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## **Between Differentiation and (Dis)Integration – Theoretical Explanations of a Post-Brexit European Union**

### **Abstract**

The authors of this paper provide a critical analysis of the most prominent theoretical vehicles employed in studying differentiated integration in contemporary, post-Brexit Europe. They discuss the descriptive, explanatory, and interpretative potential of the selected theoretical approaches that are applied at the intersection of disintegration and European differentiation discourse. “The holy grail” of the theorising of the dynamic (and accelerating) processes of (dis)integration and differentiation remains undiscovered. Nevertheless, a constant search for theoretical explanation is needed in the in-depth analyses of the current state of the European Union.

**Keywords:** Theorising, European Union, Disintegration, Differentiation, Post Brexit

### **Introduction**

Differentiated integration in Europe, as well as the inter-related problem of (dis)integration risks and externalities, has reached the very top of the agenda both in scientific and public discourse. Even though it has been present in the European integration project for

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decades, never before has it gained so much attention due to its saliency and dynamism. The so-called Brexit and the shift in French and German attitudes towards differentiation (those attitudes being open, permissive, accepting and even welcoming in nature) has changed the “ever closer Union” paradigm substantially. Britain’s departure from the EU will widen the circles of integration, while at the same time the Franco-German engine is determined to deepen integration, and the two dynamics will most probably result in a system of differentiation, unknown so far in the history of the European integration project. The new, evolving situation requires intense scientific investigation that will enhance our knowledge and understanding of the current state of the European integration project.

The concepts used, similarly to the standard ones exploited in the differentiated integration literature, range from the *Europe a’la Carte* metaphor, through a Europe of different speeds, concentric circles, differentiated geometries, up to the diversified hemispheres of integration.<sup>1</sup> More and more analysts, experts, and academics claim that the observed increase in differentiation hit the limits in which it carries the potential for disintegration. Exemptions from the Eurozone and Schengen area have already been quite prominent examples of differentiation. But undermining one of the four freedoms (the free movement of people), which was the case in the (in)famous Brexit referendum, attacks one of the fundamentals and questions the very idea of the European integration project. Openly opposing the very core of the Single Market changes the direction of Europe’s integration trajectory.

The story of European integration can be told as a story of its deepening and widening – these two dynamics have been the foundation of the mechanics of differentiation so far. Consequently, the progress in integration has resulted in an increase in differentiation over time.<sup>2</sup> However, the most recent political and economic developments in the European Union (EU) and beyond clearly show that differentiation has gained momentum, and its dynamics have accelerated. This demonstrates the extraordinary significance of the scientific problem to be solved. One of the most important characteristics of the contemporary European integration process requires further exploration in order to advance our understanding of its dynamics and determinants. It is fundamentally important from the point of view of scholarly explanation as well as being

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<sup>1</sup> S.S. Andersen, N. Sitter, *Differentiated Integration: What is it and How Much Can the EU Accommodate?*, “Journal of European Integration”, no. 28(4)/2006, pp. 313–330.

<sup>2</sup> F. Schimmelfennig, T. Winzen, *Grand theories, differentiated integration*, “Journal of European Public Policy”, no. 26(8)/2019, pp. 1–21.

furthermore crucially salient from a practical point of view of the extant phenomena; the shedding of a little light on the critical point in which a uniting Europe has found itself.<sup>3</sup>

Consequently, the authors of this paper provide a critical analysis of the most prominent theoretical vehicles employed in studying the differentiated integration in contemporary, post-Brexit Europe. They discuss the descriptive, explanatory, and interpretative potential of the selected theoretical approaches that are applied at the inter-section of disintegration and European differentiation discourse. “The holy grail” of the theorising of the dynamic (and accelerating) processes of (dis) integration and differentiation remains undiscovered, nevertheless, a constant search for theoretical explanation is needed in in-depth analyses of the current state of the European Union.

### **The Post-Brexit Context of (Dis)Integration and Differentiation in Europe**

The political idea of differentiated integration can be traced back to the famous Tindemans report (1975),<sup>4</sup> where, as a legal concept, it appeared in the Single European Act (1986). Academic debate on the topic finds its roots in Dahrendorf’s formulation of *Europe a la carte* (1970s.) Already by the 1980s, scholars identified several variations of differentiated integration and the scientific discourse has exploded ever since. From that moment on, many various conceptualisations can be traced throughout literature, including flexible integration, a multi-speed Europe, Europe as an empire, a Europe of variable geometries, concentric circles, hemispheres, etc. Yet differentiated integration has not been studied enough, especially in comparison with the huge quantity of literature on integration as a whole. The reason for this is an assumption that differentiated integration’s significance as a political phenomenon would erode over time.<sup>5</sup> That Member States (and their neighbourhood) would converge over time and that the same variously applied policies would find their cohesive end.

