

FLEXIBLE EUROPE

*DIFFERENTIATED INTEGRATION, FAIRNESS, AND DEMOCRACY*

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(Title Verso Page)

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<1> ABBREVIATIONS

<b>AfD</b>	Alternative for Germany
<b>BE</b>	Left Bloc
<b>CJEU</b>	Court of Justice of the European Union
<b>CP</b>	Constitutional Pluralism
<b>DI</b>	Differentiated Integration
<b>DK</b>	Democratic Coalition
<b>EL</b>	Red-Green Alliance
<b>ECR</b>	European Conservatives and Reformists

<b>EP</b>	European Parliament
<b>EPP</b>	European People's Party
<b>EPPO</b>	European Public Prosecutor's Office
<b>EU</b>	European Union
<b>Fidesz</b>	Fidesz - Hungarian Civic Alliance
<b>Jobbik</b>	Movement for a Better Hungary
<b>K</b>	Conservative People's Party
<b>DIE LINKE</b>	The Left
<b>LMP</b>	Politics Can Be Different
<b>MSZP</b>	Hungarian Socialist Party
<b>ND</b>	New Democracy
<b>ÖVP</b>	Austrian People's Party
<b>PIŠ</b>	Law and Justice
<b>PLUS</b>	Freedom, Unity and Solidarity Party
<b>PNL</b>	National Liberal Party
<b>PS</b>	Socialist Party
<b>PSD</b>	Social Democratic Party
<b>RV</b>	Danish Social Liberal Party
<b>SD</b>	Social Democrats

<b>SF</b>	Socialist People's Party
<b>SPD</b>	Social Democratic Party of Germany
<b>SPÖ</b>	Social Democratic Party of Austria
<b>SYRIZA</b>	Coalition of the Radical Left
<b>V</b>	Left, Denmark's Liberal Party
<b>UDMR</b>	Democratic Alliance of Hungarians in Romania
<b>USR</b>	Save Romania Union
<b>WTO</b>	World Trade Organisation

## <1> NOTES ON AUTHORS

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We owe a deep debt of gratitude to the many colleagues who have provided us with constructive and helpful comments and feedback, in some cases multiple times, on various draft papers and chapters of this book. We list them in alphabetical order, and hope we will be forgiven for any inadvertent omissions: Nick Barber, Rainer Bauböck, Michael Blauburger, Dario Castiglione, Francis Cheneval, Mark Dawson, Erik Eriksen, Cécile Fabre, Cristina Fasone, John Erik Fossum, Kira Gartzou-Katsouyanni, Lise Herman, Chris Hilson, Kasim Khorasanee, Dan Kelemen, Joseph Lacey, Dirk Leuffen, Cécile Laborde, Christopher Lord, Cormac Mac Amhlaigh, David Miller, Glyn Morgan, Kalypso Nicolaïdis, Markus Patberg, Simona Piattoni, Enzo Rossi,



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## <1> INTRODUCTION

Must European unity come at the expense of national diversity? Both proponents and opponents of European integration often believe so. Many supranationally minded pro-Europeans consider the European Union's (EU) historical goals of peace and prosperity as requiring and promoting the overcoming of national differences through greater economic and political integration and the creation of a common European identity alongside the single market and monetary union (Haas, 1958, p. 16). By contrast, many more intergovernmentally disposed pro-Europeans (Moravcsik, 1993, p. 480), as well as outright Eurosceptics (Streeck, 2019), criticise such moves for failing to take account of the important social and economic disparities between the member states that they believe make common, supranational, 'one size fits all' policies inappropriate. They contend these differences both reflect and give rise to divergent political preferences that can only be adequately recognised by retaining national sovereignty and the capacity for self-determination of the various peoples of Europe. This book explores the attractions and drawbacks of differentiated integration (DI) as a way of reconciling these two camps. A mechanism increasingly adopted from the 1990s, it allows some member states to be exempted or excluded from participating in certain existing EU policies, and other member states to cooperate in new policy areas and integrate further than some may be willing or able to, with the result that not all policies and standards apply uniformly across the EU (Schimmelfennig and Winzen 2020). As such, it offers the prospect of a more flexible Europe, capable of combining the demand for unity advocated by supporters of greater integration with the on-going claims for the recognition of diversity insisted on by its critics.

