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Abstract

It is widely recognized that the EU that emerged from the financial and refugee crises of the last decade has become more differentiated. Such a development brings forth important questions about the nature and character of the EU as a political system, and the kinds of processes and mechanisms that drive its development. An important problem is that neither differentiated integration nor differentiation say much about the positive character or the distinguishing features of the EU as a political system. The claim that we set forth in this paper is that the notion of the EU as a segmented political system provides a more apt and precise characterisation of the EU as a political system. In addition, the notion of segmentation helps to capture some of the distinct dynamics that propel the EU's development.

Keywords

Crisis - Differentiation - European Union - Function - Segmentation - Segmented political order - Territory

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Introduction¹

Since its inception in the late 1950s, the European Union (EU) has seen a dramatic rise in integration. The crises of the last decade, and no less importantly, the UK's decision to leave the EU, have brought up new questions about the EU's ability to sustain its historical integration momentum. At the same time, even if accounts vary, there is little doubt that the EU that emerged from the Eurozone and refugee crises had integrated further (Bauer and Trondal 2015). Nevertheless, the tensions and divisions that the Eurozone and refugees crises highlighted testify to the need to look closer at the type of integration involved.² The EU has experienced serious difficulties in pulling together in a unified manner. The member states have adopted different strategies for grappling with the corona pandemic. EU measures have been temporarily suspended, and there is no unified vision of what type of EU should come out of the pandemic (even if the NextGenerationEU has been agreed-upon by all 27 member states). Hence the need to focus on differentiated integration. Granted that the EU continues to integrate, there is less assurance than before that all states will integrate at the same pace, or even that all will eventually reach the same destination.

A more differentiated EU raises a number of important questions on the nature and character of the EU as a political system, and the kinds of processes and mechanisms that drive its development. There is also terminological ambiguity involved, in that the literature uses the two terms differentiated integration and differentiation almost interchangeably, even if these two terms can refer to different phenomena and dynamics (there are both zones of overlap and divergence between them³).

The main purpose of this paper is to show that the two terms – differentiated integration and differentiation – do not adequately account for the EU as a political system, nor do they contain sufficient explanatory power to account for the EU's nature and development, especially during the last decade or so. Stating that in no way refutes the fact that the EU is a distinctly differentiated political system, nor that it has become more differentiated in the last decade. The key point is that neither differentiated integration nor differentiation say much about the positive character or the distinguishing features of the EU as a political system. These terms are blunt instruments for properly capturing the EU's defining features. For more precision, we should consider the EU as a *segmented political system* (Bátora and Fossum 2020). This term provides a more apt and precise characterisation of the EU as a political system; it also introduces the notion of segmentation as a distinct dynamic. Indeed, as Héritier (2021) acknowledges, formation of a segmented political order represents a distinct path in the formation of the EU qua polity.

¹ Forthcoming chapter in 'The Routledge Handbook of Differentiation in the European Union', edited by Benjamin Leruth, Stefan Gänzle and Jarle Trondal.

² Analysts then also speak of a certain shift in gravity towards the EU's intergovernmental institutions. See in particular Bickerton et al. 2015.

³ For a more extensive elaboration of the similarities and differences between these two terms, see Fossum 2020; 2019.

This paper is divided into three parts: part one of the paper provides a brief overview of what in the EU literature is referred to as differentiated integration and differentiation. Part two defines segmentation and segmented political order, and shows how and in what sense we may talk of the EU as a segmented political order. The third and final part spells out the most important similarities and differences between on the one hand differentiation/differentiated integration, and on the other segmentation/segmented political order.

The EU – A distinctly differentiated polity

In order to understand the distinctive features of the EU as a differentiated political system, we need to keep in mind that all modern political systems are *differentiated* – along functional, territorial and hierarchical lines. The EU is distinctly differentiated, and the key term that is used to depict that is *differentiated integration*.

In the EU context, differentiated integration refers to specific features of the EU integration process; EU structural features; and more specific EU rules and policies. Differentiated integration thus manifests itself in legal terms: in primary and secondary law; in institutional structures and constitutional arrangements; and in the use and scope of application of various types of policy instruments. Numerous concepts are used to describe the process and its (anticipated) result, such as Multiple Speeds, Variable Geometry or Europe *à la carte*, Core Europe or the Europe of Concentric Circles, and Two- or Multi-speed Europe, respectively.⁴ Further, the literature tracks member states' exemptions, exceptions, opt-ins and opt-outs from EU institutional arrangements, laws and policies.⁵ A broad range of explanations has been set forth to account for the nature and causes of differentiated integration. Analysts have drawn on neo-functional, (new) intergovernmental, institutionalist and constructivist approaches to explain processes of differentiated integration.⁶

It follows from the above that differentiated integration has been attributed with a variety of different features. It has even been interpreted and evaluated differently from one academic discipline to another (Holzinger and Schimmelfennig 2012: 293). Some analysts note that '[...] the complexity and plurality of approaches to studying DI [differentiated integration] is justified by the nature of DI itself' (Leruth and Lord 2015: 761). The term is used to describe differences along vertical (across levels of governing), and horizontal (encompassing functional and territorial) dimensions, as well as along temporal lines (short, medium or long-term).⁷ Nevertheless, it is clear that different forms of differentiated integration share a minimum common

⁴ See Schmitter 1996; 2000, on 'condominio' and 'consortio'.

⁵ For a selection, consider Kölliker 2006; Warleigh-Lack 2015; Stubb 1996; Andersen and Sitter 2006; Dyson and Sepos 2010; Fabbrini 2015; Schimmelfennig 2014; Leuffen et al. 2013; Piris 2012; Genschel and Jachtenfuchs 2013, 2018; Bickerton et al. 2015; Adler-Nissen 2014; Lord 2017; Schimmelfennig and Winzen 2014.

