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The Democratic Dilemmas of Differentiated Integration: The Views of Political Party Actors

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Abstract: *Differentiated integration (DI) appeals as a pragmatic way of accommodating political and economic differences among member states (MS). However, it potentially challenges their equal standing in EU decision-making, creating the possibility for some MS to dominate others. As such, it risks undermining the democratic legitimacy of the EU. Drawing on 35 interviews with party actors in seven MS, we find many shared these concerns, thereby questioning the acceptance of DI. While they considered DI could support self-determination at the national level, they worried it might result in arbitrary exclusion and growing inequality at the EU level. To be non-dominating, they contended differentiated policies must remain open for all to join, be based on clear criteria, and allow all MS a say, though only participating states should be entitled to vote on differentiated policies in the Council, whereas all MEPs should be able to vote in the European Parliament.*

Zusammenfassung: *Differenzierte Integration (DI) entschärft politische und wirtschaftliche Heterogenität zwischen den Mitgliedstaaten (MS) der Europäischen Union (EU). Sie wirft allerdings Fragen politischer Gleichheit zwischen den MS und der Dominanz schwächerer MS durch stärkere auf und birgt das Risiko, die demokratische Legitimität der EU zu untergraben. Auf der Grundlage von 35 Experteninterviews mit parteipolitischen Akteure aus sieben MS zeigt dieser Beitrag, dass viele dieser Akteure diese Bedenken teilen. Einerseits unterstützen sie DI als Mittel zu nationaler Selbstbestimmung. Andererseits sorgen sie sich allerdings, dass DI zu willkürlicher Ausgrenzung und wachsender politischer Ungleichheit auf EU-Ebene führen könnte. Um dem entgegenzutreten, sollten alle differenzierten Politiken offen bleiben für diejenigen, die ihnen beitreten wollen, und ein späterer Beitritt sollte auf transparenten Kriterien beruhen. Die gegenwärtigen Abstimmungsregeln im Rat und im Europäischen Parlament werden demgegenüber weitestgehend befürwortet.*

Résumé: *L'intégration différenciée est une réponse pragmatique aux défis posés par l'hétérogénéité des états-membres de l'Union Européenne (UE). Toutefois, cette méthode risque de mettre en cause le principe d'égalité entre ces états-membres, d'engendrer des relations de domination et, de ce fait, de saper la légitimité démocratique de l'UE. Par une analyse de 35 interviews avec des acteurs de partis politiques issus de sept états-membres, nous montrons qu'une grande part des élites politiques européennes partagent ces préoccupations et contestent l'acceptabilité de l'intégration différenciée. Même si certain.e.s interviewé.e.s pensent que l'intégration différenciée peut renforcer l'autodétermination au niveau national, ils craignent qu'elle puisse également donner lieu à des exclusions de nature arbitraire et augmenter les inégalités au niveau européen. Les interviewé.e.s considèrent que les politiques différenciées doivent rester ouvertes à tous et se baser sur des critères précis. Il ressort également que seuls les états concernés par une politique devraient*

avoir le droit de vote au Conseil, alors qu'au Parlement Européen tous les députés devraient avoir le droit de vote.

KEYWORDS: Differentiated Integration, Domination, Political Parties, Democracy, Fairness

Introduction

Differentiated integration (DI) involves particular member states (MS) either being allowed not to adopt certain EU laws and policies, or being excluded from doing so, at least temporarily, until certain conditions are met (Holzinger and Schimmelfennig 2012: 292). While there is a growing body of literature on DI, its academic assessment remains divided. Some praise its practical (Thym 2016; Winzen 2016) and normative (Bellamy and Kröger 2017; Lord 2015) advantages in accommodating political, cultural, and economic differences by allowing certain MS to integrate more and/or faster than other MS. Others are critical of DI. They note potential risks, such as the undermining of the uniform legal order of the EU (Curtin 1993), the danger of producing new divisions between a core EU and a periphery (Michailidou and Trenz 2018), and even of allowing for domination (Eriksen 2018).

This article addresses the last of these worries – the concern that DI might undermine political equality among MS, thereby creating the possibility for some MS to dominate others in the sense defined by Philip Pettit: that is, through having the capacity to impose costs or exclude them from benefits resulting from the integration process without consulting their views or interests (Pettit 2010: 77-79). This concern relates to what Max Heermann and Dirk Leuffen identify as a gap in the literature on DI – namely, the degree to which it has 'remained remarkably silent with respect to questions of institutional design' (Heermann and Leuffen 2020: 2). This silence is surprising given that DI can impact the institutional structure and decision-making processes at the EU level, potentially impairing their democratic character. As John Erik Fossum has observed, although DI has been perceived as a way of de-politicizing highly political disagreements and difficulties concerning further integration, 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' (Fossum 2015: 799). However, these potential problems might conceivably be addressed through designing appropriate institutional arrangements for the governance of DI that ensure it remains under the equal influence and control of all the MS. We explore this issue through an analysis of the views political party actors within the MS have of DI. In particular, we ask whether they perceive DI as creating domination, and how they consider its dominating potential might be mitigated through appropriate forms of governance for differentiated policy areas.