The issues provoking these competing visions of European integration and driving the move to DI have become ever more urgent (Bellamy and Castiglione, 2019, pp. 1–2). The enlargement to Central and Eastern Europe from 2004, the Eurozone crisis of 2009 and the migration crisis of 2015/16 have heightened the tension between unity and diversity within the EU. The widening of Europe to include a number of poorer and less developed states that had only recently emerged from authoritarian rule greatly increased the socio-economic and political heterogeneity of the EU. The Eurozone crisis not only highlighted the continuing economic disparities among the euro states but also led many to argue that without a further deepening of integration and the creation of a fiscal union the eurozone would remain unstable. The migration crisis in turn illustrated strong differences in core values between member states. DI emerged as a policy instrument both to address the need to accommodate the socio-economic disparities occasioned by the widening of the EU to the East, and to manage the divergent political preferences emerging from this development (Schimmelfennig, 2014). It also offered a means to overcome disagreements among the member states over the desirability of a further deepening of the integration process into what had been regarded traditionally as core state powers, such as immigration controls, fiscal policy, defence and justice and home affairs (Schimmelfennig et al, 2015). For newer member states, DI granted them certain exemptions from policies related to the single market so as to allow their economies to adapt to higher standards and greater competition. For existing member states, it permitted them to exclude newer states from policy areas where they felt these new members either could not meet the commitments involved, as with membership of the Eurozone, or posed a threat to jobs through competition from cheaper labour and production costs, as in exclusions from free movement under Schengen. It also led some of these older member states to seek exemptions in

the form of opt-outs from moves to deepen integration in certain areas in order to retain domestic control over a policy or to maintain their political and/or cultural distinctiveness.

All these forms of DI raise important normative questions regarding their fairness and democratic legitimacy (Bellamy and Kröger, forthcoming). Some of these are familiar from other international and domestic contexts. For example, requests by certain new member states for temporary exemptions resemble the demand for special and differential treatment by developing countries within the World Trade Organisation (WTO). In these sort of cases, poorer states request exemptions from uniform rules designed to liberalise trade on formally equal terms on the grounds that they are unfair and favour the developed and wealthier states, who have already crafted the rules of the organisation in their favour (Christensen, 2015). Other instances parallel the demands for special rights and self-government rights by minority national and other groups within many multicultural and multinational states, including a number of the EU's own member states (Kymlicka, 1995). Both these examples have been controversial, yet are increasingly seen as not only pragmatically necessary but also normatively justified to accommodate relevant differences within a heterogenous political community. It is unsurprising, therefore, that as the integration process progresses they should increasingly figure within the EU as the most developed instance so far of international and supranational cooperation among democratic states.

In this book we shall assess not only whether the resulting opt-outs, exemptions and exclusions are fair and legitimate by the lights of certain ideal theories of justice and democracy, but also whether they are perceived to be so by political party actors from across the ideological spectrum and within seven member states. We regard this combination as important. If DI and the resulting idea of a flexible Europe is to provide a stable and enduring framework for the states and citizens of the EU, they must be viewed as fair and legitimate by those who must live under these

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arrangements. If they are seen as a mere *modus vivendi* – a pragmatic solution to be reluctantly adopted only when no side can obtain their preferred outcome – then their stability and acceptance will be contingent on the continuing existence of a favourable balance of ever-changing alliances and circumstances, something that in the current turbulent times cannot be counted on (Rawls, 1993, pp. 147–8).

The remainder of this introduction proceeds as follows. We start by outlining the basic concepts and theories that inform the book. First, we offer a guide to the various forms of DI and the main factors underlying demand for them. Second, we relate DI to what has been called a democratic account of the EU (Cheneval and Schimmelfennig, 2013; Nicolaïdis, 2013), which we link in turn to the idea of a flexible Europe. We then turn to the two main parts of the book and explain their rationale and the core themes of each of the chapters. We begin with the normative issues raised by DI discussed in Part I and indicate why they are important, and offer a brief preview of Chapters One–Three. We then turn to the empirical research on the views of party actors in Part II. We provide details of why and how we conducted this research, and summarise our presentation of the material in Chapters Four–Seven.<sup>1</sup>

## <2> DIFFERENTIATED INTEGRATION: AN OVERVIEW

When describing the various categories of DI, it is helpful to align the supply of different types and forms of DI with the drivers fuelling the demand for DI. The drivers can be related to social and economic heterogeneity stemming from the widening of the EU to Central and Eastern Europe,

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<sup>1</sup> Part I of the book draws on research developed by Richard Bellamy and Sandra Kröger. Part II was developed by Richard Bellamy, Sandra Kröger and Marta Lorimer.

and cultural and political heterogeneity highlighted by concerns with the deepening of the EU (Bellamy and Kröger, 2017). The corresponding forms of supply of DI can be linked respectively to Thomas Winzen's (2016) distinction between 'capacity' and 'sovereignty' DI.

Capacity DI is mainly 'motivated by efficiency and distributional concerns' linked, as we noted, to EU enlargements (Schimmelfennig and Winzen, 2014, p. 355). It occurs when either existing member states temporarily *exclude* new member states from certain policy areas because they 'fear economic and financial losses as a result of market integration with the new member states, the redistribution of EU funds or weak implementation capacity' (Schimmelfennig and Winzen, 2014, p. 361); or new member states seek to be *exempted* temporarily from integration in a given area and be granted more time to adapt to EU rules and market pressures. In such constellations, DI is seen as a temporary and transitional measure that ideally aids both sides.

