The takeoff after Lisbon

The practical and theoretical implications of differentiated integration in the EU

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Introduction

The Lisbon Treaty opened up new possibilities for differentiated integration. In June 2010, the European Parliament approved the first ever precedent of enhanced cooperation in international divorce, which is based on fourteen EU member states' initiative to stronger cooperation within their club in that field. Thanks to this, in the participating member states, separating couples of two different countries will be able to decide which national law is applicable to their divorce. The initiative of harmonising the divorce procedures of EU member states were blocked until the Lisbon Treaty entered into force and laid the strict conditions and applicable procedures of enhanced cooperation. Taking this as a pioneer example of enhanced cooperation, this paper analyses the current opportunities of enhanced cooperation, furthermore intends to contribute to the conceptualisation of differentiated integration by building on wide ranging, existing literature.

Differentiated integration exists in the European integration since the establishment of the Rome Treaty, but only in the last ten years became a new direction of European integration. Supporting this, the evolution of the concept is introduced with special emphasis on the various political, legal and academic interpretations. In order to understand the typology, the various forms of differentiated integration are introduced (multi-speed Europe, variable geometry, a la Carte Europe etc.), in the second part. In the third section, differentiated integration within the Lisbon Treaty is analysed and argued that the new treaty is a milestone in the realization of differentiated integration. Beyond this, the paper argues that differentiated integration is an approach that reinterprets the existing and so far used 'big' theories of European integration (federalist, liberal, intergovernmental, neo-functionalist, MLG theories etc) both from the process and the outcome of integration, and provides new ideas for the self-definition of the European Union too. Finally, the possible integrating and disintegrating effects of differentiated integration are examined at the end of the paper, by bringing

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up the examples of the various forms of emerging club memberships inside and outside the European Union.

The concept of differentiated integration: political, legal and academic interpretations

Differentiated integration is defined as a kind of integration or cooperation in which only some states (members and non-members) participate therefore results in the emergence of various political and legal attachments within and outside the European Union. Differentiated integration in the European Union has been in the focus of scientific investigation for long a time. Indeed, since the accomplishment of the last two enlargement waves (2004 and 2007) an increased interest emerged around it, and the concept was put into the limelight by the politicians and the theorists too. Some tend to see differentiated integration as a natural outcome of the “two big” and “increasingly heterogenic” Union. As De Neve for example argues, the European integration today resembles an onion, which is “a visualization of governance in Europe segmented not only by policy areas and levels of government — as has been the conventional wisdom — but also by subgroups of European states.” (De Neve, 2007: 504) The European integration is becoming differentiated not only by decision-making levels and policies but also by various groups of member states; as a consequence it becomes differentiated territorially as well.

Differentiated integration has a long story in the history of European integration. The political, legal and the academic concepts of differentiation emerged in line with the progress of integration. When the European integration was established along the idea of Jean Monnet and Robert Schuman - the common objective of the six founding states was to establish a united Europe in which all the member states take part to the same extent. Despite of this, the logic of differentiated integration appeared in the Rome Treaty establishing the European Economic Community by referring to the existing union between the Benelux countries: “The provisions of this Treaty shall not be an obstacle to the existence or completion of regional unions between Belgium and Luxembourg, and between Belgium, Luxembourg and the Netherlands, in so far as the objectives of these regional unions are not achieved by application of this Treaty.” Accordingly, the approach to maintain a higher level of integration among the three Benelux states within the EEC was accepted by the Rome Treaty itself. Indeed, in the blooming years of the fifties and sixties with only six members of the European Community there was no need to further develop the idea of differentiated integration. At that time the objective of establishing an ever closer union in Europe was not challenged by differentiating tendencies. It was in the seventies when differentiated integration was brought back to political and academic discourses. This was the time when European economies were seriously affected by the oil
crises and when three newcomers – UK, Ireland and Denmark - were knocking eagerly at the door of the EU.