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<sup>3</sup> R. Riedel, *Great Britain and Differentiated Integration in Europe*, in: *Brexit, History, Reasoning and Perspectives*, eds. D. Ramiro Troitino, T. Kerikmäe, A. Chochia, Cham 2018, pp. 99–112.

<sup>4</sup> L. Tindemans, *European Union. Report by Mr. Leo Tindemans, Prime Minister of Belgium, to the European Council*, “Bulletin of the European Communities”, Supplement 1/76 (commonly called the Tindemans Report), 1975.

<sup>5</sup> B. Leruth, C. Lord, *Differentiated integration in the European Union: a concept, a process, a system or a theory?*, “Journal of European Public Policy”, no. 22(6)/2015, pp. 754–776.

There are many ways of analysing this multifaceted phenomenon, from an analysis of the primary and secondary law, through multilateral negotiations, up to and including party politics in domestic contexts. It can be studied as a phenomenon, concept, process or as a system. The complexity and plurality of approaches is justified by the very nature of differentiated integration. When it comes to the theoretical relevance of Brexit (as the sparking impulse for the recent eruption of scholarly literature dedicated to (dis)integration and differentiation within European integration, it is the duty of our scholars to present a reasonable explanation why such a phenomenon could occur within the framework of the European Union, while also presenting information and solutions to withhold disintegration. European integration knew for several decades just one way forward: integration towards a (supposedly) ever-closer union. Major setbacks which led to the opposite happening became mostly prominent after the Euro crisis, such as the Schengen suspension for a brief period of time.

Also, literature shows us that in the last few years, the Brexit phenomenon has become a very common talking point in social circles and not only is it in European literature, but also in international relations. On a much broader scale, one can underline that globalisation and information technology have changed the Westphalian nation-state system with its state-centric approach to politics into a denser network reuniting states as sovereigns but also joining multiple non-state actors. After decades of the globalisation and internationalisation of the international political landscape, it becomes even more interesting to analyse subjects where the reverse action is recognisable.

As depicted in this paper, Brexit presents itself as a novelty in European integration; when it comes to keywords such as European identity, regionalism, and supranationalism, the disintegration of the United Kingdom has a multi-layered effect on several aspects of the polity, politics, and policies of the political administrative system of the European Union as an international organisation but also on the Member States. Therefore, social and especially theoretical relevance have to be acknowledged. Here, differentiated integration studies could develop themselves as a core mainstream component of European Studies in the post Brexit-era. Both scholars and practitioners could benefit tremendously from understanding what lies ahead for the post-Brexit European Union.

## **(Ex-post) Theorizing European Integration**

Before heading deeper into the diversity of European integration theories, it behooves the reader to gain a short yet overall understanding of what “integration theory” stands for in a broad perspective. When looking at the semantics of “integration” and “theory” it becomes evident what these two concepts can contribute to garnering an understanding of their assembled definition. At first sight, “integration”, when taking into consideration the deliberations of Ernst B. Haas (of one of the world’s most famous neo-functional integration theorists), is the “process whereby political actors in several, distinct national settings are persuaded to shift their loyalties, expectations and political activities towards a new center, whose institutions possess or demand jurisdiction over the pre-existing national states”.<sup>6</sup> With neo-functionalists, the creation of a new polity becomes imminent. When mentioning the neo-functionalist take of integration, one has to glance at the other main team in European integration which is represented by the liberal intergovernmentalists, who determine that it is more the creation of institutions which Member States join than the political actors themselves.<sup>7</sup>

Both parties, neo-functionalists and liberal intergovernmentalists, see integration as a process though which resembles their common denominator. The latter outlook on European integration will be of no concern of the thesis but receive an overarching outlook on the general concept of European integration theories, and liberal intergovernmentalism had to be presented in order to make the picture of European integration complete.

The study of integration theory allows us to obtain a more detailed understanding of how the European Union as a regional international organisation works. One of the key reasons why integration should be studied is its process-oriented depiction of reality and should show the institutions engaged within their policy schemes. Just looking at the rigid institutions alone will not present the full picture, will result in us not learning everything we need and the decision-making processes within the European Union will be able to be ignored.

But where does differentiated integration fit in the picture of European integration theory? Even though differentiated integration has become one of the core elements of the EU grand-theory wise, rarely has it been addressed accordingly in scholarly literature. Hence, the grand theories have

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<sup>6</sup> E. Haas, *The Uniting of Europe. Political, Social and Economic Forces, 1950–1957*, Stanford 1958, p. 16.

<sup>7</sup> A. Wiener, T. Börzel, T. Risse, *European Integration Theory*, Oxford 2019, p. 3.

focused almost solely on uniform integration. In the vast majority of the existing literature, we derive the relevant hypotheses about differentiated integration from the old-fashioned European integration theories like liberal intergovernmentalism, neo-functionalism, and post-functionalism.<sup>8</sup> In an analysis of EU legislation based on treaty material in the making between 1992 and 2016, we find evidence that the heterogeneity of both wealth and identity, integration in the area of core state powers, and pre-existing differentiation drive differentiated integration. While comparing the explanatory power of the grand theories, it was noted that neo and post-functionalism explain the differentiations that Member States obtain in EU reform treaties and explain them in a more convincing manner than liberal intergovernmentalism.<sup>9</sup> It is merely the fact that the old-fashioned European integration theories have had a ceasing explanatory power when it came to different aspects of European integration. An example of this can be found in the accession rounds with different conditions connected to the specific accession of the Member States.