However, if these differences in capacity are seen as reflecting '*structural* economic and social heterogeneity' then that can imply 'less space for uniform integration overall and might lead to some more durable forms of DI than the transitional ones linked to enlargement rounds' (Bellamy and Kröger, 2017, p. 629). Not all member states may have an equivalent ability to contribute towards or interest in providing a given collective good at the EU level. Here it is standard to distinguish public goods, such as defence or air, from club goods, such as a customs union, and common pool resources, such as fish stocks (Lord, forthcoming; Kölliker, 2001). Public goods are non-excludable and non-rivalrous – I cannot privatise the open air, and my breathing it does not deplete the stock of air for others to breathe. However, that means I cannot exclude others from the benefits or positive externalities of my good environmental policies or the costs or negative externalities of my polluting. By contrast, club goods are excludable but non-rivalrous while common-pool resources are non-excludable but rivalrous.

With regard to club goods, there are clear advantages to restricting the clubs to those with a roughly equivalent ability to pay for their production and a common interest in them. If costs were distributed asymmetrically between member states and/or they valued the benefits to an unequal degree, then provision of that good at the EU level would risk being sub optimal and involving free riding, thereby justifying DI and the formation of an exclusive club of a subset of member states. The deciding factor is the ratio between the advantages of reducing production costs of a particular club good by sharing them among as many member states as possible, and the loss of benefits as the gap widens between the ability and/ or interest of an individual member state in providing that good and the collective ability and interest of the other member states involved (see Kölliker, 2001). The more heterogeneous the group of participating member states becomes in terms of their capacity to produce the club good and/or their interest in its benefits, the greater the likelihood that either the EU will refrain from producing a given good, leaving its production to member states, or that some member states will decide to set up a 'club' that excludes others.

DI might seem less acceptable in the case of public goods and common-pool resources (Lord, forthcoming). However, that need not be the case. For example, although the EU has committed to the 'polluter pays principle' with regard to the environment (TFEU 191), in many international agreements developing countries get partial exemptions on the grounds that historically they industrialised later and have polluted and benefitted less than developed countries that, as a result of past pollution, are better able to pay and so have a duty to pick up the slack (Caney, 2010). As a result, even in this area some temporary capacity DI might be warranted. Likewise, the economies of some countries may be more dependent on certain common-pool resources, such as fish stocks, than others, making exemptions justifiable for them, while other countries may only have an indirect interest in them and so are naturally excluded. Duties to support public goods and

common pool resources might be regarded as stronger than those to support club goods, especially in areas where rights might be violated if these goods are undermined— as in action to mitigate climate change. However, that suggests all member states have a moral obligation to do something, with that something being determined by whatever justice might require of them according to a given principle, such as ability to pay. It need not mean they have an obligation to cooperate with others within the EU in doing that something, though, unless an adequate provision of the good in question could only be achieved through cooperative action at the EU level (Christiano, 2012, pp. 388–90).

Willingness to join a club involves not just capacity but also sovereignty concerns. *Sovereignty* DI occurs most commonly when competences in core state powers are transferred to the EU in the context of treaty revisions and a government successfully negotiates an opt-out of a policy transfer due to constitutional and identity issues (Schimmelfennig and Winzen, 2014, p. 355). These issues may reflect ideological or pragmatic preferences by certain political actors, as when governments of largely Eurosceptic countries, which either are ideologically opposed to further integration or fear domestic opposition to it, seek a permanent or temporary opt-out. However, they may also reflect deeper cultural and political differences in core areas about which a government or its citizens feel strongly, such as those related to marriage and divorce, abortion and euthanasia, the use of stem cell research or Sweden’s opt out from regulations regarding snus. In such areas, some governments may be reluctant to integrate a policy and seek to opt out if it is integrated, so as to protect the predominant cultural values of their citizens. Or sovereignty DI may result from diverging views about how much political integration is desirable. For example, the euro and the migration crises have produced a growing constraining dissensus among domestic electorates



fearing that EU pressures are eroding economic and social policies at the state level designed to support the losers from globalisation (Hooghe and Marks, 2009).

We argue that sovereignty concerns may prompt not only requests for exemptions or opt outs but also the need for exclusions in the form of what we call ‘value’ DI. As we explain in Chapter Three, the possibility of ‘value’ DI arises in cases of democratic backsliding by member states. We argue that the legitimacy, fairness and credibility of cooperation within the EU depends on all member states meeting certain democratic standards, such as those enumerated in the Copenhagen criteria and implied by the principles laid out in Article 2 TEU. As a result, no member state should be exempted from abiding by these standards and the associated values. Instead, a member state that rolls back from adhering to them lacks the democratic capacity for full membership. For example, their governments can no longer be counted on to represent their citizens interests or to implement EU measures in an impartial and equitable manner. Therefore, it becomes both necessary and fair to exclude them from certain EU decision-making processes and programmes until such time as their political systems can be regarded as consistent with democratic values.