Why is it important to investigate whether DI is perceived as dominating or not? DI has been seen as a pragmatic mechanism for accommodating political and economic differences among the MS that lead to divergent views and capacities with regard to the pace and extent of the integration process. However, these pragmatic advantages risk being undermined if DI is perceived as producing political inequalities between MS. The EU can be characterised as a voluntary association of states that have conferred certain competences on it (Art 5 TEU). A key rationale for doing so in an interconnected world is to mitigate the potential for the democratically made decisions of one state to dominate

the democratically made decisions of another. For example, the negative externalities of lax environmental measures in one state can undercut the more rigid environmental regulations of its neighbour. Likewise, wealthier and more developed states can often impose disadvantageous trading agreements on poorer and less developed states. The institutional structure of the EU can be regarded as seeking to overcome such dominating decisions by establishing arrangements that give states equal bargaining power within a common legal framework and encouraging interstate bargaining that will treat the citizens of all MS with equal concern and respect (Bellamy 2019). If DI is seen as distorting this structure and undermining such equitable decision-making arrangements, then anti-EU sentiments will be likely to grow, as DI would be seen as supporting processes of 'othering, when the position of the *outs* is excluded from the EU mainstream' (Thym 2016: 17).

Why, though, is it important to study the views of party actors in particular on this issue? Surely, governments are the decisive actors when it comes to DI? Governments obviously matter. However, political parties provide the discursive and organisational space in which any government inevitably moves. Discursively, it is within parties that new ideas are first developed and tested and need to be approved before they can become government policy. Organisationally, parties provide both the political groups in Parliaments as well as the leading figures in both government and opposition (Budge et al. 1987: 499). A strict separation between political parties, on the one hand, and government and the opposition, on the other, is therefore misleading. Meanwhile, parties are crucial in assuring a representative link between citizens and decision-making (Goodin 2008; White and Ypi 2016). They also provide voters with cues to form their opinion with regard to the EU (Hooghe and Marks 2005). But then, why not anchor the present study in the literature on party attitudes on the EU? The answer lies in our research strategy (outlined in section 3), which involves moving back and forth between theory and data and not forcing one onto the other. In so doing, we found that party actors' views on DI are not significantly linked to their more general views towards the EU, which made framing the paper in such a way implausible. We also found in the data that party actors themselves approached the topic more from their MS than a partisan perspective, leading us to adopt the state focussed normative theoretical framework we have chosen.

These considerations justify the focus on party actors' assessment of the institutional impact of DI with respect to domination, and what they consider would be a non-dominating institutional design for establishing and governing it. Drawing on 35 interviews with political party actors in seven MS we show that while a little under half of respondents (14) viewed different forms of DI in an exclusively positive light, as supporting legitimate diversity and national self-determination, about a quarter of respondents (9) held a predominantly negative view of DI as a potential source of arbitrary exclusion and inequality. The latter concern was particularly prevalent among respondents from new and poorer MS, suggesting that wealth influences how party actors view the dominating potential of DI. A third of respondents (12) expressed mixed views about DI, considering it could be both dominating and non-dominating. Our respondents' assessments also varied depending on what form of DI they discussed. While most respondents were positive about the non-dominating character of sovereignty DI and enhanced cooperation, capacity DI was assessed more negatively, particularly by respondents from new and poorer MS, again confirming that wealth influences how party actors view the dominating potential of DI. To mitigate these issues, respondents oppose arbitrary exclusion and insist that differentiated policies must remain open for all to join

on the basis of transparent and achievable criteria. As regards voting arrangements in policy areas involving DI, the majority considers the status quo to be broadly appropriate: namely, that in the Council only MS participating in a policy should participate in voting, while in the European Parliament (EP) all MEPs should have a vote. These findings suggest that the appropriate institutional design of DI is important to appease fears of it producing domination, and provide important cues concerning how DI should be designed to overcome this concern.

The text unfolds as follows. We start by setting out the democratic dilemmas of DI from a theoretical perspective, sketching the tensions that can arise between enhancing self-determination at the national level and allowing domination at the EU level. We then explain our methodology and our subjective approach which focuses on party actors' views of DI. The ensuing empirical analysis engages with their views in regard to the institutional impact and governance structures of DI. The conclusion discusses the findings' wider implications for the institutional design of DI.

Democratic Dilemmas of DI

DI takes various forms: it can be temporary or permanent, involve opt-outs or exclusions, and be part of primary or secondary legislation. Standardly it consists of two types, reflecting either sovereignty or capacity concerns (Schimmelfennig and Winzen 2014). Sovereignty DI emerges when the EU expands its competences into areas that are traditionally the preserve of the nation state and is usually guided by the perception of a MS government that in these areas the EU is 'the inferior legislator' (Winzen 2016: 103). In such cases, MS that are reluctant to integrate in a specific area may be accorded temporary or permanent opt-outs, though it has tended to be permanent. Sovereignty DI has hitherto arisen as part of Treaty negotiations. Capacity DI emerges when the EU sets standards that not all MS can readily achieve (Winzen 2016: 103). It typically arises during accession to the EU, when new and poorer MS, which can find it difficult or unduly costly to comply with certain policies, are provisionally excluded or accorded temporary derogations to facilitate convergence. Enhanced cooperation (Art 20 TEU), whereby some MS integrate further than others in a given policy area when unanimity on doing so cannot be reached, may be considered a third, hybrid, type. It produces DI reflecting either sovereignty or capacity concerns on the part of those resisting further integration. DI that results from enhanced cooperation can be temporary or permanent, depending on whether all MS decide to join the cooperation at a later stage.