Due to the changed economic circumstances and the accomplishment of the first enlargement wave, differentiated integration appeared as a new direction of European integration in the speeches of politicians and proposals of integration elites. Willy Brandt in his address given to the Organisation Fancaise du Mouvement Européen in Paris in 1974 was referring to the possibility of letting the stronger member states cooperating closer in the EC.² A year later, in 1975 the Belgian prime minister, Leo Tindemans similarly arguing in his report was emphasizing the openness of the emerging flexibility towards those member states who are unwilling or not able to participate in a certain cooperation:

“It is impossible at the present time to submit a credible programme of action if it is deemed absolutely necessary that in every case all stages should be reached by all the States at the same time. The divergence of their economic and financial situations is such that were we to insist on this progress would be impossible and Europe would continue to crumble away. It must be possible to allow that: (1) those States which are able to progress have a duty to forge ahead,(2) those States which have reasons for not progressing which the Council, on a proposal from the Commission, acknowledges as valid do not do so....This does not mean Europe à la carte: each country will be bound by the agreement of all as to the final objective to be achieved in common; it is only the timescales for achievement which vary.”³

Although Tindemans’ proposal was not put into practice in the seventies, the politicians often used his report as a reference to a need of differentiation in European integration in order to be able to progress.

Differentiation appeared in the primary law first time in Article 8C of the Single European Act: "When drawing up its proposals with a view to achieving the objectives,......, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain during the period of establishment of the internal market and it may propose appropriate provisions. If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the common market.”⁴

Furthermore, Article 100A of SEA introduced the possibility that a member state can decide of not taking part in a cooperation and "apply national provisions", that can be interpreted as the first formulation of the possibility of "opting out" from a policy (Ehlermann, 1995:9).

The evolution of the legal concept of differentiated integration continued in the Treaty of Maastricht, which provided examples of various forms of differentiated integration. At that time the European Community was enlarged with three new members (Greece, Spain, Portugal), of whose economic performance were much below the average of the EU. Additionally, the change of the regime in the
Eastern-European countries required to further conceptualise differentiated integration, mainly because of expected widening of the EU.

The most known example of differentiated is the Economic and Monetary Union. The Maastricht Treaty declared the three phases of the EMU and laid down the convergence criteria of joining the Euro-zone. It turned out from the preceding debates on EMU that there were significant differences between the interests and aspirations of member states in accomplishing the EMU, therefore not all member states and not at the same time can implement the objectives. (Arató & Koller, 2009: 185-190)

Therefore, Article 109 of the Maastricht Treaty declared: “If the Council has confirmed which Member States fulfil the necessary conditions for the adoption of a single currency, ...,those Member States which do not fulfil the conditions shall have a derogation... Such Member States shall in this Treaty be referred to as "Member States with a derogation". The Treaty also declared the conditions and institutional consequences of this derogation. As indicated later, that it is the Community's overall objective to enter into the third stage of EMU and is not allowed for any of the member states to stop this process. Consequently, derogation provided for those countries that are not able to fulfil the conditions of the EMU is a temporary one. This kind of differentiation fits into the category of multi-speed Europe (explained later). But there was another type of, special derogation provided for Denmark and United Kingdom in the Protocol of Maastricht Treaty relating to EMU. Denmark and United Kingdom expressed that they decided not to participate in EMU, not because of their inability but because of their political decision. Therefore Denmark’s and UK’s opt-outs from the EMU, indicated another form of differentiated integration, i.e. the so called a la Carte integration (explained later) which denotes not a temporary but a permanent differentiation between the group of member states that do or do not participate in a certain policy within the EU and they pick-and-choose it along their national interest. 

Europe a la Carte appeared in the Protocol of Maastricht Treaty on Social Policy too, that allowed United Kingdom to opt-out from this policy. Furthermore, differentiated integration appeared in the second pillar of the Treaty. According to Article J4 (5). “The provisions of this Article shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, in the framework of the WEU and the Atlantic Alliance, provided such cooperation does not run counter to or impede that provided for in this Title.”

After Maastricht, differentiated integration got into the focus of political debates: In 1994 two German politicians, Wolfgang Schäuble and Karl Lamers, proposed the establishment of a core Europe that shall lead integration process in the future. The German Chancellor, Helmut Kohl was arguing for multi-speed Europe in 1996: “The slowest ship must not be allowed to determine the speed of the convoy in the long term. If individual partners are not prepared or able to participate in certain steps towards integration, the others must not be denied the opportunity to move forward
and develop increased co-operation in which all partners are welcome." The intergovernmentalist, British Prime Minister, John Major was rather favouring Europe a la Carte concept and advocating the pick-and-choose solutions in the EU. While the French prime minister, Eduard Balladur was for a model of concentric circles. Parallel to this, heated academic debates emerged around this topic in the 1990s which contributed to the conceptualisation of the academic concept.

