

## *Déjà vu? Concepts of Differentiation for the European Union's Future Enlargement*

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### Executive Summary

- > The European Union can look back on five decades of enlargement, during which it more than quadrupled its membership. Nevertheless, it is still struggling to find the best approach towards 'widening versus deepening'.
- > Recent geopolitical events, especially Russia's war in Ukraine, have again triggered a debate on differentiated integration to address this conundrum. However, concepts such as concentric circles, staged accession, variable geometry or affiliate membership are by no means new.
- > What is novel besides the perceived urgency is the need to go beyond the well-established categories of differentiation by space, time and matter and to thoroughly discuss differentiation by governance as well. Differentiated governance entails difficult choices regarding the institutional rights and obligations of alternative arrangements to conventional full EU membership.

In June 2022, the European Council granted candidacy status to Ukraine and the Republic of Moldova and in December 2022 to Bosnia and Herzegovina. One year later, it decided to open accession negotiations with the three countries, while Georgia also obtained candidacy status. Although the European Union (EU) has evolved significantly since its very first round of enlargement fifty years ago, these landmark decisions come after a decade of 'enlargement fatigue'. Following Russia's full-scale invasion of Ukraine in February 2022, a potentially big EU expansion is thus back on top of the political agenda. At the same time, however, many member states are still wary of any Treaty reform. Given this political context, can differentiated integration provide a solution?

This policy brief examines the current conceptual proposals on how the EU can undergo the process of internal reforms (the 'deepening'), while ensuring that the integration of accession countries progresses (the 'widening'). It shows that the major concepts (or models) of how to reconcile a future widening with the necessary deepening that are currently being discussed are not novel. They rather invoke a sense of *déjà vu* among scholars of differentiated integration. In addition, the debate still lacks a detailed review of a gradation of institutional rights and obligations. The first section briefly introduces the longstanding 'widening versus deepening' debate, while the second section presents the major models of differentiated integration under discussion. The third section looks back and compares the current proposals with the older concepts. As a result, the fourth section diagnoses a gap in terms of thoroughly addressing the implications of differentiated governance. The brief concludes with recommendations reflecting lessons of the past for future EU enlargements.

### Widening versus deepening – yet again

While the 'widening versus deepening' debate has been present for decades, the need for the EU to be 'enlargement-ready' was formalised by the European Council (1993) through the Copenhagen Criteria: "The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries". The European Commission (2006, 17) followed up on further defining 'absorption capacity' by identifying its main components: the effective and accountable governance of EU institutions, the ability to implement common policies in its member states and the sustainable financing of its policies. They complement the accession criteria of stable institutions guaranteeing democracy, the rule of law and human rights, a functioning market economy and public administration.

The geopolitical pressure for enlarging the EU in light of Russia's war in Ukraine and both Russia's and China's pursuit of political influence in the Western Balkans is unprecedented. At the same time, the candidates face even bigger challenges than the Central and Eastern European countries did, *inter alia* an enormous need for domestic reform. They are also considerably poorer than even the poorest current EU member, Bulgaria. Moreover, besides the war in Ukraine, several candidates face frozen conflicts or border disputes. This notwithstanding, French President Macron (2023) stated that "the question is not whether we should enlarge ... but rather how we should do it". The sense of urgency and corresponding change of attitude that is prevalent in the present policy debate is also visible in public opinion. According to a recent Eurobarometer (2023, 23), 53% of EU citizens now support enlargement in principle, while 37% oppose it.

Proponents of deepening the EU before any accession occurs hold that further internal integration and Treaty reforms are necessary for the EU to be capable of managing the accession of up to nine new members (Albania, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, North Macedonia, Serbia, Türkiye, and Ukraine). Integrating these countries would inevitably lead to greater diversity of interests and alter the functioning of the institutions, including changes to the composition of the European Council, Commission and Parliament, which would affect the balance of power and could stall the decision-making process. Other fears concern the resolution of conflicts in accession countries prior to joining, the future protection of the rule of law or the implications for migration and the budget. Nevertheless, proponents of widening argue that deepening in terms of a Treaty reform is not needed before further enlargement. Commission President von der Leyen, for instance, noted in her most recent State of the Union address that "we cannot – and we should not – wait for Treaty change to move ahead with enlargement" (European Commission 2023a). The costs of future enlargement are expected to be high, but so are the costs of non-enlargement.

Indeed, current debates are reminiscent of the ones that preceded the 2004 'big bang' enlargement, when the EU expanded from fifteen to twenty-five members. They had discussed the 'regatta approach' in which candidate countries can accede based on merit versus the '*en bloc* approach' in which a group of countries accedes at once. With Bulgaria and Romania joining in 2007 only, the approach followed in practice was a mixture. The EU had made some compromises in this process, for instance admitting Cyprus despite the failed attempts to reunite the divided island or introducing transitional cooperation and verification mechanisms for Bulgaria and Romania to

facilitate progress in areas like judicial reform, anti-corruption and organised crime.