Our proposed value DI would produce a form of ‘reduced cooperation’ for the excluded member state. It parallels and can be contrasted with another recent development, that of ‘enhanced cooperation’. This mechanism may be employed if some member states wish to adopt a new common policy at the EU level that one or more member states proves unwilling or believes they are unable to join, so that no consensus exists in the Council for this development. In this circumstance, enhanced cooperation allows a vanguard group of at least nine member states to cooperate in an area covered by the Treaties but not an exclusive competence of the EU, with the exception of defence (TEU Art 20, TFEU Arts 326-334). The reluctance to join the policy by certain member states may reflect either sovereignty or capacity concerns, while the decision of

other members to go ahead nonetheless and integrate further produces DI with regard to it. However, such cooperation must be consistent with the Treaties, approved by the Commission and consented to by the European Parliament (EP) and authorised by a qualified majority in the Council (and unanimously in areas pertaining to the Common Foreign and Security Policy). Non-cooperating member states must also be able to join it at any time provided they meet the conditions for participation. Current instances include divorce law, patents, the property regimes of international couples, the establishment of the European Public Prosecutor's Office (EPPO) and an agreement for some member states to levy a financial transaction tax.

#### <2> THE IDEA OF FLEXIBLE EUROPE AND DEMOCRACY

DI has been associated with different models of the EU. Capacity DI aimed at easing the integration of newer states has been linked to the idea of a 'multi-speed' Europe. On this account, though some states may integrate faster than others, all are assumed to eventually integrate to the same extent. By contrast, sovereignty DI has been allied to a 'Europe à la carte', in which members can pick and choose which policy clubs they wish to join. These models are likely to give rise to a Europe of 'concentric circles' or 'variable geometry' respectively, whereby different geographic areas have different levels of integration, either temporarily or permanently. All three models can be regarded as variations of a flexible Europe.

Among both academics and politicians, the 'multi-speed' model has been regarded as the most acceptable and a 'Europe à la carte' as the least. DI has been seen as at best of pragmatic and temporary value, and at worst as a hindrance to the effective and equitable functioning of the EU, or even as producing domination and unfairness. On the positive side, many acknowledge that DI offers a means of reconciling continued integration with an ever more heterogeneous membership

(Lord, 2015) and call for a pragmatic approach to EU law that accommodates the dynamics of integration and disintegration within the EU legal order (Dehousse, 2003). In a more heterogeneous EU, a multispeed approach and some concentric circles or variable geometry allows member states to choose policies more aligned to their needs and preferences (Lord, 2015). Likewise, it might make decision-making more efficient. On the negative side, critics fear it erodes solidarity between member states and constitutes a challenge to any prospect of developing the EU into a political community based on shared rights and obligations of membership. They argue that opt-outs undermine the legal unity and authority of the EU (Curtin, 1993; Scott and de Búrca, 2000) as well as the uniform composition of EU institutions. As a result, they worry it creates a differentiated citizenship that threatens the liberal model of universalist citizenship characteristic of modern constitutionalism. This situation in turn raises the possibility of domination, whereby participants in a policy area can make decisions that adversely impact on those excluded or exempted from it, without having to consult the preferences or interests of these outsiders (Eriksen, 2018). Moreover, the contrary may also occur, whereby the domestic decisions of those outside a policy area arbitrarily undermine the decision making of those inside it.

Though various forms of DI have always existed (Schimmelfennig, 2014), both proponents and opponents of DI assumed it would erode over time (Kölliker, 2001), with member states converging on the same policies at different speeds (Stubb, 1996). However, the ensuing integration process has disproved this expectation. Instead, post Maastricht DI has steadily increased as European integration has extended into core state powers (Genschel and Jachtenfuchs, 2016) of increasing political salience due to their impact on national economic, financial and welfare policies. Consequently, domestic electorates have become more aware and often more critical of the integration process than before. This growing critical awareness on the part of voters

correlates with the increased use of sovereignty DI (Thym, 2016). Indeed, the Conclusions of the European Council of 26/27 June 2014 noted that ‘the concept of ever closer union allows for different paths of integration for different countries’, while the leaders of the founding member states responded to the British leave vote by announcing an initiative aimed at more ‘flexible’ integration, recognizing that the ‘one-size-fits-all model simply cannot work’ (Tsoukalis, 2016, p. 199). DI even forms one of five scenarios for the future of Europe outlined by the Commission (2017).

