

# Differentiation as a double-edged sword: member states' practices and Brexit

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Differentiation is a principle that has applied to the polity and policies of the European Union since its creation. It has been reinforced in the last 20 years as a consequence both of successive enlargements and of a broadening of the EU policy agenda. The British renegotiation process and the UK referendum scheduled for 23 June 2016 constitute a further stage in the debate on differentiation. For the first time a 'no' vote in a national referendum could mean that disintegration rather than differentiation is the preferred choice for an EU member state.

The leaders of the EU member states, as well as scholars and analysts of the EU, have difficulty dealing with the concept of disintegration. For this reason, it is hardly surprising that most of them would like to see the UK referendum ending with a 'yes' vote. Yet this position is not necessarily shared by all segments of European public opinion. Those who have strong Eurosceptic concerns would like to use a Brexit as leverage in their own contests with the EU.

This article considers the future of differentiation in the light of the debate on Brexit. To this end, the article has been divided into four parts. We start by examining the concept of differentiation in the EU from a theoretical perspective. In the second part, we analyse different national practices of differentiation in the member states. In the third part, we try to understand the reactions of the member states towards the British demand for renegotiation in order to avoid a Brexit, before drawing some conclusions in a fourth part.

## **Differentiation: more integration or more fragmentation?**

Differentiation and integration are intricately linked. Differentiation may be defined as the process that allows some EU member states to go further in the integration process, while allowing others to opt not to do so. It therefore runs counter to the assumption of 'ever closer union' among the member states.

The debate over differentiation revolves around the distribution of competences across all levels of government—local, regional, national and European. To be more precise, the question of differentiated integration arises as part of a debate

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over the transfer of competences from the national to the European level and the process through which this is undertaken.

Differentiation carries the risk that member states may be divided about it; the positions of the states that remain outside a particular project may harden, not soften. It is, therefore, essential that differentiation is not conceived of as a way to form a club whose members could then accept or reject latecomers. If they were able to do that, club members might be tempted to choose on the basis of their individual interest rather than on the common interest of the group. Differentiated integration therefore has to be an open process, and conditions for participation in particular projects, when deemed necessary (as in respect of the single currency), must be legitimate and transparent.

### *Theoretical foundations*

Academic debate<sup>1</sup> approaches the concept of differentiation with the aim of defining an optimal criterion in the distribution of competences between the centralized and decentralized levels of government.<sup>2</sup>

The debates usually focus on the costs and benefits of centralization. The cost of centralization of a policy at the EU level lies in the fact that it imposes the same decision on states whose national preferences might diverge. Conversely, decentralization enables the implementation of different policy choices according to different national and/or local preferences. However, decentralization does not take into account the effects of national and local policies on Europe more widely. For example, the devaluation undertaken by some member states, such as France, at the beginning of the 1980s had detrimental effects on the competitiveness of neighbours and on the economic stability of the entire European Community. Centralization, on the other hand, enables externalities to be taken into account and unproductive duplication avoided. It also enables the economic and regulatory environment for business operating across the entire EU to be simplified. In the terms of rational choice theory, the decision between centralizing or decentralizing a policy should be made on the basis of a comparison of the respective costs and benefits of each route.<sup>3</sup> A trade-off has to be made between heterogeneity of preferences on the one hand, and inclusion of externalities on the other.

At the EU level, this rationale is integrated into the treaties in two ways. First, the principle of subsidiarity states that:

<sup>1</sup> See Alberto Alesina and Romain Wacziarg, 'Is Europe going too far?', in Carnegie–Rochester conference volume, supplement to *Journal of Monetary Economics* 51: 1, Dec. 1999, pp. 1–42. See also Jean-François Jamet, 'The optimal assignment of prerogatives to different levels of government in the EU', *Journal of Common Market Studies* 49: 3, May 2011, pp. 563–84; Benjamin Leruth and Christopher Lord, 'Differentiated integration in the European Union: a concept, a process, a system or a theory?', *Journal of European Public Policy* 22: 6, 2015, pp. 754–63.

<sup>2</sup> Frank Schimmelfennig, Dirk Leuffen and Berthold Rittberger, 'The European Union as a system of differentiated integration: interdependence, politicization and differentiation', *Journal of European Public Policy* 22: 6, 2015, pp. 764–82.

<sup>3</sup> Alberto Alesina, Ignazio Angeloni and Ludger Schuknecht, 'What does the European Union do?', *Public Choice* 123: 3, 2005, pp. 275–319.

In areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.<sup>4</sup>

The other trade-off between heterogeneity of preferences and benefits from centralization lies in the choice of the voting procedures selected in the different policy areas. The use of unanimity ensures that no common decision can be taken if the heterogeneity of the states' preferences is too high. Hence unanimity gives the EU a competence in areas where the heterogeneity of preferences is sufficiently high to prevent the adoption of a common policy.<sup>5</sup> This enables progress to be made only in cases where the benefits of centralization are acknowledged by all of the member states. Moreover, the EU's exclusive areas of competence<sup>6</sup> were adopted under treaties requiring unanimity among all the member states. In subscribing to such unanimous decisions, the member states implicitly indicate that the benefits of centralization win over the costs in these policy fields, as for example the common trade policy.