⁶ See for instance Leuffen et al. 2013.

⁷ See in particular Leuffen et al. 2013 for a specification of these dimensions.

denominator, namely that within the scope of EU competences, not all member states are subject to the same uniform EU rules (Avbelj 2013: 193).⁸

As noted, differentiated integration is used to describe both legal and political-institutional developments in the EU context. Structurally speaking, the main moment of institutional differentiation occurred with the Maastricht Treaty, which introduced an EU with three pillars. It represented '[a] major advance in the scope of activity of the EC/EU [that] had to be paid for by abandoning the notion of a unitary Community legal order that applied evenly in all its Member States' (De Witte 2017: 11). Even if the pillars were formally abolished in the Lisbon Treaty, significant divisions in the EU system of governing remain (Fabbrini 2013, 2015; Fossum and Menéndez 2011).

Studies have shown that the EU has become more differentiated over time, in response to enlargements; various forms of crises; and various forms of opposition to integration. Both widening and deepening integration are associated with differentiation.⁹ As EU integration has increasingly come to touch on core state powers (Genschel and Jachtenfuchs 2013), state interests and concerns have become activated, and differentiated integration has become a means for handling (or bypassing) this. Post-Maastricht, the EU does not just exercise its own competence, it co-ordinates core state powers in areas of national competence (Heidbreder 2013). But in order to combine the two tasks of exercising its own competence and coordinating national competence, the EU has had to differentiate both its own decision-making methods and patterns of member state participation in particular policies. Thus, the EU has to incorporate two institutional systems or principles: the supranational Community System and the more intergovernmental Union System, respectively (Bátora and Fossum 2020; Bickerton et al. 2015; Fabbrini 2015; 2019). No other solution would have been compatible with maintaining the integrity of systems at the two levels (EU-level and member state level).

Nevertheless, Brexit is the starkest reminder thus far to the effect that the EU faces important *disintegrative* pressures; hence a more recent focus on (differentiated) disintegration.¹⁰ That is unto itself an important reason for distinguishing between differentiation and differentiated integration.¹¹ Differentiation is not tied to a specific direction of development, whereas differentiated integration is about specific features of a process of *coming together*. Differentiation is the more general of the two terms in that it refers to the overall composition of differentiation in modern societies, from Parsons' (1951) notion of role differentiation as the point of departure, to the state-formation literature's preoccupation with differentiation along territorial, functional,

⁸ The rationale for differentiation varies. Consider for instance the distinction between instrumental and constitutional differentiation (Schimmelfennig and Winzen 2014).

⁹ 'The conventional story attributes differentiation to an increase in heterogeneity among the member states triggered mainly by enlargement rounds but also by broadening the functional scope of EU-level policy-making and the centralization or supranationalization of decision-making' (Holzinger and Schimmelfennig 2012: 299).

¹⁰ There is a growing literature on EU disintegration. See for instance, Jones et al. 2016; Vollaard 2014; 2018; Webber 2014; 2018; and Zielonka 2014.

¹¹ For these distinctions, see Fossum (2015).

social, economic, and political lines (Rokkan 1975). These themes are also reflected in the EU literature (see for instance Bartolini 2005; Leuffen et al. 2013).

This brief overview shows that differentiation and differentiated integration both overlap and refer to different features of a political system. In principle, it is possible to say that the phenomena captured under the rubric differentiated integration are all about differentiation, but with two important provisos. One problem would be a loss of precision because differentiation does not specify the direction of change. In other words, a more differentiated system can mean a system where more of the integration is differentiated. Or, it can mean a system with pulls in both integrationist and dis-integrationist directions. Or, it can refer to a move in a dis-integrationist direction (akin to fragmentation). Further, if we focus mainly on differentiated integration, we need to be clear on whether we talk about this in structural or processual terms. The EU's distinct pattern of polity *differentiation* has bearings on the process of differentiated integration (Fossum 2019). At the same time, since the EU is structurally speaking differentially integrated, that shapes the manner in which differentiation – along territorial, functional and hierarchical lines – unfolds in the EU. We can only properly understand these dynamics insofar as we keep structure and process apart.

Segment, segmentation and segmented political order

The main argument of this paper is that we need to complement the debate on EU differentiated integration and differentiation with terms that help us to specify the character of the EU as a political system, and which also shed further light on the distinct dynamics that propel the EU's development. The relevant terms are segment, segmentation and segmented political order. 'Segment' is a term that is familiar to a range of academic disciplines, i.e. sociology, economics, and political science (Olsen 1988; Picot 2012). Segments are normally discussed as specific traits or features of political systems, within certain sectors, at meso-level. They are stabilized constellations of actors from government, parliament, regulatory agencies, NGOs, regional authorities and the private sector involved in recurrent practices of patterned information exchange and participation in policy formation (Christensen and Egeberg 1979).¹² Under certain structural and institutional conditions, segments can solidify, and a political system where such structural elements and mechanisms are pervasive can be characterized as a *segmented political system*. Segments then become constitutive features of the political system. They become macro-political phenomena in the sense that the logic of segmentation defines the structural make-up: the pattern and composition of the political system's functional, territorial, and hierarchical dimensions.