How does DI relate to domination? Following Philip Pettit, we define domination as the capacity of an agent or agency to arbitrarily impose or influence another agent(s) or agency(s) to do their will, without having to deliberatively engage with or consider the reasons and interests of the dominated (Pettit 2010: 73-75). The potential for such domination arises from the conjunction of three circumstances – an imbalance of power, dependency and the unconstrained or discretionary rule of an agent or agency (Lovett 2010: 119-120). By implication, a condition of non-domination involves a democratic community in which each member — in the case of the EU either an individual citizen or MS — has an equal status in determining its collective policies and common rules and must involve the others when formulating them, none is dependent on any of the others, and all are equally affected by the overall package of rules and policies, if not necessarily by every single one of them (Bellamy 2019: 69, 90-93). For DI to be perceived as non-dominating, therefore, its institutional design must avoid creating political inequalities that

produce imbalances, dependency and the capacity for one state or group of states to impose policies or rules on others without consulting them on an equal basis (Bellamy 2019: Ch 6). To do so, it must give all MS subjected to a given EU policy equitable influence and control over collective decision-making in that area, sufficient to ensure their views and interests are shown equal respect and concern. Meanwhile, MS affected by, but not participating in, the policy, should be able to defend the core EU rights of their citizens and not have their scope for self-determination arbitrarily diminished.

On this account, two institutional issues arise with the three types of DI outlined above. The first concerns their respective impact on the EU's institutional structure and decision-making arrangements, and the degree to which they reduce or enhance the possibilities for one state to dominate another. The second concerns whether a given form of governance for DI might mitigate the possibilities for domination. We shall explore each in turn, before seeing if political actors raise similar points on these two issues to those found in the academic literature.

With regard to the first issue, all three types of DI involve a potential trade-off between a gain in self-determination or the recognition of diversity at the national level, on the one hand, and a loss of equality in decision-making at the EU level, on the other hand. Whereas the former might reduce the possibility of domination by increasing the scope for decision-making that respects national differences, the latter may enhance it by increasing the likelihood of an MS being affected by, or even becoming dependent upon, decisions that do not consult their national interest on an equal basis to those of other MS.

Sovereignty DI may be viewed as acknowledging and accommodating differences between MS, protecting valued elements such as diversity and national democratic traditions as per Article 4 TEU. While equal concern and respect entails treating like cases alike, it also involves treating relevantly unalike cases differently (Dworkin 1977: 227). Consequently, to avoid domination diversity can, and arguably should be, accommodated by flexible arrangements concerning specific policies and processes (Bellamy and Kröger 2017). However, sovereignty DI should still ensure that the core rights associated with common citizenship of the Union remain equally available to all EU citizens. In this regard, DI can be compared to policies within many states, including a number of MS, where high levels of cultural and socio-economic heterogeneity have given rise to arrangements favouring the devolution of power to regional or sub-state units (Kymlicka 1995). In a similar vein, Bruno De Witte (2017) argues that DI is positive from a democratic standpoint because it makes it possible for the national preferences of governments and citizens to be respected (see also Lord 2015), thus reinforcing what Joseph Weiler (2001) has defined as the 'principle of constitutional tolerance'. Sovereignty DI is also attractive in giving space to those who wish to integrate further to do so, without forcing reluctant countries to participate. Non-domination in this respect is a two-way street – those reluctant to integrate in a given area are not obliged by other MS to do so, but neither can they hold others back. However, the win-win scenario may not always apply. A MS exercising an opt-out may still be affected by an EU policy they now have no say in determining and might have preferred that the EU had not undertaken. In this case, domination may result from exclusion from relevant decision-making processes.

Capacity DI proves similarly double-edged. It too can be regarded as recognising how treating MS and their peoples as equals can entail recognising their relevant differences. In cases where some MS find it particularly challenging to follow common rules, DI may be viewed as an arrangement that fosters equality by acknowledging that universality of rules and policies may deepen, rather than overcome, certain inequalities. Some countries may

be affected particularly strongly by certain measures, or be unable to comply with the terms of a one-size-fits-all arrangement. Because equal law imposed under unequal conditions of life can deepen inequality, allowing capacity DI may help foster convergence by reducing the adverse effects of a policy and providing more time for adaptation.

However, capacity DI has typically involved new MS being excluded at the point of accession from participating in common policies, such as Schengen or the euro, that they may have wished to join. Although evidence suggests that 'discriminatory' differentiation of this kind has been less frequent than more benign 'exemptive' differentiation (Schimmelfennig 2014), a common concern among Central and East European MS has been that capacity DI may deepen existing divides in the EU and lead to the creation of 'A' and 'B' citizens and states in the Union (Chopin and Lequesne 2016: 539–540). For example, it may create different layers of citizenship, with citizens in some (usually older, usually Western and Northern) MS having access to more (EU-granted) rights than their counterparts in other (usually newer, usually Eastern and Southern) MS. Unless flanked by strong mechanisms of transparency and participation for outsiders, and a clear pathway for them being able to join the policy eventually should they wish to do so, capacity DI could lead to a negative demarcation between the 'insiders' and 'outsiders' of integration, entrench divisions between them (Leruth et al. 2019: 1386), and reduce mutual trust between MS (Adler-Nissen 2011; Michailidou and Trenz 2018). Even more than sovereignty DI, therefore, capacity DI has a dominating potential, whereby an inner group of EU MS can condemn newcomers to an inferior peripheral status (Fossum 2015).