In its most recent enlargement strategy, the European Commission (2023b, 16) explicitly stated again "that both the EU and future Member States need to be ready for a further enlarged Union". The re-awakened possibility of EU expansion and the desire to also be able to further deepen integration has – again – brought into focus the concept of differentiated integration "in which the territorial extension of the legal validity of EU rules is incongruent with EU membership" (Schimmelfennig, Leuffen and de Vries 2022, 5). In fact, internal differentiation has recently been shrinking due to Brexit, Croatia's adherence to the Eurozone, the termination of Denmark's opt-out from the Common Security and Defence Policy, and the entry of Croatia – and soon as well Bulgaria and Romania – into the Schengen area.

### **Current debate: embracing differentiated integration**

Four models of differentiated integration have recently been put forward to make the EU 'fit for 35'. They follow the 'standard' categorisation of differentiated integration prevalent in the literature (e.g. Stubb 1996): differentiation by space, matter and time. Differentiation by space refers to varying membership and covers, for instance, concentric circles and variable geometry. The latter also applies to differentiation by matter, through opt-ins or opt-outs from certain policies, besides *Europe à la carte* and partial membership. Differentiation by time is temporary and embraces concepts such as multi-speed Europe and staged accession.

#### ***Differentiating by space: the Franco-German 'concentric circles' model***

The Report of the Franco-German Working Group on EU Institutional Reform (2023, 37) highlights the need for EU reform to make the institutions 'enlargement-ready' by 2030. While deepening the Union is the subject of much of the report, the Working Group considers a model of concentric circles as the best way to widen the EU which would simultaneously allow for its deepening. The model envisages four tiers of differentiated integration which would consist of two inner circles of EU member states and two outer circles of integration with non-EU countries. The first inner tier comprises areas of deep integration for EU member states, such as the Schengen area and the Eurozone. The second inner tier would consist of all current and future member states who are bound by the same political objectives. The first outer tier would include relations with associated states, including the countries of the European Free Trade Association (EFTA) in the

European Economic Area (EEA). Countries in this third group, while not bound by a commitment to pursue deeper integration, can participate in the internal market and have to comply with the EU's principles and values. The fourth tier – the European Political Community (EPC) or an upgrade thereof – would add other European countries where cooperation in areas of mutual interest can occur but no adoption of EU law and values is required.

### ***Differentiating by space and matter: the Portuguese 'multipurpose building'***

In contrast to the Franco-German proposal of concentric circles in which there would be clear levels of differentiation and 'hierarchy' between EU and non-EU states, Portuguese Prime Minister Costa envisages EU integration through the concept of a 'multipurpose building' (Politico 2023). This version of a (partial) Europe *à la carte* or variable geometry would also be founded on the states' adherence to common values and the internal market as a core, but it would allow member states to opt in or out of different policy areas. This would create a Union where old and new members would find the necessary flexibility to accommodate their concerns. It would remove the veto power of reluctant member states from areas in which they opt out, allowing willing and able ones to deepen integration, and it would thus also facilitate enlargement.

### ***Differentiating by time: the 'staged accession' model***

Emerson et al. (2021) propose a 'staged accession model' to manage the integration of the Western Balkans states, which could potentially be extended to other candidate countries as well. The proposal outlines a roadmap for a four-staged approach and thus resembles multi-speed Europe. Stages I and II would be classified as the (initial and intermediate) pre-accession phases in which the candidate countries' application of the accession 'chapters' based on the Commission's annual progress reports would be assessed. Once progress is ensured, the candidate countries would be granted more incentives through accessing more EU funds, policies and institutions. Stage III is reached when the candidate countries attain the standards required for EU accession. In this case, they would be designated the status of 'new member state' but would not have veto power nor an own Commissioner or Judge. Stage IV of the model foresees 'conventional membership' in which the members can participate in all policies and institutions. Hence, unlike in previous enlargement rounds, differentiation would for the first time also be applied to the institutions and decision-making rules, at least until conventional membership is finally reached.

### ***Differentiation by matter: affiliate membership***

Andrew Duff goes a step further and calls on the EU to learn from previous mistakes and drop its pretence that it will admit the current candidate countries to full membership. Instead, he suggests an affiliate status "as a durable settlement and not necessarily a springboard for full membership" (Duff 2022, 89). It would allow more rights for countries participating in the internal market and beyond. Nevertheless, affiliated membership would demand respect for the values on which the Union is founded but no signing up to its political objectives. Such an affiliate membership could also be of interest to associated Western non-members as it could, for instance, provide participation in relevant Council votes without the power of veto or attendance of the legislative committees of the European Parliament – in addition to selected Commission expert groups and comitology committees as is currently the case for closely associated countries (e.g. EFTA). The creation of a new category of affiliate membership would, however, require Treaty change.

The following section shows that none of the concepts discussed above are entirely new, although in earlier debates, some of them had primarily aimed at deepening rather than widening.

