" (Fossum 2019, 2). More nuanced conceptualisation of dominance is discussed in Introduction to this Report.

It appeared that both the proponents and opponents of European integration are referring to dominance. In national parliaments, dominance was addressed in almost 20% of FoE speeches. As expected, the issue of unjust exercises of power within the EU political system –

specifically of the European Commission – was mostly raised by parties at the extremes of the political spectrum, i.e. communist and right-wing party families, and specifically by the Eurosceptics. In a similar vein to research on political actors, Eurosceptic social actors "utilise the references to dominance by the EU and its institutions to more convincingly present the EU's threatening position toward the nation state and national sovereignty. Since at the same time they also present the EU as weak and incapable of dealing with crises as well as managing daily affairs, dominance becomes a useful construction because it focuses on abuse by EU institutions (and the EC in particular) of their competences rather than on who is more powerful"(Czerska-Shaw et al. 2022, 25). Surprisingly, however, in our study of social actors, dominance (often by member states) was also raised by proponents of European integration (Czerska-Shaw et al. 2022). They use it specifically to push the EU and its institutions to either deepen integration or pick up the battles on issues that member states were opposed to, such as protection of migrants. As the researchers claimed:

> Noticing and stressing the ability of the EU to manipulate and/or impose certain actions within its competences given by treaties against the wish of national governments – the powerhouses in the current political landscape in Europe – or hesitancy to act, demonstrate for proponents of EU integration the power and potential of the EU (or the EC for that matter). Therefore, the perception of dominance tends to be used as legitimising a narrative for EU institutions, stressing more competence to the supranational level and justifying the limits of power for Member States. Here, the intuitional arrangements as such stay unquestioned, but the shape of the policies and authority to create them seem be constitute the main bone of contention.
>
> (Czerska-Shaw et al. 2022, 26)

Key constitutional narratives on the EU proposed by social and political actors

Differentiation and dominance were useful concepts untangling the views by various actors on how to create the EU as a democratic system. The key

aim for research initiatives within EU3D was to test what constitutional narratives – which allowed us to capture the various configurations of democracy for the EU – were preferred in the debates and by whom. As a starting point we conceptualised three key narratives – intergovernmental, federal and regional-cosmopolitan (Fossum 2021) – testing them against the various actors' reform proposals and discourse using the indicators stemming from conceptualisation of differentiation, democracy and dominance (see Table 2).

Table 2. Conceptualisation of democracy, differentiation and dominance in three constitutional narratives

Constitutional narrative	Intergovernmentalism – Europe of sovereign states	Federal union	EU as non-state regional government
Democracy (inter-institutional relations)	Nationally based – key role: national parliaments involve themselves in EU affairs	EU-level: checks and balances	EU: community method and EU parliamentarism
Capacity/competence	EU has a limited range of competencies	EU has competencies and capacities similar to a (limited) state	EU level has limited own resources and competence in a few specified sets of issues
Vertical differentiation	Member states determine EU competences; constrain EU resources	Division of powers between levels	Pyramidal structure: few distinct EU competences, much more at the national level
Territorial differentiation (DI)	Differentiated integration and opt-outs/opt-ins	Main pattern: between states	Functional and territorial – far more limited than in a state
Perceived dominance	Perceived as supranational technocracy: imposing and unaccountable	Exclusion: states in more peripheral location feel excluded	Minorities, including member states

Source: (Góra, Thevenin, and Zielińska 2023c, 21) based on Fossum 2021.

Our research demonstrated that political and social actors are still primarily using either more intergovernmental or federal frames to narrate the EU and its desired shape. However, we also detected that there is a significant degree of inconsistency when it comes to how details are spelled out by political and social actors. For instance, regarding partisan actors we found that they "opted on a general level for a narrative, but simultaneously when debating specific policies and necessary instruments they may have contradicted the building blocks of their own preferred vision. A good illustration is visible in the German CDU/CSU, in which, despite promoting the intergovernmental middle ground with strong control vested in the national parliament, the same actors suggested more federal solutions to the refugee crisis. All in all, the way political actors reflect on the future is neither consistent nor very detailed and thorough" (Góra, Thevenin, and Zielińska 2023a, 36).