The Amsterdam Treaty further contributed to the evolution of the legal concept of differentiated integration. In Article K.15 of the Treaty the provisions on closer cooperation were laid. According to these provisions, the majority of member states can establish a closer cooperation within themselves, in case they aim to further the objectives of the Union, respect the principles of the EU. It was also declared that closer cooperation is only to be used as a “last resort”, and where the objectives of the Treaties cannot be attained otherwise. As further conditionality of closer cooperation, it was stated that the majority of Member States should be included in the cooperation; acquis communautaire should not be affected nor the competences, rights and obligations of not participating members. Additionally, closer cooperation should remain open to all Member States at any time.

Additionally, the Amsterdam Treaty incorporated the Schengen acquis into the framework of the Union and recognised it as a form of closer cooperation by “noting that the Agreements on the gradual abolition of checks at common borders signed by some Member States of the European Union in Schengen on 14 June 1985 and on 19 June 1990, as well as related agreements and the rules adopted on the basis of these agreements, are aimed at enhancing European integration and, in particular, at enabling the European Union to develop more rapidly into an area of freedom, security and justice”.

With regard to policy areas, the Amsterdam Treaty allowed closer cooperation in the first and third pillars, which was only later extended to the second pillar in the Nice Treaty. (Arató, 2002: 109-140). Under the Title VII, the Nice Treaty codified the provisions of enhanced cooperation. The conditions of enhanced cooperation were further completed by adding a clause that in those areas which fall within the exclusive competence of the Community, Member States cannot establish enhanced cooperation. Additionally, internal market, economic and social cohesion cannot be undermined; it cannot in any form be discriminative to trade and cannot distort competition either. While in the Amsterdam Treaty it was stated that the majority of the member states should participate, the Nice Treaty explicitly declared that an enhanced cooperation should involve a minimum of eight member states. It is similarly declared that it should be open to all member states and should respect the competences, rights and obligations of the outsiders too. Additionally, the Schengen acquis, which is itself a great example of differentiated integration emerged first outside the EC framework and became later involved in the framework of the Union, is also named as part of the acquis that could not be affected by any of emerging new forms of enhanced cooperation.

Interestingly, while the
provisions emerged from enhanced cooperation are binding for the participating states, it is also highlighted that they do not constitute part of the common acquis.

At the beginning of the new millennium, the politicians handed off the baton again and contributed to further conceptualisation of the concept by participating in debates on the finalité politique of the EU.

Joschka Fischer, German Foreign Minister in his speech delivered on 12 May 2000 at the Humboldt University in Berlin was talking about the emergence of a core Europe with the EU, i.e. a center of gravity: "The question of which countries will take part in such a project, the EU founding members, the Euro 11 members or another group, is impossible to answer today. One thing must be clear when considering the option of forming a centre of gravity: this avant garde must never be exclusive but must be open to all member states and candidate countries, should they desire to participate at a certain point in time. For those who wish to participate but do not fulfil the requirements, there must be a possibility to be drawn closer in. Transparency and the opportunity for all EU member states to participate would be essential factors governing the acceptance and feasibility of the project. This must be true in particular with regard to the candidate countries. For it would be historically absurd and utterly stupid if Europe, at the very time when it is at long last reunited, were to be divided once again. Such a centre of gravity must also have an active interest in enlargement and it must be attractive to the other members." Jacques Chirac in the same year speaking in the German parliament was calling for a pioneer group including France and Germany that is leading integration.

As it was demonstrated above, the multi-speed and core Europe concepts regularly appeared in the speeches of politicians and integration elites, thus the topic remained on the table for further discussions. Nevertheless, due to the misery around the constitutionalisation and the failure of the Constitutional Treaty, it was almost ten years until it appeared again in the primary law of EU, i.e. in the Lisbon Treaty.

**Typology of differentiated integration**

While I so far in this article, I deliberately used differentiated integration as the overall concept, at this point it is essential to write about the terminology and the various forms of it. In general, there is a terminological chaos around it, mainly because EU legal documents, politicians, and theorists use different concepts to describe the matter. Flexibility, core-Europe, Europe a la Carte, multi-speed, variable geometry, closer cooperation, enhanced cooperation, centre of gravity, pioneer group etc. all describe a form of differentiated integration.