Within the framework based on this rationale, a great deal of progress towards European integration has been achieved. It has, however, two major weaknesses. First, the increasing number of member states as a result of enlargement lowers the probability of a unanimous decision being reached since it increases the heterogeneity of preferences. The second weakness of this approach is that it applies the trade-off between costs and benefits of centralization only at the level of the EU as a whole. But centralization can be optimal for a subgroup of member states for which the pooling of a decision leads to greater efficiency than decentralization would do. In the optimal situation, therefore, member states involved would be able to pool a decision without making it compulsory for other member states that prefer decentralization because of their own preferences. From a theoretical point of view, differentiation can be the only way to guarantee an optimal distribution of competences between the different levels of government while going beyond the status quo associated with a unanimous vote.<sup>7</sup>

There is always a degree of uncertainty about the costs and benefits linked to the adoption of a common policy. Differentiation enables states that are prepared to take a risk to develop a common policy, while allowing the other states to look at the results of such experimentation and decide to join the other member states only if the policy produces positive effects. This has been the case for monetary policy during the eurozone crisis:<sup>8</sup> asymmetrical shocks have not affected the

<sup>4</sup> Treaty on European Union, Title 1, art. 5 (3).

<sup>5</sup> Fritz W. Scharpf, 'Joint decision trap revisited', *Journal of Common Market Studies* 44: 4, 2006, pp. 845–64.

<sup>6</sup> 'The Union shall have exclusive competence in the following areas: (a) customs union; (b) the establishing of the competition rules necessary for the functioning of the internal market; (c) monetary policy for the Member States whose currency is the euro; (d) the conservation of marine biological resources under the common fisheries policy; (e) common trade policy': Treaty on the Functioning of the European Union, art. 3.

<sup>7</sup> Thierry Chopin and Jean-François Jamet, 'How to unblock the EU's unanimity stalemate', *Europe's World*, no. 10, autumn 2008, pp. 133–7.

<sup>8</sup> On this point, see Frank Schimmelfennig, 'Differentiated integration before and after the crisis', in Olaf Cramme and Sara B. Hobolt, eds, *Democratic politics in a European Union under stress*, Oxford Scholarship online,

member states uniformly. In this context, some states did not want to take a risk while others were prepared to do so, because the risk seemed, for either economic or political reasons, smaller to them than to other states.

Differentiation as a process of experimentation shows that member states' preferences regarding the centralization of a policy are not stationary. Member states that initially opposed the adoption of a common policy might subsequently change their preferences and decide to join those that have already committed to it (opting in). This was the case with the Social Chapter in the Treaty of Maastricht. The British government of John Major negotiated an opt-out in 1992, and then in 1997 Tony Blair's government finally decided to opt in.<sup>9</sup>

It is, then, of fundamental importance not to take a static view of the trade-offs between heterogeneity of preferences and the benefits of centralization. Moreover, there are convergence processes that bring preferences closer together, thereby strengthening the legitimacy of a shared policy.

### *Risks of fragmentation*

Although differentiation seems to be an effective process by which to develop integration, it carries a certain number of risks. The first of these is an excessive fragmentation of the EU polity. The multiplication of differentiation mechanisms limits the legibility of the EU, both for its citizens and for its foreign partners.<sup>10</sup> Hence, member states must ensure that differentiation mechanisms function simply and that they are explained to their populations.

Another risk lies in division between member states arising from pressures bearing on those remaining outside any particular policy. Some member states might believe that the differentiation will damage their interests because they are not taking part. When France was thinking of forming a European defence policy via enhanced cooperation outside the NATO framework,<sup>11</sup> the central and east European member states opposed the plan because they felt it would weaken NATO and threaten their own interests. This is why enhanced cooperation agreements to constitute a European defence policy are only possible if NATO remains the frame of reference for military decision-making.

Differentiation can also give rise to division by causing some states to feel excluded from an integration process in which they do wish to take part. This explains, for instance, why the first French proposal to set up a Union for the Mediterranean exclusive to coastal states failed in 2008: the other member states, which had participated in the Barcelona Euro-Mediterranean Process since 1995,

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2015, pp. 1–14, <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198724483.001.0001/acprof-9780198724483-chapter-7>.

<sup>9</sup> Christian B. Jensen and Jonathan B. Slapin, 'Institutional hokey-pokey: the politics of multispeed integration in the European Union', *Journal of European Public Policy* 19: 6, 2012, pp. 779–95.

<sup>10</sup> The influence of differentiated integration on the EU's foreign policy is widely debated in Steven Blockmans, ed., *Differentiated integration of the EU: from inside looking out* (Brussels: Centre for European Policy Studies, 2014).

<sup>11</sup> The Amsterdam Treaty of 1997 created enhanced cooperation and the Lisbon Treaty of 2009 'permanent structured cooperation' in the field of common security and defence policy: see Treaty on European Union, arts 42, 46.

wanted to be included and to have a say in deciding how EU funds were to be used.<sup>12</sup> Differentiation does not work if it is regarded as creating inner circles whose members have the power to choose whether or not to accept additions to the circle.

### *The role of differentiation in the EU integration process*

Differentiation has played a major role in the EU integration process since its origins. The European Community itself resulted from the decision of a small number of member states in 1951 and then in 1957 to pool a limited number of policies under the treaties establishing first the European Coal and Steel Community and then the European Economic Community and Euratom.

The successful establishment of a common market (characterized by the abolition of customs duties, free movement of goods and free competition) highlighted the advantages to be gained from participating in the building of the European Communities and encouraged other European states to become candidates for membership. Differentiation, within and also outside the treaties, can have a knock-on effect and prepare for the adoption of a common policy.<sup>13</sup> The control of external borders (via the Schengen Agreement) was the first example of differentiation set up outside the treaties, becoming an EU policy in 1997.