Enhanced cooperation, finally, can be associated with both sovereignty and capacity DI on the part of non-cooperating MS and so raises similar issues. However, it takes place under a procedure laid down in the Treaties. As such, it brings us to the second issue – that of governance, and whether certain procedures for allowing DI and making decisions regarding those policies areas where it occurs can mitigate its dominating effects. As the EP states in its 2019 resolution on DI, 'the debate [...] should not be about pro-differentiation versus anti-differentiation, but the best way to operationalise differentiated integration [...] within the EU's institutional framework' (European Parliament 2019).

Enhanced cooperation is intended to allow a 'coalition of the willing' of at least nine MS to integrate further in areas that do not fall within the exclusive competences of the EU. Introduced by the Amsterdam Treaty, it is an option of last resort to resolve deadlock when the Council 'has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole' (Art. 20 TEU). Authorisation to go ahead with enhanced cooperation must be granted by the Council by qualified majority voting (QMV) (except in areas pertaining to the Common Foreign and Security Policy, in which unanimity is required), following a proposal by the Commission and with the consent of the EP (Art. 329 TFEU). Once established, enhanced cooperation must remain open for MS to join, 'subject to compliance with any conditions of participation laid down by the authorising decision' (Art. 328 TFEU). Arguably, this process involves sufficient consultation between ins and outs, including (via the EP) the totality of EU citizens, to avoid the process for establishing DI, including setting the conditions imposed to join the policy in the future, to be itself a source of domination. While it may occasionally still display dominating tendencies (see for example Kroll and Leuffen 2015 on the European patent), it may be superior to the way sovereignty DI may be exacted as the price for agreement by a MS in Treaty negotiations, or be imposed by existing MS to reduce the costs of admitting a new MS in accession negotiations.

However, that still leaves open the issue of the governance of all three types of DI and the question of which decision-making processes in the affected policy area in the Council and EP might best ensure that ins and outs are treated with equal respect and concern. The current arrangement stipulates that if a MS opts out from parts of the Treaties, 'it shall not take part in the adoption by the Council of proposed measures' in those areas. Correspondingly, non-participating MS are not allowed to vote on secondary legislation in enhanced cooperation, even though they may take part in the deliberations preceding the vote (Art. 20 (3), TEU). Meanwhile, all MEPs within the EP can vote on differentiated policies.

From the perspective of non-domination, this set-up is not entirely unproblematic. As far as the EP is concerned, it means that MEPs from non-participating MS vote on legislation that does not apply to their constituencies. As such, this practice results in a mismatch between the territorial scope of EU policies and the composition of the legislature (Heermann and Leuffen 2020: 3), potentially leading to domination by giving a disproportionate say to those who are not subjected to a policy. However, dividing the EP may be equally problematic. As Deirdre Curtin and Cristina Fasone (2017) note, separate voting arrangements would violate the principle of equality by creating 'second-order MEPs and implicitly recognize second-order European citizens represented in the EP' (Curtin and Fasone 2017: 130). Thus, neither system appears entirely satisfactory. When it comes to the Council, the risk with the existing system is that states that do not participate in enhanced cooperation, or are temporarily excluded because they fail to meet certain criteria, or that have a permanent opt-out, may still have a stake in policy decisions on which they have no say because of their implications for the future scope and functioning of the EU, yet have to rely on insiders for their voice to be heard. This risk proves especially pertinent when exclusion is involuntary (e.g., Adler-Nissen 2016).

Studying the Democratic Credentials of DI as Viewed by Party Actors

Existing studies of DI remain confined to deductive reasoning which results in theory-testing. We consider that there should also be room for a different methodology, and the present study adopts a *pragmatic* research strategy (Friedrichs and Kratochwil 2009). *Pragmatism* rejects ontological realism and the correspondence theory of truth. There are two methodological implications. First, a pragmatic study cannot be a deductive one: 'If it is true that the subject is always implicated in the constitution of the object, then there can be no direct testing against reality' (Friedrichs and Kratochwil 2009: 705). Second, a pragmatic study is also not necessarily an inductive one, in that its goal is not to arrive at conclusions that can be generalised. Rather than seeking to arrive at authoritative conclusions about why party actors think the way they do, our goal is to explore the views party actors have of DI in the first place.

Conceptually, a pragmatic research strategy is fairly close to social constructivism. From a social constructivist perspective, social structures and human behaviour do not exist independently of their context and the interpretations of it by the actors involved (Bourdieu 1977; Giddens 1984). Instead, it is through the way actors interpret their environment that institutions and actions acquire meaning (Pitkin 1967: 9–11). It follows that 'opportunity is, ultimately, what people make of it' (Kurzman 2004: 117).

DI, like any other legal-institutional settlement, depends on social, political and economic factors. It would be an analytical overestimation if it was assumed that legal-institutional assessments alone provide a full picture of whether DI can be sustainable

long-term (Thym 2018: 18). Instead, law and institutions interact with broader social processes which influence the perceptions of political actors. Whether or not DI is legitimate should not only be related to the legal existence of DI and its actual outcomes, but also 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 and which should be taken into consideration when assessing and designing DI. 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: 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: 46). 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).

To explore party actors' views of the democratic credentials of DI, 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 which may be expected to influence views on European integration (e.g., Hobolt and de Vries 2016: 420; Rohrschneider and Loveless 2010), including wealth, levels of Euroscepticism and geographical positioning within the EU. We also expected parties in these countries to have reasonably developed stances on DI, since several of them have direct experience with it. Thus, they constitute a purposive (rather than representative) sample, aimed at maximising diversity of viewpoints and understandings.