One of the most comprehensive categorisation of differentiated integration came from Stubb, who defined the three main concepts of differentiated integration along three variables: time, space and
matter. In this paper Stubb's below defined three categories will be used for characterizing differentiated integration.

As his first category, a "multi-speed EU can be defined as the mode of differentiated integration according to which the pursuits of common objectives is driven by a core group of member states which are both able and willing to pursue some policy areas further, the underlying assumption being that others will follow later".

As a second category, "variable geometry can be defined as the mode of differentiated integration which admits to unattainable differences within the main integrative structure by allowing permanent and irreversible separation between the core of countries and lesser developed integrative units."

A third category, a la Carte Europe, based on the culinary metaphor “allows each member state to pick and choose as from a menu, in which policy area it would like to participate, whilst at the same time maintaining a minimum number of common objectives." (Stubb, 1996: 287-288). Stubb, later explained and worked out his categories in details by defining them along their temporary, permanent, general or specific nature, and argued that definitions and natures of flexibility often overlap. (Stubb, 1997: 44).

Another widely cited author, Kölliker analysed differentiated integration from the perspective of integration theories. He argued that differentiated integration emerged along the increase in institutional flexibility in the 1980s. According to his theory, due to the centripetal effects of closer cooperation of participating states, the initially non-participating states become also very much affected by the cooperation which long-term leads to a more united integration. Nevertheless, according to Kölliker, centripetal effects depend very much on the character of the policy area, in which the states would like to cooperate. (Kölliker, 2001:147). Further developing Kölliker’s idea on the centripetal effects of differentiated integration, de Neve argues that there are two options of getting the initially not-willing states on board and convince them to join the initiative of other countries. There is the so called ‘carrot’ centripetal effect, where the “prospect of being part of advanced structural cooperation, perceived to be in the interests of a state” therefore the state tries to accomplish as much as it can in order to be involved in this cooperation. Besides that there could be a “stick” centripetal effect too, which describes the “threat of being excluded from a more advanced degree of integration that pushes a recalcitrant member state to cooperate”. (De Neve, 2007: 511-12)

All of the above mentioned authors and others (Philippart & Edwards, 1999; Tekin & Wessels, 2008, Andersen and Sitter, 2006) interpreted differentiated integration on the basis of existing EU treaties and legal arrangements, but it is important to highlight that differentiated integration can be interpreted in a wider sense.
One author, arguing for this, distinguishes three different kinds of orders of flexibility. The first and most intense one is on the level of the primary law of the EU, and includes safeguard clauses, opt-outs and protocol-based derogations. The second order of flexibility is at the level of secondary EU law and encompasses legal techniques of minimum harmonisation, mutual recognition, interpretative solutions and derogative clauses. And finally, the third, and according to my opinion, the most interesting order of flexibility cover all the regulatory and legal regimes and cooperations which were born outside the Union’s framework and later did or did not become part of the aquis communautaire. (Avbjev, 2008). This third form of differentiated integration, I argue should be in the scope of further scientific investigation, because this latter could have unexpected consequences to the status of European integration and could influence significantly how the European Union is going to look like in the future.

**Differentiated integration within the Lisbon Treaty**

As a continuation of the evolution of the legal concept, the Lisbon Treaty should be considered as another step in codifying differentiated integration. The conditions of establishing enhanced cooperation that were laid down in the Nice Treaty stayed mostly unchanged in the text, namely that enhanced cooperation should comply with aquis communautaire, shall not undermine the internal market or economic, social and territorial cohesion or shall not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them. Further, any enhanced cooperation shall respect the competences, rights and obligations of those Member States which do not participate in it. However, the minimum of participating states was increased to nine countries in the Lisbon Treaty. In general, the Lisbon Treaty made it easier to implement enhanced cooperation. The “last resort” remained an integral element in the Lisbon Treaty too, however “it has been watered down by the new treaty by stating that the last resort can be established by the Council” (Tekin & Wessels, 2008: 28). As far as initiation concerned, member states can turn with their request to the Commission: “Member states shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so. Authorisation to proceed with the enhanced cooperation shall be granted by the Council, on a proposal from the Commission and after obtaining the consent of the European Parliament.” According to the Treaty, member states can initiate enhanced cooperation in all of the policy fields (meeting the conditions set in the Treaty), though there are differences between the authorisation procedures according to the policy areas. In case of CFSP, beside the Commission and the Council,
the High Representative for Foreign Affairs is also involved in the procedure: “The request of the member states which wish to establish enhanced cooperation between themselves within the framework of the common foreign and security policy shall be addressed to the Council. It shall be forwarded to the High Representative of the Union for Foreign Affairs and Security Policy, who shall give an opinion on whether the enhanced cooperation proposed is consistent with the Union’s common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information. Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council acting unanimously.”