Similarly, this holds true for social actors which are navigating within the main frames but rather focusing on thematic issues such as migrants' rights or gender democracy and equality. As Marta Warat claimed in reference to gender equality CSOs: "The EU plays an important role in this project – it is seen as an important actor and co-creator of feminist Europe. This perception shows the Union's dominant position towards member states in the field of gender equality" (Warat 2023, 233). The CSOs that were analysed within the EU3D framework very much subscribe to the long-lasting tradition in EU-related literature focusing on the nature and direction of the process rather than the polity constitutional-democratic outlook, as stressed in the introductory part of this report.

A novel result of research on constitutional narratives that the EU3D researchers revealed is the rise and popularity of a new narrative – sovereignism. Overall narratives in many national contexts were steered to focus on division of power between member states and the EU level and what we referred to as vertical differentiation. Macron's European sovereignty concept meant to push for a more federalised Union but backfired, with more attention given to national sovereignty. As Góra, Thevenin and Zielińska (2023) argue in their comparative study:

> that sovereignty is problematised primarily through a national lens and political actors have a different understanding and narrative of European and supranational sovereignty. The Macronist

> understanding is relevant in French debates but framed differently in the Polish and German contexts and, even if it serves a similar function to support sharing and equipping the EU with sovereignty, it is articulated in less clear and decisive terms. It is also visible in the French context that the blurred meaning of the concept of European sovereignty and specifically its relationship to national sovereignty is an obstacle in achieving its aim. It is something of a "cakeist" approach – one cannot have both European and national sovereignty, and the nesting element is as difficult as is its segmented nature in the positive-sum model.

> (Góra, Thevenin, and Zielińska 2023b, 96)

The EU3D researchers pushed forward a novel research agenda to capture the increasingly important sovereignist narrative on the EU, further nuancing the understanding of its claims.

Right-wing sovereignism in the EU: definition, features, and implications

Fabbrini and Zgaga claim that the new political narrative – sovereignist - was developed by nationalist, right-wing parties after realizing the negative implications of Brexit. Sovereignism is a 'narrative characterized by a critique of the EU but from within, accompanied by the request to repatriate one or another policy, leaving other policies integrated' (Fabbrini and Zgaga, 2023, 1). Sovereignism differs from nationalism by not advocating for leaving the EU. Sovereignism also differs from populism because the former criticizes mainly supranational institutions but defends national institutions, whereas the latter is against all types of institutions as epitome of elites' power. Ultimately, sovereignism does not express a generic mistrust and animosity towards the EU like Euroscepticism, but requests the repatriation of specific competences from the EU to the national level.

The analysis focused on right-sovereignist parties and leaders in two Western (France and Italy) and two Eastern (Hungary and Poland) European member states in the period from 2016 to 2022. It found that all right-wing sovereignist actors refused the supremacy of EU laws and the power of supranational institutions which it wants to disempower for the

benefit of intergovernmental (and national) institutions. Moreover, all right-wing sovereignist actors wanted to transfer policy competences from the EU back to the member states.

The crucial finding of the research on sovereignism is that

> western and eastern actors focused their call for repatriation/disintegration on different types of policy. In Eastern Europe, RWS actors demanded full national control over policies such as migration or asylum but supported a larger EU budget to finance cohesion and structural funds (or new EU policies on defence and security). In Western Europe, RWS actors concerned primarily economic competences, particularly the disintegration of the EMU.

> (Fabbrini & Zgaga, 2023, pp. 12-13).

Hence, the sovereignist narrative had more an economic rationale in Western and a cultural rationale in Eastern Europe. As a result, a 'sovereignist alliance' able to agree on which policies to repatriate and how to do so has not been formed so far. This is why the sovereignist approach to the EU would lead to the nationally differentiated disintegration of the EU.