In a sense, differentiated integration has always been connected with the Brexit case because of the nature of the exemptions that the UK received as part of their preferential membership. Studies on differentiated integration have failed to agree on a common theoretical base of the differentiated integration for a long time. Regarding the definition, scholars are also still in dispute over its consequences.<sup>10</sup> Subsequently this new phenomenon of differentiated integration was invented by the scholars particularly because the classic grand integrations theories ceased to provide fertile explanations. But also, because the real-life increase in the number of exemptions such as opt outs and enhanced cooperation, protocols within the European Union were indisputably on the rise. It provided a widening and deepening of the European Union on a different scale with different speeds, allowing those who wanted to engage in a more intense integration a more prosperous and advanced integration. This clearly becomes evident when looking at regulations and directives in the EU legislation process. Here, differentiated integration is key because directives, for instance, can implement a certain time-frame to make them binding for all European Member States in order to respect the imbalanced gradient from North to South within the European Member States.

In addition, when looking at differentiated integration from the perspective of Leruth et al., and their historical and diachronic perspective,

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<sup>8</sup> F. Schimmelfennig, T. Winzen, op.cit., pp. 1–21.

<sup>9</sup> Ibidem, p. 3.

<sup>10</sup> B. Leruth, S. Gänzle, J. Trondal, *Exploring Differentiated Disintegration in a Post-Brexit European Union*, “Journal of Common Market Studies”, no. 59(5)/2019, p. 5.

it becomes evident that the volume of differently implemented legislation has substantially increased. Apart from the ascending volume, different forms of differentiation have also been acknowledged resulting in the establishing of differentiated integration as a bedrock of European Studies.<sup>11</sup> But differentiated integration can be best understood as an institutional response to the increasing heterogeneity of the Member States. In the integration process in which a specific Member State group is not subject to the same union laws as competing Member State groups; “[...] differentiation can be of a long, medium, or short-term nature and take effect either in primary or secondary law of the European Union”. Particular forms of differentiation stretch beyond the EU’s borders including non-EU states. Differentiation can represent a useful measurement for managing heterogeneity among intra-EU Member States overcoming stalemate situations.<sup>12</sup> But at the same time, it can risk provoking disintegration or dissolution trends within the European Union as a supranational regional organisation.

Ever since the European Union came into existence, scholars have tried to determine whether the EU fits into different classificatory tables to determine what kind of “animal and species” the European Union’s characteristics can be best compared with.<sup>13</sup> Some scholars such as Ferry<sup>14</sup> or Schmidt<sup>15</sup> claim that the Union may be asserted with the connotation of a completely new state. Another cast of scholars, including Hix,<sup>16</sup> regard the European Union as a non-state political system. When it comes to differentiated integration, one could remark that it is a scholarly concept that is a relatively new phenomenon in European studies, or, more broadly; international relations, legal studies, political science, or economy.

In the European Union we are experiencing a “polycrisis”, as Jean-Claude Juncker, the former EU Commission President, once emphasised. It is a mixture of a sequence of the euro crisis, the migration crisis, the Brexit referendum, the coronavirus pandemic, along with the democratic backsliding in Central Europe. There are different scenarios towards

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<sup>11</sup> B. Leruth, S. Gänzle, J. Trondal, op.cit., p. 5.

<sup>12</sup> F. Tekin, *Differentiated Integration at Work: the Institutionalization and Implementation of Opt-Outs from European Integration in the Area of Freedom, Security and Justice*, “Studies on the European Union”, no. 6/2012.

<sup>13</sup> B. Leruth, C. Lord, *Differentiated integration in the European Union: a concept, a process, a system or a theory?*, “Journal of European Public Policy”, no. 22(6)/2015, p. 752.

<sup>14</sup> J.-M. Ferry, *La Question de L’État Européen*, Paris 2000.

<sup>15</sup> V. Schmidt, *The European Union: Democratic Legitimacy in a Regional State*, “Journal of Common Market Studies”, no. 42(4)/2004, pp. 975–999.

<sup>16</sup> S. Hix, *The Political System of the European Union*, Basingstoke 2005.



which the European Union could be headed in the future. Concerning the EU's future, there are already a number of different scenarios in existence. The European Commission presented its White Paper on the future of Europe (2017) detailing 5 scenarios on how the European Union might develop in the future and how they would be explored until 2025. Whereas Scenario 3 resembles and matches “differentiated integration” the most, and is where the coalition of the willing, which are different sub-groups of EU Member States, would agree on specific policy areas.