Additionally, the Lisbon Treaty increased the involvement of European Parliament in the authorisation of the enhanced cooperation, by requiring its consent in all procedures. "(Tekin & Wessels, 2008: 29)

Additionally, there is an “emergency bake”, i.e. a possible veto of one or more states in the field of police and judicial cooperation in criminal matters too.

The procedure of “joining the club”, i.e. accession to an enhanced cooperation within the EU framework is also regulated. “Any Member State which wishes to participate in enhanced cooperation in progress ...shall notify its intention to the Council and the Commission. The Commission shall, within four months of the date of receipt of the notification, confirm the participation of the Member State concerned. It shall note where necessary that the conditions of participation have been fulfilled and shall adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation. However, if the Commission considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request. On the expiry of that deadline, it shall re-examine the request, in accordance with the procedure set out in the second subparagraph.”

According to Article 331, if the Commission considers that the conditions of participation have still not been met, the Member State concerned may refer the matter to the Council, which shall decide on the request.”

In case of foreign and security policy the member state should notify the Council, the High Representative of the Union for Foreign Affairs and Security Policy as well.

The provisions on permanent structured co-operations in the Lisbon Treaty are other examples of differentiated integration by providing the closer cooperation of member states that have better defense capabilities: “Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework”.

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To assess the significance of the Lisbon Treaty with regard to the evolution of differentiated integration, is not an easy task, because it is only one year ago when the new treaty finally entered into force. Nevertheless, there are signs that the Lisbon Treaty marks a start of a new era in European integration.

Although the Nice Treaty provided to possibility of using enhanced cooperation, despite its existence for 10 years, there was not any single example of enhanced cooperation that implemented this mechanism (Král, 2008: 4) Before Lisbon it seemed that due to the already declared (Nice Treaty) strict conditionality of enhanced cooperation and the complex and rigid procedure, it could be only hardly defined on which field differentiated integration shall be established. Single market issues, including the common agricultural policy, transport, competition and cohesion policies belonging to the ‘untouchable matters’ could not the fields of enhanced cooperation. Whether social policy and environmental policies could be targets of treaty based enhance cooperation is a question, because both of them strongly connected to functioning of single market. As potential targets, such heavy weight cooperation areas like the fiscal and economic aspects of EMU, operations within CFSP or police and judicial cooperation in criminal matters and lighter, marginal issues like civil protection, public health tourism etc. can fall into the category. (Ehlermann, 1995: 25-26).

The first ever example of enhanced cooperation was implemented after the entry into force of the Lisbon Treaty in June 2010, when the European Parliament approved the initiative of fourteen member states to harmonise their divorce law applicable in cross-country separation. Consequently, the real “take-off” appeared in a rather marginal area which is however very much affecting the every-days of the European citizens, therefore can be interpreted as a “bread and butter issue” for the 170.000 couples per year involved in such a separation and therefore be interpreted as a bottom-up process providing a usable framework to settle cross-border divorces. Thank to the growing mobility of citizens in the single market, the need to settle the cross border divorce disputes appeared on the agenda of the Commission before18, however some states like Sweden for example blocked the procedure because felt its liberal divorce law threatened.

In 2008 eight member states initiated enhanced the cooperation in the harmonisation of cross border divorces and officially submitted the request to the Commission. During the procedure new countries joined the proposal and one country: Greece fell out from the initiative later. At the end, fourteen EU member states (Austria, France, Hungary, Italy, Luxembourg, Romania, Slovenia, Spain. Belgium, Germany, Lithuania, Latvia, Bulgaria and Portugal) decided to implement enhanced cooperation in divorce law. After getting the consent of the EP, the Council approved to implement enhanced cooperation in divorce law.

