



International Economic Law Practicum

**ANALYSING THE DIFFERENTIATED INTEGRATION POLICY OF THE EUROPEAN
UNION**

Recommendations for OECS States

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List of Abbreviations

Abbreviation	Full Form
Art	Article
ASFJ	Area of Freedom, Security, and Justice
CAP	Common Agricultural Policy
CARICOM	Caribbean Community
CCJ	Caribbean Court of Justice
CEEC	Central and Eastern European Countries
CFSP	Common Foreign and Security Policy
DI	Differentiated Integration
EDF	European Defence Fund
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EMU	Economic and Monetary Union
EU	European Union
GDP	Gross Domestic Product
GNP	Gross National Product
IGC	Intergovernmental Conference
NATO	North Atlantic Treaty Organisation
OCT	Overseas Countries and Territories
OECS	Organisation of Eastern Caribbean States
ORs	Outermost Regions
PESCO	Permanent Structured Cooperation
QMV	Qualified Majority Voting
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
US	The United States of America

Executive Summary

Differentiated Integration (“DI”) plays a crucial role in the European Union’s (“EU”) functioning, allowing for tailored integration approaches considering the diverse characteristics of member states. The EU’s legal framework encompasses various forms of DI, including multi-speed and multi-end differentiation, voluntary and involuntary differentiation, and internal and external differentiation. Examples such as the Single Market, Economic and Monetary Union, and the Schengen Area highlight the complexities of integration processes.

Despite DI’s significance, challenges persist, particularly for small states. Small states often face involuntary differentiation, limited sovereignty concerns, and a lack of bargaining power in decision-making processes. They may perceive integration as a threat to national identity but recognize the benefits of cooperation in a globalized world. The effectiveness of DI has been debated, but it has predominantly been embraced as a mechanism accommodating heterogeneity among member states. Early indications of DI can be traced back to the foundational Treaty of Rome, emphasizing its integral role in the European Integration project. However, challenges persist, especially concerning perceptions of 'second-class' membership among small states.

Small states navigate various challenges within the EU framework, including concerns over involuntary differentiation, fears of losing sovereignty, and limited bargaining power in decision-making processes. Policy decisions often favor larger states, leaving small states as mere decision-takers rather than decision-makers. The lack of coalition potential further exacerbates the disparity in influencing policies. Various small states, including Hungary, Slovenia, and the Czech Republic, voice apprehensions about DI's potential implications for their status and influence within the EU. They advocate for equitable treatment and enhanced participation of small states in decision-making processes.

The European Union has crafted integration policies tailored to meet the needs of remote small islands, recognizing their unique socio-political requirements and geographical challenges. These islands, known as Outermost Regions (ORs), belong to France, Spain, and Portugal, but are situated in remote locations such as the Atlantic or Indian Ocean. Currently, nine islands are categorized as ORs and are EU members. While these islands enjoy EU membership, they are granted exemptions in primary and secondary law to ensure fair treatment among member states. Differentiation based on objective differences is accepted, but differentiation based on purely political grounds is not compatible with EU policy, as confirmed by the Court of Justice of the European Union (CJEU).

The legal basis for differential treatment of ORs and other islands is found in Articles 174 and 349 of the Treaty on the Functioning of the European Union (TFEU), which define islands as territories with specific geographical characteristics. Article 355 of the TFEU confers special status on ORs, allowing them to derogate from certain treaty provisions to address their unique challenges. Key criteria for qualifying as ORs include their remote or insular nature, small size, challenging topography, harsh climate conditions, economic dependence, and economic development challenges. While GDP is considered a factor, the focus is on structural disadvantages rather than economic backwardness.

The analysis extends to small island states in the Caribbean, particularly those within the Organisation of Eastern Caribbean States (OECS) and the Caribbean Community (CARICOM). These states share characteristics of smallness, vulnerability to natural hazards, trade openness, and tourism-dependent economies. While the challenges faced by Outermost Regions and Caribbean states vary, the vulnerability index associated with very small island states aligns with criteria employed for ORs' special status.

CARICOM has explored differentiated integration (DI) through variable geometry, allowing for varying degrees of cooperation and integration based on political will and capacity. However, execution remains a challenge, with delays and indecisiveness hindering progress. Lessons from the EU, such as the principles of proportionality and subsidiarity, can inform CARICOM's integration efforts. External solidarity over internal divisions and constructive abstention can facilitate consensus on foreign policy matters. Reintegration strategies, including legal engineering and separate agreements, offer avenues for closer participation in integration processes.

Small states within CARICOM, like OECS members, can leverage supranational bodies and collective bargaining power to advance their interests. Minilateralism and macroregionalism enable cooperation and objective realization. A small-states-centric approach, guided by parliamentary debates and declarations, can foster accelerated implementation and address the concerns of disadvantaged countries within CARICOM. Ultimately, adopting strategies informed by the EU's experience and tailored to the Caribbean context can enhance regional integration and address the challenges faced by small island states.

Iceland maintains strong ties with European nations through the European Economic Area Agreement (EEA), which enables access to the EU's internal market. As an island with a small population and limited arable land, Iceland relies heavily on exports, particularly fisheries products and renewable energy industries. The EEA Agreement, in place since 1994, aligns regulations and principles between EU member states and EEA states, ensuring the free movement of goods,

capital, services, and individuals. Despite not being an EU member, Iceland fully implements the Schengen Agreement, eliminating internal border controls. The EEA Agreement guarantees Icelanders rights to reside, work, and study within the region, contributing to Iceland's economic and social development. While maintaining bilateral relations with EU member states, Iceland faces challenges such as lack of formal representation and outdated EEA policies. Efforts are underway to increase Iceland's influence on EU legislation and update the EEA Agreement to address contemporary issues such as AI, FinTech, and climate change, aligning EU policy goals with Iceland's national interests.

Malta's strategic role in the fifth European Union enlargement in 2004 and 2007, as one of the twelve Central and Eastern European Countries, showcased a nuanced approach to differentiated integration (DI). As the smallest prospective EU member state, Malta aimed to maximize its position by emphasizing its unique attributes during the accession process. The case study explores Malta's differentiated integration through several lenses, including property acquisition, a 25-mile exclusive fishing zone, limitations on the free movement of workers, and the distinctive status of the smaller island of Gozo. In property acquisition, Malta's permanent derogation aims to balance EU principles with its specific challenges, impacting housing dynamics. The 25-mile fishing zone illustrates flexible adaptation to EU policies, balancing environmental concerns and economic reliance on fishing. Limits on free movement of workers addresses Malta's concerns about its labor market, showcasing flexibility and recognition of small market challenges. The unique status of Gozo, though recognized in a unilateral declaration, lacks legal binding force, emphasizing the nuanced nature of EU negotiations. Overall, Malta's case showcases the EU's adaptability, by recognizing and addressing the unique challenges faced by smaller member states through differentiated integration.

Part I: Introduction

Differentiated Integration has a longstanding importance in the functioning of the European Union (“**EU**”). Rather than uniform integration, the EU leaned towards differentiated integration considering the diverse characteristics of member states. The mechanism cumulatively has helped achieve the goals, as it allows exemption or exclusion of individual member states from legally valid rules embedded in treaties and directions. Policies ranging from European Economic Area (“**EEA**”) to Schengen Area Agreement have enlivened the concept of differentiated integration. Not to mention, Treaties like the Treaty on the Functioning of the European Union (“**TFEU**”) also embody the principles of differentiated integration.

Adding to it, a variety of factors influence the type of differentiated integration to be employed for all-encompassing development and coherency. Precisely, the small size of a state and its perception about the Union altogether shape varied interests in assessing their capacity in joining the Union. Several methods like the Variable Geometry method, multi-speed and multi-end method, and a la carte approach have been formulated to address these concerns. Despite the existence of these methods, tensions between the small states and predominant states have not simmered. Various countries like Malta, Iceland, and Hungary have voiced their dissatisfaction with the treatment received and echo their aspirations for a seat at the center table.

Across the Atlantic, the Caribbean Community (“**CARICOM**”) faces a similar situation. CARICOM is an intergovernmental organisation comprising of fifteen states aimed at political and economic integration of the states throughout the Americas and Atlantic Ocean. Similarly, a sub-regional organisation in the form of Organisation of Eastern Caribbean States (“**OECS**”) was established comprising of eleven of the fifteen countries member of CARICOM. All the member states share similar geographical characteristics and threat to natural hazards like hurricanes, except OECS member states are typically small in size. Differentiated Integration has more often than not featured in official documents and policy structures of CARICOM. However, similar to the EU, the discontent of small member states in CARICOM reverberates in policy-making processes and establishment of a sub-regional organisation altogether.

Against this backdrop, this report aims to highlight the historical aspects of differentiated integration in the EU and sketch the incorporation of various forms of differentiated integration in EU policies. Part I is the introduction to this unique report. Part II outlines the Literature that was reviewed in the construction of this research paper and examining differentiated integration in the EU making recommendations to OECS member states, which are small islands that are a

part of the bigger regional integration grouping of CARICOM. Part III provides a synopsis of Differentiated Integration and Small States: in the context of the European Union framework. Part IV addresses Differentiation Policy in the context of Small Island States, while Part V presents the case studies of Iceland and Malta as two island Small States of the EU grouping demonstrating the lessons OECS Member states ought to learn from how differentiated integration is achieved from the EU's treatment of these two small island states. Lastly, Part VI attempts to provide feasible recommendations for equitable treatment of small states and Part VII is the concluding remarks.

Part II: Literature Review

During the process of creating this report, the authors came across several scholarly writings on Differentiated Integration in the European Union. However, there have been rare sightings of literature on Differentiated Integration in the European Union as recommendations for OECS Member States, small island states which form part of a larger regional grouping of CARICOM. Hence, the list of scholarly writings that aided in arriving at subsequent conclusions are as follows:

I. Differentiated integration in the European Union: Institutional effects, public opinion, and alternative flexibility arrangements by Frank Schimmelfennig, Dirk Leuffen and Catherine E De Vries

The research on differentiated integration (DI) in the European Union (EU) has evolved to address the causes, conditions, and patterns of differentiation, with a recent focus on its effects on institutional outcomes and public support. However, alternatives to de jure DI and its impact on efficiency and legitimacy are underexplored. The paper highlights the historical use of transitional arrangements granting temporary derogations from EU legislation, a topic previously neglected by major integration theories. Recent research has incorporated differentiation into the theory, definition, and measurement of integration. DI, characterized by incongruent legal validity with EU membership, exhibits multitier differentiation in core state powers and encompasses exemptive and discriminatory forms. The causes and conditions of differentiation have been extensively studied, predominantly within an intergovernmentalist framework.

The rationalist assumption that governments choose DI as an efficient policy underlies much of the positive theorizing, but the focus is often on short-term benefits rather than long-term consequences. The assessment of DI's effects traditionally revolves around efficiency and legitimacy, with a preference for uniform integration but a recognition that DI may be preferable to the status quo of no integration. However, there is a lack of scholarly attention to the consequences of DI. The paper proposes an analytical framework centred on efficiency and legitimacy to study the effects of different types of DI, addressing this gap in the literature. Findings from the InDivEU project and its cooperation with EU3D suggest that DI may entrench existing fault lines, emphasizing the need for theoretically sound and empirically solid answers to the challenges posed by differentiated integration in European governance.

II. The European Union as a system of differentiated integration: interdependence, politicization and differentiation by Frank Schimmelfennig, Dirk Leuffen and Berthold Rittberger

The conceptualization of the European Union (EU) as a system of differentiated integration, marked by both vertical and horizontal differentiation, is central to understanding the variation in centralization levels and territorial extension across policy areas. As the EU's powers, policy scope, and membership have grown, differentiation has become increasingly prominent. This study attributes the pattern of differentiated integration to the interaction of interdependence and politicization. Internal differentiation among member states arises under conditions of high interdependence and politicization, while external differentiation occurs in highly interdependent but weakly politicized policy areas. The study illustrates these constellations through case studies in the internal market, monetary union, and defense. Measurement and mapping of differentiated integration employ indicators of extension and intensity, revealing a trajectory of integration in both vertical and horizontal dimensions that challenges the perceived dilemma between deepening and widening.