This continued and expanded use of DI reflects the ways heterogeneity impacts both the economic space for integration and the political willingness of the peoples of these states to integrate further. Rather than seeing DI as a failure to integrate in a uniform way or as confining certain member states to a second-class status within the EU, we shall argue that it is not only functionally necessary but also normatively desirable given the ineliminable diversity and pluralism of any Union as large as the EU. We relate the resulting need for a flexible Europe to the character of the EU as a democracy rather than a pan-European democracy in the making (Bellamy, 2019, chap. 6).

The democratic view of the EU takes off from the EU’s character as a Union of states and their respective peoples or *demos*, which results in their citizens also possessing certain transnational and supranational EU rights, such as free movement and the right to elect members of the EP. One way of understanding this arrangement is to see the EU as offering a framework for facilitating cooperation among its constituent states and their citizens in ways that show them equal concern and respect. This framework aims at supplementing rather than supplanting the domestic democratic systems of the member states, so as to facilitate their mutual cooperation.

The result is a system whereby the peoples of Europe can ‘govern together but not as one’ (Nicolaidis, 2013, p. 351).

Why is such a democratic arrangement important? In an interconnected world, individual states confront a functional and a moral challenge (Bellamy, 2019, pp. 4–6). Functionally, globalisation has weakened the capacity for nation states to frame independent socio-economic and security policies. Democratic decision-making at the national level either cannot fully address, or can be partially undercut by, transnational processes, such as cross-border financial movements; international activities, such as those of criminal, terrorist or business groups; and certain democratic decisions of other countries, such as the lowering of corporate taxation or the weakening of environmental controls. In these cases a process, organisational activity or policy originating in one or more states can have effects upon and operate across many other states. To differing degrees, depending on the policy concerned and the capacity of the state involved, all states need to cooperate with other states through international legal frameworks and organisations in order to regulate many transnational political, economic and social processes and activities effectively and to provide adequate systems of defence and policing.

Morally, globalisation and its international regulation raises the cosmopolitan challenge to treat all individuals as moral equals, regardless of where they live or come from. The moral case for democracy rests in part on the role it plays in ensuring the laws and policies that govern citizens treat them with equal concern and respect, by responding to their preferences and interests through an electoral process based on one person, one vote. However, as we noted, in an interconnected world the democratic decisions of one state can impact on those of another or be undercut by transnational processes. In regulating their interactions and these processes, democratic states confront a dual moral requirement – that these regulations should be mutually acceptable to each

other, on the one hand, and to their respective citizens, on the other (Pettit, 2012). In other words, the representatives of these states must agree as equals to the terms of their cooperation among themselves and have these agreements in their turn agreed to through their domestic democratic systems by their respective citizens. At the same time, the resulting framework itself gives individual citizens of all the states a collective interest that it should treat them with equal concern and respect, regardless of their member state.

Therefore, meeting the functional and moral challenges requires a delicate balancing act between the functional need to collaborate, on the one side, and the moral requirement to respect the equal right to self-determination of the collaborating peoples, on the other – while all the time treating all the citizens subject to the overarching legal and political framework that results from this cooperation, regardless of their state, as equals with regard to its rules (Cheneval, 2008). Demoiracy offers a way of responding to this trilemma by seeing organisations such as the EU as involving both intergovernmental bargaining among the elected executives of states, each of whom represents their respective demoi, and a direct voice for all citizens of the resulting framework as a trans- and supranational demos (Bellamy, 2019).

It might be considered that a neater solution would be offered by uniform integration within a federal arrangement that shifts democratic authority with regard to areas of EU competence upwards to the European level, so that EU decision makers are directly authorised by and accountable to EU citizens as a whole. Demoirats raise two objections to this scenario. First, they contend the already existing forms of democratic life established within the various member states have moral worth for their citizens and that a moral loss would be incurred through their absorption within a more unitary and hierarchically ordered EU federation (Nicolaidis, 2012, p. 260; Bellamy, 2019, p. 21). Second, they consider this proposal as minimising the heterogeneity of the component

parts. Not all socio-economic systems can be easily integrated on equal terms with each other, nor can all political and cultural systems. As domestic democracies containing diversity stemming from multiculturalism and minority nationalism have discovered, the ideal of uniform integration tends to ignore issues of privilege and disadvantage in ways favouring the dominant groups (Young, 2000, pp. 216–21). To overcome such issues, forms of differentiated governance, that allow for the asymmetric devolution of powers to self-governing localities alongside differentiated legislation offering certain groups special rights, become inevitable as ways to show equal concern and respect to diverse, and especially disadvantaged and discriminated, groups of people (Kymlicka, 1995; Young, 2000, pp. 221–28). Flexible Europe reflects a similar logic. As we show in Chapters One–Three, such flexibility reflects a commitment to the equal rights and pluralism that provide the rationale for democracy – a commitment that as a matter of consistency involves equal concern and respect for the rights and pluralism of all peoples, and hence an acknowledgment of the need for them to cooperate on fair terms with each other.