Differentiation has been an obligatory stage in most of the progress made by the EU institutions since the 1990s, with the negotiation of opt-out mechanisms proving necessary in the reform of every new treaty signed since the 'Maastricht Moment'. The Treaty of Maastricht was rejected by referendum in Denmark in June 1992 before a new agreement was reached in December of the same year, leading to a second referendum yielding a vote for acceptance in May 1993. The Treaty of Nice was rejected by Irish citizens in June 2001 and finally accepted after a second vote in October 2002. Similarly, Irish citizens rejected the Treaty of Lisbon in a referendum in June 2008, accepting it in a second referendum in October 2009 after the Irish government had achieved a series of political declarations and an assurance that after 2014 Ireland would retain the same number of European Commissioners as other member states. These successive rejections stressed the importance of opt-out devices for the adoption of treaties. Since the 1990s it has been impossible to achieve consensus among the EU member states without differentiation.

The convergence criteria which govern admission to the eurozone are also based on differentiation. They aim to ensure a sufficient homogeneity in terms of economic conditions within the economic and monetary union (EMU). However, they lose their incentive effect as soon as the main benefit (membership of the eurozone) has been reached. One of the lessons of the recent debt crisis within the eurozone is that sanctions provided for non-compliance with the rules do

<sup>12</sup> Renaud Dehousse and Anand Menon, 'The French presidency', *Journal of Common Market Studies* 47: 1, 2009, pp. 99–111.

<sup>13</sup> Alkuin Kölliker, 'Bringing together or driving apart the Union? Towards a theory of differentiated integration', *West European Politics* 24: 4, 2001, pp. 125–51.

not work with members.<sup>14</sup> In this context, the crisis has revived the debate about a ‘multi-speed’ or ‘two tier’ Europe. To regain their sovereignty and credibility in the eyes of the markets, the member states of the eurozone decided to form a more coherent body (as discussed below). Beyond the EMU mechanisms included in the EU treaties, they adopted new common rules outside the treaties in fiscal matters—the Euro Plus Pact and the Fiscal Compact—while the European Stability Mechanism (ESM) entered into force and progress was made with the idea of a banking union.

EU history clearly shows that differentiated integration—both inside and outside the EU treaties—is an established practice. Schengen and the eurozone are examples of this. The various forms of differentiation should not, though, be confused with the rhetoric used in national political discourses to describe the politics of differentiation.<sup>15</sup> These expressions, as will be shown in the next section, reflect *representations* of differentiation rather than actual institutional achievements.

## National practices of EU differentiation

EU studies have focused strongly on negotiating processes and institutionalization at the EU level, but have generally neglected the relationships of EU institutions with domestic politics in each member state. Some scholars, such as Helen Wallace and Simon Bulmer, warned very early on that it did not make sense to study the EU integration process without giving serious consideration to the domestic politics of the member states.<sup>16</sup> To do so was relatively easy with twelve member states; it has become trickier with 28. Nevertheless, a failure to study the relationships between the domestic politics of the member states and the EU renders any explanation of the integration process a partial analysis only.<sup>17</sup>

There is a variety of national practices regarding differentiation. By ‘practices’, we mean—in the wake of the ‘practice turn’ in the social sciences<sup>18</sup>—the degree of institutional diversity national political elites are prepared to promote and national societies to support in respect of EU integration in each member state. As it is not possible to analyse within a single article the practices of 28 member states, we concentrate here on three ideal-types: the Anglo-Scandinavian practice, the Franco-German practice and, finally, the central and east European practice.

<sup>14</sup> On internal differentiation among the eurozone member states, see Ramunas Vilpisauskas, ‘The euro zone crisis and differentiation in the European Union: a threat to the goals of the EU or an instrument of managing the divergence of national interests?’, *Lithuanian Annual Strategic Review* (Vilnius University) 12: 1, 2014, pp. 75–90.

<sup>15</sup> For the debate on different types of differentiation, see Alexander C.-G. Stubb, ‘A categorization of differentiated integration’, *Journal of Common Market Studies* 34: 2, 1996, pp. 283–95; Katharina Holzinger and Frank Schimmelfennig, ‘Differentiated integration of the European Union: many concepts, sparse theory, few data’, *Journal of European Public Policy* 19: 2, 2012, pp. 292–305.

<sup>16</sup> Helen Wallace, *National governments and the European Communities* (London: Royal Institute of International Affairs, 1973); Simon Bulmer, ‘Domestic politics and the European Community policy-making’, *Journal of Common Market Studies* 21: 4, June 1983, pp. 349–64.

<sup>17</sup> Simon Bulmer and Christian Lequesne, eds, *The member states of the European Union* (Oxford: Oxford University Press, 2013).

<sup>18</sup> Karin Knorr Cetina, Theodore R. Schatzki and Eike von Savigny, *The practice turn in contemporary theory* (Abingdon: Routledge, 2001).