Theoretical underpinnings posit that a system of differentiated integration involves variance across policy areas and space while maintaining an institutional core. The study introduces hypotheses related to interdependence and politicization, highlighting their role in shaping integration outcomes. Empirical analyses of three policies (internal market, monetary union, and defense) support these hypotheses, demonstrating the significance of high interdependence and asymmetric politicization in influencing integration patterns. Overall, the study concludes that the development of European integration involves deepening, widening, and differentiation, with politicization gaining prominence as interdependence pressures increase. Member states with Eurosceptic citizens are more likely to contest supranational integration, while non-member states respond to high interdependence through selective integration in non-politicized policy areas. The findings emphasize the dynamic nature of differentiated integration within the EU.

III. Different yet the same? Differentiated integration and flexibility in implementation in the European Union by Sebastiaan Princen, Frank Schimmelfennig, Ronja Szczepanski, Hubert Smekal & Robert Zbiral

Differentiated integration (DI) and flexibility in implementation (FI) represent strategies within the European Union (EU) to manage the diverse preferences and concerns of member states. This article explores whether these two forms of differentiation serve as alternatives or fulfill distinct functions in EU legislation. Utilizing a dataset mapping opt-outs and flexibility provisions in EU directives, the analysis reveals a tendency for DI and FI to be used in conjunction. A qualitative examination of directives combining various levels of DI and FI elucidates that DI accommodates individual outliers, whereas FI addresses widespread concerns among member states.

This implies that DI and FI are complementary tools, each addressing different aspects of common underlying concerns. Constitutional differentiation, motivated by national sovereignty and identity concerns, emerges as a central theme, facilitating decision-making when member states struggle to agree on uniform standards. The mixed-methods approach employs quantitative analysis to establish correlations and inform the selection of cases for qualitative scrutiny. The study focuses on directives adopted between 2006 and 2015, shedding light on the nuanced interplay between DI and FI in responding to heterogeneity challenges within the EU.

IV. Differentiated Integration and Disintegration in the EU: Brexit, the Eurozone Crisis, and Other Troubles by Menelaos Markakis

The article reviews three models of differentiated integration: multiple speeds, federal core Europe, and flexibility à la carte. It explains the rationale, advantages, and disadvantages of each model, and how they relate to the finality of the European project. It also identifies four key problems with the proposals for differentiated integration: the contested rationale for conferring powers on the EU; the difficulty of disentangling policy areas; the legal and institutional complexity of organizing differentiation; and the degree of flexibility that already exists within some policy areas. The article argues that Brexit should be seen as an opportunity to reform the EU and address its problems, rather than pursuing radical differentiation. It suggests building on the existing opportunities for differentiated integration in the EU Treaties, and using any Treaty revision to give added impetus to differentiation.

FORMS OF DIFFERENTIATED INTEGRATION (DI) IN THE EU AND OECD

Opt-outs in international agreements let a country skip certain rules. This can happen when joining a group; the decision could be solo or discussed with others. People debate opt-outs because they might make a split-level membership, causing issues. But, some see them as vital to handling diverse country needs. For instance, the UK has opted out of the eurozone and the Schengen Area.

Enhanced cooperation in the EU lets a group of countries boost integration in a specific area, even if others aren't interested. At least nine EU countries can kick-start this, and it needs the green light from the European Council and the European Parliament. It is like a focused upgrade for those who want to move ahead¹.

¹ Juan Santos Vara and Ramses A Wessel (eds), *New Options for Differentiated Integration in the European Union* (Hart Publishing 2023)

Variable geometry is a way for groups of countries to work closely on specific matters, even if only some are on board. It lets integration go deeper in areas with strong support, even without unanimous agreement on everything. In the EU, this approach has been used in the eurozone and Schengen Area—some countries diving in while others stay out. For instance, some OECD countries are participating in the OECD's Common Reporting Standard on automatic exchange of financial account information, while others are not².

Table 1: (Dis)integration Along Three Dimensions

	<i>UNIFORM & INTEGRATIVE</i>	<i>UNIFORM & DISINTEGRATIVE</i>
<i>WITHIN EU FRAMEWORK</i>	Uniform internal integration	Uniform internal disintegration
	Uniform external integration	Uniform external disintegration
<i>OUTSIDE EU FRAMEWORK</i>	Uniform alternative integration	Uniform alternative disintegration
	<i>DIFFERENTIATED & INTEGRATIVE</i>	<i>DIFFERENTIATED & DISINTEGRATIVE</i>
<i>WITHIN EU FRAMEWORK</i>	Differentiated internal integration	Differentiated internal disintegration
	Differentiated external integration	Differentiated external disintegration
<i>OUTSIDE EU FRAMEWORK</i>	Differentiated alternative integration	Differentiated alternative disintegration

It is important to note that the table³ only provides a partial list of all possible types of differentiated integration. There are many other ways that countries can cooperate on different levels or participate in different policies or agreements. New and more flexible forms of differentiation are needed to address the challenges facing the EU in the 21st century.

POSSIBLE NEW OPTIONS FOR DIFFERENTIATED INTEGRATION SUGGESTED BY SCHOLARS

Modular integration means countries can pick and choose which policies they want from organisations like the OECD and the EU. An OECD country may opt to combat bribery but skip the tax administration part. It is like a customised approach to international agreements.

Flexible integration means countries, like those in the OECD or EU, can join policies at different intensities based on their needs. For instance, an EU country might opt into the Emissions Trading System without committing to the same emission targets as others. It is like a tailored approach to policy involvement.

² OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters* (2nd edn, OECD Publishing 2017) <1> accessed 12 February 2024

³ Robbert Biesbroek and Jeroen J L Candel, 'Mechanisms for policy (dis)integration: explaining food policy and climate change adaptation policy in the Netherlands' (2020) 53 *Policy Sciences* 61.

Differentiated implementation means countries in the OECD or EU can carry out policies in varied ways based on their unique situations. It is like a customised approach to putting plans into action or Differentiated enforcement is another way which lets OECD and EU countries face distinct mechanisms for sticking to agreed policies. For instance, an EU country struggling with emissions reduction targets might get extra time or face reduced fines. It is like adapting the consequences to individual circumstances.⁴

V. Governance, Effectiveness and Legitimacy in Differentiated Integration: An Analytical Framework By Sandra Lavenex & Ivo Križić

Lavenex and Križić introduce Differentiated Integration (DI) in the European Union (EU), outlining its regulatory and organizational dimensions. In the regulatory aspect, differentiation ranges from full commitment to no commitment, as seen in policies like the Euro and Schengen. In the organizational dimension, participation varies from full to no involvement, with examples such as the Schengen framework. The authors examine the effectiveness of DI in governance, aiming to assess its impact and legitimacy. They propose two benchmarks for evaluation: the No Policy Change Benchmark and the Ideal Solution Benchmark, applied across policymaking, policy implementation, and problem-solving dimensions. Various factors influencing effectiveness are considered, including the nature of the issue area, institutional capacity, and power dynamics. They argue that legitimacy is crucial for sustainable DI, emphasizing the need for perceived appropriateness and effectiveness. They highlight how legitimacy can vary based on the degree of sovereignty protection and procedural openness, suggesting that institutions with higher problem-solving effectiveness may enjoy greater legitimacy. Overall, the authors provide a comprehensive framework for analysing DI's governance, effectiveness, and legitimacy within the EU context.

VI. Differentiation In The European Union In Post-Brexit And -Pandemic Times: Macro-Level Developments With Meso-Level Consequences By Jarle Trondal, Stefan Gänzlel And Benjamin Leruth

The paper provides a comprehensive analysis of the concept of differentiated integration within the European Union (EU). It traces the origins of this concept back to the Tindemans Report in 1975 and examines scholarly debates that emerged in response to early opt-outs by certain member states. The review discusses how the Treaty of Amsterdam introduced the Enhanced Cooperation Mechanism, formalizing differentiated integration to address the EU's internal heterogeneity.

⁴ European Environment Agency, 'Climate Change Mitigation: Reducing Emissions' <1> accessed 12 February 2024

Various theoretical perspectives on differentiated integration are explored, alongside its application during the poly-crisis faced by the EU from 2007 to 2008 and its renewed focus post-Brexit. The review highlights differentiation's relevance to both integration and disintegration processes across institutional, policy, and territorial dimensions.

Additionally, it analyses the impact of the COVID-19 pandemic and Brexit on differentiation, emphasizing meso-level institutional differentiation and its implications for EU governance and territorial relations. The review concludes by proposing an institutional research agenda on meso-level differentiation, stressing the importance of understanding institutional responses to change and uncertainty within the EU framework. Overall, the review provides a thorough examination of the evolution and significance of differentiated integration within the EU.

VII. The small states of the European Union and the resilience/competitiveness nexus_by Lino Briguglio and Melchior Vella

This article provides a statistical analysis of correlation between economic resilience and competitiveness after placing the EU small states within the Vulnerability and Resilience Framework. Small states are inherently economically vulnerable owing to their trade openness and limited natural resources endowments, which ultimately leads to trade openness (imports). The findings indicate that (a) that the EU small states tend to exhibit a high degree of economic vulnerability, suggesting that they are highly exposed to external shocks and (b) that the most economically vulnerable EU small states tend to register relatively high resilience and competitiveness scores. Such high scores have been possible because of high macroeconomic stability, prudent market flexibility, sound political governance, social development and cohesion, and lastly environmental management. This would seem to suggest that economic resilience and competitiveness are related and that their resilience-building policy framework enables them to withstand or reduce the harmful effects of their exposure to economic shocks. Lastly, the paper provides some recommendations with regards to measures which can enhance their competitiveness, like identifying niche linkages, attracting investments and more.

VIII. Differentiation in the European Union and Beyond by Liesbet Hooghe and Gary Marks

The article examines the concept of differentiation within the European Union (EU), focusing on how states within the EU can opt out of common policies. It highlights that differentiation is not unique to international regimes like the EU but can also occur within states. Differentiation serves

as a negotiated response to demands for special treatment within a larger framework, with the overarching principle of decentralizing where possible and centralizing where necessary.

The benefits of scale within the EU are emphasized, as it enables more efficient policy-making and reduces costs by sharing policies across a larger population. The EU's competences are most developed in areas where scale enhances its power or where national policies have significant externalities. Differentiation helps sustain the EU framework by allowing regions with distinct cultures to opt out of certain policies, thereby preventing demands for self-determination.

The article provides a comparative view of differentiation within the EU, noting that the EU's diverse units and history of independence make it conducive to differentiation. However, empirical data presented by Schimmelfennig and Winzen suggest that differentiation mostly serves as a temporary facilitator of EU integration rather than leading to ever-looser union.

The demand for EU integration is strongest in geographically peripheral regions, with countries like Denmark and Sweden being responsible for most cases of constitutional differentiation. Sweden, for example, has initiated opt-outs from the monetary union. Overall, the article discusses the complexities and dynamics of differentiation within the EU, emphasizing its role in accommodating diverse interests and sustaining the EU framework.

Part III: Differentiated Integration and Small States: The European Union framework

“Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.”

What started with a pooling of coal and steel resources by 6 states in post-war Europe, is today the largest economic and political union of 27 European states. Over the years, the ideas of supranationalism have led to an expansion in membership of the union as well as the policy areas within its ambit. The uniformity in application of European Union (EU) law and policy has been stressed upon as one of the main tenets of European integration. In recent times, several scholarly observations have noted that this augmented level of integration could be attributed to the fact that the steps have been taken towards accommodating state preferences in the integration process.⁵ This approach has facilitated the selective application of policies and strategies tailored to the choices and circumstances of individual member states. Such differentiation can be seen in various forms since the beginning of the European integration project. European integration is thus, differentiated integration.

The EU territory includes several small island member states and islands in the Mediterranean, Baltic, North and Caribbean Seas, and in the Atlantic and Indian Oceans. Small states, even more so, small island states, face the issue of economic vulnerabilities due to multifaceted factors inter alia their size, remoteness, exposure to natural adversities and smaller population. Scholarly discourse⁶ and official declarations⁷ by member states alike acknowledge the distinctive challenges faced by these entities. This section examines the nuances of differentiated integration of the EU, specifically, differentiation on basis of the status of being a small island state within the EU framework.

I. History of the European Integration

Aimed at ensuring peace and preventing another war, the Schuman declaration urged six nations - Germany, France, Italy, the Netherlands, Belgium and Luxembourg – to create the European

⁵ Nicoletta Pirozzi & Matteo Bonomi (2022) Governing Differentiation and Integration in the European Union: Patterns, Effectiveness and Legitimacy, *The International Spectator*, 57:1, 1-17, <https://www.tandfonline.com/doi/full/10.1080/03932729.2022.2038424>

⁶ Brigugilo (1995) “Small Island Developing States and their Economic Vulnerabilities”, p.1615-1632

⁷ Declaration No. 30 on island regions, OJ C 340 of 10.11.1997.; Declaration No. 33 on Article 174 TFEU, OJ C 83 of 30.3.2010.