For each country, we contacted all parties scoring above 5% in the most recent national and EU elections respectively, 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: 817). Respondents were MPs, most of whom were members of the European Affairs Committee of national parliaments, party advisors on EU affairs, and MEPs. For each party, we sought to speak to at least two actors, although this was not always possible. The appendix provides a full list of respondents.

All interviews were carried out online or over the phone[1] and manually analysed by means of qualitative content analysis. Using NVivo, transcripts were read and answers pertaining to the institutional design of DI sorted into views on the institutional impact of different types of DI arrangements (sovereignty, capacity, and enhanced cooperation), and views on governance. Following Lovett's (2010: 119-120) definition of the sources of domination, these statements were analysed to see whether actors thought that different types of DI gave rise to (or limited) domination in the form of imbalances in power;

[1] We had originally planned on holding in-person interviews, however, travel restrictions imposed following the 2020 Covid-19 outbreak made it necessary to shift to online and phone interviews.

dependency, and/or unconstrained or discretionary rule. The findings of the analysis are presented below.

How Democratic is DI? What Party Actors Think

This section undertakes two tasks. First, it explores how far political actors considered domination to be an actual or potential problem with regard to DI. Second, it examines whether they considered the current governance structures were adequate to reduce this possibility.

Creating Domination? The Perceived Institutional Impact of DI

Respondents' overall views of DI were divided between those who saw it in an exclusively positive light (14), those who viewed it in an exclusively negative light (9) and those who expressed mixed assessments (12). Confirming the view that different types of DI raise different issues, respondents expressed varying assessments of DI depending on whether they were discussing sovereignty DI, capacity DI, or enhanced cooperation. Thirty-one respondents expressed an opinion on sovereignty DI. These respondents were divided between those who thought this type of DI did not generate domination (16) and those who thought it did (8). The remaining seven respondents expressed views in both directions. Only eleven respondents discussed capacity DI, with seven of them mentioning it as a source of arbitrary exclusion and growing inequality, three considering it may facilitate integration and one mentioning both possibilities. Actors' assessment of the institutional impact of enhanced cooperation was mainly positive: seventeen viewed it as a way to respond to MS diverse preferences, while only eight suggested it could have negative implications for equality and self-determination. One respondent mentioned both aspects.

Views of DI as dominating or non-dominating were evenly distributed across political parties and countries, suggesting positions on DI do not align well with the key cleavages associated with European integration more generally. While left-wing respondents were marginally more sceptical about DI than respondents from other parties, most party families were split on the issue, and in several cases opinions varied within the same party because of the lack of an established party line on DI. A somewhat clearer trend emerged concerning capacity DI, which found little favour with respondents from poorer MS. Finally, enhanced cooperation was viewed in a positive light by most respondents. However, Eurosceptic[2] respondents of the left and of the right, and several respondents from Central and Eastern Europe (CEE), were slightly more inclined to oppose it. The qualitative evidence presented below probes further into these dynamics, showing how and when they informed respondents' assessments of DI.

Respondents who considered sovereignty DI to have a positive institutional impact focused on its ability to accommodate the wishes and needs of MS and their citizens. These respondents thought DI's main appeal lay in permitting MS that wished to integrate further to do so without either forcing everyone to integrate together, or allowing reluctant MS to form a blocking minority. A Danish respondent, for example, thought 'it wouldn't be fair' if Denmark 'could block all or veto that other member states could go

[2] Parties were classified based on the latest Chapel Hill expert survey (Bakker et al. 2020).

further in integration if they want to' (Respondent 13, Venstre). Other respondents considered DI inevitable because, as a Portuguese interviewee put it,

> We cannot wait for some states that have their own idiosyncrasies in internal, national policy. So, it's perfectly acceptable that some countries don't want to go further in integration, that's okay, but that decision cannot block [...] the others that want to go further. (Respondent 35, Social Democratic Party)

While these answers may be viewed as pragmatic responses to potential vetoes, they also reflect a view of the EU as involving voluntary cooperation between MS of equal standing, entitled to integrate further or not.

Unsurprisingly, similar sentiments emerged among the smaller group of respondents stressing the potential of sovereignty DI to accommodate the wishes of citizens not to integrate further. Most respondents raising this point came from Denmark, reflecting their experience with DI as what citizens, rather than governments, desire (e.g., Adler-Nissen 2011). These respondents understood DI as an essential part of their membership, making it possible for them to be part of the project while respecting the results of Danish referendums concerning integration. As one respondent put it, 'our opt-outs are the foundation of our membership [...] the Danish population have made their opinion clear, so we want to respect that' (Respondent 19, Social Democrats).

Of the 15 respondents considering the negative effects of sovereignty DI, half worried that DI could become a tool of non-democratic governments. Poland and Hungary were clearly in their mind, with respondents citing these two countries openly or referring to them implicitly. Most of these respondents came from the Left and far-Left, and could be expected to oppose right-wing governments violating liberal-democratic principles (e.g., Sedelmeier 2014: 119). As a result of these concerns, they also thought that flexibility should not apply to all policies and that certain core areas of law should be mandatory (for a similar argument in the literature, see Kelemen 2019). One Greek respondent summarised this well, stating that

> I precisely excluded the area of the rule of law, and broadly speaking democracy from flexibility. No, we cannot have an illiberal democracy within the European Union. No we cannot have non-democratic processes within the European Union. (Respondent 22, Coalition of the Radical Left)

The other half worried that this type of DI could lead to MS being negatively affected by decisions they have no say in making.