### *The Anglo-Scandinavian practice: refusing a centralized EU*

This first practice brings together under a common banner the UK, Denmark and Sweden. It does not include Ireland and Finland, the latter being culturally a northern but not a Scandinavian country. (Swedish Finns represent only 5.4 per cent of the total population of Finland in 2016.) One feature common to the UK, Denmark and Sweden is that all three countries joined the EU (the first two in 1973 and the latter in 1995) mainly for rational economic reasons.<sup>19</sup> The differences in GDP between these countries and the EU member state average were not a crucial issue when they joined, even if the UK's GDP was below the EU average in 1973. The national elites of the three countries wanted primarily to join the common market in order to better integrate their economy within Europe in the exchange of goods, services and capital. Among the political elites of the three countries, any perception of the EU as a centralized polity has always been marginal, with national sovereignty (UK) and national models (social models in Denmark and Sweden) remaining high priorities in the respective societies.<sup>20</sup> The three countries have always been attached to market progress, but have been less interested in non-market issues at EU level, with the exception of the rule of law and transparency.

This explains why the political drive to move the European Community beyond the internal market, in the 1990s, created strong demands for differentiation and opt-outs in these three countries.<sup>21</sup> In the UK and Denmark, the 'Maastricht Moment' in 1991–2 represented a turning-point in their membership of the institution. In the UK, the Conservative government of John Major negotiated an opt-out from the final stage of EMU (thereby avoiding the replacement of the pound by the euro) and the implementation of the EU Social Chapter, adopted as a protocol to the treaties.<sup>22</sup> In Denmark, the process was different. In February 1992 the right-wing government of Poul Schlüter signed the Treaty of Maastricht but the ratification was rejected by a referendum held in June that year. As a consequence, the Danish government had to return to its EU partners to negotiate the Edinburgh Agreement, introducing opt-outs from the euro, the Common Foreign and Security Policy, the justice and home affairs pillar, and EU citizenship. Presented with this new deal, the Danish citizens were able to accept the Treaty of Maastricht in a second referendum held in May 1993. The abolition of the opt-out for the euro was put to a further referendum in September 2000 but was again rejected by Danish citizens.

The situation of Sweden is different, as this country was not a member state when the Treaty of Maastricht came into force.<sup>23</sup> The Swedish government did not have the option of negotiating any opt-outs during the enlargement negotia-

<sup>19</sup> Desmond Dinan, *Europe recast: a history of European Union* (Basingstoke: Palgrave Macmillan, 2014).

<sup>20</sup> Gosta Esping Andersen, *The three worlds of capitalism* (Cambridge: Polity, 1990).

<sup>21</sup> Rebecca Adler Nissen, *Opting out of the European Union: diplomacy, sovereignty and European integration* (Cambridge: Cambridge University Press, 2014).

<sup>22</sup> Stephen Wall, *A stranger in Europe: Britain and the European Union from Thatcher to Blair* (Oxford: Oxford University Press, 2008).

<sup>23</sup> Anna Michalski, 'Sweden: from scepticism to pragmatic support', in Bulmer and Lequesne, eds, *The member states of the European Union*, pp. 161–85.

tions, because a candidate country has no alternative to accepting the entire EU *acquis*.<sup>24</sup> However, Sweden never participated in the final stage of EMU, even though its economy fulfilled all the convergence criteria laid down in the Treaty of Maastricht. In September 2003 the Swedish government of Göran Persson held a non-binding referendum on the potential introduction of the euro: 55 per cent of Swedes who did vote rejected the proposal.

In all three of these countries, a majority of politicians in the mainstream parties support differentiation as a pragmatic way for their member states to participate in the EU. In UK, for instance, a Conservative government negotiated an opt-out from EMU in 1992, and the Labour governments in power from 1997 to 2010 did not renegotiate this exemption. Tony Blair's decision in 1997 to abolish the opt-out on the Social Chapter is the only example of a move from decentralization to recentralization in any of the three countries.

It is also in these countries that some political parties have pressed for their countries' complete withdrawal from the EU. In the UK, this is the position of the UK Independence Party (UKIP), created in 1991 as a single-issue Eurosceptic party, but also of some in the leadership of the Conservative Party.<sup>25</sup> In Denmark and Sweden, members of both far right and far left parties are respectively advocating national withdrawal from the EU. The Unity List and the People's Party in Denmark, and the Left Party and the Democrats in Sweden are calling no longer for differentiation but for disintegration.<sup>26</sup>

### *The Franco-German practice: promoting 'core Europe'*

France and Germany were founding members of the European Coal and Steel Community in 1951. They are today the most powerful states of the continental EU, even if German reunification has introduced an asymmetry between Germany and France, in both demographic and economic terms.<sup>27</sup> Their self-representation as 'founding' and 'big' member states has created among the French and the German elites a specific practice of what their countries' responsibility should be within the EU. This practice rests upon the concept of leadership and can be summarized as follows: when French and Germans agree, European integration progresses; on the contrary, when French and Germans disagree, European integration stagnates.

The Franco-German practice has been fed by concrete actions (the European Monetary System in 1979, the Schengen Agreement in 1985, the EMU project launched in 1988) but also by political discourse (references to the 'Franco-German motor' or the 'Paris-Berlin couple'). The Franco-German practice considers differentiation as an inevitable result of EU enlargement, but sees the effects of opt-outs with regret. Along with a group of states that support their embedded bilater-

<sup>24</sup> Ulrich Sedelmeier, *Constructing the path to eastern enlargement: the uneven impact of EU identity* (Manchester: Manchester University Press, 2007).

<sup>25</sup> Wall, *A stranger in Europe*.