Coal and Steel Community in 1952.⁸ In this way, no country would be able to make weapons and turn against the other. By 1957, the Rome Treaty envisioned an ‘ever closer union’, broadening the scope to European Integration.⁹

At Rome, the Treaty Establishing the European Economic Community (EEC) was signed, to enable market integration by establishing four freedoms – goods, services, capital and persons. The treaty established a common market in manufactured goods. The plan to create a common market, rather than an Free Trade Agreement was reasoned to ensure that member states would not simply “play the same economic game by different rules,” and that their economic factors would be considered.¹⁰

The EEC was a huge success. The group’s productivity witnessed a 19 per cent increase between 1957–61, faster than the US or UK.¹¹ The GNP of member states shot up by 27 per cent in real terms.¹² In 1973, Britain, Denmark and Ireland joined the common market. Eventually, more states, including Spain and Greece joined the market. For non-members in Europe, at this point, being outside the market nevertheless meant conforming to the EU standards and laws, due to the large consumer base. Membership simply meant being able to participate in the decision-making process which would eventually affect all states.

In light of recurring monetary crises, the idea of an Economic and Monetary Union (EMU) was also hatched.¹³ Most several smaller agreements and groupings, it was finally in 1992 that the Treaty of Maastricht is signed.¹⁴ This Treaty on European Union was a milestone as it laid down clear rules for the single currency union, in addition to the framework on co-operation on justice, home affairs and foreign and security policy. The ‘European Union’ was officially established in 1993.

With the four freedoms in mind, the European Economic Area is created. The EEA was the world’s biggest free trade area, spanning 19 countries with a population of 380 million. Stretching from the Arctic to the Mediterranean, it represented 46% of the world trade.¹⁵ In the same decade, the Schengen agreement was entered into, promoting free movement of travellers between all

⁸ ‘History of the European Union 1945-59’ <https://european-union.europa.eu/principles-countries-history/history-eu/1945-59_en>

⁹ Rome treaty

¹⁰ Martin Dedman, *Origins and Development of the EU 1945-2008*, 2nd Edition, Routledge

¹¹ Id

¹² Id

¹³ Id

¹⁴ Treaty of Maastricht, 1992

¹⁵ Supra Note 6

signatory states, with no border controls. The Euro, as a single currency, was also introduced for financial transactions. In 2000s, the Lisbon treaty was signed, amending the previous treaties.¹⁶

Starting with six member states, the EU had expanded to 28 in 2013, to shrink to 27 when the UK left the union in 2020. From its initial integration in coal and steel, it has evolved into an organization dealing with all major policies for most states in Europe.

II. Differentiation in the European Union

Differentiation within the EU emerges as a consequence of its enlargement processes. It fundamentally embodies the diverse levels of heterogeneity observed within the Union, wherein uniform legal standards are applied while accounting for the varying capacities and preferences of individual member states.¹⁷ Notably, certain measures of integration are not uniformly applicable to all member states. Even when such measures are uniformly applicable, the strategies implemented to achieve these objectives may vary across member states. In fact, most EU-level agreements provide considerable room for variation at the State levels, thereby ensuring a balance between EU supranationalism and state sovereignty.¹⁸

The legal framework of the EU comprises two categories of laws: primary and secondary.¹⁹ Primary laws encompass the foundational treaties of the Union, while secondary laws are derived from these primary laws and comprise of regulations, directives, decisions, recommendations, and opinions. Differentiation is observable within both strata of the EU's legal framework.

Differentiation within primary EU law has sporadically existed since the inception of the European Coal and Steel Community Treaty in 1952. However, it gained significant traction subsequent to the enactment of the Maastricht Treaty in 1993.²⁰ Conversely, differentiation within secondary EU law has been more consistently present throughout the course of its evolution.²¹

¹⁶ Lisbon Treaty

¹⁷ The Politics of Differentiated Integration: What do Governments Want? Country Report – France <https://deliverypdf.ssrn.com/delivery.php?ID=24900000008112402811508512108209306504008202200203901606610902510011609010900911509512203101800401204509800301910311312110711405102704501908111411118081098004095126040046041080083068088117086112064065102085072020019008095023094068099024107085069067001&EXT=pdf&INDEX=TRUE>

¹⁸ 'Defending the State: Nationalism, Geopolitics and Differentiated Integration in Visegrád Four Security Policy'; https://biopen.bi.no/bi-xmlui/bitstream/handle/11250/2836961/Sitter_2021.pdf?sequence=4&isAllowed=y

¹⁹ https://commission.europa.eu/law/law-making-process/types-eu-law_en#:~:text=Primary%20versus%20secondary%20law,-Every%20action%20taken&text=Treaties%20are%20the%20starting%20point,%2C%20decisions%2C%20recommendations%20and%20opinions.

²⁰ Paolo Chiochetti, Differentiated Integration Manual, Integrating Diversity in the European Union (InDivEU)

²¹ Id

Forms of Differentiation

The concept of differentiation within the European Union can be explained through various theoretical manifestations. It can be delineated into several forms, including multi-speed and multi-end differentiation. Multi-speed differentiation represents a temporary variance in the pace at which member states aim to achieve a common objective, whereas multi-end differentiation denotes a permanent divergence in pursuing distinct goals based on respective capacities.²² Multi-end Europe refers to the idea that the EU is not a static entity and that it can evolve in different directions. This means that some member states may choose to deepen their integration with the EU, while others may choose to disengage or even leave the EU altogether. Transition periods and temporary derogations relating to accession agreements may be seen as a common example of this multi-speed of differentiation.²³ The United Kingdom choosing to leave the EU in 2016, while other member having expressed interest in further integration is an example of multi-end differentiation.

Scholars have further dissected differentiation along different dimensions within the EU framework.²⁴ This includes the regulatory dimension, which pertains to the adherence of member states to EU policies, and the organizational dimension, which concerns the participation of states within the bodies constituting the EU system. Within these dimensions, a spectrum of involvement exists, ranging from full opt-out to partial commitment or full opt-in by member states.

This differentiation may manifest in voluntary or involuntary forms.²⁵ Voluntary differentiation occurs when countries willingly choose to abstain or opt-out of certain EU policies or initiatives. In contrast, involuntary differentiation arises when specific EU states are intentionally excluded or sidelined from participating in particular policies or agreements. Voluntary differentiation can be observed through opt-out clauses like those signed by Denmark and the UK which gave them permanent rights to remain outside of the Economic and Monetary Union.

Moreover, differentiation can be observed both internally and externally within the EU framework.²⁶ Internal differentiation occurs when certain member states abstain from engaging in cooperative arrangements adopted by other EU members. For instance, the Schengen Area

²² https://liberalforum.eu/wp-content/uploads/2022/01/ELF-Multispeed-Europe-2021-Final-Briefing_unlocked.pdf

²³ Differentiated Integration in the EU: the position of small member states; https://cadmus.eui.eu/bitstream/handle/1814/3366/05_17.pdf?sequence=1&isAllowed=y

²⁴ Sandra Lavenex & Ivo Križić, Governance, Effectiveness and Legitimacy in Differentiated Integration: An Analytical Framework, *The International Spectator*, 57:1, 35-53,

²⁵ Paolo Chiochetti, *Differentiated Integration Manual, Integrating Diversity in the European Union (InDivEU)*

²⁶ id

agreement, where some member states opt out of aspects related to border control and free movement. On the other hand, external differentiation materializes when third countries selectively engage or participate in existing EU arrangements. An example of this is the EEA, where countries like Norway or Iceland, while not EU members, participate in the single market to a significant extent.

This differentiation could be instrumental, granting new members temporary opt-outs to let member states develop the necessary implemental capacities. It may also be constitutional, wherein old member states have obtained permanent opt-outs to avoid loss of sovereignty at the cost of integration.²⁷

In essence, these various forms of differentiation highlight the diverse approaches and levels of engagement within the EU framework, reflecting the intricate dynamics among member states and their distinct preferences or capacities in pursuing integration and cooperation.

Examples of differentiated Integration in EU

- *Single Market*

The establishment of the common market stands as a cornerstone of European Integration, representing one of the most consistently applied policies within the EU. However, within this overarching policy framework, exceptions and instances of differentiated integration are delineated in Article 114 of the Treaty on the Functioning of the European Union (TFEU),²⁸ signifying variations in its implementation, albeit on a limited scale. Furthermore, noteworthy is the involvement of non-EU member states, such as Iceland and Norway, in the single market through agreements forged with the EU.

While market integration constitutes the fundamental pillar, the trajectory of European integration has expanded to encompass the Economic and Monetary Union, as well as Policies on Justice and Home Affairs. The nature of involvement is differentiated as certain member states have chosen to abstain or engage to varying extents from these specific dimensions of integration.

- *The Economic and Monetary Union*

The EMU introduced a supranational currency, the Euro, and consolidated monetary policy at the EU level. However, recognizing the diverse preferences and capacities of individual nations to

²⁷ Differentiated integration as symbolic politics? Constitutional differentiation and policy reintegration in core state powers; <https://journals.sagepub.com/doi/10.1177/14651165221128291>

²⁸ Article 114 TFEU

manage their macroeconomic policies, the integration process did not impose uniformity across all participating states. For instance, countries like Sweden and Denmark, despite being EU members, have not adopted the Euro as their official currency due to specific economic considerations and political choices. The euro is legal tender in only 20 of the 27 member states.²⁹

Membership in the Eurozone is contingent upon the fulfilment of a strict ‘convergence criteria’ regarding economic and fiscal performance.³⁰ These criteria encompass parameters such as inflation rates, public debt levels, exchange rate stability, and more. This delineates a form of involuntary differentiation within the EU framework, where certain member states, due to their economic conditions or policy disparities, face exclusion from participation.

- *Area of Freedom, Security and Justice - Schengen Area*

The genesis of the Area of Freedom, Security, and Justice (AFSJ) and the establishment of the Schengen Area stemmed from the Amsterdam Treaty, envisioning greater co-operation.³¹ Central to this construct was the abolition of internal border controls, facilitating unhindered movement across participating nations. Beyond the EU, the Schengen Area encompasses associated Nordic countries alongside Switzerland and Liechtenstein. However, the notable absence of certain EU member states from the Schengen Agreement underscores the voluntary nature of participation. Moreover, some member states may wish to participate, but may be perceived as incapable of implementing the policies due to limited capacity. This could explain the continued exclusion of Romania and Bulgaria from the Schengen Framework.

III. Effectiveness of Differentiated Integration

Differentiated integration within the framework of European integration has been a subject of contention among certain factions, positing that it might ultimately lead to disintegration. Nonetheless, differentiation has predominantly been embraced as a viable mechanism fostering the advancement of the European Integration project as it aims to accommodate the inherent heterogeneity and divergent preferences among member states. Moreover, the roots of differentiation can be traced back to the nascent stages of the integration project.

Although the early Communities were commonly perceived as advocating a uniform *acquis Communautaire*, legal indications of what we now recognize as differentiated integration were

²⁹ https://european-union.europa.eu/institutions-law-budget/euro_en

³⁰ Dirk Leuffen, Berthold Rittberger and Frank Schimmelfennig, *Integration and Differentiation in the European Union*, palgrave macmillan (2020)

³¹ Michal Piechowicz, *Evolution of Schengen: An Example of Enhanced Cooperation and Differentiated Integration Model within the Area of Freedom Security and Justice*, 46 POLISH POL. SCI. Y.B. 121 (2017).

apparent even in the foundational Treaty of Rome. The concept appeared for the first time in the primary Community law in 1986, articulated in Article 8c of the Single European Act (now Article 27 of the Treaty on the Functioning of the European Union [TFEU]): “common policies where there are common interests without any constraint on those who cannot, at a given point of time, join them”.³²

Critiques have been directed towards major theories of European integration for failing to account for state sovereignty and autonomy and balancing it with the ideals of co-operation. Such failure would only lead to deadlocks or dissatisfaction amongst states, rather than any integration.³³ Scholars posit that within such a context, member states might confront two primary alternatives: either opting for a complete withdrawal from the organization or expressing their discontent through the use of vetoes or protests.³⁴ Consequently, they proposed that differentiation was the key to resolving such issues.