Capacity DI was addressed less frequently than sovereignty DI. Only 11 respondents discussed it, and they mainly focused on its potential negative implications. The few respondents who focused on its positive aspects stressed its role in facilitating the integration of new MS by avoiding one-size-fits-all arrangements. One respondent from Romania, for example, considered capacity DI 'the key of enlargement. We cannot reach out to new member states [...] without allowing some opt-outs given the specificity of [...] countries that are newcomers' (Respondent 21, Save Romania Union).

However, while capacity DI found some acceptance as a means of treating all as equals by treating dissimilar states in different ways, most respondents raised concerns that instead of facilitating integration, capacity DI might create different tiers of membership, with some EU MS and citizens having more rights than others. All respondents who problematised this aspect came from the poorer, peripheral MS, suggesting that this

concern was most acute amongst those who had been excluded from EU policies in the past and were worried about being left out of the core of European integration. A Greek respondent said this very clearly when he mentioned that his party's scepticism about DI was led by the fear that Greece could be 'forced to be left out' (Respondent 23, New Democracy), as had initially been the case with EMU.

Actors' assessment of enhanced cooperation followed similar patterns to their assessment of sovereignty and capacity DI. While 18 respondents viewed it primarily in a positive light, 9 also suggested that it could have negative implications for equality at the EU level or national self-determination. The most appealing aspect of enhanced cooperation appeared to be its allowing those who wish to integrate further to do so. A Portuguese interviewee, for example, thought that it was 'a way to go further if you want to go and not going if you don't want' (Respondent 29, Left Bloc). A Hungarian respondent also saw it as a response to different MS preferences concerning integration. Given growing scepticism about integration in some countries, he argued, countries who wished to integrate further would have to either abandon joint policies, or

> try to find a more flexible framework for this type of reinforced cooperation. And I think [...] they are not going to abandon their wish for further integration. (...) If the Eastern European countries don't want that, then they have to stand aside and let the others go ahead. (Respondent 6, Democratic Coalition)

Respondents who opposed enhanced cooperation worried that it might harm the equality of European citizens and result in the domination of some MS over others. Respondents from CEE, for example, thought that enhanced cooperation could only be allowed if it did not create divisions between a 'core' Europe and the rest because 'then we would go back to the first-class citizens, second-class citizens, third-class member state' (Respondent 18, Alliance of Hungarians in Romania) and that it should not become a way for a number of countries to 'move on and to leave everyone else behind' (Respondent 8, Hungary, Movement for a Better Hungary). Reflecting a concern that enhanced cooperation might lead to further (unwanted) integration, more Eurosceptic actors stressed that enhanced cooperation might result in a situation where certain MS would be able to impose their preferences on others. A Portuguese respondent put it most clearly when he stated that

> As states are not all equal in political power and in economic weight, [...] having an [...] enhanced cooperation [...] means that we have a club of the strongest countries that decide very important policies. And [...] if the others are not in this more integrated process, they will have to follow because this cooperation will end up influencing all the European Union and the others will not decide but will be affected by it. (Respondent 20, Left Bloc)

These findings demonstrate that while respondents did not speak directly about domination and non-domination, their views reflected the relevance of these concepts to the analysis of the implications of different types of DI for the EU's institutional structure. They show that under certain conditions DI may be perceived as a way to tackle the roots of domination by responding to the heterogeneous wills and needs of different MS. Sovereignty DI and enhanced cooperation, for example, were mostly positively evaluated as means of accommodating the diverging preferences of MS and citizens concerning integration, hence ensuring that no one group of states could impose their preferences on the others. To a significantly lesser extent, capacity DI was seen as a potential equalizer

which could address issues of dependency and power imbalances by facilitating integration. However, the findings also confirm DI's nature as a double-edged sword. Party actors' fears that sovereignty DI could enable autocrats, or that capacity DI and enhanced cooperation might result in arbitrary exclusion and the creation of different classes of membership, suggest that if incorrectly designed DI may indeed be perceived as a tool for domination, and allow a group of insiders to impose rules on outsiders.

Mitigating Domination: Institutional Set-Up and Governance Structures for DI

A central factor in responding to the more critical voices is the establishment of clear criteria for accession to differentiated policy areas, and appropriate voting arrangements for them in EU institutions. Confirming the importance of institutional design to the assessment of DI, the discussion of criteria for introducing and governing DI was an important aspect of our respondents' views. While some actors discussed this in relation to the formal process of enhanced cooperation, others spoke about rules for differentiated policies (e.g., Schengen, the Euro) more broadly. Because of the strong similarity between the points they raised, we discuss their answers together below.