## <2> THE NORMATIVE DIMENSION

DI and the idea of flexible Europe possess a normative as well as a pragmatic justification, therefore. DI results from moral demands related to different forms of diversity. However, as we detail in Part I of this book, these normative demands also place constraints on the kinds of DI that can be considered as fair or democratically legitimate. Moreover, as we seek to show in the empirical analysis in Part II, these normative justifications matter to, and are to a large extent shared by, key party-political actors from across the EU.

Why do these normative assessments and perceptions matter? First, the EU places non-discrimination, justice, equality and solidarity on the one hand, and democracy, the rule of law and

rights, on the other, among its core values, while being committed to tolerance, pluralism and diversity (Art. 2 and 3 TEU). Second, if DI is perceived as unfair and undemocratic, it will not generate the support it needs to work and might even foster rather than propitiate Euroscepticism. Examples include the institutional power imbalances between ‘ins’ and ‘outs’ in the Eurozone, or the demands creditor states have imposed on debtor states in the context of the Eurozone crisis. Third, an unfair and undemocratic institutional design of DI will also fail in its purpose of reconciling member states that want to integrate to different degrees, and at different speeds. The worry will arise that it produces a fragmented EU, lacking the diffuse reciprocity and solidarity required for states to cooperate over a range of policies. Governments will seek to cherry pick with whom and for what purposes they are willing to cooperate at the EU level in order to maximise the benefits and minimise the costs of EU integration for their member state. Such attitudes risk undermining the equity and efficiency of the EU, and might even lead to a two-tier EU of rich and poor states, and allow the domination of the latter by the former. Fourth, DI can also contribute to creating new divisions, as the Eurozone and the migration crises and their management measures have shown. Indeed, one could say that DI itself is an expression of new divisions in the EU (Michailidou and Trenz, 2018), and entails a given conception of the EU. When and for which policies DI is thought acceptable, by and among whom and on what grounds, with which distributional results as to the costs and benefits of membership and decision-making, are all questions that involve a notion of the ‘nature of the beast’. There are different ways of designing DI, and different institutional designs involve different notions of fairness. Though DI may seem a way of de-politicizing highly political questions, it proves ‘a deeply political process and a way of relating to conflicts. There are winners and losers, and outcomes often reflect prevailing power



constellations rather than efficient solutions to policy problems' (Fossum, 2015, p. 799). Therefore, fair design in DI matters.

We address these normative issues from a theoretical perspective in Chapters One–Three, that form Part I of this book, and empirically through the analysis of interviews on these topics with political actors in Chapters Four–Seven, that comprise Part II. Chapter One looks at both the procedural fairness of the processes by which particular forms of DI are agreed upon and subsequently governed, and the substantive fairness of the distributions of burdens and benefits associated with participating in a given policy. We shall argue that DI can be so designed as to meet the democratic trilemma noted earlier, thereby supporting a fair scheme of cooperation between member states, on the one side, and among their citizens, on the other, both domestically, at the state level, and trans- and supranationally, at the EU level. To achieve this result, DI must meet certain substantive and procedural criteria. Substantively, DI must be a Pareto improvement, that makes no other member state(s) worse off than they currently are under the status quo – that is, before either DI, or either a new policy or accession by a new member state that triggers DI, has arisen; and avoids creating negative externalities that diminish the securing of public goods and common resource pools. Procedurally, DI must be mutually agreed by the representatives of both member state peoples and EU citizens; and governed in a way that involves consultation with those not included and offers a clear pathway for them to join in the future. We claim such a form of fair DI avoids the dilemmas of fragmentation feared by its critics.

Chapter Two moves from justice to democratic legitimacy. Some critics fear DI may give rise to domination. We acknowledge this concern, but argue that in certain circumstances democratic norms might also require DI to avoid domination. Democracy reduces the risk of domination by curbing the possibility of arbitrary rule and increasing the likelihood that rulers will address the

common interests of the ruled and treat them with equal concern and respect. However, to possess these qualities, all citizens must have a roughly equal stake in the package of policies that are to be decided collectively, and share a public sphere in which they can collectively deliberate on the basis of shareable reasons (Miller, 2009). When one or other condition does not obtain, then either the equity or impartiality of democracy will be impaired by what we call respectively the proportionality and partiality problems. In these circumstances, democracy may itself become dominating by involving a ‘tyranny of the majority’ (Christiano, 2010). We argue that DI can be warranted as a way of avoiding this result by involving in a given policy area only those with either an equal stake in it or who conceive of themselves as a public capable of expressing commonly allowable reasons with regard to it. The logic of DI in this regard follows that of schemes for multicultural citizenship and minority national self-government within many states (Young, 1989; Kymlicka, 1995), including some EU member states.