However, it must be pointed out that the prevailing acceptance of differentiation primarily pertains to its voluntary application. In contrast, there exists a notable aversion among member states toward involuntary differentiation. This can be observed in the contrasting viewpoints of Slovakia and Romania regarding the idea of ‘multi-speed Europe’³⁵. The former is more inclined towards embracing the concept, whereas the latter harbours more negative sentiments. These contrasting stances seem to stem from the distinct experiences each country underwent during the accession process.

Slovakia, having adopted the common currency and secured participation in the Schengen Area, exhibits a supportive stance towards the idea of a ‘multi-speed Europe’ as it aligned itself with the European ‘core’. In Slovakia, support for ‘multi-end Europe’ is rooted in its experience and aspiration of joining the European ‘core’. In contrast, in Romania “any sort of European integration involving different speeds or different shapes are perceived as a sign of discrimination that would leave Romania in Europe’s periphery”.

³² Differentiated Integration in the European Union: a Concept, a Process, a System or a Theory?; file:///C:/Users/hp/Downloads/JEPPLeruthLord.pdf

³³ Scharpf, F. W. (1996). Negative and positive integration in the political economy of European welfare states. In G. Marks, F.W. Scharpf, P.C Schmitter, & W. Streeck (Eds.), Governance in the European Union (pp. 15–39). London: Sage

³⁴ Hirschman, A. O. (1970). Exit, voice, and loyalty: Responses to decline in firms, organizations, and states. Cambridge, MA: Harvard University Press

³⁵ Differentiated integration in the EU – What do the member states ‘think’ about it? https://cadmus.eui.eu/bitstream/handle/1814/71002/RSC%202021_50.rev.pdf?sequence=4&isAllowed=y

IV. Special and Differential treatment of small states in the EU

As covered above, Differentiated Integration (“DI”) is perceived as a means to facilitate cooperation between member states, allowing each of them an option to not participate in the policy-making process. Not to mention, DI is actuated through various approaches, namely, multi-speed, multi-end, variable geometry, and more. Considering these, a veritable understanding arises, indicating positive outcomes of DI. A single-line explanation refers to DI as the ability vested in member states to opt out of specific policies until certain conditions are met. However, the small states’ outlook must be assessed in light of such practices. In this section, the EU and OECS small states’ perspectives are inferred to reach an understanding of whether DI is efficient in attaining what it is used for.

V. Small States in the EU: a General Discussion

Historically, DI has found its way into legal documents of the EU, precisely in the Treaty of Rome. Politically, it is mentioned in a Report on the future of the European integration put forth by the Belgian Prime Minister Leo Tindemands.³⁶ It can also be traced in Article 27 of the Treaty on the Functioning of the European Union.³⁷ A major conundrum arises when it comes to the classification of a state as ‘small’ or ‘large’. One must not lose sight of the influence that a small state can exercise in geopolitics in want of the size of the concerned state. It is safe to classify a state as ‘small’ on the basis of its relative territorial size or population, along with material resources, political clout, and status. Particularly for the EU, voting share is also a crucial factor for ascertaining the ‘small-ness’ of a state. On the basis of such definition, France, Germany, Italy, Spain, and Poland come across as large states of the EU, while the rest end up in the small states category.³⁸

Against this backdrop, it must be noted that small states usually perceive integration as a threat to their national identity. But in a highly globalized world, such states integrate to ensure stability, and security, and potentially offset negative externalities. DI creates a situation for the states to decide between opt-in and opt-out (to preserve formal autonomy).³⁹ A general understanding presents

³⁶ Benjamin Leruth & Christopher Lord, ‘Differentiated integration in the European Union: a concept, a process, a system or a theory?’ (2015) 22(6) J. Eur. Public Policy < <https://tandfonline.com/doi/full/10.1080/13501763.2015.1021196#:~:text=It%20suggests%20that%20studying%20differentiated,Differentiated%20integration> > accessed 1st March 2024.

³⁷ *ibid*

³⁸ Kristin Haugevik & Pernille Neiker, ‘Autonomy or integration? Small-state responses to a changing European security landscape’ (2017) 3(3) Global Affairs < <https://doi.org/10.1080/23340460.2017.1377625> > accessed 1st March 2024

³⁹ Felix Biermann, ‘The Differentiation Paradox of European Integration: Why Going it Alone Produces Suboptimal Results’ (2022) 61(2) JCMS <

that small states have a stronger preference for entering into international cooperation as compared to large states, simply because the former safeguards its interest better in alliance rather than in isolation.

When does a Small State Integrate?

A state's degree of involvement typically rests on its perception of vulnerability, economic and otherwise, which shapes its foreign policy. Not to mention, their loyalty to the Institution adds to the calculus of foreign policy participation. Noting Scharpf,⁴⁰ a member state is presented with two possibilities: either to strengthen the policy-making capacity or defend some of its own problem-solving capabilities.

Especially for small states, the power asymmetry and uneven functional pressure distribution can dissuade them from integrating. Not to mention, the emergence of an autocratic government also leads to an aversion to integration. Further, based on economic principles, a small member state may be intrigued to integrate if the benefits exceed the costs attached to such an exercise.

Country-wise position on DI

Since the Intergovernmental Conference ("IGC") of 1996-97 small states have been vocal about their views on DI, Belgium has put forth that DI must be used as a last resort', thereby creating a 'traction effect' and allowing the other member states to catch up with the leaders. Not to mention, the Danish side of the Table has voiced concerns over multi-speed Europe creating tiered membership in the EU. Austria harped on Belgium's stance and posited DI as an "exception to the rule". Not to mention, Greece was against any kind of DI by reasoning that DI could potentially destabilise unity and equality between member states.⁴¹

The IGC of 2000 was also marked by concerns of the small states with regard to lowering the percentage for forming the pioneering group under the Treaty of Nice.⁴² The proposal involved lowering from half to one-third of the critical mass. This proposal was also supported by some of

<https://onlinelibrary.wiley.com/doi/full/10.1111/jcms.13373#:~:text=The%20Differentiation%20Paradox%20%E2%80%93%20Causal,outcome%20is%20a%20suboptimal%20club.>> accessed 1st March 2024.

⁴⁰ F Scharpf, 'Games real actors could play: Positive and negative coordination in embedded negotiations' (1994) 6(1) *Journal of Theoretical Politics*, <doi:10.1177/0951692894006001002>; F.W. Scharpf, 'Negative and positive integration in the political economy of European welfare states.' (1996). In G. Marks, F.W. Scharpf, P.C Schmitter, & W. Streeck (Eds.), *Governance in the European Union*(pp. 15–39). London: Sage.

⁴¹ Steffan Telle, 'Attitudes of national decision-makers towards differentiated integration in the European Union' (2023) 21 *CEP* < <https://link.springer.com/article/10.1057/s41295-022-00303-7>>

⁴² Steffan Telle et al, 'Differentiated integration in the EU – What do the member states 'think' about it?' (2021) *EU Working Paper* < https://cadmus.eui.eu/bitstream/handle/1814/71002/RSC%202021_50.rev.pdf?sequence=4&isAllowed=y>

the small states such as the Netherlands and Luxembourg. However, there were qualms regarding formation of a ‘core group’ with a small number of states.

In the field of security interests, small states have usually aimed to line up their national interests with the EU/NATO policy. Denmark has pursued the opt-out option as provided by the Maastricht Treaty while Norway has effected a quasi-membership of the EU by becoming a part of the European Economic Arrangement (“EEA”) but not the Union itself.⁴³

VI. Challenges for Small States

As noted above, DI can generally take different forms. A significant distinction must be made between voluntary and involuntary differentiation vis-à-vis small states. Voluntary differentiation is more favourable and sought after since it allows the member states to willfully opt-out of the EU policies based on a lack of approval on the national front. However, involuntary differentiation invokes a negative assessment of the policies, for the fact that it drives the states towards ‘second-class’ membership in the Union.⁴⁴ The continued exclusion of member states is attributable to veto block of another member state of the Union.⁴⁵ A classic example can be of Romania, Bulgaria, and Croatia in the Schengen Area. Longer durations of involuntary opt-outs tend to aggravate negative attitude towards DI.

Not to mention, an overhanging association of multi-speed Europe with ‘second-class-membership’ dissuades small member states from participating. The same is reflected in the statement of the Deputy State Secretary of Hungary:

*“I think that, unfortunately, we have to talk about core Europe and the periphery, because there is a realistic chance that a core Europe will emerge. [...] if implemented as set out in the Macron plans, it could also result in a parallel institutional structure. [...] We believe that Option 3 [of the Commission White Paper], which means a multi-speed Europe with a focus on enhanced cooperation, would provide the flexibility for the current development of the European Union that the Member States could take advantage of”.*⁴⁶

⁴³ Nick Sitter, 'Defending the State: Nationalism, Geopolitics and Differentiated Integration in Visegrád Four Security Policy', (2021), 26, European Foreign Affairs Review, Issue 3, pp. 127-144,

⁴⁴ European Parliament. 2011. *Resolution P7_TA(2011)0443 Accession of Bulgaria and Romania to Schengen.*; Steffan Telle, 'Attitudes of national decision-makers towards differentiated integration in the European Union' (2023) 21 CEP <<https://link.springer.com/article/10.1057/s41295-022-00303-7>>

⁴⁵ SANDRA KRÖGER and THOMAS LOUGHRAN, 'The Risks and Benefits of Differentiated Integration in the European Union as Perceived by Academic Experts' (2022) 60(3) JCMS <<https://onlinelibrary.wiley.com/doi/epdf/10.1111/jcms.13301>>

⁴⁶ Anna Kyriazi, 'The politics of differentiated integration: what do governments want? Country report: Hungary' <<https://cadmus.eui.eu/handle/1814/69704>>

Interestingly, the parliamentary debates in Lithuania points to the negative attitude towards two-speed Europe, primarily because of chances of disintegration of the EU or hints at its usage as a tool for further marginalization of small member states.⁴⁷ Apart from this, Slovenia shares the concern with other small countries about losing its status as a core country. In furtherance of it, Prime Minister Jansa had indicated to shift gears during its Council Presidency to defend the Lisbon Treaty ‘as a basis for the EU, enabling relative equality of the member states.’⁴⁸

Not to mention, small states have a specific aversion to multi-end model of DI. The Irish perspective details about its fear of losing on the sphere of influence in the European Union. The ambition of remaining as a core country can also be seen in the Italian support for multi-end model of Differentiation.

A palpable strive to stay or join the core group of states can also be inferred from the Hungarian Minister for Public Administration and Justice’s statement in the Parliament:

“we are not willing to put up with being second-class members of the European Union, we are not willing to put up with Hungarians being a second-class nation in Europe. We must fight and the government also aims to ensure that all members, all nations, are equal within the European Union. Let there be no double standard, judge us by the same standard”⁴⁹

Aside from this, the policy of establishing the European Public Prosecutor’s Office was junked by the Member states as concerns were raised in relation to their sovereignty.⁵⁰ Not to mention, sovereignty and political maneuverability become key components for the small member states. The United Kingdom, Sweden and Denmark opted out of the EMU because of fears of sovereignty loss back home.

If a state has no say in the decision-making process, DI leads to domination by a few states. Norway, as a member of the European Free Trade Agreement, is bound by the rules but owing to its non-membership in the Union, it does not have a say in the decision-making process. Besides, the dearth in bargaining power of the small states puts them at a natural disadvantage in the decision-making process. Lack of resources, smaller economies, and lack of alternatives present a

⁴⁷ Ramunas Vilpisauskas and Inga Vinogradnaitė, ‘The Politics of Differentiated Integration: What do Governments Want? Country Report – Lithuania’ <<https://cadmus.eui.eu/handle/1814/69818>>

⁴⁸ Janez Janša, Inaugural Address in Parliament, 13 March 2020; cited in Udovič and Bučar 2021: 12

⁴⁹ Anna Kyriazi, ‘The politics of differentiated integration: what do governments want? Country report: Hungary’ <<https://cadmus.eui.eu/handle/1814/69704>>

⁵⁰ Katarzyna Walecka and Wojciech Gagattek. ‘The Politics of Differentiated Integration: What Do Governments Want? Country Report - Poland. Florence.’ (2021) <<https://cadmus.eui.eu/handle/1814/70397>>

dismal picture of either accepting the policies of the EU or remaining excluded from the scope of benefits.

A large state can go alone keeping its size and resourcefulness in consideration, however, the same cannot be said for small states due to restricted options and limited scope of unilateral actions. This pushes small states to become mere decision-takers rather than decision-makers. Adding to it, the majority of the small states (precisely for the EU) have joined the Union at the conclusion of the talks of EU enlargement.