<sup>26</sup> Cécile Lecointe, *Understanding Euroscepticism* (Basingstoke: Palgrave Macmillan, 2010).

<sup>27</sup> Ulrich Krotz and Joachim Schild, *Shaping Europe: France, Germany and embedded bilateralism from Elysée Treaty to 21st century* (Oxford: Oxford University Press, 2013).

alism (Austria, Belgium, Italy, Luxembourg, the Netherlands, Spain), France and Germany apply all the EU policies and have no opt-outs. They are full members of the eurozone, and also of the Schengen and Prüm Agreements<sup>28</sup> on the free movement of persons. They participate in the three areas of 'enhanced cooperation' that have been established under the treaties: on divorce law, on unitary patent and on financial transaction tax.

Contrary to the Anglo-Scandinavian practice, the Franco-German practice focuses primarily not on the preservation of diversity but on centralization. This is why it is French and German elites that have generated the main proposals for the creation of a 'hard core' within the EU (the Schäuble–Lamers proposal of a 'Kern Europa' in 1994; the Delors proposal of an 'avant-garde' in 2001) or 'concentric circles' with an inner core (Chirac's proposal of 'pioneer groups' in 2000; Fischer's proposal to develop a 'centre of gravity' in 2000).<sup>29</sup> These projects are above all political discourses. They have not necessarily been translated into concrete institutional design.<sup>30</sup> Given its attachment to the idea of national sovereignty, French society in particular has never been prepared to accept the institutional consequences of a 'core Europe' that could create a small 'federal Europe' within a larger EU. Since the financial crisis of 2008, German society too seems less inclined to accept such a scenario.<sup>31</sup>

In Germany and France, politicians from the mainstream political parties regularly warn their respective national societies against a possible disintegration of the EU. As in the UK, Denmark and Sweden, there are in France and in Germany political parties that express opposition to the EU. But their Euroscepticism has never included a primary objective of leaving the EU. There is, however, support inside German and French Eurosceptic parties for withdrawal from the eurozone (Front National in France, Alternative für Deutschland in Germany). In all French and German parties (both mainstream and Eurosceptic), we also find strong critics of EU enlargement, especially the last waves in 2004 and 2007 to include countries of central and eastern Europe.<sup>32</sup> The most articulate criticism about the risks of dilution of an EU that has become too big after the successive enlargements emanates from France, Germany and the countries that support Franco-German bilateralism. The proposals for the creation of a 'core Europe' are seen as ways to prevent this dilution; but again, these proposals frequently remain in the realm of discourse, and have not necessarily been followed by concrete institutional reforms.

<sup>28</sup> The Treaty of Prüm was signed on 27 May 2005 in Prüm (Germany). It has currently 14 state signatories. The treaty establishes a legal framework to further develop cooperation among member states in combating terrorism, cross-border crime and illegal immigration. More specifically it provides for the exchange between the contracting parties of data on DNA, fingerprints, vehicle registration, and personal and non-personal data related to cross-border police cooperation.

<sup>29</sup> Christian Lequesne, *La France dans la nouvelle Europe. Accepter le changement d'échelle* (Paris: Presses de Sciences Po, 2008).

<sup>30</sup> Jean-Claude Piris, *The future of Europe: towards a two speed European Union?* (Cambridge: Cambridge University Press, 2012).

<sup>31</sup> Martin Koopmann and Barbara Kuntz, eds, *Deutschland 25 Jahre nach der Einheit* (Baden-Baden: Nomos Verlag, 2016).

<sup>32</sup> Lequesne, *La France dans la nouvelle Europe*.

### *Central and eastern European practice: refusing second-class status*

The last practice is that of the central and east European member states. These countries considered their admission to the EU (and NATO) in the 1990s as a 'return to Europe which meant more broadly a return to the West after the experience of Soviet domination'.<sup>33</sup> Except in Poland, the elites of the central and east European member states do consider their respective countries as small member states. This representation of 'smallness' is compatible with a strong belief in national sovereignty. The member states of central and eastern Europe became members of the EU in 2004 and 2007, around 15 years after they rediscovered the legitimacy of national sovereignty.<sup>34</sup>

During the ten years of enlargement negotiations, candidate countries of central and eastern Europe had no other option than to accept the entire *acquis communautaire*. Twenty years later, they still do not participate in all EU policies, not because they do not want to be committed, but because they do not respect some formal criteria set up in the EU treaties. This is particularly the case in respect of membership of the eurozone. Bulgaria, the Czech Republic, Hungary, Poland and Romania still do not participate in the final stage of EMU. Some of these countries (the Czech Republic and Poland) meet the qualifying criteria for adoption of the euro (as do Slovenia, Slovakia and the three Baltic states) but in the context of the financial crisis have preferred to stay outside as long as the door remains open to their membership. What both elites and societies of central and east European member states do not like are closed doors, implying that differentiation is about exclusion and second-class status within the EU.<sup>35</sup>

Though Eurosceptic tendencies do exist within the political parties of central and east European member states, there are few major forces that openly call for leaving the EU completely. Leaders of some of these countries were inclined in the 2000s to negotiate voluntary opt-outs where they did not want to be committed to a specific policy for domestic political reasons. In the negotiations leading up to the Treaty of Lisbon, the Polish government led by the right-wing party Law and Justice, and the Czech government led by the neo-liberal Civic Democratic Party (ODS), secured protocols enabling them to opt out of the Charter of Fundamental Rights. Interestingly, a change of majority after the 2014 Czech parliamentary election encouraged the new government—led by the Social Democratic Party CSSD—to withdraw the opt-out and to make the Charter applicable in the Czech Republic.<sup>36</sup>

Elites in central and eastern Europe are adamant that they will not be 'left behind', wishing to be considered equal to the states that became members of the EU before them. They also have reservations about the Franco-German practice of a 'core Europe', suspecting a hint of hegemonic tendency behind this recurrent statement.