We can identify six traits that give meaning and shape to a segmented political system (Bátora and Fossum 2020). **Trait 1** is an entrenched set of ideas and ideologies that limits the search for alternatives and fosters cognitive closure. The *systematic selection bias* that we associate with a segment is a form of closure: actors within a segment

¹² This conceptualization of segments builds on the 'garbage can model' of organizational choice as proposed by Cohen et al. (1972).

systematically exclude alternative ways of understanding problems, and shut out alternative types of expertise, alternative policy instruments and alternative solutions. **Trait 2** refers to a particular (limited, narrow or strongly biased and with limited scope for switching between policy instruments) configuration of policy instruments that contributes to lock-in forms of cognitive closure. Such a configuration typically makes up a distinct policy style (for this term, see Richardson 1982). **Trait 3** refers to a set of organisational and procedural arrangements that sustains the segmental logic(s). The structure is imbued with a built-in bias in the sense that it systematically *organises in* certain ways of understanding issues, and systematically *organises out* alternatives. **Trait 4** refers to the fact that a segmented political order is fundamentally *constrained*. As such, segmented political orders resemble those pre-modern political orders that lacked the magnitude, breadth of scope, and type(s) of resources that mark modern democratic states (Tilly 1993). **Trait 5** refers to external dependence. A segmented political order lacks the size, scope and access to resources that are available to the modern state and is therefore more dependent on factors and forces in the external world, such as other states and (global) markets, for instance. Finally, in accordance with **Trait 6** a segmented political order is characterized by *endogenous biases* structuring policy making. It has weak or deficient de-segmenting arrangements, in other words arrangements that pry open segments and undermine built-in biases and patterns of path dependence. Of particular importance are those arrangements that ensure consideration of a plurality of views, values, and considerations (typically associated with arrangements that ensure democracy and transparency).

The next section provides a brief overview of how the six traits of a segmented political order manifest themselves in the EU.

The EU – A Fledgling Segmented Political Order

Segmented political orders may come about through original design – with a built-in bias from the outset – or they may experience increased segmentation due to crises, upsets, and ruptures. The EU contains a mixture of these: it was explicitly barred from becoming a state through clear constraints on integration in ‘core state powers’ such as military defence, police, and taxation.¹³ The main drivers of integration were executives and experts, and democratisation was a matter of ‘catching up’ with these (Crum and Fossum 2013). Nevertheless, the EU has, over time, developed important de-segmenting arrangements. The poly-crises of the last decade or so have led to an EU-mutation that has, on the one hand, reinforced built-in biases in a segmenting direction, and, on the other, weakened and/or side-lined de-segmenting bodies/arrangements, notably parliaments. In the following, we spell out what this entails with explicit reference to the six traits of segmented political order that we outlined above. We will show that the EU’s segmented political order consists in two discernible segments, which are associated with the EU’s two institutional tracks.

¹³ For the notion of core state powers in the EU context, see Genschel and Jachtenfuchs (2013).

Trait 1: Ideas and Ideologies

The first type of cognitive bias and ideological component has roots in the EU's strong market orientation or what has also been referred to as 'internal market rationality'.¹⁴ The EU as noted above, and especially when compared to a state, has been a biased or lop-sided system from its inception. Nevertheless, the strong market-rational imprint has developed and solidified over time, since the late 1970s (Menéndez 2013). The EU's legal-constitutional development has entrenched that market-rational imprint (Grimm 2015; Isiksel 2016). What we see in connection with the EU's orientation to the Eurozone crisis is a form of 'segmental closure', in which the EU's crisis response was motivated by particular economic doctrines. These doctrines were systematically selected in certain crisis-action handling repertoires, notably of an ordo-liberal, or for some, neoliberal bent. At the same time, they systematically excluded (after the initial fiscal stimulus) Keynesian-type action repertoires where 'intellectual convergence around a flawed set of economic ideas continuously blinded EU policy-makers to dangerous divergences in the real economy' (Tranøy and Schwartz 2020: 47-48). The crises also brought forth a second type of bias associated with securitisation or a propensity to think of issues and concerns as matters of security *first and foremost*. With a securitisation logic also comes a specific element of fear and uncertainty. As Huysmans has noted, 'security practices [...] turn an issue like migration into a security problem by mobilizing specific institutions and expectations' (2000: 757). This logic has become far more pronounced in connection with the so-called refugee crisis. The refugee crisis was re-defined from an initial focus on the humanitarian aspects of refugee suffering and the need for solidarity, to the concerns of states with borders and terrorist threats (Lazaridis and Wadia 2015).¹⁵

Trait 2: Policy Instruments and Policy Style

The EU's core realm of action lies in the field of regulation (Majone 1994), especially in the realm of the internal-market. That in turn yields a distinct EU policy style, with a limited repertoire of policy instruments, and when coupled with the EU's limited fiscal capacity, provides little room for flexibility in instrument choice (Genschel and Jachtenfuchs 2018). The limited range and built-in biases in the EU's policy measures have bearings on the EU's institutional structure. This has, at least since Lowi's seminal work, been an important insight. A recent important reminder is found in Orren and Skowronek (2017). It is also interesting to consider this in light of what Adam et al.

¹⁴ Marija Bartl presents it as: 'a specific pattern of political action in the field of internal market, which has emerged gradually due to the confluence of three main factors: first, the EU's functional institutional design; second, the processes of post-national juridification; and third, a more contingent influence of ideas. In the interplay of those three factors, the interpretation of internal market has become overdetermined, restricting thereby the space of (democratic) politics in its regulation' (Bartl 2015: 572).

¹⁵ Further evidence of securitization are the practices of Frontex. In 2017-2019, this agency was responsible for the protection of EU borders and management of refugee flows and has been actively in contact with defence industrial actors and has increasingly acquired various types of surveillance technologies and advanced defence equipment. See collection of official documents from 2017-2019 collected and published by German public TV station ZDF in 2021 at www.frontexfiles.eu [accessed on 30 March 2021].