On several occasions, a small state may find itself critical of the policy put forth by informal groupings. However, it may lack coalition potential and thereby be precluded from influencing or addressing the issues, thus leading to the adoption of a policy against its disagreement. This concern has been voiced multiple times by the Czech representatives.⁵¹

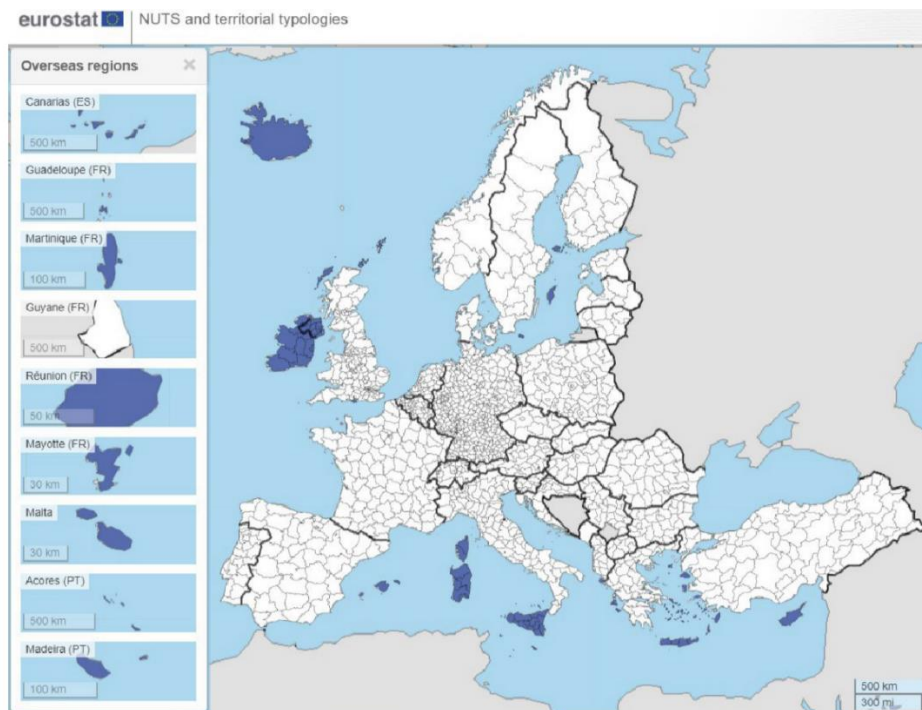
⁵¹ 'Informal Differentiated Integration in EU Foreign and Security Policy: Perspectives of a Small Member State' <<https://www.cidob.org/es/content/download/80848/2603551/version/3/file/PB%20No.%205.%20Informal%20Differentiated%20Integration%20in%20EU%20Foreign%20and%20Security%20Policy.%20Perspectives%20of%20a%20Small%20Member%20State.pdf>>

Part IV: Differentiation Policy in context of Small Island States

I. Policy Background

The European Union has tailored its integration policy to suit the needs of remote small islands. It facilitates a smooth integration while recognising the unique socio-political requirements and geographical handicaps of these vulnerable islands. This distinct category among islands is known as Outermost Regions (ORs). These islands belong to France, Spain and Portugal, but are located in parts of the globe that are remote from Europe, such as the Atlantic or the Indian Ocean.

At present, there are nine islands i.e. Guadeloupe, French Guiana, Réunion, Martinique, Mayotte and Saint-Martin (France), the Azores and Madeira (Portugal), and the Canary Islands (Spain) which are categorised as “Outermost Regions” and constitute as members of the EU.⁵² While these remote islands are members of EU, they are granted certain exemptions at a primary as well as secondary level in law to establish a level playing field between different EU member states. In this context, differentiation based on objective differences has been accepted but differentiation based on purely political grounds, or subjective differences, is not compatible with the EU policy. This understanding has been confirmed by the Court the EU. The differentiation of the small island states is justifiable within the on many occasions.⁵³



⁵² Treaty on the Functioning of Europe, Art. 355.

⁵³ Ziller (2000) “Flexibility in the Geographical Scope of EU Law”, p.113, De Búrca (2000) “Differentiation within the Core”, p. 134 and Tuytschaever (1999) Differentiation in European Union Law, p. 112-113.

Source: Eurostat 21⁵⁴

II. Legal basis for differential treatment to small island states

Islands are acknowledged as separate territories in EU laws, acknowledging their unique development challenges due to their insular and remote nature. Articles 174 and 349 of the Treaty on the Functioning of the European Union (TFEU) define islands as territories with specific geographical characteristics and provide a solid legal foundation for implementing special measures for Outermost Regions (ORs).⁵⁵ The legal basis for differentiation of ORs and other islands is found Article 355 read with Article 349 TFEU which recognises and confers special status on these islands to derogate from certain provisions of the treaty permitting them certain flexibility.

Breaking down Art. 355 TFEU		
Sub-section of Art. 355 TFEU	Content	Effect
355 (1)	Creates nine “Outermost Regions” which consist of nine small island states.	Oare considered members of EU with certain derogation permissible in primary as well as secondary law.
355 (2)	Deals with overseas countries and territories i.e. “OCT” which is a list of twenty-one territories in Annex II of the Lisbon Treaty. These are countries and territories that are not independent and are linked with France, the United Kingdom, the Netherlands or Denmark.	These overseas territories are not considered members of EU by default.
355 (3)	The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is Responsible	Overseases Countries and Territories are not considered a part of EU.

⁵⁴ Eurostat

⁵⁵ Treaty on the Functioning of Europe, Art. 74 and 349.

355 (4)	Confers special status to Aaland islands	Aaland islands is a member of EU.
Art 355 (5) (a)	Grants special status to Faroe Islands	Faroe islands is a member of EU
355 (5) (b)	Grants special status to Cyprus	Cyprus is a part of EU, however certain territories of Cyprus which are a sovereign base of UK are exempted from the treaty.
355 (5) (c)	Grants special status to Channel islands and Isle of Man.	These islands are only part of the Union for the purpose of free movement of industrial and agricultural goods but not for instance for the purpose of free movement of persons and taxation
355 (6)	Gives power to amended Article 355 and add or remove territories mentioned in it.	

For the purpose of analysing EU policy's applicability in context of OECS states, this report will focus on Outermost Regions. In this report, small islands will be considered to mean Outermost Regions.

III. Reviewing the criterion under Article 349 TFEU to qualify as Outermost regions

As discussed above, the basis for accommodating differential treatment to small island states is their vulnerability. In this part, the various parameters considered to grant the special status will be broken down and reviewed and the severity of these parameters will be analysed too. As outlined in a Planistat Europe report, one of the key criteria determining their status is their remote or insular nature. The defining characteristic shared by the Outermost Regions is their exceptional isolation and remoteness compared to other continental islands.⁵⁶ Some of the factors are as follows:

⁵⁶ Planistat Europe et al. (2003) The outermost regions, p. 7.

Distance – All the island states are situated away from continental Europe, however the proximity varies. The distance is a pivotal factor which results in implications for trade connectivity, employment and human resource development.

Insular or isolated - All islands are inherently insular, defined by their isolation as they are not part of a continent. However, the degree of isolation varies among islands. Although isolation and extreme remoteness are considered crucial factors for Outermost Regions, the disparities among these regions highlight a notable flexibility in the criteria.

Small size –

The criterion of small size for the Outermost Regions is outlined in Article 349 of the TFEU. However, the concept of small size for a state lacks a clear definition in both literature and EU law. Despite this, many scholars and institutions consider smallness as a significant factor contributing to economic vulnerability. A commonly suggested threshold for the population of a small state is between 500,000 to a million.⁵⁷

This criterion appears reasonable as the semi-autonomous and highly remote nature of these regions makes their status akin to that of small island states. In this context, ORs are sparsely populated and rely more on their own resilience and resources than European small island regions that are closer to their mainland. The compounded challenges of remoteness and insularity create an objectively unequal situation for these small islands compared to other "larger" islands or territories situated on the continent or in closer proximity.

Harsh climate conditions –

Challenging topography is mentioned as a criterion under Article 349 to qualify as ORs. Elevated areas, specifically altitude, are recognized as natural handicaps in Article 174 of the TFEU and the Common Agricultural Policy (CAP). Certain islands such as the Azores and Martinique have mountainous areas are considered to have enduring natural disadvantages due to topographic and climatic constraints on economic activities. Additionally, the Outermost Regions face limitations in cultivating their land due to the restricted usable land area resulting from a combination of mountains and their island status.

Apart from mountains, the tropical landscape of the Outermost Regions renders grazing land highly susceptible in certain areas, exacerbating the environmental challenges faced by these

⁵⁷ Report by University of Iceland

territories. Like other islands, they exhibit a heightened sensitivity to climate change, with a susceptibility to natural disasters such as volcanic activity or flooding ranking among the Commonwealth's three primary threats to a vulnerable small island economy. Although topography and climate are not considered the predominant factors distinguishing the Outermost Regions from other Union islands, the subsequent examination of Malta in this report highlights how challenging topography and climate represent vulnerabilities for it. Furthermore, as discussed later in this section, Iceland may be characterized as being exposed to challenging climatic conditions.

Economic dependence –

Article 349 of the TFEU identifies reliance on a limited number of products as a distinguishing feature of the Outermost Regions. Geographical impediments, socio-economic disparities hamper a country's ability to produce goods and services making the country dependent on a limited range of economic activities. It also makes an economy highly dependent on foreign exchange earnings and susceptible to outside economy threats. The ORS are primarily focused on agriculture and tourism services. A majority of these regions depend on a limited range of relatively similar export goods, such as bananas, dairy products, fish, sugarcane, and more. Additionally, these territories heavily rely on imports for both industrial purposes and local consumption. Due to inherent land constraints, the primary avenue for growth in most cases is through tourism, with many of these regions boasting a sizable or expanding tourist sector.

Economic development - While GDP i.e. poorness of an island is considered a factor to assess whether it qualifies to be an OR, there is growing consensus amongst scholars and institutions that it is not as significant a factor. For instance, The Canary Island, Madeira and are closely catching up with the average GDP of EU in 2005.⁵⁸ Despite how well-off the islands might be, emphasis is on the permanent structural disadvantages faced by the islands which make them vulnerable and susceptible to backwardness.⁵⁹ It is imperative to have special support policies for these islands. An important distinction is drawn between vulnerability and economic backwardness. The former is referring to an inherent structural disadvantage whereas the latter is the state of economy. Even if the islands are doing well, on account of their remoteness, limited resilience, smallness, sparse population and geographical threats will remain susceptible and should be supported by special economic measures.⁶⁰

⁵⁸ University of Iceland Report.

⁵⁹ EU Commission Report, 2007.

⁶⁰ Research paper by Koschinekov

IV. Analysis in context of OECS and CARICOM States

The Caribbean Community (“CARICOM”) is a regional group of Caribbean nations comprising fifteen members. Of them, 11 nations form a part of the Organisation of Eastern Caribbean States (“OECS”), which can largely be referred to as small states within CARICOM. Against this backdrop, a pertinent question arises with respect to the existence of a separate regional organisation within another regional organisation. The answer lies in the goal of forging economic integration and trade cooperation amongst the Eastern Caribbean states. However, a shared characteristic of all the member states is their smallness and vulnerability to natural hazards, such as hurricanes. The recent fear of climate change has further aggravated chances of getting hit by a natural disaster, apart from the capital stock depletion due to pollution. Not to mention, their distinct features also include trade openness and a tourism-dependent economy.⁶¹

The socio-economic analysis has unveiled that the Outermost Regions are not as uniform a cluster of islands as initially assumed. While all of them grapple with significant enduring challenges, the extent of severity varies among them. Additionally, the challenges faced by the Outermost Regions are not distinct; most, if not all, align with the criteria employed in the vulnerability index associated with very small island states. Similarly, akin to the vulnerability index, Article 349 of the TFEU centers on natural and structural handicaps as the underlying causes of vulnerability. Consequently, it is not the GDP of the Outermost Regions that distinguishes them from other islands. Concerning their extreme remoteness and isolation, this assessment has established that not all Outermost Regions are equally remote.

On the DI front, CARICOM has previously utilised the same vis-à-vis unrestricted movement of OECS nationals and their stay in any of the member states.⁶² However, at the 26th Meeting of the Conference of Heads of Government of CARICOM, Antigua and Barbuda expressed the need for “special and differentiated treatment” within common market for the OECS member states.⁶³

⁶¹ 'Publication: Taming Volatility: Fiscal Policy and Financial Development for Growth in the Eastern Caribbean' <https://openknowledge.worldbank.org/handle/10986/24925>

⁶² Patsy Lewis, *Caribbean Regional Integration: A Critical Development Approach* (Routledge 2022).