Almost all respondents (30) expressed views on the rules DI should respect to be considered a non-dominating form of cooperation. Most respondents (26) stressed that there should be no arbitrary exclusion against a MS' will. However, 22 respondents accepted that there could be stringent criteria (such as those governing accession to the Euro and Schengen) for access to these collaborations. Nevertheless, 17 stressed that policies should remain open to those who wish to join provided they meet the criteria, and that arbitrary exclusion could not be permitted. One German respondent, for example, thought that it was very important that policies 'remain open for others to join, based on clear, transparent and fair criteria' (Respondent 15, Social Democratic Party of Germany), while a Greek respondent thought it acceptable to set up an enhanced cooperation only 'provided that it's an open door, that everybody can join if he or she wants to. It doesn't work as an exclusionary club' (Respondent 23, New Democracy). The issue of arbitrary exclusion was felt most strongly in the context of access to the Schengen area. Most Romanian respondents, for instance, were very critical of their country having not been able to join. One expressed his frustration, saying that

> You have processes where the rules are clear [...] therefore if you push this lever, this happens and if you pull that lever, that happens. And then there are processes like Schengen where you have no idea where the levers are, whether you need to push or pull [. . .] It's an esoteric political process where you just need to convince certain governments to politically do something different. And that is a process that is unfair. (Respondent 25, Freedom, Unity and Solidarity Party)

With regard to the governance structures and voting arrangements in the European Parliament (EP) and the Council of the EU, our respondents expressed a marked preference for the status quo, with just under half of them (17) considering that while in the Council only those taking part in a policy should vote, in the EP, all MEPs should vote. The remaining respondents were divided between those who thought that all members of both the EP and the Council should vote in instances of DI (5), those who thought that only MEPs and MS taking part in a policy should be involved in decision-making (3), and those who only had a view on one of the two institutions (10). The latter group generally expressed a preference for the status quo.

The respondents who thought that only MS participating in a policy should vote in the Council in cases of DI did not always explain why. The few who did develop their answers argued that only those directly subject to policies should be allowed to vote. A Hungarian respondent talking about the Euro, for example, stated that 'you cannot expect that you will gain a say on what the other countries [...] should be doing' (Respondent 6, Democratic Coalition). These views were frequently entwined with an understanding of the Council as a body dedicated exclusively to the representation of MS' views and functionally separate from the EP. As one Danish respondent put it,

> there is a difference between the Council and the Parliament. The Council is where the countries represent themselves and their own interests [...] In the European Parliament, I don't argue that Denmark wants this, or Denmark wants that, so I think we should have one Parliament for the whole of Europe. (Respondent 19, Social Democrats)

A quarter of the respondents (9) suggested that there should also be a way to involve those not participating in a policy in deliberations, as they may still be affected by it. One Portuguese respondent, for example, argued that even if a country is not subject to a policy, 'everything that affects the whole system affects you. So you have to have the possibility to talk about it and to reflect about it and to have a position about it' (Respondent 29, Left Bloc). As a result, while respondents though it important that only those participating in a policy have the right to vote, they acknowledged that outsiders might also have a stake and should be given a say.

The sense of a functional separation between the Council and the EP noted above emerged most clearly in responses to the question of whether the EP should vote as a whole in instances of DI. Respondents frequently opened their answers to this question by stressing that they thought the Parliament was different, and contrasting its role with that of the Council. As with the Danish respondent cited above, they believe the Council and EP obey different logics, making it acceptable to have different and more inclusive voting system in the EP. As a Portuguese respondent put it:

> Instinctively I would say that it would be unacceptable to create various categories of MEPs. It's different when you say that some countries cannot vote because somehow you are creating a different framework of institutions for those areas, but in the European Parliament it's tougher to have the same answer because it's the same institution. All the MEPs have the democratic legitimacy to be there. (Respondent 35, Social Democratic Party)

Most respondents were reluctant to see divisions emerge in the EP, as they viewed it as a supranational body and the representative organ for European citizens. This point reflects a broader concern with the equality of MEPs which emerged from some respondents. They stressed that since all MEPs were elected on an equal basis, it would be illegitimate to create divisions between them, because, as a Greek respondent put it, 'when someone is elected through the electoral process you cannot deprive him or her of voting rights' (Respondent 26, Coalition of the Radical Left).

Respondents who thought the Council as well as the EP should vote in their entirety on differentiated policies showed comparable concerns to those who did not despite their different conclusions concerning ideal voting procedures. Those advocating involving both bodies fully in decision-making on DI appeared to be primarily worried about the creation of new boundaries and their potentially disintegrative implications. In line with findings from the previous section, four out of five of these respondents were from CEE countries,

highlighting their concerns of being left out of further integration. Respondents favouring having only those involved voting in both bodies did not fully explain their choices, although one Austrian respondent in this group was generally sceptical of the EP taking part in any decisions on DI, as he understood these to be primarily intergovernmental agreements (Respondent 33, Austrian People's Party).

In sum, respondents indicated certain procedures as desirable to mitigate potential domination through DI's set-up and governance. Clear criteria were a key factor, because they ensured that differentiated processes remained genuinely open, and that exclusion was not the result of an arbitrary decision but part of a well-established and predictable process. The involvement of the Council and EP also appeared to be important, although most actors thought these two bodies should vote in different ways. In the Council, respondents considered the 'all-subjected' principle should apply, although several also believed that there should be a way for the other MS to have a say. For the EP, respondents argued that the EP should always vote in its full composition. The fact that MEPs whose countries are not subject to measures would have a vote did not appear to be a concern; rather, following a similar reasoning to Curtin and Fasone (2017), respondents were worried that dividing the EP would create power imbalances between citizens as well as between their representatives. The application of different logics to the two bodies may be viewed as a reflection of the nature of the EU as dominated by 'two kinds of subjectivities' (Kröger and Friedrich 2013). This arrangement may not be ideal from a theoretical perspective (e.g., Heermann and Leuffen 2020); however, it appears to be by and large accepted by political actors involved in decision-making over DI.

