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Differentiation in the European Union in Post-Brexit and -Pandemic Times: Macro-Level Developments with Meso-Level Consequences

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Introduction

2021 marked the official start of a post-Brexit era for the European Union (EU) since the United Kingdom (UK) had only fully withdrawn when the transition period lapsed on 31 December 2020. The transition period prevented the EU and the UK from falling off a cliff before a mutual Trade and Cooperation Agreement (TCA) was to be ratified and implemented into UK law by Parliament before 1 January 2021. This cumbersome process marked the pinnacle of a three-decades long period of European integration which saw the political architecture of the EU gradually shift from a system characterized by integration to one that is more succinctly marked by differentiation. Using Brexit and the Covid-19 pandemic as cases in point, we argue that *differentiation has become the system property of the EU's institutional polyarchic architecture*. While differentiation has sometimes been conceived as being mostly temporary in nature, we may think of a differentiation of the EU's political order as a permanent and systemic property.

Differentiation is both an empirical and a theoretical phenomenon. *Empirically*, it has been on the rise ever since the ratification of the Maastricht Treaty in 1992. As Euroscepticism progressively became more mainstream, disintegrative tendencies feature more prominently in Europe's political order (Bátora and Fossum, 2020; Gänzle et al., 2020). Membership withdrawals or centrifugal moves away from the EU, such as Brexit or Switzerland calling off negotiations on a partnership agreement in 2021, have therefore been coined *conceptually* as differentiated disintegration (Schimmelfennig, 2018). Similarly, reverse processes of 'de-differentiation', such as the Danish people's decision in May 2022 to revert the former opt-out in EU defence (Politico, 2022), have occurred, too.

Prior to the landmark process of Brexit, European integration generally followed the 'ever closer union' model – as famously stated in the preamble to the Treaty of Rome of 1957. Even so, European integration was never truly uniform but shaped by mechanisms of differentiated integration (Leuffen et al., 2022). In addition to policy-centred vertical differentiation (that is, the variation in the level of centralization across policies), such as most prominently in Economic and Monetary Union (EMU), the EU has encountered various forms of horizontal differentiation. This includes an *internal dimension* with EU countries opting out from certain policies both *de jure* and *de facto* (Hofelich, 2022), as exemplified by Denmark and Sweden's non-adoption of the common currency as well as an *external dimension* with non-EU countries, such as

Norway and Switzerland, opting into selected policies (Leuffen et al., 2022). Today, the EU can therefore be considered as an *institutionally polyarchic architecture* of concentric circles with a core of club members surrounded by countries that have managed to negotiate opt-outs from specific policy areas; countries willing to join; and various neighbourhood agreements involving both European and non-European countries (for example, Gstöhl and Lannon, 2018).

Studies of European differentiation have underlined that it is paramount to conceive of differentiation as a comprehensive phenomenon that is not tied to specific directions of either integration or disintegration (Gänzle et al., 2020; Leruth et al., 2022; Olsen, 2007). Yet, while differentiation was initially considered as a temporary phenomenon (through the concept of ‘multi-speed Europe’), we nowadays witness the emergence of permanent forms of differentiated political order(s) within the EU, for instance through the form of opt-outs from the Eurozone. This study suggests that forms of macro-level differentiated political order in the EU may lead to transformations at the meso-level, which in turn may affect the institutional robustness of the EU. Ultimately, differentiation may serve as a vehicle for the long-term sustainability and institutional robustness of the EU. This argument is supported by studies showing that the survival of international organizations (IOs) is associated with the size of their executive capacity (Debre and Dijkstra, 2020). This also suggests how institutional features of IOs may assume a paramount role of robust global governance. It is also necessary to emphasize the attractiveness of studying the robustness of a differentiated European political system in turbulent times (Ansell et al., 2017). Clearly, the robustness of institutions may be taken for granted during periods of stability (Olsen, 2007). During periods of turbulence or crisis, however, established institutions may become subject to contestation, requests for reform, and objects of scholarly studies. Rather than leading to fragmentation and dissolution of institutions, we maintain that manifestations of differentiation foster resilience of the political order of the EU.

After a concise conceptualization of differentiation, we examine how the EU has dealt with both internal and external differentiation at the meso-level using Brexit and Covid-19 as cases in point. Second, in our view, differentiation is and will continue to be prominent in the years to come, hence we sketch out an institutionalist research agenda which suggests how macro-level differentiation – for example, with respect to polity-level differentiation – may lead to meso-level institutional responses. Finally, we close by discussing implications for the post-Brexit and post-pandemic future of differentiation.