⁶³ Karen E Bravo, 'CARICOM, the Myth of Sovereignty, and Aspirational Economic Integration' (2005) 31 N.C.J. INT'L L. & COM. REG. <<https://mckinneylaw.iu.edu/instructors/Bravo/Caricom.pdf>>

The World Bank⁶⁴ has proposed deeper regional integration as a possible means for promoting stable growth. The premise can be found in small states' constrained budgets, and lack of resources. Regional integration helps in pooling resources and reducing costs. A key example can be that of the Caribbean Catastrophe Risk Insurance Facility.⁶⁵

Considering the past, CARICOM had broadly inculcated intergovernmentalism in their state practice. Post-global crisis in 1970s and 1980s, the Heads of Government did not meet for six consecutive years. The revision in the Treaty of Chaguaramas in 2001 led to the establishment of the Caribbean Court of Justice ("CCJ") and the Caribbean Single Market, while the Rose Hall Declaration⁶⁶ led to the adoption of the CARICOM Executive Commission to remedy the implementation paralysis and effectuate governance arrangements. Disconcertingly, only Guyana, Belize, and Barbados have become members of the appellate jurisdiction of the CCJ. Thus, underestimating the potential of an important supranational structure. Caribbean Scholar Professor Norman Girvan⁶⁷ has mentioned lack of supranationalism and collective sovereignty as a part of the implementation deficit of the Community. This is also considered as a part of the "original sin", as coined by Professor Girvan.⁶⁸

A global outlook of the Caribbean states already indicates to their smallness. Against this backdrop, the OECS member states appear as microstates. Considering this dual marginalisation of the OECS states, calls for integration become more profound. The proclivity towards differentiated integration is also reflected in the formation of a sub-regional group like OECS in itself. The complacency of CARICOM member states between 1976-1981 segued into the signing of the Treaty of Basseterre (the founding treaty of OECS).⁶⁹ DI is a must for CARICOM, as envisioned by the West Indian leaders who argued emphatically on independence not protecting them from external threats. The geography of the Caribbean posits it as a single entity rather than separate distinct entities.⁷⁰

⁶⁴ The World Bank, 'Caribbean countries can benefit from more regional integration, World Bank Says' <<https://www.worldbank.org/en/news/press-release/2017/03/29/caribbean-benefit-regional-integration-world-bank>>

⁶⁵ *ibid*

⁶⁶ Regionalism and Sub-regionalism in the Caribbean: Challenges and Prospects - Any Insights from Europe? <<https://aei.pitt.edu/33484/1/GrenadeCaribRegionalismLong2011edi.pdf>>

⁶⁷ *ibid*

⁶⁸ Norman Girvan "CARICOM's „Original Sin“ Paper presented at the CARICOM Regional civil Society Consultation, Port-of-Spain, Trinidad and Tobago, 10-11 February, 2011, p. 1.

⁶⁹ THE TREATY OF BASSETERRE & OECS ECONOMIC UNION <http://www.sice.oas.org/ctyindex/OECS/Treaty_e.pdf>

⁷⁰ W Marvin Mill, 'A Nation Divided: The Quest for Caribbean Integration' (1991) 26(2) *Lat. Am. Res. Rev.* <<https://www.jstor.org/stable/2503626>>

Part V: Case Studies

Iceland – A case study

Iceland maintains strong historical, political, and cultural ties with various European nations. Despite not being a member of the European Union (EU), its connection to the EU is primarily rooted in the European Economic Area Agreement (EEA), which became effective in 1994. The EU member states hold significant economic importance for Iceland, making the EEA Agreement a crucial component of the country's foreign policy.

As an island with an exceptionally small population, it stands as the least densely inhabited candidate nation for EU membership to date. Situated in the remote North Atlantic, only a limited portion of its land is suitable for cultivation. The primary foundation of its exports revolves around natural resources, particularly fisheries products, and industries driven by sustainable and renewable energy sources.⁷¹

The EEA Agreement serves as the unifying factor between the EU member states and the three EEA states (Iceland, Liechtenstein, and Norway), creating a unified market governed by identical fundamental regulations. These regulations are founded on the principles of the four freedoms: unrestricted movement of goods, capital, services, and individuals, along with adherence to competition rules.

Since March 25, 2001, Iceland has fully adopted the Schengen Agreement, resulting in the elimination of internal border checkpoints and controls. Individuals from countries that have implemented the Schengen Agreement are able to cross internal borders within these countries without undergoing checks.

Iceland and EU

Europe remains a significant market and cultural area for Iceland, prompting the country to uphold unrestricted and open entry to the EU's internal market through the EEA Agreement. This agreement has been a fundamental cornerstone of cooperation and relations between Iceland, the EU, and its member states, and is expected to persist as such. Through the Agreement, Icelandic businesses benefit from access to a crucial market, enjoying the free movement of the majority of goods (though not entirely for agricultural and marine products), capital (investment), and services.

⁷¹ Arndís Kristjánsdóttir. 'Small Islands Differentiation In EU Law', (Masters in Law thesis, University of Iceland, 2010).

The Agreement guarantees Icelanders the right to reside, work, and pursue education throughout the region. As an evolving framework, the Agreement faces ongoing challenges. One key goal of the EEA Agreement is the harmonization of legislation among all participating parties, aiming to ensure uniform rights for individuals and businesses across the internal market of the European Economic Area, now encompassing 31 states. The legislative process bears significant responsibility in achieving and sustaining this objective, crucial for safeguarding the legal rights of individuals and enterprises across various domains—a vital aspect aligned with Iceland's interests.

The Icelandic government places special emphasis on maintaining continuous, proactive, and close relations and cooperation with the EU and its Member States through existing agreements. It stresses the importance of active participation, asserting equality in these engagements. It has had close bilateral relations with a number of European states for decades. Enhanced relations with these nations are reinforced through various bilateral agreements, including but not limited to the EEA Agreement, the North Atlantic Treaty, and the European Free Trade Agreement Convention. Agreements like the EEA Agreement not only strengthen ties but also open avenues for collaboration in diverse areas. The primary focus is on international cooperation, spanning trade, education, culture, welfare, and security. Seeking collaboration with countries within and outside the EU remains a priority, grounded in principles of fairness, equality, and mutual benefit. Sustaining such relationships is crucial for safeguarding Iceland's interests in the future. Beyond the mentioned multinational agreements, Iceland engages in collaboration on geothermal energy with several European states, such as Hungary, Romania, and Portugal. Additionally, robust cultural cooperation exists between Iceland and numerous European nations.⁷²

Conclusion

Iceland has struck a fine balance in its relation with the EU. On account of its non-membership in the EU, it enjoys greater autonomy over formulation of its own policies. At the same, the EEA facilitates economic collaboration between EU and Iceland which further its national interests. However, there it encounters two major issues due to its stance:

1. ***Lack of formal representation*** - Iceland lacks voting powers and formal representation in the EU decision-making bodies. The insufficient representation restricts access to many of the EU informal decision-shaping processes preceding decisions, which is a major

⁷² Excerpt from the report by the Minister for Foreign Affairs to Parliament 2018, Ministry for Foreign Affairs of Iceland ,2018.

disadvantage. Since Iceland's entry into force, the impact of the EEA Agreement on the Icelandic legal environment has increased. At the same time the legal environment within the EU has changed, e.g. through the latest amendments to the EU Treaties, hence representing Iceland's interest has become more complicated. As a matter of fact, recently Iceland considered making an application to the EU for its membership but subsequently dropped the bid.⁷³

2. **Outdated EEA** – The EEA was drawn up in the 1990s and prioritizes sectors and policy which are more relevant in that period of time. There is a need to update it with an increased focus on sectors such as AI, FinTech and Climate Change.⁷⁴

In recent years there has been an effort to increase Iceland's influence regarding EU legislation and to further improve the execution of the EEA Agreement. Icelandic authorities have among other things, prepared a list of issues where they propose a detailed action plan to integrate the policy goals of EU with its own national interests.

Malta- Case Study

Malta, one of the twelve Central and Eastern European Countries (“**CEEC**”),⁷⁵ played a pivotal role in the fifth European Union enlargement, which unfolded in 2004 and 2007. The initiation of negotiations with Malta dates back to February 2000. Being the smallest prospective EU member state, Malta strategically aimed to maximize its position and emphasize its unique attributes during the accession process. In order to address the specific challenges faced by Malta, numerous transitional arrangements and permanent derogations were secured.⁷⁶ These transitional periods, outlined in Article 24 of the 2003 Act of Accession, granted Malta certain flexibilities and exemptions as it integrated into the European Union. A detailed list of these transitional arrangements and derogations for Malta is provided in Annex XI of the same Act. Compared to other aspiring member states, Malta stood out by receiving the largest number of arrangements. At the same time, many of these were time-limited transitional periods, ranging from short to extended durations; some, such as those pertaining to competition policy and agriculture, extended

⁷³ Mariánské Lázně Informal Meeting of Ministers for Regional Policy, Reflection paper on future Cohesion Policy, 22-24.4.2009.

⁷⁴ Mariánské Lázně, Informal Meeting of Ministers for Regional Policy, Reflection paper on future Cohesion Policy, 22-24.4.2009.

⁷⁵ Commission opinion of 19 February 2003 on the applications for accession to the European Union by the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

⁷⁶ Roderick Pace, ‘Malta and EU Membership: Overcoming Vulnerabilities, Strengthening Resilience’ (2006) 28 Journal of European Integration

beyond the typical timeframe, set to expire between 2011 and 2015.⁷⁷ This departure from the usual ten-year limit, as suggested by a 2001 working paper by the Jean Monnet Chair, indicated a recognition of Malta's vulnerable economy. It is noteworthy that an exhaustive examination of all the arrangements exceeds the confines of this report.⁷⁸ Nonetheless, a cursory overview will be provided to highlight measures identified by scholar Buttigieg as particularly attuned to Malta's small-island status, reflecting the nuanced considerations given to the unique economic circumstances of the country during the enlargement process.

Differentiated Integration in Malta's Property Acquisition:

Malta's property acquisition derogation exemplifies the implementation of DI to accommodate a member state's unique circumstances. It highlights the EU integration process's flexibility, showcasing tailored solutions that balance the interests of all stakeholders. Upon joining the EU, Malta faced the challenge of complying with the principle of free movement of property, which would have allowed unrestricted property purchase by non-resident EU citizens, potentially driving up prices and impacting its citizens.

A permanent primary law derogation was established in Protocol No. 6 of the Act of Accession⁷⁹. This derogation allows Malta to maintain its restrictions on non-resident EU nationals acquiring secondary residences or additional properties unless they have legally resided in Malta for at least five years. The derogation applies equally to all non-resident EU and Maltese citizens residing abroad, ensuring non-discrimination based on nationality. Furthermore, while the derogation limits the value of properties non-residents can purchase, these thresholds can be adjusted to reflect market changes, offering some flexibility. Malta's exceptional circumstances explicitly justify the derogation – its limited land and high population density. This situation is distinct from the broader concept of small island vulnerabilities, which focuses on the environmental and economic challenges small islands face.

Moreover, few principles of DI are recognized that a one-size-fits-all approach to integration may not be suitable for all member states. The derogation granted to Malta exemplifies this principle, allowing it to tailor its application of EU rules to address its specific needs. While DI does not

⁷⁷ Rose Azzopardi, 'Small Islands and the European Union' Paper prepared for the XIV Convention of the Nordic Political Science Association, Workshop on Small States in International and European Affairs, Reykjavik, 11-13 August 2005

⁷⁸ Ulrich Becker, 'EU-Enlargements and Limits to Amendments of the E.C. Treaty' (2002) In Jean Monnet Working Paper Series, No. 38, 2002

⁷⁹ "12003t/pro/06" (Europa.eu) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12003T%2FPRO%2F06>> accessed January 6, 2024

explicitly create a "multi-speed Europe," it allows for different paces of integration in certain areas based on individual member states' circumstances. Malta's case demonstrates how a member state can opt out of certain aspects of integration while remaining part of the Union. The derogation represents a balancing act between upholding the EU's internal market principles and respecting the specific challenges faced by Malta. It aims to ensure fairness for EU and Maltese citizens while protecting Malta's national interests.