<sup>33</sup> Timothy Garton Ash, *History of the present: essays, sketches and despatches from Europe in the 1990s* (New York: Vintage, 2001).

<sup>34</sup> Christian Lequesne and Jacques Rupnik, *L'Europe des Vingt-Cinq. 25 cartes pour un jeu complexe* (Paris: Autrement, 2004).

<sup>35</sup> Lequesne and Rupnik, *L'Europe des Vingt-Cinq*.

<sup>36</sup> Conclusions of the 3313th meeting of the EU Council of ministers, Brussels, 13 May 2014.

As the only 'big' member state in this group, Poland constitutes a special case.<sup>37</sup> From 2007 to 2015, the strategy of the leading party Civic Platform (PO) consisted of using EU membership to serve the interests of Poland. In particular, PO leaders built a *rapprochement* with Germany and did not hesitate to support German economic orthodoxy during the financial crisis, claiming that Poland still belonged to northern Europe.<sup>38</sup> Such statements were above all a way of expressing Poland's shift from 'new' member state to established member state and of avoiding any marginalization.

Each of these three practices represents an idiosyncratic approach to differentiation. As these practices are not uniform in all member states, institutional decisions on differentiation at the EU level often correspond to a lowest common denominator, and implementation varies substantially from one member state to another.

### **Brexit: between fear of disintegration and recognition of the EU's need for reorganization**

The renegotiation process between the UK and its 27 partners is more important for the political message it conveys to public opinion (both in the UK and in the other member states) than for any concrete policy substance.

#### *Fears of a disintegrative spiral*

On 18–19 February 2016, all the EU member states decided to reach a compromise with Britain's Prime Minister David Cameron. Cameron had to go back home with a 'success' to be sold to British public opinion, because most of the EU leaders did not want to risk a 'failure' giving further ammunition to the British 'no' campaigners and their own Eurosceptics. The EU leaders had no other alternative than to accept Cameron's four demands (an opt-out on 'ever closer union'; limits to welfare provision for EU citizens working in the UK; enhanced coordination between the states using the euro and those using another currency; more power for national parliaments) at a time when European integration was not in good shape.

However, contrary to what neo-functionalist theory has always assumed, Brexit is not considered by the member states as just another crisis whose settlement will be productive for the future of European integration.<sup>39</sup> References to 'disintegration' have emerged in the public debates of the member states and represent a real breach in the history of European integration.

The founding fathers of the EU did not seriously envisage the eventuality of a member state's withdrawal. It is not by chance that article 50, establishing a

<sup>37</sup> Nathaniel Copsey, 'Poland: an awkward partner redeemed', in Bulmer and Lequesne, eds, *The member states of the European Union*, pp. 186–211.

<sup>38</sup> Aleks Szczerbiak, *Poland within the European Union: new awkward partner or new heart of Europe?* (Abingdon: Routledge, 2011).

<sup>39</sup> Sabine Saurugger, *Theoretical approaches to European integration* (Basingstoke: Palgrave Macmillan, 2013).

procedure for the withdrawal of a member state, was introduced into the treaties as late as the Lisbon reform of 2009. As a consequence, scholars too have not given much consideration to the disintegrative effects of any such withdrawal. The New Zealand political scientist Douglas Webber has convincingly shown that theories of EU integration in particular, because they give too little weight to the effects of domestic politics on EU integration, do not provide useful tools for understanding disintegration.<sup>40</sup>

There is no single member state among the 27 partners of the UK that does not have its own Eurosceptic or Europhobic political party or parties.<sup>41</sup> Some of them, such as the Front National in France and Alternative für Deutschland in Germany, call only for a limited withdrawal, wishing to withdraw their countries from EMU. Others, such as the Party for Freedom in the Netherlands and the People's Party in Denmark, call for complete withdrawal from the EU. Most EU leaders fear that a 'no' vote in the British referendum will legitimize Eurosceptic and Europhobic parties demand for the same opportunity in other member states. Even mainstream political parties are not totally immune from pressures for referendums in their countries. In the Netherlands, some popular newspapers have raised the question of a referendum about the future of Dutch membership of the EU.<sup>42</sup> On 23 February 2016, Czech Prime Minister Sobotka announced that a debate on a possible withdrawal of the Czech Republic will be inevitable if the British citizens vote 'no' in their referendum.<sup>43</sup> The neologisms Nexit and Czexit, in reference to Brexit, have appeared in the Dutch and Czech public debates.

The lack of strong leadership inside the EU also makes the prospect of disintegration more plausible. The growing asymmetry between France and Germany in economic performance since 2010 has made reform of the eurozone more difficult, as we will show in the next section. Berlin and Paris were also unable to convince the other member states that strong European solutions should be adopted to cope with the refugee crisis. Finally, both countries have their own Eurosceptic political parties. If Germany and France had an explicit common project for the EU, as was the case in the late 1970s (the Giscard d'Estaing–Schmidt period) and early 1990s (the Mitterrand–Kohl period), the risks of disintegration as a result of Brexit would probably be smaller.<sup>44</sup> This would also reduce the power of the argument of Brexit supporters in Britain in favour of withdrawing their country from an EU they frequently describe as being in a situation of complete deadlock.