I. Towards the Age of Differentiation in European Integration

As a strategy of integration, the roots of differentiation can be traced back to a report produced under the direction of Leo Tindemans (1975), which laid the conceptual foundations of a ‘multi-speed Europe’ (Stubb, 1996). Yet, scholarly debates on differentiated integration only started in the early 1990s – against the backdrop of the legally enshrined British and Danish opt-outs in terms of currency union and defence for example. With subsequent discussions on further constitutionalizing forms of differentiated integration, the enhanced cooperation mechanism was introduced in the Treaty of Amsterdam.

Considering these developments, Stubb (1996, p. 283) defined differentiated integration as ‘the general mode of integration strategies which try to reconcile heterogeneity within the European Union’ in terms of time, space, and matter. From a theoretical perspective, other scholars also focused on the scope and limits of differentiated integration in the EU (for example, de Neve, 2007; Holzinger and Schimmelfennig, 2012; Leruth and Lord, 2015; Schimmelfennig et al., 2015; Sitter and Andersen, 2006). The financial and economic turmoil of 2007–2008, subsequently followed by socio-economic and political unrests of many kinds, brought the EU into a new multi-faceted poly-crisis (Riddervold et al., 2021). The future of European integration became increasingly questioned, as domestic Eurosceptic actors pushed for reducing the scope of core EU powers, opt-outs or even withdrawing from the Union as a whole. Brexit eventually opened a new chapter in the study of differentiation (Leruth et al., 2019). Some of the recent literature on crisis, disintegration and differentiation in Europe also combines explanations based on collective actors’ cost–benefit calculations – such as the promotion of equality of opportunity among EU members (Jones, 2018) and institutionalist explanations focusing on how crises are channeled through and mediated by pre-existing institutional frameworks and resources (for example, Bátorá and Fossum, 2020). Brexit thus largely reinvigorated differentiation as a central focus of research in EU studies.

In contrast to previous iterations of differentiation – which were exclusively used to qualify forms and grades of integration – the term has now come to be applied in instances of both integration and *dis*integration. Both growth and reduction of the level, scope and membership of IOs remain unequal and therefore differentiated. Differentiation applies to the institutional, policy and territorial dimensions of such processes. With regards to the institutional dimension, differentiation is relevant for grasping the *settlement* of both emergent organizations and organized systems. Institutions and organized systems are temporary sets of rules and procedures, demography, locations, beliefs and norms. Different approaches to differentiation are particularly helpful in conceptualizing the settlement of emergent political orders such as the EU that involve multiple tiers of authoritative decision-making. The EU has been depicted in a two-pronged way both as ‘a conceptual battleground and an institutional building site’ (Olsen, 2010, p. 81) with a varied mix of organizational forms, governance patterns and ideas about legitimate forms and speeds of integration. Institutional differentiation was eventually understood as ‘new institutional spheres [that] have split off from older ones and developed their own identities’ (Olsen, 2010, p. 142). From an institutional theory perspective, differentiation ultimately ensures a form of interdependence that ties institutional spheres together. In such a highly dynamic process of institutionalization, de-institutionalization and re-institutionalization, European integration is constantly being reconfigured.

II. The Impact of Covid-19 and Brexit: Meso-Level Differentiation vis-a-vis Institutions, Policy, and Territoriality

Varieties of organizational structures and institutional norms in the EU contribute to institutional change within EU member states. It has been observed that both intergovernmental, supranational as well as non-majoritarian institutions tend to encourage patterns of institutional differentiation. Egeberg and Trondal (2017) demonstrate that EU agencies have become vehicles for integrating regulatory bodies also from non-EU member states.

In addition, they document an acceleration in the creation of new decentralized agencies over time not only in terms of numbers but also in terms of powers and quality. The ‘agencification’ of both EU (non)member-states and the EU administrations serve as an institutional infrastructure for differentiated administrative integration (Trondal, 2014) through a differentiated inclusion of administrative bodies from member and non-member states in EU governance. Central agencies in Switzerland, EEA/EFTA countries, candidate and neighbouring countries are offered access to EU decentralized agencies’ management boards, leading the latter to become privileged fora for external differentiated integration (Lavenex, 2022). During the Covid-19 pandemic, EEA countries coordinated their response strategies with the European Centre for Disease Prevention and Control (ECDC). Since agency officials generally enjoy a considerable degree of independence from their states’ central administration, and that their involvement in EU networks is thus relatively insulated from political intervention from their governments, they are highly sensitive to governance processes at different levels of government (Egeberg and Trondal, 2009). The result is a differentiated and semi-autonomous polycentric patchwork of memberships and associations in EU administrative networks.