This research agenda was also further problematise by Góra and Zielińska (2023) who analysed based on Polish MEPs statements between 2014-2022 how the references to religion (primarily Christianity) serve several functions in the sovereignist vision focusing on the cultural and identitarian dimensions. This allowed to pinpoint that religion serves as identity marker of us versus other (drawing heavily from nationalism (and nativism). In addition religious references are actually meant to strengthen and anchor the sovereignty of the nation state in the past making it more defendable against the further integration (Góra and Zielińska 2023).

From another perspective Zgaga investigated how sovereignist parties in Italy dealt with crises which the EU manages in a supranational way — specifically with the adoption of the recovery fund 'NextGeneration EU' (NGEU) during the COVID-19 pandemic. NGEU was an unprecedented

measure which increased the EU's collecting and spending powers. Institutionally, NGEU granted more powers to the Commission – a supranational empowerment which sovereignist parties usually do not like. If sovereignist parties had to act coherently, they would not support a supranational crisis management, because the latter results in a further transfer of powers from the national to the European level — a particularly unwelcome outcome in the nationally sensitive realm of fiscal policy. But are sovereignists parties in front of a large crisis that requires supranational measures coherent with their original position? This research developed a sovereignist test, according to which a party can be considered to display economic sovereignism if it opposes European revenues, expenditures and fiscal rules as well as the empowerment of supranational institutions in the fiscal domain. It found that in Italy League, Five Star Movement (M5S) and Brothers of Italy (FoI) can be considered to display economic sovereignism during the time of consideration. In sum, during the COVID-19 pandemic sovereignist parties only partially managed to act in a way that was coherent with their original positions.

The aspects of economic sovereignism were also researched by Orzechowska-Wacławska (2023) who in her study of Polish Law and Justice economic policies demonstrated that economic and cultural sovereignism are not mutually exclusive but rather intertwined and specifically if assessed against various types of economic policies. Based on Polish case study Orzechowska-Wacławska proposed a novel three-dimensional model of economic sovereignism, defining it through the prism of (1) statism, (2) promotion of national interests, and (3) criticism (but not necessarily refusal) of supranational organisations (Orzechowska-Wacławska 2023).

The way forward? Models of EU polity: parliamentary union, intergovernmental union, economic community, federal union

EU3D researchers derived three different models of EU polity (Fabbrini et al., 2023): the parliamentary union, the intergovernmental union, and the economic community. More in general, these models seem to have crossed

the debate on the future of Europe in the last decade (Fabbrini, 2015). The team of researchers examined each of them, criticizing their internal congruence. On this basis, it identified a fourth model – the federal union – that seems less internally contradictory than the previous ones. In any case, the implementation of all these four models in their pure form would imply a change (although differentiated) of the Treaties. We tested the logic of the four models and not their political feasibility. Specifically, reserachers sought to address the following question: which critical implications do the four above-mentioned models of EU polity have for differentiation, dominance, and democracy? To do so, we pointed to the different types of differentiation (Fossum, 2019; 2021), the threat of dominance, and the risks of democratic malfunctioning that each model could trigger.

The EU as a parliamentary union

The parliamentary union model argues that the European Parliament (EP) should be empowered. The EP should have the power to propose new legislation – a prerogative which currently only the Commission has. This model pushes for establishing a relationship of confidence between the legislature (EP) and the executive (Commission) as it occurs in parliamentary fusion of powers systems at the national level. According to the *Spitzenkandidaten* practice, the parties in the EP – and not national governments within the European Council – should have a decisive voice over the appointment of the European Commission's president. This proposal is part of the attempt to establish transnational lists for the EP elections.

Law-making differentiation should consist of transferring powers currently held by the Commission and by the (European) Council to the EP. In terms of functional (competence-based differentiation), the parliamentary union model favours the establishment of new policies and policy instruments at the EU level: this embraces also the nationally sensitive realm of core state powers (Genschel & Jachtenfuchs, 2016), like fiscal, foreign, and security policy. As it becomes clear, the model implies that the allocation of policy competences changes in favour of the EU level (vertical differentiation). Although less explicit on the issue of differentiated integration, the parliamentary union model ultimately implies the creation of a centralised federal state of the EU. In such a

polity, there would be little to no room for a scenario of territorial differentiation, where some member states take part in certain policies but not in others.