Most EU leaders, then, perceive Brexit as a major political risk, and accepted the British renegotiation to try to avert this outcome. David Cameron's argument

<sup>40</sup> Douglas Webber, 'How likely is it that the European Union will disintegrate? A critical analysis of competing theoretical perspectives', *European Journal of International Relations* 20: 2, 2014, pp. 341–65; Douglas Webber, *European disintegration? The European Union in crisis* (Basingstoke: Palgrave Macmillan, forthcoming 2017).

<sup>41</sup> Paul Taggart and Aleks Szczerbiak, 'Coming in from the cold? Euroscepticism and government participation and party positions on Europe', *Journal of Common Market Studies* 51: 1, 2013, pp. 17–37.

<sup>42</sup> Servaas van der Laan, 'Krijgt ook Nederland zijn eigen EU-referendum?', *Elsevier*, 23 Feb. 2016, <http://www.elsevier.nl>. (Unless otherwise noted at point of citation, all URLs cited in this article were accessible on 9 April 2016.)

<sup>43</sup> Agence France Presse, Prague, 24 Feb. 2016.

<sup>44</sup> Krotz and Schild, *Shaping Europe*.

for a renegotiation (not Brexit) has always been that the UK can only participate in a reformed EU. His first move towards renegotiation in 2013 aimed at further post-Lisbon reform of the EU treaties, with particular support from the German government. This proved impossible to achieve. For the UK's partners in the EU, the effects of the British referendum result on the EU remain totally unpredictable. A 'yes' vote could be a strong incentive for the EU to launch a major reform; or it could be taken to justify EU leaders taking a conservative stance and confirming the status quo. A 'no' vote could be an opportunity for the German and French governments to relaunch their 'hard core' scenario for the EU; or it could provide significant impetus towards progressive dilution and disintegration. It is because the member states do not have a clear view on the possible effects of Brexit that they all prefer to support a 'yes' vote in the British referendum. In their eyes, the 'yes' option—including a British opt-out from the treaty provision on 'ever closer Union'—is the only option that will reliably exclude the scenario of disintegration.

### *'Brexit' and the eurozone: two Europes*

The crisis in the eurozone since 2008 has revealed the incomplete nature of European integration and more particularly of the eurozone itself. It has also revived debates about a multi-speed Europe and a two-tier Europe. The successive meetings of the European Council since 2008 have only served to emphasize the widening gap that exists between the eurozone and the rest of the EU.

The member states of the eurozone have decided to complete EMU. Beyond the EMU mechanisms included in the EU treaties, they have adopted stricter common rules outside the treaties in fiscal matters: the Six-Pack, the Two-Pack and the Euro-Plus Pact. In addition, over the past few months the project of a banking union has made some progress. The member states of the eurozone have also joined with those that do not use the euro to create the European Financial Stability Facility and the ESM. In December 2012 they adopted (with the exception of the UK) the Treaty on Budgetary Discipline,<sup>45</sup> known as the 'Fiscal Compact',<sup>46</sup> and in 2014 created the Single Resolution Fund. In these four cases, the member states of the eurozone have concluded with the 'pre-ins'<sup>47</sup> inter-governmental agreements introducing more flexibility to avoid a risk of veto.

The deepening of European integration, particularly on fiscal matters, has raised the question of strengthening EU differentiation, from both the political and the institutional points of view.<sup>48</sup> For example, in order to strengthen the

<sup>45</sup> When in December 2011 David Cameron asked for the exemption of the British financial services from the common rules in exchange for his country's support for the Budgetary Pact, his European partners saw this as simple blackmail and chose to ignore it.

<sup>46</sup> European Council, Treaty on the Stability, Coordination and Governance within the Economic and Monetary Union, signed 2 March 2012.

<sup>47</sup> The 'pre-ins' are the countries that have not yet joined the euro but want to adopt it.

<sup>48</sup> I. Pernice, M. Wendel, K. Bettge, M. Mlynarski, L. S. Otto and M. Schwarz, 'A democratic solution to the crisis: reform model for a democratically based economic and financial constitution for Europe', Walter Hallstein Institute for European Constitutional Law, Humboldt University Berlin, 2012, [http://www.whi-berlin.eu/tl\\_files/documents/Pernice%20u.a.,%20Die%20Krise%20demokratisch%20ueberwinden,%202012.pdf](http://www.whi-berlin.eu/tl_files/documents/Pernice%20u.a.,%20Die%20Krise%20demokratisch%20ueberwinden,%202012.pdf). See also M. P. Maduro, B. de Witte and M. Kumm, 'The euro crisis and the democratic governance of the euro: legal

legitimacy of and democratic control over EMU, the creation of a specific parliament for the eurozone has been put on the agenda.<sup>49</sup> The European Parliament predictably would prefer any such assembly to be one of its subcommittees, in the same way that the Eurogroup is a subcommittee of the European Council.<sup>50</sup>

In the project to design the next steps of EMU reform, a report was published at the end of June 2015 under the names of five presidents: Jean-Claude Juncker (President of the Commission), Donald Tusk (President of the European Council), Jeroen Dijsselbloem (President of the Eurogroup), Mario Draghi (President of the European Central Bank) and Martin Schulz (President of the European Parliament).<sup>51</sup> The report outlines a plan to deepen EMU and argues that the foundations of EMU need to be strengthened not only to ensure smooth functioning of the currency union but also to allow the member states to adjust to global challenges.<sup>52</sup>