Differentiation and the Covid-19 Pandemic

In March 2020, the global Covid-19 pandemic eventually hit Europe; it affected most policy domains of the EU and substantially put solidarity amongst member states to a test. Although the EU has only limited competence on public health, which remains largely under the control of member states (European Court of Auditors, 2021), the EU was criticized for its lack of coordination, for not acting immediately concerning medical equipment for Italy and not reintroducing internal borders (Wolff and Ladi, 2020). The EU’s immediate health policy responses mostly rested on the use of pre-existing resources and institutions: the ECDC, the health emergencies system, the Joint Procurement Program (JPP) and the RescEU civil protection mechanism. The initial EU response to the crisis was differentiated partly because the ECDC was dwarfed by the many national agencies it was supposed to coordinate, the lack of an independent budget line, and its sole support by an administrative agency with no independent legal basis (Consumers, Health, Agriculture and Food Executive Agency, CHAFEA). As a result, member states responded quite differently to the crisis, largely reflecting different government systems, governance traditions, policy styles, attention structures and pre-existing crisis routines within each country (Askim and Bergström, 2021; Zahariadis et al., 2021). On the issue of fiscal support to struggling EU member states, an existing political division lingering from the Eurozone crisis between so-called ‘frugal’ Northern countries and the Southern member states reemerged, yet with one crucial difference: Germany appeared to have changed its stance on the matter (Schulz and Henökl, 2020). This resulted in the approval of the unprecedented €750 billion NextGeneration EU recovery plan. With a view to violations of the rule of law in Poland and Hungary, the recovery plan included access clauses tied to the fundamental principles of the EU via the Rule of Law Conditionality Regulation, which acted as preventative mechanisms against further democratic backsliding in both countries, thereby implying that differentiation cannot be applied when it comes to these core values. Legal challenges were unsuccessfully launched by the

governments of both countries, yet there were still major concerns over the inaction of European institutions to tackle democratic backsliding in Poland and Hungary. However, the Commission's decision to endorse Poland's recovery and resilience plan in June 2022 was met with strong skepticism, given the government's refusal to loosen control over the judicial system (The Guardian, 2022).

Existing patterns of territorial differentiation led to institutional differentiation among national health agencies. Health agencies in Norway and Sweden, for example, activated different strategies first to combat the virus nationally and second in their adoption of advice and services from the ECDC. Contrary to the general observation of tight agency networks among the Nordic countries (Schrama et al., 2020; Stie and Trondal, 2020), the Norwegian and the Swedish health agencies adopted opposite strategies in both regards, for example regarding the implementation of lockdowns and with regards to their referral to the ECDC. Reflecting different domestic institutional designs and past choices, the Norwegian and Swedish governments differed in how they framed and managed the crisis – as a healthcare crisis (in Norway) and a public health crisis (in Sweden; Askim and Bergström, 2021). This observation moreover reflected general patterns of EU differentiation, in which administrative differentiation of the EU contributed to provide institutional architectures for meso-level differentiation (Leruth et al., 2022). One effect was that a non-EU member state (Norway) coordinated Covid-19 responses *vis-à-vis* the EU more extensively than an EU member state (Sweden). Subsequent internal differentiation occurred once vaccines were deemed safe by peer-reviewed studies: as the EU and the European Medicines Agency were criticized for initially slow-paced decisions to approve vaccines and organizing an effective rollout program, some countries such as Hungary and Slovakia relied on non-European Medicines Agency-approved vaccines such as the Russian Sputnik V (Politico, 2021).

Differentiation and Brexit

Brexit is a second illustrative case providing evidence on how administrative networks in the EU harbour resources for meso-level institutional differentiation. Despite polity-level transformations as with the rupture produced by Brexit, UK-based actors continued their participation in EU administrative networks, while at the same time exhibiting some variation due to institutional factors (Copeland and Minto, 2021). The scope of meso-level consequences in terms of *policy differentiation* becomes evident in the way the post-Brexit EU fisheries policy took shape. Although the UK's withdrawal has not yet produced any radical disintegration in fisheries policy, arguably one of the most Europeanized areas of UK public policy (Van der Zwet et al., 2022), the institutional arrangements and specifics around the new agreement (for example, access to waters and maintenance of quota systems) exhibit a strong degree of regulatory and institutional alignment. This may even trigger important consequences for the UK; potentially, Scotland seeking to align itself more to the EU in the future, whereas England may be diverging more. In turn, the process of Brexit has already revived the independence agenda in Scotland, and the medium to long-term consequences of leaving the EU may provide further opportunities for the Scottish National Party and other pro-independence parties to push for further autonomy.