(2019) have referred to as ‘the policy accumulation trap’. In other words how responsiveness leads to an accumulation of policy, and:

[...] renders policy content increasingly complex, which crowds out policy substance from public debates and leads to an increasingly unhealthy discursive prioritization of politics over policy. Secondly, policy accumulation comes with aggravating implementation deficits, as it produces administrative backlogs and incentivizes selective implementation. Finally, policy accumulation undermines the pursuit of evidence-based public policy, because it threatens our ability to evaluate the increasingly complex interactions within growing policy mixes. (ibid: i)

In this context, we may hypothesize that the greater or the more extensive the policy responsiveness is, in a context marked by a limited range of policy instruments and clear constraints on available resources and action capability, the more troublesome the policy accumulation trap.

Trait 3: Institutional and Structural Arrangements

The EU’s institutional structure lends itself to the entrenchment of the market bias. An important reason for why it makes sense to talk about present-day EU as a segmented political order, is that it stems from the fact that the two segmental logics correspond roughly to the two tracks of the EU’s institutional structure. We find one track in the *supranational Community component*, which we may, broadly speaking, refer to as supranational (expert-based) regulation. The other track is in the *intergovernmental component* (mainly associated with the Council of the EU and the European Council), and relies on intergovernmental interaction and bargaining. These are institutionally and functionally divided. Along each of these two tracks, there was a process of segmental closure during the crises of the last decade.

Institutionally speaking, the EU combines *horizontal separation (of functional spheres: the supranational Community versus the Intergovernmental realm)*, with *vertical fusion (of levels)* (Fossum 2020). This combination represents a unique form of differentiation, in the sense that functional spheres are horizontally separated and operated by different institutional arrangements, one with a strong supranational tenor, the other with a strong intergovernmental tenor (the two arrangements also somewhat overlap and give rise to two different segments, as these have been explained in the contributions in Bátorá and Fossum 2020). The horizontal separation is combined with a strong vertical fusion of levels; in other words, the EU institutions are tightly interwoven with the member states’ institutions. This distinctive institutional configuration fosters segmentation by preventing or constraining horizontal co-ordination, market correction and fiscal stabilisation at EU-level, because, as Scharpf (2010) has underlined: the EU decision procedures in the institutions bent on market-making are majoritarian, whereas the member states can exercise a veto in those institutions bent on market correction, and fiscal and tax harmonisation. Moreover, the structure also fosters segmentation by implicating national officials in EU-level decision-making,

and fusing levels of governing and administration by the development of stabilized constellations connecting participants, problem definitions, solutions, and choice opportunities across a diverse group of actors both on the national and on the EU level. The combination of the specific institutional separation of tasks, combined with the bringing together of executive and administrative officials across levels of governing, are structural features of the EU that are conducive to segmentation – not least because these processes are removed from proper parliamentary oversight and control.

The EU's structural make-up contains traits that are conducive to segmentation through the particular biases that they contain. The important point is that the Eurozone crisis has clearly re-enforced segmentation. The crisis has re-enforced the ties among the components that make up the distinct socio-economic policy stance, which mark the Eurozone. Fiscal policy is increasingly coordinated across levels (and as such reflects an ever-greater pattern of fusion).¹⁶

In this context, the scope for governments to pursue other policies is limited. Further, in dealing with its many crises and challenges, the EU has often resorted to intergovernmental means, with the European Council playing a central role through measures such as intergovernmental treaties (see for example the Treaty on Stability, Co-ordination and Governance in the Economic and Monetary Union) and informal intergovernmental bargains (notably between Germany and France). It should be noted that this does not necessarily entail that the supranational institutions have been side-lined or robbed of tasks. Aspects of the EU's supranational components have been strengthened, notably in the areas of macroeconomic policy and banking regulation, in which the role of the Commission and the European Central Bank (ECB) has been considerably enhanced (Dehousse 2015). Nevertheless, in overall terms, what appears is that the more informal (less legally regulated and constrained) intergovernmental approach that we witnessed in the handling of the Eurozone crisis may re-programme the supranational structure and make it more attentive to the interests and views of certain core governments; especially Germany and its conception of how to deal with the crisis through a tough fiscal austerity policy with a neoliberal/ordoliberal orientation. This supports the notion of crisis-reinforced segmentation.

Trait 4: Constraints and Limits on Capacity and Capability

The fourth trait that we associate with a segmented political order pertains to constraints. The fact that an entity is constrained does not – in itself – make it into a segmented political order. Only certain types of constraints and certain types of circumstances will foster segmentation, and both factors (types of constraints and specific circumstances) are relevant for the EU. The EU was, from the very outset, prevented from becoming a state by the strong built-in constraints on core state powers (military, diplomacy, policy, tax, and fiscal policies). This, over time, has produced a

¹⁶ That is reflected in the emergence of what Dawson has labelled the Coordinative Method: 'EU economic decision-making is coordinative in that it is formed as a policy cycle based on a constant "back and forth" between the EU and national levels [...] decision-making never crystallises into a "once and for all" agreement but is ongoing and revisable with the possibility of norms being adapted to changed factual circumstances' (Dawson 2015a: 53; see also 2015b).

curious paradox, wherein the EU has seen very little of the capacity-build-up that we find in most states. The EU is nevertheless a vital force in Europeanizing the Member (and affiliated) States. The EU's development is therefore a powerful story of circumventing such constraints, but with strong built-in biases. Consider the ECB's 'monetari[s]ation of fiscal policy at the EU-level' (Avbelj 2020), which was attacked in the ruling of 5 May 2020 of the Second Senate of the German Constitutional Court on the ECB's Public Sector Purchase Programme (PSPP). The Court ruling in turn opens further scope for national court challenges to EU measures, which was quickly noted by the Polish government after the German court ruling. The EU's circumventing of constraints is shaped and contributes to shape the broader context of an EU regulatory policy style and political and administrative fusion, both of which leave the member states with a central role in effectuating EU action. This is most pronounced in the first track or the realm of the community system (which sees very little differentiation), and less so in the second track or the intergovernmental system where there is limited supranational integration, a lot of differentiation, weak democratic-constitutional controls, and where states' people play a predominant role. The second sovereignty-cum-securitisation segment, which is institutionally situated in the intergovernmental track, is therefore quite differently constituted and constrained from the first single-market based segment which is anchored in the supranational Community.