A. Long-Term Impact of Malta's Property Acquisition Derogation

Malta's decision to restrict non-resident EU citizens from purchasing secondary residences has significantly affected the country's housing market, property prices, and social dynamics. Analyzing its impact on the housing market, the restrictions have reduced availability for non-residents seeking secondary properties. While this may reduce competition and slow down price increases, it could unintentionally⁸⁰ drive increased demand for primary residences among non-residents, potentially intensifying competition and raising prices in that category. This, in turn, may impact affordability for local citizens. Introducing a two-tiered system with distinct rules for primary and secondary residences may also contribute to market distortions and inefficiencies, hindering some buyers from accessing their desired properties.

Regarding property prices, the restrictions have moderated overall increases, particularly for secondary residences. While this moderation may enhance affordability for Maltese citizens seeking their first homes, it may also result in a significant price gap⁸¹ between primary and secondary residences, potentially limiting ownership opportunities for local and non-residents. Although the restrictions may somewhat mitigate speculative pressure in the secondary market, they may not entirely eliminate speculative influences on overall property prices.

From a social equality perspective, the restrictions are an attempt to safeguard access to housing and property ownership for Maltese citizens, aiming to reduce wealth disparities and promote social stability. However, concerns have been raised about potential discrimination based on residency status, questioning alignment with EU free movement principles and the potential for increased social tensions. While the restrictions aim to improve affordability for Maltese citizens, they may not directly address fundamental issues such as income inequality and wage stagnation. The effectiveness and fairness of the restrictions are subjects of ongoing debate. While they may

⁸⁰ (*Com.mt*) <<https://www.act.com.mt/wp-content/uploads/2019/12/Taking-up-residence-in-Malta-Non-EU-EEA-Swiss-Nationals-2.pdf>> accessed January 6, 2024

⁸¹ Eurostat, "House Prices and Rents Increased in Q2 2023" (*Eurostat*, October 3, 2023) <<https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20231003-1>> accessed January 6, 2024

protect national interests by moderating property prices and securing access for citizens, they also raise concerns about discrimination against non-resident EU citizens. Striking a balance between these considerations is crucial, necessitating regular reviews and adjustments based on long-term impacts and evolving market conditions.

Looking ahead, a comprehensive approach involves evaluating the ongoing impact of the restrictions and exploring alternative solutions. Implementing targeted policies directly addressing housing affordability, such as rent control and subsidies, may prove more effective and equitable than restricting property ownership based on residency. Additionally, promoting transparency in property transactions and ensuring fair market practices can benefit both Maltese citizens and non-residents, regardless of ownership restrictions.

B. Comparison

Malta's property acquisition derogation, compared to other EU exceptions, reveals intriguing parallels and divergences, particularly among small island nations and densely populated member states. Similarities arise in the shared challenges of limited land area and high population densities faced by several EU island nations, such as Cyprus and the Canary Islands. These challenges give rise to housing affordability, social cohesion, and environmental preservation concerns. In response to these challenges, similar to Malta, these countries have pursued derogations or opted out of specific EU rules, particularly concerning the free movement of capital and property. The objective is to safeguard national interests and address vulnerabilities unique to their circumstances. A notable commonality lies in the focus on favouring resident citizens' access to primary residences, often achieved through restrictions on foreign ownership or purchase limitations.

Despite these similarities, distinct differences emerge. Malta's derogation centres on secondary residences, contrasting with Cyprus, where restrictions are based on nationality, and the Canary Islands, which employ a quota system for non-resident property purchases⁸². The scope and nature of these exceptions vary, reflecting each country's circumstances. The justifications also differ, with Malta emphasizing land scarcity and population density and Cyprus focusing on cultural preservation and security, underscoring the diverse vulnerabilities different member states face. Malta's derogation is argued to have moderated price increases, while Cyprus' nationality-based restrictions encounter legal challenges and discrimination concerns. Amidst these divergences,

⁸² Natalie, "The Cost of Living in the Canary Islands – Including Taxes and Visa Routes for Expats" (*Chase Buchanan*, November 8, 2023) <<https://chasebuchanan.com/cost-of-living-in-the-canary-islands/>> accessed January 6, 2024

common challenges persist for small island nations and densely populated member states. The ongoing struggle involves reconciling national interests in housing affordability, social cohesion, and environmental protection with the EU framework's foundational principles of free movement and non-discrimination. Addressing housing affordability issues necessitates more than temporary exceptions. Sustainable solutions, including mixed-income housing developments, comprehensive land-use planning, and reduction of income inequality, are imperative. Recognising the unique vulnerabilities of smaller or geographically constrained member states is crucial, as is advocating for tailored approaches within the EU framework, as "one-size-fits-all" solutions often prove inadequate.

25 mile exclusive fishing zone

The establishment of Malta's 25-mile exclusive fishing zone, though not technically classified as a derogation, serves as a notable illustration of how DI principles can be effectively employed to customize EU policies according to the distinct requirements of individual member states. This case highlights the EU's capacity to flexibly adjust its frameworks, maintaining equilibrium among diverse interests, environmental concerns, and legal principles. This case study provides valuable insights for ongoing discussions on Differentiated Integration and its potential applications within the broader EU context by showcasing how the EU can adapt its policies to address specific member state needs. The implementation of a 25-mile exclusive fishing zone in Malta exemplifies the application of DI principles within the European Union in various dimensions.

The flexibility and adaptability inherent in DI are evident in the EU's recognition of Malta's unique circumstances regarding its fisheries industry⁸³. Rather than enforcing a rigid, one-size-fits-all approach, the EU allowed for adjustments to the Common Fisheries Policy to accommodate Malta's specific needs without resorting to outright derogations.

The concept of "multi-speed Europe" is reflected in the Maltese 25-mile zone, demonstrating that certain member states can progress at different paces within specific areas⁸⁴. While EU integration typically aims for harmonization, this zone acknowledges Malta's specific challenges or vulnerabilities in its fisheries sector.

⁸³ Sansone K, "Big Fishing Zone Is of Little Benefit to Maltese Fishermen" (Times of Malta, July 8, 2009) <<https://timesofmalta.com/articles/view/big-fishing-zone-is-of-little-benefit-to-maltese-fishermen.264120>> accessed January 6, 2024

⁸⁴ Differentiated Integration, "Making Sense of Macro-Regional Strategies in the EU" (Utwente.nl) <https://essay.utwente.nl/64838/1/Vogelsang_MA_MB.pdf> accessed January 6, 2024

The decision strikingly balances various interests. On the one hand, it addresses Malta's conservation efforts and economic reliance on its fishing industry by safeguarding sustainable practices and protecting vital fisheries resources. On the other hand, it aligns with EU principles of free movement and non-discrimination by limiting vessel sizes and preventing potential exploitation by large-scale foreign vessels⁸⁵. The implementation mechanisms are embodied in Regulation 813/2004⁸⁶, a legal framework that explicitly establishes the 25-mile zone and its regulations. This is a tangible example of how Differentiated Integration can be effectively implemented through legislation⁸⁷.

The justification for Malta's 25-mile zone revolves around sustainable development and conservation concerns, illustrating how DI can be driven by environmental considerations alongside economic and social factors. Notably, unlike programs such as the Outermost Regions' POSEI-fisheries program,⁸⁸ Malta's justification relies on general legal arguments rather than specific claims of island vulnerability. However, the island's status and reliance on maritime resources likely influenced the overall context.

Potential challenges arise in maintaining fairness and transparency. Ensuring that the 25-mile zone does not unfairly disadvantage other EU fishermen through undisclosed benefits for Maltese vessels requires continuous monitoring and transparency. Additionally, achieving long-term sustainability entails a delicate balance between conservation efforts and the economic needs of Malta's fishing industry within the designated zone.

A. Long Term Impact

Malta's 25-mile fishing zone holds potential long-term impacts, influencing fish populations, ecosystem health, and the economic dynamics of the local fishing industry. In the realm of fish populations and biodiversity, positive outcomes emerge from reduced overall fishing pressure,

⁸⁵ Dimechl. M and others, "The Potential of Fisheries Reserves as a Tool for Biodiversity Conservation. The Case of the Nautical Biodiversity Conservation. The Case of the Nautical Mile Fisheries Management Zone around Malta. Mile Fisheries Management Zone around Malta" (Edu.mt) <<https://www.um.edu.mt/library/oar/bitstream/123456789/18190/5/OA%20Conference%20paper%20-%20The%20potential%20of%20fisheries%20reserves%20as%20a%20tool%20for%20biodiversity%20conservation.%20The%20case%20of%20the%2025%20Nautical%20Mile%20Fisheries%20Management%20Zone%20around%20M.pdf>> accessed January 6, 2024

⁸⁶ "EUR-Lex - 32011R0813 - EN - EUR-Lex" (Europa.eu) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32011R0813>> accessed January 6, 2024

⁸⁷ Aimsiranun U, "Comparative Study on the Legal Framework on General Differentiated Integration Mechanisms in the European Union, APEC, and ASEAN" [2020] Asian Development Bank <<https://www.adb.org/publications/comparative-study-differentiated-integration-mechanisms-eu-apec-asean>> accessed January 6, 2024

⁸⁸ The name POSEI comes from the French acronym programme d'options spécifiques à l'éloignement et l'insularité; POSEI Scheme, EC <https://agriculture.ec.europa.eu/common-agricultural-policy/market-measures/outermost-regions-and-small-aegean-islands/posei_en> accessed 11 February 2024

potentially aiding stock recovery and contributing to habitat protection within the zone. However, concerns linger, including the potential displacement of fishing efforts and the necessity for stringent monitoring to mitigate bycatch impacts on non-targeted species⁸⁹.

Ecosystem health experiences nuanced impacts. Positive outcomes include potential trophic cascade effects and improved water quality due to sustainable fishing practices within the zone. Nevertheless, challenges arise from habitat degradation caused by other anthropogenic activities and overarching threats of climate change. The zone fosters sustainable resource management within the economic sphere, potentially elevating catch values and bolstering Malta's seafood industry reputation. Challenges, however, manifest in limited fishing grounds, heightened local competition, and compliance costs linked to stricter regulations within the zone. Striking a balance between economic viability and sustainable practices becomes paramount⁹⁰.

The impact on livelihoods, income, and employment is intricate. While some fishermen may benefit from increased catch⁹¹ values, others face challenges due to limited fishing grounds and heightened competition. The transition to sustainable practices may result in temporary income fluctuations, with potential shifts in the overall employment landscape and job losses in certain segments.

Limitations to the Free Movements of the Workers

There were concerns about Malta's ability to cope with the unrestricted movement of workers as guaranteed by the Treaty on the Functioning of the European Union (“TFEU”). There was apprehension that the small labour market in Malta might be overwhelmed by a surge of EU nationals seeking employment, potentially displacing Maltese workers and leading to a rise in unemployment. To address these concerns, Malta engaged in negotiations during the Accession Treaty to Article 45 TFEU (formerly Article 39 TEC) of the Lisbon Treaty.⁹²

As a result of these negotiations, a transitional provision was incorporated, allowing Malta to take measures until 2011 if it faced or anticipated disturbances in its labour market that could significantly jeopardise the standard of living or employment levels in a specific region or occupation. This provision enabled Malta to implement a safeguard procedure, suspending, either

⁸⁹ (*Oecd.org*) <<https://www.oecd.org/agriculture/topics/fisheries-and-aquaculture/>> accessed January 6, 2024

⁹⁰ Said A, Tzanopoulos J and MacMillan D, “The Contested Commons: The Failure of EU Fisheries Policy and Governance in the Mediterranean and the Crisis Enveloping the Small-Scale Fisheries of Malta” (2018) 5 *Frontiers in marine science* <<http://dx.doi.org/10.3389/fmars.2018.00300>>

⁹¹ (*Oceanpanel.org*) <<https://oceanpanel.org/wp-content/uploads/2022/05/Towards-Ocean-Equity.pdf>> accessed January 6, 2024

⁹² Ulrich Becker, ‘EU-Enlargements and Limits to Amendments of the E.C. Treaty’ (2002) In Jean Monnet Working Paper Series, No. 38, 2002

wholly or partially, the application of Regulation 1612/681 concerning the freedom of movement for workers.⁹³ The purpose of this measure was to restore normalcy in the affected region or occupation while ensuring that Maltese nationals continued to enjoy the benefits of the regulation.