Sergio Fabbrini and the team found that this model has several incongruences. First, it implies that member states – and, specifically, their governments – would accept abdicating their powers in favour of an institution, the EP, which they could not control. Second, the model underestimates some member states attachment to their sovereignty. Particularly in the northern and eastern parts of the continent, several national governments want to remain in charge of specific core state powers, opposing any step for providing the EU with stronger fiscal or military capacity at the central level. However, the model takes for granted that member states share the same *finalité* of the integration process – the development of a federal state. The idea of a constitutional decoupling (Fabbrini, 2019) is never considered.

Not less important are the implications of the parliamentary union model for patterns of dominance. Each member state has a degressive proportional number of representatives in the EP. A stronger EP would, thus, grant more powers to some member states over others. Next to this intra-institutional pattern of dominance, an inter-institutional form of dominance could also materialise (Zgaga et al., 2023). As an institution representing the interests of European citizens, the EP would prevail over the Council and the European Council as institutions representing national governments. This model would bend the EU in the direction of a union of citizens (and not of states). Last but not least, a question of democratic malfunctioning arises: which role would national parliaments play in the parliamentary union model?

The EU as an intergovernmental union

The intergovernmental union model argues that the Council and the European Council should be the key decision-making actors in the EU. The EP should be mainly *ex ante* consulted and *ex post* informed, without having any key voice in the decision-making process. The Commission should not propose new legislation but should simply enforce the decisions taken by the intergovernmental institutions. Unlike the

parliamentary union model, the intergovernmental union model welcomes a stronger involvement of national parliaments in the EU's decision-making process. While some member states, like France and Germany, argue for taking decisions in the Council and in the European Council through qualified majority voting, others, like Hungary, Poland, Sweden and Denmark, push for keeping unanimity in place, thus granting any government a veto power.

For the intergovernmental union model, law-making differentiation should consist in strengthening the Council as a legislative and the European Council as an executive institution in charge of the fundamental decisions regarding the integration process. While the EP should be downsized, the Commission's role should be changed from proponent of legislation to executor of policies. The development of new policies and/or policy instruments (functional differentiation) is not a core aim of the intergovernmental union model. The key point is rather to bring almost all EU policies under the control of national governments. Similarly, the model does not claim which policies should be integrated and which ones should remain nationalised or become re-nationalised: the direction of vertical differentiation is determined by member states as the masters of the treaties. The intergovernmental union model accepts territorial differentiation provided that each member state is left free to decide its participation in different EU policy regimes.

Like the parliamentary union model, the intergovernmental union model also has its relevant incongruences. First, it underestimates the powers that supranational institutions have acquired over the last thirty years, particularly in the regulatory policies of the single market. As part of the ordinary legislative procedure, the EP has become a co-legislator together with the Council. Specifically, it has also acquired stronger powers on the EU budget. Similarly, the enforcement role of the Commission has been strengthened, up to the point that Commission's recommendations to the Council are often deemed to be adopted unless the Council opposes it through reverse qualified majority voting (RQMV) (Zgaga, 2020). The intergovernmental union model unrealistically assumes that governments could simply 'pool and coordinate' their sovereignty without relying on the support of supranational institutions. Second, the model overestimates the efficiency of a strictly intergovernmental decision-

making process. On several issues, member states have divergent preferences, and the veto power assigned to each of them can easily cause a decisional deadlock. As Fabbrini et al. (2023, p. 4) put it, 'coordination among national governments can generate a positive result only if the policy at stake doesn't impinge on their national interests and identities'.

What about the intergovernmental union model and dominance? Although formally in the intergovernmental regime all member states are equal, *de facto* this is not the case. Especially in a context of crisis, some powerful states can use their political influence to exercise pressure on others. The euro crisis with the Franco-German *directoire* is a good example. In addition, member states can veto a decision for whatever reason, thus holding the other national governments hostage. In democratic terms, thus, intergovernmentalism can result not only in a tyranny of the majority but also in a tyranny of the minority (Zgaga et al., 2023). Last but not least, the intergovernmental union model poses serious problems of democratic accountability and legitimacy: national governments are formed through national elections but when they take decisions within (particularly) the European Council they affect also constituencies other than those from which they derive their legitimacy.