The EU is constrained in a material sense; it is also constrained in an ideational sense, in two respects: (1) first is that the member states, as the EU's constituent units, have never agreed on a common normative script for the EU; in other words, they have never agreed on what type of entity it *really is* and what type of entity it *should be*. That would have been unproblematic if the EU had been an ordinary international organisation, but it amounts to a normative deficit when the member states have conferred so many tasks on the EU. (2) The second constraint is that the EU is institutionally barred from playing a significant socialising role; hence, it confronts serious structural obstacles that work against generating the depth of citizens' attachment that nation states can generate. Thus, the EU is very different from all nation-states, federal or not.

These material and ideational constraints leave the EU highly vulnerable to criticism, which right-wing Europhobes are exploiting to the full. It is especially explicit in Hungary and Poland, both of which have embarked on a major onslaught on constitutional democracy, with significant ramifications for the EU in general.

In structural terms, the combination of Trait 3 (institutions and procedures) and Trait 4 (limited resources) suggests that segments may vary considerably in terms of institutional arrangements and structures, as well as resources – material and immaterial – supporting them. Some segments can consist of tightly coupled institutional arrangements, while others consist of loosely coupled institutional arrangements. The latter is evident in the EU's increased reliance on *interstitial organisations* – organisations that emerge in the interstices between established institutional fields, tapping into the personnel, financial, legal and legitimacy resources of organisations belonging to different institutional fields, and re-combining these to form new patterns of action and new organisational types (Bátora 2013; 2017;

Korff et al. 2015).¹⁷ Interstitial organisations emerge in situations in which there is a need for problem-solving under strong institutional, legal, political and resource constraints, and interstitial organisations were a frequently resorted-to EU crisis-handling measure.

Interstitial organisations or bodies are not a necessary manifestation of a segmented political order, but the relationship has thus far not been specified. In situations where established institutional forms either fail to generate action capacity or are hindered from doing so, interstitial organisations provide action capacity through organising across traditional institutional boundaries and even different decision-making methods. This happens via creative re-combination and transposition of norms, rules and procedures from across different institutional domains, which enable co-ordinated action and – as a bi-product – the generation of various kinds of ambiguities and uncertainties. The critical issue for segmentation pertains to whether interstitial organisations generate or sustain forms of cognitive and/or decisional bias. Interstitial organisations are good illustrations of the sometimes very complex manner in which cognitive factors – ideas and ideologies – are institutionally entrenched.

Trait 5: Dependence on External Factors and Patterns of External Vulnerability

The fifth trait that we may associate with a segmented political system refers to vulnerability and dependence on external factors. As was the case with Trait 4, this is not a defining feature, as such, but will, under certain circumstances, foster segmentation. With regards to the first segment (located in the supranational Community), the financial crisis showed that the EU's socio-economic structure and built-in imbalance – monetary union without an attendant fiscal union – rendered it highly dependent on volatile international markets. This dependence on external factors was evident in the crisis responses, especially in the EU's reliance on the International Monetary Fund (IMF) in the bailout of the EU's member states. The central crisis handling role of the *Troika* (the European Commission, the European Central Bank, and the IMF) is a case in point. This type of dependence ensures that market-based imperatives play a central role in the considerations of EU decision-makers. As such, it helps to entrench the market-based segment, especially in so far as the criteria and conditions are, broadly speaking, aligned with a neoliberal austerity policy.¹⁸

The EU has also faced a significant external vulnerability and subsequent dependence in the other security segment. The EU's high level of vulnerability stems from the fact that it borders on such a large number of states, not least states that are weak or

¹⁷ Examples of interstitial organizations include the European External Action Service, European Border and Coast Guard or the European Stability Mechanism. See Bátora (2020).

¹⁸ It needs to be noted, though, that the EU's reaction to the covid-19 crisis and the agreement of member states on the 750 billion euro heavy Recovery fund Next Generation EU is built on a combination of loans and grants with the latter set to flow, in particular, as direct subsidies to countries and regions hardest hit by the epidemic. The nature of these instruments still needs to be analysed.

dysfunctional or deeply oppressive. The EU's contrast to the US, which has only two neighbours, and friendly ones to boot, is quite instructive.

In the area of immigration and border controls, the EU's vulnerability has been turned into structural dependence on Turkey for regulating the inflow of migrants to Europe. The EU-Turkey agreement has been widely criticised, and fosters segmentation in the sense that the EU has not only taken active measures to exclude migrants, but is also excluding them from European law (Spijkerboer 2017). Whether intended or not, the effect is for the securitisation logic to crowd out humanitarian considerations across a broad range of institutions.

Trait 6: Weak De-segmenting Arrangements

The final trait of a segmented political order refers to its imbalanced nature, in the sense that the institutions and arrangements that foster and sustain segmentation are systematically more developed than those institutions and arrangements that can ensure de-segmentation. In this regard, the EU has built-in constraints, in the sense that its de-segmenting features have consistently fallen short of those we find in democratic states. With regard to the EP, for instance, the EU's two-tracked structure generates a discrepancy between the EP's realm of effective legislative and controlling action, and the realm of tasks that are actually undertaken at EU-level, by EU institutions.