The implementation of the Protocol on Ireland/Northern Ireland has remained high on the agenda in 2021. Recognizing the intention of securing the 1998 Good Friday (Belfast) Agreement, and thereby avoiding a hard border on the island of Ireland, the Commission proposed further flexibilities in the implementation of the Protocol in the areas of food, plant and animal health, customs, medicines, and engagement with Northern Ireland on 13 October 2021. Therefore, while Brexit triggered an unprecedented process of differentiated disintegration in the European Union, it also threatens the integrity of the United Kingdom that could lead to its own disintegration. In 2022, the UK Government's position on scrapping the protocol heightened tensions with the EU, which could further lead to distrust between both parties and have dire consequences at the Irish border.

III. Towards an Institutional Research Agenda on (Meso-Level) Differentiation

Departing both from the empirical illustrations above, and the idea of differentiation as a system property of the EU, we believe that there is a broader research agenda on (meso-level) differentiation that may be outlined. There is a general body of literature on institutional absorptive capacity which tries to identify how institutions and systems respond to surprises, uncertainty, and errors, and which may inform studies of differentiation in the EU (Hermus et al., 2020; Schulman, 2021). Studies also provide knowledge on how different institutional conditions enable institutions to respond to change (for example, Castellacci and Natera, 2013). Although institutional factors are a frequently conceived of as barriers to organizational change and reform (Cinar et al., 2019; De Vries et al., 2015, p. 157), institutional theory may be used as a theory of differentiated governance responses. Moreover, an institutional approach links EU scholarship to the realities of European (dis)integration, concerned not just with how things are, but *how things might be* (Gulick, 1937; Meier, 2010, p. 284). Given certain goals, such as institutional resilience and robustness of the EU, organization designers would be capable of recommending structural solutions. The role of organizations and organizational factors, however, is somewhat contested in the social sciences. Given that institutional scholarship has largely emphasized the study of long-term reform-pessimism and fiascoes (for example, Pierson, 2004), this section examines what we see as a short-term reform optimistic approach to differentiation that theorizes avenues for short-term successes (see March and Olsen, 1983).

Reform Optimism and Pessimism: Long-Term Vs. Short-Term

March and Olsen (1989) famously found that long-term courses of action tend to be characterized by incremental adaptation to changing problems in which old solutions tend to be applied to new problems. Organizational designers who seek to design a polity in accordance with an architectonic design and envisage themselves as polity engineers often find themselves in situations they have not envisaged (Pierson, 2004). Yet, willful design and orderly reform of the EU and its institutional system, as with most institutions and polities, is constrained by many factors: ambiguities, the stickiness of existing organizational arrangements, institutional fads and fashions, shifting and competing goals, short attention-spans, limited capacity to monitor processes, and a history of previous conflict that could at any time reemerge (for example, March, 2008; Pierson, 2004). Reforms

sometimes are sometimes characterized by the codification of developments that have already taken place (March and Olsen, 1989, p. 114) or that reform processes mainly involve sense-making and meaning-formation based on senses of identity (March and Olsen, 1989). The long-term development of differentiated political orders, such as the EU, has been observed to fit into this picture (Bátora and Fossum, 2020). It should thus be apparent that the development of a differentiated EU political order is often not deliberately designed as a result of purposeful processes but rather subject to constraints.

Nevertheless, the challenge of making an overall institutional design does not necessarily mean that a political order develops in an arbitrary way. Local and stepwise reforms of the EU, each of which is entirely sensible, may be driven by local rationality and may add up to form a type of polity that nobody envisaged. A reform-optimistic approach therefore focuses on deliberate intervention and change through the design of organizational structures. Consequently, an institutional approach emphasizes how decision processes and human behaviour respond to a set of fairly stable organizational routines that may be deliberately redesigned (Cyert and March, 1963). Essentially, stable premises for behavioural choices are past experiences encoded in rules and expressed in the organizational structure of a government apparatus (Olsen, 2017). Organizational characteristics are thus likely to variously enable and constrain differentiation, making some organizational choices more likely than others. By redesigning – for example, differentiating – the organizational structures of the EU, the attention structure or the choice architecture of EU decision-makers is also systematically redirected. This means that polity-level (that is, the macro-level changes of the EU) reforms are likely to bias the set of choices available to actors at the level of institutions (that is, the meso-level choices of EU institutions and decision-makers).