Differentiated integration (DI) being unique in comparison to old fashioned integration theories such as neo-functionalism and liberal intergovernmentalism was not new to the discourse in European integration. DI had its first theoretical testings in the 1970s.<sup>17</sup> From the publication of the Tindemans report (1975) until the early 1990s, the density of literature regarding differentiated integration is considered rather non-existent and not tremendously developed.<sup>18</sup> But it was considered as a rather new approach to the concept of Ralf Dahrendorf's “Europe á la carte”. Without going so far as to propose that a new treaty be drawn up, the Tindemans report promoted a consolidation of the existing institutional framework and the development of common policy goals.

DI concepts began to vary so that Alexander Stubb (1996) devoted an academic paper to categorise the sheer variety of concepts of DI in English, French, and German. “Two-speed, multi-speed, step-by-step, strengthened solidarity, graduated integration, hard core, variable integration, concentric circles, two-tier, multi-tier, multi-track, two-track, ‘swing wing’, circles of solidarity, variable speed, imperial circles, pick-and-choose [...]” are a few examples of the rhetoric in English that existed in order to describe differentiated integration in the 1990's. But according to Stubb, the excess of terminology may cause even an experienced specialist in European integration a “severe case of semantic indigestion”.<sup>19</sup>

Stubbs' explorations illustrated that the different semantics of differentiation provide a plethora of complex integration strategies, responding to the challenges of enlargement using variants of multi-speed (time), variable geometry (space) and á la carte (matter).<sup>20</sup> Realising through the exploration of just the semantics in the 1990s that expansion always leads to diversity, the various concepts of differentiated integration

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<sup>17</sup> F. Schimmelfennig, T. Winzen, *Ever looser union? Differentiated European integration*, Oxford 2020.

<sup>18</sup> A. Stubb, *A Categorization of Differentiated Integration*, “Journal of Common Market Studies”, no. 34(2)/1996, p. 284.

<sup>19</sup> *Ibidem*, p. 283.

<sup>20</sup> *Ibidem*, pp. 283–284.

made it possible for the Union to embrace the necessary flexibility in dealing with the strongly varying patterns of integration.

But what empirical examples can be manifested where differentiated integration can be best described and used as an example? Cue, as empirical examples, the Schengen agreement and the implementation of the Euro as a currency. These examples can be regarded as the two biggest projects post-European single market, where the concept of DI enfolded in an empirical and practical manner throughout the European Union. Highly impressive to see that practice and theory diverged greatly within the Union of today. On the one hand, principles such as the principle of subsidiarity, the principal of proportionality, and principal of conferral, which are laid out in Art 5 TEU, strongly advertised the norm of uniform integration. But on the other, the gap between practice and theory widens due to the reason why the concept of DI was not mentioned or merely approved in the treaties.

Considering the enlargement rounds in 2004, differentiated integration received more scholarly attention since the phenotype of a Europe of different speeds came about. Here, the notion of a multi-speed Europe or a Europe of two different speeds rose in academia during that time. Within the enlargement rounds one can clearly see that different state groupings within European integration were forming due to the different initial bases the Member States were starting from. It is interesting to add at this point that after several years of implementing differentiated integration, one of the key results could be seen that by the end of the decade all legislation was implemented in a different way, and adjusted to the needs of the different state groupings.

After the enlargement rounds of 2004, from 2005 onwards, differentiated integration was studied more intensively. Beside the theoretical dimension, empirical studies were on the rise by scholars such as Miles,<sup>21</sup> Marcussen,<sup>22</sup> Adler-Nissen,<sup>23</sup> and Balzacq and Hadfield.<sup>24</sup> Taking the theoretical nuance of differentiated integration into account, the interest in academia was rising in order to incorporate this theoretical construct empirically. Scholars such as Andersen and Sitter (2006) and

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<sup>21</sup> L. Miles, *Introduction: Euro-outsiders and the Politics of Asymmetry*, "Journal of European Integration", no. 27(1)/2005, pp. 3–23.

<sup>22</sup> M. Marcussen, *Out of the Box: Coping Successfully with Euro-Outsidersness*, "Cooperation and Conflict", no. 44(2)/2009, pp. 167–187.

<sup>23</sup> R. Adler-Nissen, *Behind the Scenes of Differentiated Integration: Circumventing National Opt-Outs in Justice and Home Affairs*, "Journal of European Public Policy", no. 16(1)/2009, pp. 62–80.

<sup>24</sup> T. Balzacq, A. Hadfield, *Differentiation and Trust: Prüm and the Institutional Design of EU Internal Security*, "Cooperation and Conflict", no. 47(4)/2012, pp. 539–561.