Conclusion

The introduction of DI is pragmatically and normatively appealing: sovereignty DI, capacity DI and enhanced cooperation can help accommodate the diversity of EU MS and facilitate integration. However, it also raises the prospect of domination: it may result in arbitrary exclusion, and not give all concerned an equal say in matters impacting the scope and functioning of the EU. In such circumstances, questions of institutional design are key, as an appropriate design may mitigate some of the dominating aspects of DI while enhancing its non-dominating ones. In the foregoing, we have investigated party actors' views on DI to study how they perceive the dominating potential of DI, and how they considered its governance should be designed to respect the principle of non-domination.

Party actors thought that different types of DI raised different issues. They viewed sovereignty DI as a way to accommodate legitimate differences and preferences concerning integration, confirming Bellamy and Kröger (2017), but also worried it might facilitate autocratic rule and result in some MS not getting a say in matters that potentially impact them, confirming Eriksen (2018). Capacity DI was assessed more negatively: while a few respondents viewed it as a legitimate way of treating unequals unalike in order to foster integration, others deemed it to be a source of inequality. This view was most marked amongst actors of newer and poorer MS, who considered it as a form of (frequently arbitrary) exclusion. Enhanced cooperation raised similar issues, with some considering it an appealing way to allow some to go forward when others were more reluctant, and others considering it deepens divides between MS and leads to some MS deciding policies without consulting others. While most of these views were evenly distributed across countries and across parties, left-wing respondents tended to be more sceptical about sovereignty DI, while respondents from poorer MS expressed doubts about capacity DI.

Finally, although enhanced cooperation was generally well-received, Eurosceptic actors and several respondents from CEE regarded it somewhat negatively.

In order to mitigate these issues, respondents also discussed the principles DI should respect in its governance. They insisted that exclusion from policies should not be arbitrary and that DI 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 MS taking part in a policy voting in the Council (albeit in consultation with non-participants), and all MEPs voting in the EP. This arrangement would respect the 'all-subjected' principle in the Council, while preserving the equality of all MEPs.

These findings carry important implications for the design of DI. Concerning the perceived impact of DI on equality between MS, they suggest that both the non-dominating and dominating aspects of DI were visible to party actors. It is important, therefore, to address the latter, as failure to do so may result in a loss of legitimacy of DI and, potentially, of the EU as a whole. So far as the design of DI is concerned, our findings make it possible to derive three practical principles that DI should respect. First, instances of DI should remain open to all and subject to clear and transparent criteria for accession. Exclusion, unless subject to such criteria, should be avoided. Second, current governance structures are broadly satisfactory. Divisions within the Council can be accepted, although it is helpful to maintain deliberative processes involving all MS. In the EP, all MEPs should be allowed to vote, as other arrangements would be viewed as harming the equality of MEPs and the democratic legitimacy of the EP as an institution. Finally, it is important to note that even though many of these rules are already enshrined in the Treaties (e.g. in art. 328 TFEU), respondents' concern that DI may be a closed and non-transparent process suggests that their practical application may be perceived to be unsatisfactory or insufficiently effective, especially as far as those coming from poorer MS are concerned. Therefore, it is important to ensure that appropriate safeguards are present, not least in the form of genuinely inclusive consultation and voting processes when it comes to introducing different types of DI.

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Data Availability Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.

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Appendix
List of respondents

(1) Advisor, National Liberal Party (PNL), Romania
(2) Co-chair, Politics Can Be Different (LMP), Hungary
(3) Elected official, Movement for a Better Hungary (Jobbik), Hungary
(4) International Secretary, Hungarian Socialist Party (MSZP), Hungary
(5) Elected official, Democratic Coalition (DK), Hungary
(6) Advisor, Democratic Coalition (DK), Hungary
(7) Elected Official, Conservative People's Party (K), Denmark
(8) Elected Official, Movement for a Better Hungary (Jobbik), Hungary
(9) Elected Official, Social Democratic Party of Germany (SPD), Germany
(10) Advisor, Die Linke (LINKE), Germany
(11) Elected Official, Social Democratic Party of Germany (SPD), Germany
(12) Advisor, Red-Green Alliance (EL), Denmark
(13) Elected Official, Venstre (V), Denmark
(14) Advisor, Socialist People's Party (SF), Denmark
(15) Advisor, Social Democratic Party of Germany (SPD), Germany
(16) Elected Official, Social Democratic Party of Austria (SPO), Austria
(17) Elected Official, Austrian People's Party (OVP), Austria
(18) Elected Official, Democratic Alliance of Hungarians in Romania (UDMR), Romania
(19) Elected Official, Social Democrats (SD), Denmark
(20) Advisor, Left Bloc (BE), Portugal
(21) Elected Official, Save Romania Union (USR), Romania
(22) Elected Official, Coalition of the Radical Left (SYRIZA), Greece
(23) Elected Official, New Democracy (ND), Greece
(24) Elected Official, Radikale Venstre (RV), Denmark
(25) Elected Official, Freedom, Unity and Solidarity Party (PLUS), Romania
(26) Elected Official, Coalition of the Radical Left (SYRIZA), Greece
(27) Elected Official, Alternative for Germany (AfD), Germany
(28) Elected Official, Socialist Party (PS), Portugal
(29) Elected Official, Left Bloc (BE), Portugal
(30) Elected Official, Die Linke (LINKE), Germany
(31) Advisor, National Liberal Party (PNL), Romania
(32) Advisor, Radikale Venstre (RV), Denmark
(33) Advisor, Austrian People's Party (OVP), Austria
(34) Advisor, Venstre (V), Denmark
(35) Elected Official, Social Democratic Party (PSD), Portugal

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