An organizational approach is grounded on the assumption that endogenous organizational characteristics may explain *how* institutions such as the EU work and change. It posits that organizational factors are not merely an expression of symbol politics (Meyer and Rowan, 1977) but generate systematic bias in human behaviour and decision-making processes by directing and nudging choice and attention towards certain problems and solutions, i.e., making certain outcomes more likely than others (Thaler and Sunstein, 2009). Two reasons are given for this focus. First, it has been shown that the systematic and significant effect of organization structure on decision-making behaviour and governing processes, e.g., on studies of the European Commission (for example, Christensen and Læg Reid, 2008; Egeberg and Trondal, 2018; Trondal, 2006). Second, organization structure, compared to other factors that *intervene* in the policy process, is more subject to deliberate change and may thus be an important *instrument* (Egeberg and Trondal, 2018; Thaler and Sunstein, 2009).

An organizational approach therefore departs from the short-term politics of (re)organizing EU institutions. We thus conceive of this approach as a reform-optimistic approach which highlights that pattern of differentiation may be institutionally conditioned. This approach outlines design implications that may be useful for practitioners in the EU. It may for example be argued that the loose institutional character of a polity would increase the variety of institutional tools at disposal for institutional design. Conceiving of the EU as a differentiated and loosely coupled polity, we argue that the polity-level robustness of the EU is positively associated with varieties of meso-level institutional differentiation, for instance among EU agencies and administrative networks (see above). In other words,

the constant growth of EU agencies over time has empowered the EU's internal robustness and provides ample opportunity to influence both member and partner countries alike in terms of multilevel administrative governance.

Conclusion and Further Research

Our article has argued that the EU has proved resilient in the face of past crises, such as Covid-9 and Brexit, by adapting differentially through established institutions, rules, and routines. Differentiation may act as a powerful tool for the Union to muddle through crises. While the notion of differentiation has been used and abused politically across Europe, these cases demonstrate Kelemen's (2021, p. 680) point quite well: "[I]ike most habits and even vices, [differentiation] is not threatening if engaged in with moderation."

The years ahead may show the extent to which differentiation eventually serves to further consolidate the EU in the face of poly-crisis. Will future crises continue to strengthen a process towards a differentiated Union, or are we likely to witness tipping points that may undermine the process towards an ever-differentiated EU? The war in Ukraine initially fostered discussions over the creation of new organizations, such as Macron's 'European political community', which resembles Mitterrand's idea of a 'European confederation' following the Revolutions of 1989. Such political community would bring a new dimension to debates over the nature of differentiation in Europe. At the same time, the Russian war in Ukraine since February 24, 2022, has (at least partly) triggered a process of 'de-differentiation' in Denmark, as the Danish population voted in favour of scrapping the defence opt-out in a referendum held on 1 June 2022.

Future studies on differentiation should examine causal mechanisms that may explain the emergence of and consequences of differentiation. In particular, we call on studies to probe how differentiated EU capabilities for risk prevention and crisis management cause unintended longer-term consequences. Riddervold et al. (2021) have established that crisis governance in the short-term and within certain policy domains may cause long-term unintended institutional consequences. Two long-term implications of crisis governance appear discernible calling for further scholarly investigation: unintended consequences across policy fields and time as well as challenges to the EU's overall democratic process. First, crisis management tend to have consequences that reach beyond what is intended - as observed in the Covid-19 crisis. A crisis that emerges within one policy domain - such as public health - may cause unintended consequences in other policy areas or potentially reverberate across entire systems (Caporaso, 2021). Secondly, the EU's crisis responses may have long-term and unintended democratic implications (see Kochenov and Bard in this issue). Arguably, when the EU functionally responds to crisis through differentiated institutional and policy responses, the EU's democratic deficit may grow in the long run since crisis responses tend to strengthen executive institutions and contribute to the contraction of government decision authority. This involves empowering de-centred agencies, central banks, core-executive institutions and so on, without strengthening parliamentary institutions in parallel. Such processes are far from unproblematic; crisis responses and short-term reform-optimism at EU level may therefore create a *systemic* executive dominance and accountability deficits with long-term challenges if not met with the support of parties and citizens (Telle et al., 2021).

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