De Neve (2007) asked about the different typologies of differentiation but also gave differentiated integration the notion of adaptation and the possibility to change over time. The scholars have mainly analysed differentiated integration in retrospective of the creation of the European Single Market”.<sup>25</sup>

According to Olsen,<sup>26</sup> the European Union is a conceptual battleground and an institutional building site. Olsen therefore put emphasis on institutional differentiation, taking the various origins of the EU institutional system converting itself into its own sui generis system into account. Institutional differentiation was helping to create the identity of the institutional set-up of the European Union.

From 2010 onwards, scholars such as Frank Schimmelfennig published a great variety of studies taking several nuances of differentiated integration into account, namely constitutional aspects, enlargement impacts, and the impact on EU legislation.<sup>27</sup> In addition to this, there was Dirk Leuffen et al.,<sup>28</sup> with their famous approach of a “system” of differentiated integration which was developed in the 2010’s. In close connection with the severe economic crisis in 2007 was the path to the study field of European disintegration paved. Many studies have covered problems such as the events in Greece, Britain’s troubled relation with Brussels, or taken the rising issues with the Schengen agreement into account. As depicted in the differentiated integration literature review of this paper, it can be said that differentiated integration as a phenomenon has always been on the horizon of European integration.

When considering the “new” empirical example of Brexit, one can underline the circumstance that it grew together with the real-life increase in differentiation (opt-outs, exemptions, enhanced cooperation, constructive abstention, special clauses, additional protocols, etc.) and London was an unquestioned leader in it. In the last two decades, differentiation has been a dominant feature of the European integration phenomenon. The United Kingdom has changed its internal position from that of an integration-tolerant country, to an integration-rejecting

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<sup>25</sup> S. Andersen, N. Sitter, *Differentiated Integration: What is it and How Much Can the EU Accommodate?*, “Journal of European Integration”, no. 28(4)/2006, pp. 313–330.

<sup>26</sup> J.P. Olsen, *Governing through Institution Building*, Oxford 2010.

<sup>27</sup> See for example: F. Schimmelfennig, *Brexit: differentiated disintegration in the European Union*, “Journal of European Public Policy”, no. 1(20)/2018, pp. 1–31, or: F. Schimmelfennig, *Negotiating differentiated disintegration in the European Union*, in: *Differentiated Integration and Disintegration in a Post-Brexit Era*, Routledge, Abingdon 2019, pp. 19–35.

<sup>28</sup> D. Leuffen, B. Rittberger, F. Schimmelfennig, *Differentiated Integration. Explaining Variation in the European Union*, Basingstoke 2013.

country, which endangers the very fundamentals of the integration process. It produces externalities to be consumed by other Member States and non-members as well. Additionally, the already existent exemptions from the Eurozone and Schengen area have already been quite prominent cases of differentiation.<sup>29</sup>

Schimmelfennig, Leuffen, and Rittberger (2015) even emphasised and underlined that the EU, as a system of differentiated integration, has two verdicts of differentiation. On the one hand, there is the existing vertical differentiation which manifests itself in the levels of centralisation but there's also the variation in territorial extension known as the horizontal differentiation. "Differentiation has been a concomitant of deepening and widening and has increased and consolidated as the EU's powers, policy scope, and membership have grown".<sup>30</sup> Turning to an explanation, the contribution attributes the figure of differentiated integration in the EU to the interrelation of interdependence and politicisation. According to Leuffen et al., politics can be conceptualised as a three-dimensional configuration of authority. This level of centralisation manifests in the following manner:

First of all, the level of centralisation has to be preexisting, politics that monopolise authoritative decisions in the centre have a maximum level of centralisation, whereas decision-making authority dispersed across a multitude of actors indicate a low level of centralisation. In addition to the first condition, the functional scope varies between authority over a single issue and authority over an entire range of policies.

Among the rich diversity of theories to be applied, it is worth mentioning post-functionalism that attributes differentiated integration and disintegration to a certain level of the politicisation process, which shifts European integration themes from the level of interest of group politics to the level of mass politics, where the alleged 'identity logic' of politics has a larger role.<sup>31</sup> But when it comes to post-functionalism, it originally evolved because it allegedly claims that neo-functionalism and intergovernmentalism have become increasingly less useful in

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<sup>29</sup> R. Riedel, op.cit., pp. 99–112.

<sup>30</sup> F. Schimmelfennig, D. Leuffen, B. Rittberger, *The European Union as a system of differentiated integration, politicization and differentiation*, "Journal of European Public Policy", no. 22(6)/2015, p. 766.

<sup>31</sup> L. Hooghe G. Marks, *A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus*, "British Journal of Political Science", no. 39/2009, p. 93; L. Hooghe, G. Marks, *Grand theories of European integration in the twenty-first century*, "Journal of European Public Policy", no. 26(8)/2019, pp. 1113–1133.

order to serve as a theoretical base for European integration due to the aforementioned politisation.<sup>32</sup>

To explain this shift, post-functionalism proposes several elements which can occur singularly or cumulatively: on the one hand, the depth of integration while on the other hand, exclusive national identity, but also the rise of Eurosceptic parties and referendums in the EU. Furthermore, in order to explain disintegrative elements rather than a simple refusal to more integration, there has to be a significant increase in these factors that drive the mentioned shift.<sup>33</sup>

Considering *politicization*, whereas neo-functionalism and intergovernmentalism regard European integration as an efficiently improving process where economic players seek gains, post-functionalism emphasises the disruptive potential of a clash between functional pressures and exclusive identity.<sup>34</sup> This approach is deeply connected in the comparative research on identity and domestic contestation.