With the crises, we see a clear weakening of democratic systems of monitoring and control at all three key levels: EU, member state, and regional. Thus, those institutions that could open up and foster de-segmentation are weakened. National parliaments have seen their fiscal sovereignty severely constrained, and the EP has not been given powers to fill the gap (Fasone 2014a, 2014b). The EP, side-lined, at least in part, in the crisis response, has been one of the main losers, and the crisis response has re-enforced technocracy, in the sense that experts have obtained a freer role and are less encumbered by legal and democratic controls. An important hallmark of this system has been summed up in *the new informality*: far more is now settled in bargains among leaders and officials; less is subjected to proper, transparent procedures.

To sum up thus far, the post-crises EU has clear traits of a segmented political order. The two prevailing segmental logics are: a marketisation logic infused with a neoliberal/ordoliberal twist propagating a rules-based austerity mind-set, and a sovereignty-cum-securitisation logic. The segmental logics are embedded in institutional arrangements that re-inforce and sustain these cognitive and decision biases, through the EU's distinct institutional configuration which combines a two-tracked institutional structure (horizontal differentiation) with a lopsided process of the fusion of levels of governing.

Comparing/Contrasting differentiation and segmentation

The comparison of segmentation and segmented political order, on the one hand, and differentiated integration and differentiation, on the other, is complicated by at least

four sets of factors. (1) One is the relationship between process and structure. Both sets of concepts refer to distinct process dynamics and distinct structural configurations. (2) The second complication in comparing the terms refers to the fact that differentiation and differentiated integration are not easy to relate to each other; both contain zones of convergence and divergence. (3) The third complication refers to the fact that the terms may not be theory independent in the sense that analysts approach the terms from different theoretical traditions. (4) The fourth complication is that the terms deal with phenomena at different levels of magnitude (polity versus policy), which in turn may affect their differences. We will deal with these aspects below.

The teleology that marked much of the mainstream literature on European integration since the 1950s posits in various iterations the notion of an 'ever closer Union' – i.e. the idea that EU member states and their shared institutional arrangements would progressively grow more integrated and eventually encompass all parts of political governance. Yet, the reality of European integration has not corresponded with any form of statist teleology, neither in terms of process nor in terms of substance. Analysts have pointed to this deviation with reference to the notion of differentiated integration; the EU deviates in significant ways from both the functional and the territorial dimensions. Differentiated integration in its various forms has enabled participation of member- and non-member states in the EU's political order. Hence, it has sought to combine flexibility and difference accommodation with some modicum of stable and predictable forms of policy coordination and conduct among states in Europe. Although differentiated integration enables states with various interests and policy specifics to participate in flexible types of co-operation in institutionalized integration frameworks, a political order based on differentiated integration is – necessarily – highly unwieldy. If exceptions and vetoes are the rule and a condition based on which states can accept integration, political orders are prone to dead-lock and – in crises – prone to collapse.¹⁹ A similar logic applies to differentiation in general: the more differentiated the polity is in functional, territorial and hierarchical terms, the more unwieldy and difficult it will be to govern. Such a highly differentiated polity would exhibit value and institutional diversity and the predominance of local rationalities, with very little scope for any form of coherence.

What we have seen in the last decade in the EU is that whereas it has been hit by a series of existential crises, it has *not* lost its steering- and policy coordination-capacity. On the contrary, in responding to crises, it has pursued a policy of fiscal restraint with dogged determination, and has developed various new structural arrangements, policy instruments and initiatives, all of which enable it to act in a concerted manner. For instance, the Eurozone crisis has been averted by a concerted effort of EU institutions and international monetary institutions such as the IMF, Eurozone member states' finance ministries, finance ministries of non-Eurozone EU member states' governments, as well as new international organisations set up to deal with the

¹⁹ A case in point is, for instance, the *liberum veto* rule in the Polish kingdom prior to constitutional reform in 1791 based on the notion of full equality of all aristocratic representatives to the representative assembly (Sejm) and allowing every member to stop a piece of legislation by his own single vote. This often led to deadlocks and delays and, arguably, also to the first partition of Poland following Russian military intervention in 1767.

Eurozone crisis, most notably the European Stability Mechanism (ESM) (Ban and Seabrooke 2017; Bátorá 2020).

The EU's segmented character has enabled it to fashion quite coherent policy responses especially in the Eurozone. Segmentation allows stabilisation of patterns of interaction among a constellation of actors sharing a specific view of what are appropriate types of responses to the given crisis – in this case *ordo-cum-neoliberalism* as an ideational foundation for managing the bailout packages to Greece and other crisis ridden member states of the Eurozone (Tranøy and Schwartz 2020). There is no presumption that all relevant actors will share the same view, as was clear in the division between North and South in the Eurozone crisis. Here, the most powerful actors were able to impose their views.

The EU's ability to fashion coordinated responses to thorny issues, whilst at the same time allowing for increased differentiation, underlines our main point, namely that a segmented political system is a *distinctly differentiated polity*. It operates according to a distinct logic of segmentation that may both serve integration and differentiation, and do so in a distinct manner. The notion of segmented political system yields precision to the manner in which the EU is institutionally and structurally configured. In depicting the EU political and institutional system as a segmented political system, we obtain a more nuanced conceptual apparatus that helps us to specify different types of political systems, and how a given political system tags onto a given configuration of differentiation.

The implication in structural terms is that we should abandon the statist analogy and the manner in which statist think about differentiation. Instead, we should build on what we presented above on the EU as a segmented political system, and spell that out in further detail with specific focus on how a segmented political system is configured in differentiation terms. We then need to analyse differentiated integration in relation to the EU's segmented traits. That provides a much more specific vantage-point for assessing the nature and dynamics of EU differentiation.