In such a context, the growing gap between the member states of the eurozone and the non-members becomes an issue. It is not by chance that it is also one of the major issues of the UK renegotiation process. Regarding relations between the EU19 of the eurozone and the EU28, the British government is aiming to receive guarantees that EMU countries will not be able to impose measures deemed contrary to the interests of EU members outside the eurozone. However, the member states of the eurozone defined clear limits regarding the British demands during the negotiations. For example, they repudiated as unacceptable the proposals aiming to dilute the treaty obligation to adopt the single currency<sup>53</sup> and the introduction of new voting rights for the non-eurozone countries.<sup>54</sup>

The deal concluded at the European Council on 18–19 February 2016 does not call into question the principle that the euro is the currency of the EU. It recognizes the necessity to deepen EMU, a goal whose achievement the states outside

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and political issues of a fiscal crisis', policy report, Global Governance high-level seminar on 'The democratic governance of the euro', Robert Schuman Centre for Advanced Studies, European University Institute, Fiesole, Aug. 2012.

<sup>49</sup> European Council, 'Issues paper on completing the Economic and Monetary Union', 12 Sept. 2012: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/132413.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/132413.pdf).

<sup>50</sup> John Erik Fossum, 'Democracy and differentiation in Europe', *Journal of European Public Policy* 22: 6, 2015, pp. 799–815.

<sup>51</sup> During the European Council of June 2015, Jean-Claude Juncker, President of the European Commission, presented a report entitled *Completing European Economic and Monetary Union*, prepared in close collaboration with the presidents of the European Council, the Eurogroup, the European Central Bank and the European Parliament. The 'five presidents' report was anticipated in *Towards a genuine economic and monetary union*, report by President of the European Council Herman Van Rompuy, 5 Dec. 2012. For a Franco-German article on the issue, see Emmanuel Macron and Sigmar Gabriel's column, 'Europe: pour une Union solidaire et différenciée', *Le Figaro*, 3 June 2015.

<sup>52</sup> See Benoît Coeuré, member of the Executive Board of the European Central Bank, 'Drawing lessons from the crisis for the future of the euro area', speech at the French Ministry of Foreign Affairs during the Ambassadors' Conference, Paris, Aug. 2015, <https://www.ecb.europa.eu/press/key/date/2015/html/sp150827.en.html>.

<sup>53</sup> Twenty-six member states committed to adopting the single currency when they fulfil the conditions set out in art. 3.4 of the treaty. Just two states, Denmark and the UK, have an opt-out—but these two are exceptions and not the rule. See Thierry Chopin, Claire Darmé and Sébastien Richard, *E(M)U and the UK: one or several Europe(s)?*, European Issues no. 381 (Brussels and Paris: Robert Schuman Foundation, Feb. 2016).

<sup>54</sup> 'Safeguarding non-eurozone states' rights is key to new EU settlement', *Open Europe*, 10 Sept. 2015; Thierry Chopin, 'The UK's renegotiation: what a fair deal between London and its European partners might look like?', *LSE EUROPP* (London School of Economics and Political Science), Oct. 2015.

the eurozone must not block.<sup>55</sup> The settlement also stresses the need for the eurozone to comply with internal market rules. But, at the same time, it provides scope for member states that have not adopted the single currency to express their concerns at the European Council.

The deal also provides that the supervision of credit institutions under the banking union framework shall be applied only to banks located in the member states; their currency must be the euro, 'in accordance with relevant EU rules and subject to the requirements of group and consolidated supervision and resolution'.<sup>56</sup> This may cause difficulties for the consolidated supervision and resolution of banks whose subsidiaries are located outside the eurozone, for example in the UK. Moreover, the deal implies that member states outside the eurozone would not take fiscal responsibility for the measures which are necessary for ensuring the financial stability of the eurozone. This opens up the possibility of a situation where the eurozone will have to assume the financial burden for the resolution of banks that are established in the UK and supervised by the British authorities (e.g. clearing houses). The risk is a deepening of the gap between those member states that are within the eurozone and those that are not.

## **Conclusion**

The Brexit debate does not concern only the future of the UK in the EU. It raises deeper questions, on the one hand about a possible disintegration of the EU and on the other about the relationship between the eurozone and the EU as a whole. Whatever the decision of UK citizens in June 2016, whether to leave or to remain in the EU, the integration process will face an uncertain future. Brexit may stimulate pressure to leave in other member states; or it may act as an incentive to reform the EU and EMU. If the UK chooses to remain in the EU, again either scenario could ensue: the 'British story' is just one manifestation among 28 of the politicization of European integration under strong pressure from domestic politics. Which scenario comes into being will decide the theoretical question. A re-launch of the EU will vindicate neo-functionalist theory, which assumes that crisis brings necessarily rationalization and reform of the agenda. Disintegration will mean precisely the opposite. One thing is certain: the EU will not escape more differentiation in the future.

<sup>55</sup> Conclusions of the meeting of the European Council, 18–19 Feb. 2016, EUCO 1/16 CO EUR 1 CONCL 1.

<sup>56</sup> Conclusions of the meeting of the European Council, 18–19 Feb. 2016.