However, Chapter Three notes that such arguments entail the acceptance of pluralism and a commitment to the core components of any constitutional democracy: free and fair elections, equal civil and political rights, and judicial independence and the rule of law. As such, democratic arguments for DI cannot be legitimately recruited in support of democratic backsliding, as the current governments of Hungary and Poland have attempted to do. Instead, such member states become liable to measures we term ‘value’ DI, whereby they can be temporarily excluded from certain decision-making processes and substantive policies until such time as they embrace and institutionalise democratic norms.

<2> THE VIEWS OF PARTY ACTORS

We complement these purely normative arguments with empirical research on how far they are shared by party political actors. Here we explain why we chose to focus on party actors, and how we devised the semi-structured interviews and survey we used to explore their views. We then briefly summarise Chapters Four–Seven that form Part II of this book, noting how Chapters Five–Seven parallel the topics and analysis of Chapters One–Three.

First, even though the era of mass party politics is behind us, political parties continue to play important normative and representative roles in contemporary democracies. They are crucial in offering electorates alternative policy proposals and create representative links between citizens and decision-making by providing the leading figures in both government and opposition (Goodin, 2008; White and Ypi, 2016; Turnbull-Dugarte, 2020). Furthermore, political parties not only reflect the views of electorates, but also contribute to shaping them (Hobolt, 2007; Steenbergen et al, 2007; de Vries et al, 2011). In short, political parties define the terms of political debate.

Second, analysing parties' views allows us to capture the political dimension of DI. While existing academic works on DI have tended to present it as a pragmatic and presumably uncontroversial solution that governments adopt to deal with increasing heterogeneity (Malang and Holzinger, 2020, pp. 733–44), this approach underestimates the extent to which DI is itself political and divisive (Fossum, 2015, p. 799). Political actors from different countries and different sides of the political spectrum may hold very different views of DI, depending on whether they consider themselves winners or losers from its implementation, and how it interacts with their political ideology and national background. Analysing the views of governments on DI is unlikely to capture this political dimension because government participation in EU decision-making can lead a party to 'suppress' its EU position (Turnbull-Dugarte, 2020, p. 903), making DI appear less divisive than it actually is.

Third, like any other legal-institutional settlement, DI depends on social, political and economic factors. It would be an analytical overestimation to assume that legal-institutional assessments alone provide a full picture of whether DI can be sustainable long-term (Thym, 2016, p. 18). Instead, law and institutions interact with broader social processes which influence the perceptions of political actors. Whether or not DI is legitimate must include an assessment of how the relevant political actors perceive it, given these perceptions may influence their appreciation of the legitimacy of DI independently of any of its actual effects. While their views may not always be fully accurate, or display only a partial understanding of the rules regulating DI, they nonetheless reflect key concerns that actors have. In other words, by focusing on party actors' perceptions we do not ignore the actual legal-institutional settings of DI. Rather, we suggest that they be 'supplemented by perspectives on how this concept is played out in practice' (Adler-Nissen, 2011, p. 1099).

One way of getting at party actors' perceptions lies in a 'subjectivist' approach (Crotty, 2003; Kröger, 2018), whereby their views become the analytical focal point. This can be particularly well achieved through interviews, as they are uniquely well-suited for studies focused on 'meaning-making' (Schwartz-Shea and Yanow, 2012, p. 46). Semi-structured interviews enable the researcher to develop an in-depth understanding of 'the knowledge, experience, and perspectives of research subjects' (Kelly, 2010, p. 309). Providing thick descriptions of actors' views that emerge from the analysis of interviews does not imply that nothing can be explained. However, such an explanation is limited to the particular time and space, so that generalisations must be avoided (Bevir and Rhodes, 2006). Some might suggest that one should study party manifestos instead or in a complementary fashion. However, this is rendered impossible by the absence of more definite party policies on DI in the abstract. While parties do have positions on

concrete salient policies which are differentiated, such as the Euro or Schengen, they tend not to have positions on DI as an abstract principle. As a result, opting for an exploratory research design and speaking with party actors directly was the most meaningful as well as potentially the only possible way of exploring their views.

We conducted 35 semi-structured interviews with party actors in seven EU countries (Austria, Denmark, Germany, Greece, Hungary, Portugal and Romania). These countries were selected because they vary on a number of dimensions, including wealth and geographical positioning within the EU, which may be expected to influence views of European integration in general as well as their views of DI in particular. Thus, they constitute a purposive (rather than representative) sample, aimed at maximising diversity of viewpoints and understandings (Williams, 2019, p. 54). For each country, we contacted all parties scoring above five per cent in the most recent national and EU elections, considering this would allow us to include most relevant actors. Casting this relatively wide net also provided us with a suitable amount of ideological variation (both in terms of Left/Right positioning and pro/anti-EU views), another factor which may be plausibly expected to influence how parties perceive of DI (Leruth, 2015, p. 817).