In the following, we spell out in further detail the main points of convergence and divergence between differentiated integration and a segmented political order. As noted above, a complicating factor here is that the terms are far from theory independent; neither is their usage. Differentiated integration is primarily analysed from the vantage point of law and rational-choice institutionalism, whereas our approach to segmentation and segmented political order is steeped in sociological and historical forms of institutionalism. We therefore include the theoretical difference in our brief assessment below. A further complication is that differentiated integration refers to policy or rule-specific measures (exemptions, exceptions, opt-outs and opt-ins); the process of integration (different speeds and time-scales); and the structure of the polity. The differences between the terms vary according to which of the three dimensions are in play.

There are six sets of factors to explicate the similarities and differences between segmentation/segmented political system on the one hand and differentiated

integration/differentiation on the other. The six sets of factors are as follows: (1) demand and supply of differentiated integration; (2) integration; (3) the institutional and procedural centre of gravity; (4) driving mechanisms; (5) patterns of organisational learning and adaptation; and (6) democratic governance. In the following, we will discuss these six factors.

(1) Consider first **demand and supply of differentiated integration** in terms of exemptions, exceptions, opt-ins and opt-outs. Here, students of differentiated integration focus on the *role of the member state in the EU*. They see differentiated integration as constituted by states and governments that negotiate participation in and/or opt-outs from various more or less institutionalized formats of co-operation. Indeed, differentiated integration confirms the role of the state as the constituting unit (Bellamy 2019). In the terminology introduced by Ruggie (1993), differentiated integration as a state-driven process is state-centric and homonymous. If this state-centred view is how analysts view integration, then differentiated integration would effectively preclude state-formation on the polity level.

A segmented political order is not state-centric in the modern sense of the term. It is instead based on stabilized constellations of processes and interactions between various actors and structures across governments, international organisations, private enterprises, NGOs and civic groups. The closest a segmented political system comes to statehood is through the analogy to the rather peculiar pre-modern form of statehood, which lacks the magnitude of territorial and functional penetration and control that we find in the modern state (Tilly 1993).

(2) Second, differentiated integration and segmentation vary with regard to **integration**. Segmentation can foster policy co-operation and joint solutions within segments. At the same time, segmented political orders do not necessarily emerge through integration, but can emerge through partial disintegration. One option is by means of states collapsing into segmented political systems by limiting their functional repertoire and/or losing the capacity to control territory. The other is through states coming together to form a new entity that is neither a state nor an international organisation, but a partial and lopsided polity consisting of one or more segments – with limited ability to summon own resources and constraints on its scope and depth of action.

(3) Third, students of differentiated integration have a different conception of **the institutional and procedural centre of gravity** than do students of segmented political systems. Students of differentiated integration focus on: (a) structures, institutions and formal rules of policy-coordination; and (b) processes of states joining and enacting their participation in such integration frameworks and/or, indeed, on opting out from these and enacting their non-participation. Students of segmentation and segmented political orders focus on networks and interaction patterns stabilizing constellations of collaborating actors and structures, i.e. across governments, EU institutions, non-state actors and private enterprises in stabilized constellations of collaboration within specific sectors. Whereas differentiated integration is characterized by co-operation between hierarchies and based on hierarchical principles – i.e. attention to formal rules

and treaties, clear boundaries between participating organisations, and actors' position in formal structures; the logic of segmentation is based on network forms of co-operation characterized by informal ties, re-current interactions, exchange of commodities with no stable value (e.g. information), and some sense of mutual obligation and trust.²⁰

(4) Fourth, differentiated integration differs from segmentation in terms of the key **driving mechanisms**. In differentiated integration, it is joint performance of selected policy functions. States participate in performing these together or they opt-out. In terms of segmentation, in contrast, the key mechanisms are shared ideational frames and/or ideologies that enable actors across different institutions and societal sectors to perceive policy problems in similar ways within distinct structural configurations that organize-in particular policy solutions and organize-out others. Examples of the latter include, for instance, the ordo-cum-neo-liberal frame in dealing with the 2010s Eurozone crisis (Tranøy and Schwartz 2020); or the securitisation frame in dealing with the migration crisis of 2015-16 (Bátora and Fossum 2020). Indeed, frames seem to be potent mechanisms for mobilizing attention and resources for particular types of policy solutions. As the study of crisis management in the EU's recent crises shows, while EU member states easily end up abandoning joint precepts for performance of joint policy functions when hit by crises and return to national solutions, mobilisation of crisis response is helped by shared perceptions, frames and ideologies among key actors.

(5) Fifth, students of differentiated integration generally place less emphasis on the **patterns of organisational learning and adaptation** (for key sources, see March and Olsen 1976; Levitt and March 1988) than do students of segmentation. Students of segmentation see organisational learning as characterized by exploitation of existing frames across stabilized constellations of actors in governments, parliaments, EU institutions, private enterprises and NGOs. Changes in the environment are interpreted within such segments, and learning can involve path-dependent adaptations. In this sense, organisational learning in segmented contexts is likely to generate coherence in adaptation patterns within the segment, but not across the different sectors of the political order. Reliance on established solutions and pervasive exploitation can lead to competency traps or learner lock-ins (Fossum 2020). In parallel, learning dynamics in EU-wide segments may challenge patterns of exploitation in national contexts and dislodge existing competency traps there.²¹

(6) Sixth, there is a difference between the effects that differentiated integration and segmentation have on **democratic governance**, and how these effects can be dealt with from a democratic perspective. Students of differentiated integration insofar as they see democratic governance as anchored in the member states, focus on structures and

²⁰ For models of hierarchies and networks as organizational paradigms, see Powell (1990).