However, the theoretical outcomes of post-functionalism are open – the theory does not implicitly imply integration or disintegration; various scenarios are viable. When it comes to disintegration as a theoretical concept, neo-functionalism becomes very prominent. Schmitter and Lefkofridi<sup>35</sup> discuss the relevance of neo-functionalism as a theory of disintegration in order to find further explanations for disintegrative elements of European integration. They explore neo-functionalism as a conceptual and theoretical framework that helps one understand the current crisis and explores the future consequences as such a crisis may well have in regards to European integration.

Schmitter and Lefkofridi decided not to reject neo-functionalism but they want to exploit it scientifically. In their work they formulate a series of suppositions and hypotheses which are evaluated using existing data sources and related research. While testing neo-functionalism in disintegration, they made the discovery that the concept of spillover can also be reversed. Instead of spillovers, Schmitter and Lefkofridi introduce the term of spillbacks, which refer to the predecessor concept just as an opposite. Schmitter and Lefkofridi refer to a spillback in a situation where Member States no longer wish to deal with a policy at the supranational level. While presenting this new theoretical approach, Schmitter and

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<sup>32</sup> S. Czech, M. Krakowiak-Drzewiecka, *The rationale of Brexit and the theories of European integration*, “Oeconomia Copernicana”, no. 10/2019, p. 591.

<sup>33</sup> F. Schimmelfennig, *Brexit: differentiated disintegration...*, pp. 1–31.

<sup>34</sup> L. Hooghe G. Marks, op.cit., p. 13.

<sup>35</sup> P. Schmitter, Z. Lefkofridi, *Neo-Functionalism as a Theory of Disintegration*, “Chinese Political Science Review”, no. 1/2016, pp. 1–29.

Lefkofridi name a few examples where such a spillback can be seen as the usual code of conduct in the European integration process. The scholars say spillback elements can be traced in case of the collapse of the Euro or in general when a Member State exits the Eurozone or even the project of the European Union itself. As for two hard, factual, empirical examples they refer to Brexit and Grexit.<sup>36</sup> Usually these spillbacks are promoted by parties on the radical left and right within the national political systems. Of course, they pursue different political reasons for proposing spillback tendencies in both creditor and debtor states. Other scholars such as Jones<sup>37</sup> do not share the opinion of the already-mentioned scholars Schmitter and Lefkofridi. Erik Jones states that the creation of a new theory of disintegration that does not share the same common grounds as the classical European integration theories is simply unavoidable, since he argues that even though these attempts to theorise disintegration deal with European integration in general, it does not mean they can provide scientifically valid and proper information for the research field of European integration.

The purpose of his comment “Towards a theory of disintegration” is to suggest an overarching theoretical framework to structure the existing literature and to suggest new areas for research, while explaining the interaction of integration and disintegration at different levels of aggregation. But why are the classic European integration theories ill-equipped to have a deeper understanding of disintegration? The main argumentation of Jones<sup>38</sup> and other scholars is that transactionalist, neo-functionalist, intergovernmentalist, and institutionalist arguments share functionalist tendencies and totally leave out identity politics and identity-based political mobilization.<sup>39</sup>

To assemble European disintegration scenarios for the future, there has been a response within the academic field in order to create new theories on a post functionalist account such as Hooghe and Marks,<sup>40</sup> Schmitter,<sup>41</sup>

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<sup>36</sup> Ibidem, pp. 1–29.

<sup>37</sup> E. Jones, *Towards a theory of disintegration*, ”Journal of European Public Policy”, no. 25(3)/2018, pp. 440–451.

<sup>38</sup> Ibidem.

<sup>39</sup> E. Jones, op.cit., pp. 440–451.

<sup>40</sup> L. Hooghe, G. Marks, *A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus*, “British Journal of Political Science”, no. 39/2009, pp. 91–195, see also: L. Hooghe, G. Marks, *Grand theories...*, pp. 1113–1133.