Our respondents were MPs (usually members of the European Affairs Committee of their national parliament), MEPs, and EU affairs advisors of parties. For each party, we sought to speak to two actors, however, this was not always possible (details available in annex 1). Interviews were conducted online or over the phone between March and June 2020 (interview guidelines in annex 2).<sup>2</sup> Using NVivo, interview transcripts were read and subsequently manually coded, using codes

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<sup>2</sup> Interviews were planned to be in-person, however, the Covid-19 outbreak in March 2020 prompted a shift to online and phone interviews.

we had developed prior to the interviews as well as new ones which emerged from the material. Common arguments and patterns were identified, and similar views brought together under relevant thematic headings.

The material on party actors' views of DI presented in Chapters Five–Seven of the second part of the book parallels Chapters One–Three of the first part. However, we begin in Chapter Four by detailing the more general views party actors hold of DI. This chapter engages with the broader literature on political parties and European integration and examines how far, if at all, the views party actors have of DI relate to the established party cleavages over the EU. As we shall see, a key cleavage proves to be not ideological differences but the contrast between richer and poorer member states. A main finding from this chapter is that DI divides party actors, generating both pragmatic and normative support and opposition. Whereas supporters focused on DI allowing integration to proceed even in the absence of consensus and as a way of accommodating heterogeneity, opponents viewed it as a threat to the EU's efficacy and to key principles of solidarity, equality, and unity. The two dimensions that seemed to affect actors' views were the wealth of their respective member states and prior experience of DI. By contrast, party family did not seem to influence views on DI significantly nor did EU positioning and positioning on DI necessarily correlate.

We return to the cleavage between richer and poorer states in Chapter Five, where we discuss how party actors relate to the issue of substantive fairness. The evidence presented here indicates that respondents from poorer and richer states relate differently to issues of fairness in DI. As regards widening, interviewees from poorer member states were favourable to DI that acknowledged and accommodated their different capacities, while we found no evidence of richer member states either opposing exceptions or supporting exclusions. By contrast, so far as

deepening is concerned, we found many similarities in the arguments brought forward by richer and poorer member states. The only exception was that almost all actors from poorer member states expressed opposition to enhanced cooperation that made some member states better off, but left other member states worse off, while only a very few from richer states did so (although hardly any explicitly supported it either).

Chapter Six addresses the democratic dilemmas of DI as perceived by party actors. Like previous chapters, this chapter confirms that it is not so much ideological preferences that drive actors' assessments of DI as the rich-poor cleavage. Along these lines, interviewees from poorer member states were more likely to consider capacity DI as a form of arbitrary exclusion than their counterparts from richer states. However, most party actors from richer and poorer member states alike viewed sovereignty DI positively, as a legitimate means of accommodating differences and preferences concerning integration. Party actors were also adamant that a differentiated policy should remain open for all to join, based on clear criteria. Most also believed that the current voting arrangements in the EP and Council were broadly acceptable, with only member states taking part in a policy being able to vote in the Council (albeit in consultation with non-participants), and all MEPs voting in the EP.

Finally, Chapter Seven turns to how party actors think of democratic backsliding and its potential links to DI. In this chapter we complemented our interview data with a short survey of 42 party actors to gauge their views on democratic backsliding. For this survey, we contacted both our original interviewees (25 of whom agreed to take part), as well as additional respondents from our selected countries. Most actors perceived democratic backsliding to be a serious issue and worried about its potential implications for the effectiveness and democratic legitimacy of the EU. The views of party actors differed regarding the connection between DI and democratic

backsliding. While in the interviews, few suggested that differentiated integration could facilitate democratic backsliding, respondents in the survey were significantly more likely to consider that DI could enable it. However, it is also worth noting that both interview and survey respondents were sceptical of accepting DI in areas pertaining to Article 2, suggesting that the problem was less with DI itself than with how it was being used to justify dubious practices. Most respondents thought the EU could and should act against democratic backsliding, and suggested a variety of possible measures it might take.

We conclude by offering a balance sheet of the benefits and risks associated with DI as well as some reflection on future research on DI and political action relating to it. As we hope to have shown, the flexibility associated with DI is fair when it is motivated by, and designed in ways that are consistent with, democratic norms of equal concern and respect. Indeed, within a heterogeneous EU, some DI is likely to be a requirement of fairness. So conceived, it enables a fair system of cooperation between the states and citizens of the EU that promotes the qualities of mutual recognition and non-domination. As such, it makes it possible for the EU to provide a form of unity consistent with the diversity member states. However, DI proves unfair, and undermines both solidarity and democracy, when it circumvents these democratic norms. In these cases, therefore, it ought not to be allowed.