²¹ Arguably, management of the financial / Eurozone crisis in Greece by the Troika was an example of how external segmental logic building on ordo-liberal frames dislodged existing patterns of performing fiscal and economic governance in Greece (Chatzistavrou 2020). In general, a change in organizational structure can lead to dislodging existing competency traps (Levinthal and March 1993 ; Sigelkow and Levinthal 2005).

processes for conducting democratic scrutiny of governmental agencies' participation in different formats and frameworks of differentiated integration. In terms of how co-operation is formed we find that member state governments' instrumental preferences play a key role (Moravcsik 1998). The democratic relation is often framed in principal-agent terms, with the member states the principals and the EU-level institutions the agent. An important democratic challenge then is agency drift, creeping competence and other developments that undermine the principals' ability to control the agent. International institutions can exacerbate the problem of 'democratic disconnect between the peoples of the constituent states and the inter- and multi-national decisions their domestic representatives make in their name [...]' (Bellamy 2019: 12). Nevertheless, in a globalized and interconnected world this disconnect cannot be abrogated by domesticating decision-making, because that renders people vulnerable to external domination. As Bellamy underlines, '[r]ather than subverting democracy at the national level, global institutions are in many respects vital to its continuing effectiveness and acceptability in an interconnected world' (2019: 3). The solution is however not democratizing global institutions. Instead, 'they can acquire this legitimacy not by becoming themselves sources of democratic authority but through being under the democratically authorised and accountable control of the states that established them and regulate their interactions through them' (ibid: 3). Differentiated integration is in this context intrinsic to the democratic character and operation of the multilevel EU system.

Segmentation and a segmented political system pose serious challenges for democratic governance, but these are not the same as those we identify under the heading of differentiated integration, as spelled out above. Segments as stabilized constellations of actors promoting policies in various fields of governance boost collective action capacity in delivering policy solutions. This can strengthen output legitimacy (cf. Scharpf 1998). Nevertheless, a segmented political system is one where segments foster particular kinds of closure and generate – and entrench – biases as well as side-lining democratic bodies. An important difference then, is that students of differentiated integration operating from an intergovernmental perspective tend to downplay the role of such bodies as the European Parliament, and therefore have problems accounting for the EP's rising institutional role and presence in the EU. Students of segmented political systems underline how the rise of the EP was associated with de-segmentation, whereas the EP was side-lined under the conditions of segmental closure that occurred during the financial crisis. As the case of the ESM and Troika involvement in implementation of the bailout packages in Greece after its 2011 financial breakdown indicates, the ESM has brought in *ordo-cum-neo-liberal* solutions that worked. At the same time, however, decision-making processes related to the bailout packages were seen as closed and impenetrable and were generating various types of hegemony and dominance (Chatzistavrou 2020; Fabbrini 2016). Indeed, as some of the direct participants in the processes argued, the EU and its economic governance could be characterized as being under control of an unaccountable 'deep-establishment' (Varoufakis 2017). Operation of segments in EU governance is often characterized by informality, by interstitial organisational structures with special statuses, and which are situated on the fringes of and/or outside the *remits* of the EU treaties. Given such features, it is not always straightforward to pinpoint where the

responsibility for particular decisions lays, and how democratic scrutiny could be properly performed. De-segmentation as restoring democracy is therefore not simply a matter of empowering national parliaments as intergovernmentalists underline, but equally about empowering the European Parliament to enforce proper control and accountability at the EU-level. De-segmentation in an EU-context requires reinforcing the EU-level as a relatively autonomous governing level; hence de-segmentation requires both capacity-building and strengthening of representative democracy at the EU-level.

Conclusion

In this paper, we have taken as our point of departure that the EU that emerged out of the fiscal and refugee crises has continued to integrate, even if the pattern of integration has become more differentiated. Hence, as is frequently pointed out, there is less assurance than before that all states will integrate at the same pace, or even that all will eventually reach the same destination. Our concern in this paper was to reflect on what a more differentiated EU entails in terms of the appropriate designation of the EU as a political system, and the processes that propel this entity. We sought to specify the phenomena and dynamics that the terms differentiated integration and differentiation referred to, and thereafter queried whether they could adequately account for the EU's nature and development. Neither terms offer a positive designation of the EU; hence, the difficulties in sorting out the different dimensions involved: policy-specific versus system-specific; structure-specific versus process-specific. In order to explicate the EU's character qua polity, we introduced a third term, namely the notion of the EU as a segmented political system, and as part of that segmentation as a distinct action logic. We outlined the defining features of such a system, and have underlined that the institutional arrangement at the EU-level has obvious traits of a segmented political system.

The designation of the EU as a segmented political system has clear bearings on how we understand and analyse differentiation and differentiated integration, given that a segmented political system is a *distinctly differentiated polity* that deviates in key ways from the manner in which we think of differentiation in the nation-state context. Thus, by linking differentiation to the notion of segmented political system, we can hone in on and specify how we understand and analyse differentiated integration. The present literature relies on differentiated integration both to depict the EU's distinct differentiation configuration, and the process whereby states demand and the EU level supplies exceptions, exemptions, deviations from rules and institutional arrangements. By introducing the notion of segmented political system, we have a benchmark for assessing the implications of more or less territorial and functional differentiation. We can apply the same type of analysis to differentiated integration, but now with the underlying phenomena and dynamics more clearly delineated.

The overall implication of this analysis is that we should work from the positive designation of the EU as a segmented political order. That means abandoning the implicit statist analogy that crops up and muddies our conceptions of the EU.

Ironically, such an approach renders more useful what statisticians think about differentiation, because we can consider that in relation to a positive delineation of the EU qua segmented political order.

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