The emergence of a “mini-aquis” in the field of divorce law inside the EU framework could be put into the category of a mixture of variable geometry and multi-speed Europe. Apparently, there are
some states such as Sweden, Malta, the UK, Ireland or the Nederland that are not going to participate in it. However, experiencing the practical advantages in the long-run, some countries may later accede and be part of that newly emerged acquis.

Apart from this first precedent of enhanced cooperation, the Lisbon Treaty provided other examples of treaty-based differentiated integration, in the form of a la Carte Europe, i.e. letting three of its member states to freely choose among the areas in which they would like participate and opt-out from those that they would not. Although the Charter of Fundamental Rights is not an integral part of the text, The Lisbon Treaty made it legally binding. However, three member states, UK, Poland and Check Republic clearly expressed their standing away from the Charter because of various reasons. UK feared that its labour law would be threatened, Poland wanted to keep national control on family law and abortion, and Check Republic did not participate in it because of the fear of emerging possible property claims of WWII German expellees.

Based on the above mentioned examples, I argue that the first precedent of enhanced cooperation in international divorce law, the opt-outs from the Charter of Fundamental Rights, the provisions on permanent structured cooperation as well as the emergence of differentiated integration outside the EU framework (later discussed) are signs of a new era in integration in which new circles of acquis emerge short and long-term and make the European integration increasingly differentiated.

**Differentiated integration and finalité politique**

Currently, we experience differentiated integration in various forms in the European Union, however, we can only guess about its effects on European integration, its consequences on the relationship between member states as well as on the non EU members and on the evolution of the policies of the EU in the future. Furthermore, we at the current stage can only predict how it is going to affect the self-definition and the legitimacy of the European Union. Though many attempts were made to conceptualise differentiated integration, I believe that we are just at the start of theorizing it. Because of the size limits of this paper, I’m only going to sketch the main dilemmas around it, and try to define the routes of further scientific discourse.

At first, we should turn to integration theories, because they can be at our help in understanding the nature of differentiated integration. There is a vast amount of literature contributing to theorizing integration starting with the early explanations of the neo-functionalists (Haas, 1958, Lindberg 1963) continuing with the intergovernmentalists (Hoffman, 1966, Taylor 1982) and liberal intergovernmentalists (Moravcsik, 1993) and arriving to the models of multi-level governance (Hooghe & Marks, 2008) and social constructivism (Risse, 2004) – just to name a few. But where is the place of differentiated integration among the theories of European integration? Is differentiated
integration a new theory? Some authors argue for that. De Neve for example foresees the end of
grand theories of integration and writes that “all theories of European integration — both rationalist
and constructivist — be revisited to come up with a satisfactory analysis of the processes of
differentiated integration” (De Neve, 2007: 515).

The theories of European integration can be put into two categories: the first groups of theories
analyse the process of integration and the development of common institutions, the second groups
focus on the explanation of the outcomes of integration. Differentiated integration should also be
approached from these two angles: from the process on the one hand and from the outcome of
integration on the other hand. (Wiener & Diez, 2004:3).

With regard to the first approach, the process of differentiated integration can be interpreted as a
functional drive for efficiency in integration, which at the end can contribute to greater
Europeanization. (Kölliker, 2001; De Neve, 2007) Along this argumentation it can be viewed as a tool
to overcome deadlocks in integration process by letting some countries to progress in certain policy
fields and reach higher lever of integration in the short term. The Euro-zone and the first precedent
of enhanced cooperation in international divorce law are good examples for that. Without the
approach of differentiation, none of them could have been adopted. Nevertheless, it seems that
differentiated integration does not necessarily have this positive, strengthening role in the
integration process, and it can be interpreted as a brake and a barrier to Europeanisation. The list of
opt-outs form Social Policy, EMU, Charter of Fundamental Rights etc. all fall into that category. These
can be the symbols of the so called “downsizing effect” of differentiated integration (Tekin & Wessels,
2008:25), which rather serve as fostering the centrifugal than the centripetal forces in the EU.