<sup>41</sup> P. Schmitter, *On the Way to a Post-Functionalist Theory of European Integration*, “British Journal of Political Science”, no. 39/2008, pp. 211–215.

or Wiener, Börzel and Risse.<sup>42</sup> These scholars think that economic interests are not the most important element of integration anymore. But in this definition the major element of the purpose or function of integration is missing. This is why the researcher Gunnar Myrdal has linked his integration theory to liberalism, which takes the form of the “equality of opportunity” in his theoretical framework<sup>43</sup>. His theory shows that economic interests and European identity have been intertwined throughout the European project and help us to understand why identity based political mobilisation was less important in the first three decades of European integration. The “equality of opportunities” is promoted by the main European Institutions and should develop a more efficient allocation of resources, which should automatically lead to the accepting of the rules of the game by the different participants. This is especially the case when it comes to the equality of opportunity and greater efficiency; the critical point is that these are positive and conditional claims rather than normative claims. Everything is linked to the type of equality of opportunity that was created and the efficiencies that were implied. These are testable hypotheses which can also run in the opposite direction. Discriminatory measures that restrict the equality of opportunity can be introduced that limit efficiency and give rise to political conflict.<sup>44</sup>

The benefit of Myrdal’s theory helps one to understand the cycles in which both integration and disintegration are moving and only empirical testing can tell you which cycle is empirically valid at the time of the conducted research. Myrdal’s consecutive model was more interested in integration on a global scale and national levels than it was interested in European dynamic. But redirecting to Jones’ model, it can be added that discrimination of equality of opportunity or the inequality of opportunities lies at the root of the disintegrative process, in a comparable manner as the equality of opportunity lies at the root of the integrative process.

The works of Schmitter and Lefkofridi<sup>45</sup> presented how disintegration could be operationalised from the point of view of a theory classic such as neo-functionalism. They rely on the old classic European integration theories whereas other scholars like Jones<sup>46</sup> demand a completely new theory of disintegration that is more suitable to the prevalent empirical examples such as Brexit. After having discussed the notion of the two concepts of differentiated integration and disintegration in general, it is

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<sup>42</sup> A. Wiener, T. Börzel, T. Risse, op.cit.

<sup>43</sup> After: E. Jones, op.cit., p. 442.

<sup>44</sup> E. Jones, op.cit., pp. 440–451.

<sup>45</sup> P. Schmitter, Z. Lefkofridi, op.cit., pp. 1–29.

<sup>46</sup> E. Jones, op.cit., pp. 440–451.

the task of the next section to combine these two notions and present the theoretical groundwork of “differentiated disintegration”.

Unquestionably, differentiated integration was used for agreements in treaties and laws in European Union competencies, to cope with the different levels of integration but also with the different economic strengths and diverse capabilities to integrate within the framework of the European Union. The former prime minister of the United Kingdom in his 2013 announcement of the referendum triggered a new process which can be theoretically referred to as differentiated disintegration.

Vollaard<sup>47</sup> says that it remains too dangerous to just turn the old classic integration theories around and use them in an opposite direction to theoretically make them fit to disintegration. This despite the fact that Vollaard focused mainly on old classic European integration theories such as liberal intergovernmentalism and neo-functionalism and did not take differentiated integration into account. The question that arises here is whether the same can be said for the case of differentiated integration in comparison to differentiated disintegration. It becomes evident at this point that there is a need to analyse this factum retrospectively.

Just as path-dependent differentiated integration, the concept of differentiated disintegration is a rare but significant phenomenon of DI in the EU. Admittedly, differentiated disintegration is in line with the logic of constitutional differentiation which follows and heightens traditional British concerns about the preservation of national sovereignty and identity in areas of core state powers. According to Schimmelfennig and Winzen<sup>48</sup> in negotiations on differentiated disintegration, however, Eurosceptic governments become the “demandeurs”, and the other Member States become the defenders of the status quo. Differentiated integration refers to a situation in which integration progresses overall but at least one State remains at the status quo or does not participate at the same level of integration as the others. By contrast, differentiated disintegration is the selective reduction of a state’s adherence to the integrated legal rules, which results in an overall lowering of the level and scope of integration.

It can be underlined that between the end of 2015 and the beginning of 2016, the negotiations on the UK’s position within the European Union concerned internal differentiated disintegration<sup>49</sup>, since until the

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<sup>47</sup> H. Vollaard, *Explaining European Disintegration*, “Journal of Common Market Studies”, no. 52(5)/2014, pp. 1142–1159.

<sup>48</sup> F. Schimmelfennig, T. Winzen, *Ever looser union? Differentiated European integration*, Oxford 2020, DOI: <https://doi.org/10.1093/oso/9780198854333.001.0001>.

<sup>49</sup> F. Schimmelfennig, *Brexit: differentiated disintegration...*, p. 5.



referendum it was unclear whether the UK would remain in the European Union. Most scholars and politicians still believed that a negative Brexit referendum was not an option at all and that the UK would remain in the European Union as part of the 28-Member States during that time. The phenotype of internal differentiated disintegration fits this phase the most because the UK was still in the European Union and arguing internally about several disintegrative steps, but not leaving the European Union entirely.