### ***Looking back: reinventing the conceptual wheel?***

Former German Chancellor Brandt (1975) was the first to propose a multi-speed Europe, which would allow some countries to progress more quickly towards common policies (such as monetary union), while members of the slower group could catch up at any time. He argued that the Community would not be weakened, but strengthened, if the countries that were stronger advanced with further economic integration, while other countries would participate in this process in stages according to their objectively different situation.

The concept of variable geometry, which could also include non-members, originated with France's Commissariat Général du Plan (1980). Withdrawal from closer cooperation could thereby take place either *ex ante* from the outset (opt-out) or *ex post* after countries have already committed to common objectives, while reserving the right to decide later whether or when to join (opt-in).

By contrast, a 'core Europe' basically comprises the same member states in all policy areas. This core (especially the internal market) could also serve as an avantgarde, and it could be part of a Europe of concentric circles, which would divide the periphery around the core area into different circles depending on the policy areas and

participants (Tugendhat 1985). Today, the EPC created in 2022 would, as suggested by the Franco-German report, constitute yet another outer circle – but in fact, the EPC too has a predecessor, the short-lived European Conference, established in 1998, which brought together the EU member states and those European states aspiring to accede to the EU.

Finally, in the concept of graduated or staged integration (Grabitz 1984, especially 25-30), the member states share the general integration goals, but in specific cases only one group actually seeks to achieve them, while others are granted indefinite (but not permanent) exemptions. In addition, national and Community measures are intended to reduce the socio-economic structural differences that make full participation difficult.

The proposal of a partial EU membership is no novelty either. European Commission Vice-President Andriessen (1991), for example, pondered the concept of affiliate membership, which would grant affiliate members full rights and obligations only in the areas covered by their status, allowing the EU to proceed with deepening and widening simultaneously.

As this review shows, there is a lot of *déjà vu* in the current debate of differentiated integration in the context of future EU enlargement. Moreover, none of the models as such had been implemented with regard to enlargement.

### Looking ahead: recognising differentiated governance

The current policy and conceptual debates have largely been silent on institutional aspects of alternatives to full EU membership. Besides differentiation by space, matter and time, this policy brief argues that a fourth category – differentiation by governance – has so far been neglected. This implies that countries have different representations in the EU and varying institutional rights and obligations based on their degree of integration. If certain stages of accession become (semi-)permanent rather than multi-speed or if partial membership is an option, the creation of different ‘classes’ of members appears unavoidable, at least among those countries that would be willing but not (yet) able to fully join. By lowering the accession standards, the EU could avoid far-reaching reforms and third countries could join faster. However, this would then also lead to more differentiation among members for many years, and the EU institutions would likely also face difficulties in accommodating the diversity of policy and participation preferences. Moreover, the creation of a ‘lower’ member status is not foreseen in the Treaties, and

it is uncertain whether the EU’s constitutional principles like the equality of member states would allow for a very long temporary or even permanent partial accession (Blockmans 2023).

Regarding alternatives to full membership, a final word of caution is in order. The EEA negotiated between the EU and the EFTA countries at the time of the completion of the internal market had initially served the purpose of avoiding membership applications. Yet most EFTA countries (Austria, Sweden, Finland, Norway and Switzerland) applied anyway between 1989 and 1992. Initially ‘able but unwilling’ candidates, they were in particular disappointed by the institutional shortcomings of the EEA, which excluded them from the EU decision-making process by merely granting decision-shaping rights for rules they would have to take over. A decade later, the European Neighbourhood Policy aimed at offering ‘everything but institutions’ to the new neighbours. Yet, twenty years on, most Eastern Partnership countries applied for EU membership regardless. This leads to the conclusion that alternatives to full membership seem to be of limited attractiveness for many EU neighbours.

### Conclusion: differentiation and future EU enlargement

The EU is still struggling to find the proper recipe to reconcile deepening and widening. Even though the current geopolitical situation calls for an acceleration of the accession process, neither the candidate countries nor the EU seem prepared. Any future enlargement should heed some lessons from the past. Generally, the EU should insist on a prior resolution of bilateral conflicts between countries and a strong emphasis on democracy and the rule of law, including at the post-accession stage. In case of setbacks, the EU should not shy away from applying negative conditionality, for instance by lowering levels of institutional participation and previously granted funding. Second, despite a perceived ‘geostrategic imperative’, enlargement should follow a merit-based ‘regatta approach’ with at best a ‘small bang’ enlargement. This implies no ‘fast-track’ accession nor any pre-set accession date. Third, candidates should be ‘phased in’ by granting increasing access to the internal market and other policies of mutual interest to them and the EU, accompanied by informal participation in EU bodies that could later expand beyond an observer status. A prerequisite for this would be a thorough debate about differentiated governance – which has so far rather been taboo. Under these conditions, differentiated integration may be able to help solve the ‘widening versus deepening’ dilemma.



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