Assessing the future effects of differentiation on the process of integration, I believe that the kinds of
differentiated integration, which include regulatory and legal regimes and cooperation that were
born outside the Union’s framework and later did or did not become part of the aquis communautaire should be examined. These could either become driving forces of integration or turn out to be exclusionary in character and contribute to slower the integration process. The Schengen regime is a good example of differentiated integration that contributed to deepen integration among its members first and then become fully involved in the EU framework by codifying it in the Amsterdam Treaty. But as one author argues, even in case of Schengen there were many contingencies and ad hoc solutions that interfered with strategic calculations. (Gaisbauer, 2010: 2). It seems logical to anticipate this in the future, and expect that the process of differentiated integration may have some unknown variables.

It should be noted that the actors of differentiated integration are states (members and non-
members) whose rational interest stand behind their willingness or unwillingness of participating in
integration in various matters and in different time frames. From an intergovernmental perspective,
differentiated integration is a way how national interest could be put into fore. It is true, that currently states are the subjects of differentiated integration in both primary and secondary law of the EU as well as in the outside agreements. Nevertheless, I believe that later local, regional communities and also individuals could be the motors of that process.\textsuperscript{19}

With regard to differentiated integration’s effect on the outcome of European integration, i.e. on the finalité politique of the EU, it is worth sketching the prospects. The evolution of differentiated integration in the European Union and also in relation to non-members is expected to results in significant changes in how we imagine the Union in the future. Differentiated integration can be interpreted as a boundary issue and a continuous formation of new “clubs of membership” in connection with the European integration. Forming a new club and delineating its boundaries also means including the joining members and excluding those who do not participate in the cooperation, therefore differentiated integration is also about defining “ins” and “outs” in relation to the club. For example, Hungary is a club member of the EU and the Schengen regime but to date, not yet included in the Euro-zone. Similarly, Norway is not an EU member-state, but because its membership in European Economic Area enjoys most of the advantages of the single market.

In line with the spread of differentiated integration, the mirror of self-understanding of the Union becomes vague and uncertain. It is not so obvious to define who belongs to “us” and “they” any more. Being a member of the EU 27, the euro-zone, Schengen Zone or part of the European Economic Area or cooperating with the EU in frames of the Stabilisation and Association Agreement all represent a different type of “club membership” and all in a way exclusionary in nature. Apparently, the value of these club memberships differs to a large extent. Thus, differentiated integration can also be interpreted as forming new fragmentation lines in the Union, thus it is about establishing new boundaries inside and outside the EU as well.

Foremost, European Neighbourhood Policy, as a form of variable geometry outside the EU borders, should be mentioned as an example of re-interpreting otherness within Europe. The in 2003 launched new policy aims to share some the benefits of the European Union with the neighbouring countries, without letting them to have their voice in setting its fundamentals. Thus, a new, in-between category, “the neighbours” emerges which indicates that these countries are attached to Europe in economic, social, cultural and political aspects but should not be considered as fully being part of the EU. Simply saying: “these partners are almost like us, but not us”. European Neighbourhood Policy requires wide range of commitments from the non-member countries to follow the “European way” in various fields of cooperation, while not offering them full membership. “The ENP is as much about the identity of Europe as it is about the handling of the relations to the neighbouring states” (Jan Ifversen and Christoffer Kølvraa, 2007:3)
The much criticised Eastern Partnership with the post-soviet countries also aim to establish stronger links between the EU and the Eastern neighbours while importing the European values, norms eastwards without letting these countries to contribute to this relationship. The Stabilisation and Association Agreements with the Western Balkan states are different in nature because they explicitly include provisions for future accession and thus representing a step towards gaining full membership in the EU, therefore can be interpreted as multi-speed Europe outside the EU’s border. The establishment of the so called functional macro-regions could be interpreted as outcomes of differentiated integration too. Functional macro-region, a term widely used in the EU documents indicates a territorial unit, which encompasses various states (EU members and non-members) covers different areas of cooperation and is interweaved with multi levels of competences (in that sense it is also an example of multi-level governance).