But this change of phenotype from internal differentiated disintegration to external differentiated disintegration was about to change due to the circumstance of the negative Brexit referendum of June 2016. Since then, the negotiations have focused more on a real withdrawal from the European Union rather than selective integration as being exempted and taken out of the equation of the European Union. Here the mentioned shift from internal differentiated disintegration to external differentiated disintegration becomes obvious. According to Schimmelfennig, there are three types of differentiated disintegration. Unquestionably, the first form of differentiated disintegration is connected to the cause of internal differentiation which is common in differentiated integration discourse. It is called internal differentiated disintegration and occurs when a state may seek shallower integration within the EU (internal differentiation).<sup>50</sup> But the most striking thing about internal differentiated integration is the fact that it is reliant upon the other EU Member States due to the reasons of free-riding, which will be elaborated upon in the next paragraph. In addition, internal differentiated integration does not include an agreement as it does in the case of external differentiated integration.

Here it is in the interest of the Member States as a collective to protect their commonalities within the integration project to avoid such occurrences and incidents that involve the common free-riding problem and cherry-picking behaviour. When it comes to the free-rider problem, the EU states realise that they can utilise many of the benefits of integration even without meeting economic standards. In the times before the Brexit vote but being connected to the Brexit case, the then Prime minister David Cameron took the decision to link his referendum announcement to realise a new contractual settlement for the United Kingdom and the European Union.<sup>51</sup> The aim was to follow two consecutive goals: to put pressure on the other Member States of the European Union in order to gain more concessions in future negotiations and secondly, with these

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<sup>50</sup> Ibidem, p. 11.

<sup>51</sup> Ibidem, p. 15.

gained concessions by the other Member States, to convince the undecided voters to vote to remain in the European Union.

Cameron never had the intention to pursue a hard disintegration of the United Kingdom from the European Union, which can be proven by a letter from November 2015 to the President of the European Council, Donald Tusk, asking for the indulgence of proposed reforms while seeking a “moderate expansion of Britain’s differentiated integration in the European Union”. The only policy where Cameron clearly expected differentiated disintegration and to prevent the UK from engaging was the area of immigration. Restrictions on the free movement of EU citizens was also intended to limit in-work benefits to prevent child benefit fraud. To conclude the deliberations on internal differentiated disintegration, one can underline that the phenotype and empirical example was per se existing in the time-frame before November 2015. When it comes to external differentiated disintegration in contrast to internal differentiated integration, the main difference becomes evident in Article 50 of the Treaty of the European Union.<sup>52</sup> Within the reasons of the concept of “external differentiation”, this conceptualisation appears frequently in those empirical cases where at least one Member State possesses an advantage in the integration process by having left the European Union through triggering the Art. 50 accords.

## Conclusions

Both in academic deliberations and in real-life politics, differentiated integration concepts have offered, so far, a way out from the dichotomous thinking between full membership and full non-membership. Moreover, nowadays these concepts are treated much more as a solution than a problem. Nevertheless, differentiated integration as a scholarly concept is a relatively new phenomenon in European studies, or more widely: international relations, legal studies, political science or economy. It grew together with a real-life increase in differentiation (opt-outs, exemptions, enhanced cooperation, constructive abstention, special clauses, additional protocols, etc.). In the last two decades, differentiation has been a dominant feature of European integration. It is argued that approximately half of EU policies are implemented in different ways.<sup>53</sup> Undoubtedly, studying

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<sup>52</sup> Ibidem, p. 10.

<sup>53</sup> See B. Leruth, C. Lord, *Differentiated integration in the European Union: a concept, a process, a system or a theory?*, “Journal of European Public Policy”, no. 22(6)/2015, pp. 754–764, and B. Leruth, S. Gänzle, J. Trondal, *Differentiated integration and disintegration in the European Union after Brexit: risks versus opportunities*, “Journal of Common Market Studies”, no. 57(6)/2019.

differentiated integration contributes to a better and more refined theoretical and empirical understanding of the European integration process as such. Differentiation in Europe has reached such a phase, scale, and depth that it is difficult to disagree that it is a systematic characteristic of the European integration project as seen in XXI century. Frank Schimmelfennig, Dirk Leuffen, and Berthold Rittberger<sup>54</sup> even wrote about the system of differentiated integration, in which differentiation is an essential and enduring characteristic of the EU.

The European Union is the most advanced, integrated, regional organisation in the world. It originated from that of a free trade area, moving on to a customs union, and to recent times possessing a common market, and being on the verge of an economic and political union. Therefore, the European integration project only knew one direction which has been the tying of the European Member States ever closer together (at least considering the intentions) since its foundation after World War II.<sup>55</sup> This is why European integration serves as fertile ground for scientific analysis and for developing ideas for theorising disintegration as well as various forms of differentiated integration.

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<sup>54</sup> F. Schimmelfennig, D. Leuffen, B. Rittberger, op.cit., pp. 764–782.

<sup>55</sup> See also: *The European Union and Member states*, eds. E. Zeff, E. Pirro, London 2001, and N. Nugent, *The government and politics of the European Union* (6th ed.), New York 2006.

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