The EU as an economic community

The economic community model argues that the EU should mainly consist of an integrated single market. The European Council should be the key decision-making actor. Supranational institutions should be disempowered, whereas core state powers should be repatriated. Similarly, to an empowerment of national parliaments corresponds a disempowerment of the EP. The Commission should be marginalised. The centrality for the protection of national interests is epitomized by the unanimity vote in the European Council.

Unlike the intergovernmental union model, the economic community model conceives law-making differentiation as the goal of strengthening the European Council only. No new policies should be integrated unless strictly necessary (functional differentiation). Vertical differentiation clearly points towards the re-domestication of most EU policies. In terms of territorial differentiation, this model does not have a clear prescription: member states are free to do what they prefer. Yet, the single market is

seen as a basis to which all member states could in principle agree to because it does not impinge upon their sovereignty.

How congruent is this model? On the one hand, it is unrealistic because it underestimates the role of supranational institutions in creating and preserving the European single market. Its logic appears to be congruent with a free-trade area and not with an integrated market. On the other hand, the European Council might be able to take fundamental decisions on the course of integration, but it is unable to effectively deal with daily EU policies. Moreover, it needs the Commission to enforce its decisions. In addition, it is not clear how national parliaments could more effectively participate in the EU decision-making process.

With regard to dominance and democracy, the economic community model faces similar risks as the intergovernmental union model: the imposition of some member states over others and the impossibility for national constituencies to hold the European Council to account.

The EU as a federal union

The three models, each in their own way, appear to be insufficient to face the systemic implication of both endogenous (such as the COVID-19 pandemic) and exogenous (such as the Russian invasion of Ukraine) crises. This is why researchers at Luiss devised a fourth, alternative model – not emerged from the CoFoE debate – and called it the federal union model. The federal union is based on fundamental compromises between the three models: on the one hand, core state powers (where positive externalities can be created in military, security, and fiscal policy) should be transferred to Brussels, while some of the centralised single market policies (where member states could be more effective in their control without jeopardizing the integrity of the single market) should go back to national capitals. Hence, selective integration would co-exist with selective repatriation grounded on the principle of subsidiarity (or alternatively, constitutional division of competences). Institutionally, the model does not argue for the centrality of either supranational (like the parliamentary union model) or intergovernmental (like the intergovernmental and the economic community model) institutions. Rather, a system of checks and balances should constitute the only effective way (or the less ineffective) for taking decisions in a union of

asymmetrical states and nationally differentiated citizens (Fabbrini et al., 2023). This would represent a compromise between institutions representing European and national interests.

In terms of law-making differentiation, the federal union model argues for the empowerment of both executive and legislative institutions however with different pre-eminences, where pre-eminence in specific policies is possible yet without any predominance of one institution over the other or even the full exclusion, for instance of the EP, from the decision-making process. As for functional differentiation, the choice for more/fewer policies to be integrated is answered on a case-by-case basis grounded on efficiency criteria: new policies from the member states to the EU if this is associated with the creation of European public goods or the adoption of countercyclical policies in times of crisis; new policies from the EU back to the member states if the subsidiarity principle so suggests (functional differentiation). The same logic applies to the general competence allocation between the EU and the member states (vertical differentiation). Lastly, the federal union model allows for territorial differentiation: those member states that are willing to advance in the integration process should be allowed to do so; those who do not want to should not be forced to advance. It accommodates constitutional decoupling as a basic democratic right at the disposal of a member state (Fabbrini, 2019). Forms of coordination between more or less integrationist member states should be found. The federal union model is less exposed to patterns of dominance than the other models. The main reason is that supranational and intergovernmental institutions would operate on equal footing. In democratic terms, the system of checks and balances prevents anti-majoritarian drifts, within the institutions and between the institutions.

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