A macro-region aims to find the lost consent of people to the whole European project at various levels of their activity, including the national level, the regional level, the local level and even the level of the individuals. It also aims to foster the better use of existing financial resources, institutions and legal framework in order to enhance the level of cooperation between the stakeholders of the region without establishing new institutions, financial and legal structures. It is, therefore rather a catalyst to get things moving in the society, economy and environment than a new establishment. Macro regions can be viewed as examples of new territorial forms of differentiated integration. On the one hand, by fostering on bottom-up processes they can contribute to the strengthening of the common Europe. On the other, they are regional sub-groups in the European integration that could work against the unity of the EU and create new fragmentation lines on the map of the continent. This approach is in line with the variable geometry concept. It seems logical that in a Union with 27 member states manageable sub-groups, like the Baltic or Mediterranean cooperation evolve and work in unison for common projects and actions. The recent establishment of the Danube Region is also an example of that and it also expands over the EU’s borders, because non-members participate in the undertaking as well.

Additionally, in line with the emergence of overlapping clubs inside and outside the EU, the concept of enlargement gain new interpretations. As we have learned from the history of European integration: new enlargement wave always constituted a complex challenge for the community. The inclusion of the newcomers proved to be a hard and long process in both the old members and the newly joined states. Transforming the “outs” to “ins” apart from resulting in obvious benefits also requires sacrifices depending on the value of the good and has transaction costs on both sides. In a new era of differentiated integration, we cannot any more talk about enlargement in a traditional way. Accession to the EU is only one form of enlargement in the future, and there are still many countries – Croatia, Iceland, Turkey waiting for becoming full members of the EU27. Nevertheless,
accession to other clubs such as the Euro-zone, the Prüm Treaty or the Danube Region Strategy constitutes different but valuable memberships. Accordingly, in the future we can only talk about enlargement in plural, i.e. enlargements of the various clubs and about continuous pursuits of some states to change their status of outsider to insider in policy areas like EMU or in a geographical entity like the Danube-Region. Similarly, “deepening” should be reformulated too, because it could only be interpreted within certain clubs of the integration in the future. Further, deepening integration in a club of the EU could lead to increase the value of club membership, and parallel to increase it exclusionary nature and make them less open to outsiders. Implementing a stronger cooperation in budgetary and fiscal policies in the Euro-zone could be a future example of that.

Conclusion

Despite of the existence of a wide ranging literature on the subject, as this paper presented, there are still many open questions that surround the concept of differentiated integration. Politicians, lawyers and academics all contributed to conceptualisation but it seems that we still know little about it. While Treaty-based explanations dominate the discourse, less was written about differentiated integration in secondary law and even less in connection to the evolution of the just established “new clubs” outside the EU framework (e.g. macro-regions), which could be also become examples of differentiated integration. As it was argued, the Lisbon Treaty marks a new era in integration. New clubs of integration emerge which can reinterpret the widening and deepening debates in the EU. In line with that, the so far used theories of integration should be cautiously applied in explaining the nature of differentiated integration. Finally, differentiated integration is considered as a boundary issue; therefore either the emergence of centres of gravities or new fragmentation lines can be foreseen in the future.


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Notes

1 Article 233, Treaty Establishing the European Economic Community.
5 Article 109 ,Treaty establishing the European Community (consolidated text) Official Journal C 325 of 24 December 2002
10 ‘From Confederacy to Federation - Thoughts on the finality of European integration‘ Speech by Joschka Fischer at the Humboldt University in Berlin, 12 May 2000.
15 ‘In case of foreign and security policy the member state should notify the Council, the High Representative of the Union for foreign Affairs and Security Policy as well. The Council shall confirm the participation of the Member State concerned, after consulting the High Representative of the Union for Foreign Affairs and Security Policy and after noting, where necessary, that the conditions of participation have been fulfilled. The Council, on a proposal from the High Representative, may also adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation. However, if the Council considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfill those conditions and shall set a deadline for re-examining the request for participation. For the purposes of this paragraph, the Council shall act unanimously” (Article 331)
18 Franco Frattini, at that time Commissioner of Justice and Home Affairs proposed this harmonisation in 2006, but his plan could not be implemented because of the strong opposition of some member states. Current Commissioner for Justice, Fundamental Rights and Citizenship, Viviane Reding further pushed this initiative later and suggested to implement the proposal only in a circle of pioneer countries.
According to Article 11, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. Official Journal C 83 of 30.3.2010: “Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.”

As it is defined by the Commission “an area including territory from a number of different countries or regions associated with one or more common features or challenges...geographic, cultural, economic or other” (CoR, 2010).