To proactively monitor the labour market and receive early warnings of potential disruptions by way of a Declaration, Malta was granted the ability to retain its work-permit system until 2011. It is noteworthy that EU nationals seeking employment in Malta would automatically receive such permits, contributing to a balanced approach.⁹⁴

Furthermore, a joint declaration attached to the Accession Treaty emphasized that if Malta faced difficulties related to the free movement of workers, even after 2011, the matter could be brought before Union institutions. This mechanism aimed to seek solutions to any challenges that might arise from Malta's accession, demonstrating a commitment to address issues pertaining to the movement of workers within the European Union.⁹⁵

Malta was unique among candidate countries in seeking and successfully securing a distinctive arrangement of this nature. While the restrictions were often seen as a response to the size of Malta's labour market, it is important to note that such arrangements were not exclusively granted to small states or islands. Larger Member States, facing similar concerns from their own citizens regarding workers from Central and Eastern European Countries, did not receive comparable privileges.⁹⁶

Interestingly, workers from Malta and Cyprus were exceptional in enjoying full rights to seek employment in Member States from the outset. This special treatment is indicative of the recognition of their small size.⁹⁷ This underscores the fact that the concerns related to the impact of free movement on the labour market were not confined to smaller nations alone but extended to larger Member States as well.

It is known that joint declarations, such as the one in question, constitute soft law. This is explicitly stated in Article 60 of the 2003 Accession Treaty,⁹⁸ which outlines that annexes and protocols are

⁹³ Eugene Buttigieg, 'Challenges Facing Malta as a Micro-State in an Enlarged EU' (2004) Bank of Valletta Review, 29

⁹⁴ Eugene Buttigieg, 'Challenges Facing Malta as a Micro-State in an Enlarged EU' (2004) Bank of Valletta Review, 29

⁹⁵ Declaration 14 on the Free Movement of Workers, OJ L 236 of 23.9.2003 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL%3A2003%3A236%3ATOC>> accessed 7 January 2024

⁹⁶ Paul Christoffersen, 'The Preparation of the Fifth Enlargement' (2007) *The Accession Story: the EU from 15 to 25 Countries*, Vassiliou, G.(ed.), OUP

⁹⁷ Article 60 states: "Annexes I to XVIII, the Appendices thereto and Protocols No. 1 to 10 attached to this Act shall form an integral part thereof."

⁹⁸ Article 60 states: "Annexes I to XVIII, the Appendices thereto and Protocols No. 1 to 10 attached to this Act shall form an integral part thereof."

integral parts of the Treaty, while declarations are not explicitly mentioned. Consequently, declarations do not carry legally binding force. Therefore, the declaration should be considered a common international agreement, lacking binding effects on other Member States or the European Union. It is worth noting that in the event of the Commission taking action due to an overflow of workers, any legal acts resulting from such actions would be of a secondary nature, subject to scrutiny by the Court and required to adhere to the non-discrimination principle.⁹⁹

The Declaration does signal the Union's acknowledgement that the permanent features of small market size can impact a Member State's ability to fulfil certain obligations of the Union. This recognition suggests that flexibility may be necessary to accommodate the challenges posed by the size of a Member State's market.

A. Long-Term Impact of Declaration on Malta

The long-term effects of the declaration mentioned above, which grants Malta a specific arrangement in terms of restrictions on the free movement of workers, could have several implications:¹⁰⁰

Permanent Recognition of Small Market Challenges: The declaration signifies an acknowledgement by the Union that the challenges associated with a small market size have permanent features. This recognition may pave the way for a more nuanced understanding of the difficulties faced by small Member States in fulfilling certain obligations of the Union.

Flexibility for Small Member States: By allowing flexibility in accommodating the challenges posed by a small market, the declaration suggests that tailored solutions might be necessary for small Member States like Malta. This recognition of the need for flexibility could influence future negotiations and discussions, potentially leading to more accommodating measures for small economies within the European Union.

Potential for Ongoing Special Treatment: The fact that Malta was the only candidate country to seek and obtain such an arrangement sets a precedent. This could open the door for other small Member States to seek similar special treatment based on their unique circumstances. The long-term effect might be a more nuanced approach to accommodating the specific needs of smaller economies within the EU.

⁹⁹ Eugene Buttigieg, 'Challenges Facing Malta as a Micro-State in an Enlarged EU' (2004) Bank of Valletta Review, 29

¹⁰⁰ Report on the impact of the Treaty of Lisbon on the development of the institutional balance of the European Union <https://www.europarl.europa.eu/doceo/document/A-6-2009-0142_EN.html> accessed 7 January 2024

Impact on Labor Market Dynamics: The arrangement, which allows for restrictions in the event of disturbances in Malta's labour market, might impact the dynamics of the labour market over time. It could influence the patterns of employment, migration, and overall economic stability within Malta and potentially impact the attractiveness of the country for foreign workers.

Legal Precedent and Soft Law Influence: The declaration being considered soft law means that it does not have legally binding effects. However, it establishes a precedent that might influence future legal interpretations and negotiations. It sets the tone for recognizing the unique challenges faced by small Member States and may contribute to a broader understanding of how soft law can shape the legal landscape within the EU.

Potential for Adaptations and Revisions: Over time, as Malta's economic and labour market conditions evolve, there might be discussions about adapting or revising the arrangement. The long-term effects could include negotiations to reflect changing circumstances and ensure that the arrangement remains relevant and effective in addressing Malta's specific challenges.

In summary, the declaration can have lasting effects on how small Member States are perceived and treated within the EU framework. It may contribute to a more adaptive and flexible approach to accommodate the unique challenges faced by smaller economies in fulfilling their obligations within the European Union.¹⁰¹

Small-Region Gozo

Malta comprises three islands: Malta, the largest-Gozo, situated to the north and separated by an 8-kilometer stretch of sea; and Comino, a small and sparsely inhabited island.¹⁰² Gozo, with a landmass of 67 square kilometres¹⁰³ and a population of around 31,000 inhabitants, faces unique challenges due to its double insularity, environmental fragility, small population size, and limited resources. These factors collectively contribute to the vulnerability of Gozo's island economy.¹⁰⁴

The government of Malta issued a unilateral declaration attached to the accession treaty, recognizing Gozo's distinctive status as a very small island territory. This declaration explicitly acknowledges Gozo's special needs arising from its specific handicaps and, importantly, asserts

¹⁰¹ The Treaty of Lisbon: An Impact Assessment, House of Lords, 10th Report of Session 2007–08 <<https://publications.parliament.uk/pa/ld200708/ldselect/ldeucom/62/62.pdf>> accessed 7 January 2024

¹⁰² Eugene Buttigieg, 'Challenges Facing Malta as a Micro-State in an Enlarged EU' (2004) Bank of Valletta Review, 29

¹⁰³ EUROPA Research and Consultancy Services <<https://www.european-research-services.eu/>> accessed 7 January 2024

¹⁰⁴ Gozo.gov.mt. <<https://gozo.gov.mt/>> accessed 7 January 2024

that even if Malta as a whole becomes ineligible for certain regional policy measures, Gozo would still benefit from those measures.¹⁰⁵

The Maltese interpreted this declaration as a recognition of Gozo's special status within the framework of EU law. However, a response from the Commission to a question posed by MP Scicluna in the European Parliament challenged the significance of this declaration. The Commission emphasized that the declaration was a unilateral statement made by Malta, and any future evaluation of Gozo's economic and social situation would be conducted solely within the context of EU considerations.

The Commission's response makes it explicit that a unilateral declaration lacks legally binding force and, consequently, cannot serve as a basis for establishing a special EU island status. Unlike the Outermost Regions and the Åland Islands, Gozo, despite being a small and vulnerable island territory of a Member State, does not benefit from atypical protection or differentiation mechanisms.

This situation underscores the nuanced nature of negotiations and agreements within the EU, emphasizing the importance of legal instruments and collective EU context in determining the status and protections afforded to specific regions, even within a Member State.

A. Long-Term Impact of Declaration on Malta

Malta, including the smaller island of Gozo, unmistakably exhibits characteristics of a small and vulnerable island, as evident in the existing literature. Notably, during its accession negotiations, Malta secured a greater number of temporary transitional arrangements compared to other incoming Member States. These arrangements encompassed various sectors, with competition policy and agriculture standing out for their notably extended periods of validity. This prolonged validity suggests consideration for Malta's status as a small and vulnerable economy, aligning with the insights gleaned from academic literature.

While Malta did benefit from certain arrangements reflecting its economic vulnerabilities, it appears that, in general, the negotiations did not yield specific conditions tailored to its size or insularity. The exception to this is the derogation allowing Malta to maintain existing conditions regarding the sale of secondary homes to non-Maltese EU citizens. It remains unclear whether Malta actively invoked the argument of being a vulnerable small island in its negotiations with the Union. Nevertheless, it can be reasonably inferred that such reasoning was brought into play,

¹⁰⁵ Declaration 36 by the Republic of Malta on the Island Region of Gozo, OJ L 236 of 23.9.2003

particularly in the case of Gozo. However, these efforts do not seem to have met with substantial success.¹⁰⁶

The arrangements made by Malta, despite any specific concessions related to size or insularity, serve as instances highlighting the flexibility inherent in the Treaties. The adaptability demonstrated in accommodating Malta's unique circumstances, especially in terms of temporary transitional measures, underscores the dynamic nature of negotiations within the European Union. The case of Malta and Gozo exemplifies how the Treaties can be flexibly applied to address the distinct challenges faced by specific regions or territories, contributing to a nuanced understanding of the EU's approach to diverse member states.

¹⁰⁶ Eugene Buttigieg, 'Challenges Facing Malta as a Micro-State in an Enlarged EU' (2004) *BANK OF VALLETTA REVIEW*, 29

Part VI: Recommendations

Alexander Stubb categorically divided the various forms of differentiated integration into multi-speed, variable geometry, and à la carte. Multi-speed differentiation purports a model wherein a core group of states fulfills the chosen objects. Other states with differing capacities may aim to achieve the same objective simultaneously and at varying paces. This mode envisions full integration over time.

Variable geometry is a form of differentiation that allows for permanent separation from the union on an objective, acknowledging irreconcilable differences owing to development. This form envisions a less integrated union, with a group of highly integrated core states and less-integrated peripheral states. The à la carte form of differentiated integration allows states to decide the policy areas they want to participate in while choosing to refrain from integrating in other regions. This approach would result in an intergovernmental form of integration.

The historical context of CARICOM puts forth traces of variable geometry being followed in the region. In addition to adopting an intergovernmental model, variable geometry also finds its place in Article 27 Para 4 of the Revised Treaty of Chaguaramas, which reads as: “4. *Subject to the agreement of the Conference, a Member State may opt out of obligations arising from the decisions of competent Organs provided that the fundamental objectives of the Community, as laid down in the Treaty, are not prejudiced thereby.*”¹⁰⁷ Various statutory frameworks point to flexibility in their execution underscoring the “voluntary” aspect of an agreement, and enter into agreements on matters under the Organisation’s competence even when only some of them are involved.

This approach further finds support in the Dickenson Bay Declaration of 2008, where the CARICOM Heads of States affirmed variable geometry for integration “*which allow for variation in the pace of accession to the integration arrangements*”.¹⁰⁸ In addition to the statutory agreements, the CARICOM Single Market Economy also presents signs of variable geometry in its functioning. In contrast, the agreements setting the foundation of institutions like the Caribbean Court of Justice and the Assembly of Caribbean Community Parliamentarians reinforce the same principle.

However, on a careful reading of the interpretation in the Dickenson Bay Declaration, the understanding of variable geometry differs significantly from the European definition and that of Alexander Stubbs. Hence, it can be inferred that Caricom’s official interpretation of “variable

¹⁰⁷ SICE, Protocol Amending the Treaty Establishing the Caribbean Community’ <<http://www.sice.oas.org/trade/ccme/protocol1.asp>>

¹⁰⁸ Elisa Teno, ‘The Variable Geometry in the Experience of Regional Organizations in Developing Countries’ Spanish Yearbook of International Law < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2576739>

geometry” supports a flexible and practical approach to integration, thereby indicating that countries can join or take part in the process based on their own political will and ability. It allows for varying degrees of cooperation and integration. Against the backdrop, the CARICOM definition of “variable geometry” seems more suitable than any approach for the reason that the Heads of the States are aware of the perspective needed for the growth and integration of the Region, thereby according a special meaning rather than following the European version.

As will be highlighted before, execution remains a problem in CARICOM. The application of variable geometry has not been regulated or detailed through procedures or future actions. Even the West Indian Commission has critiqued CARICOM for “inordinate delay and indecisiveness, with bureaucracy, with meetings which generate rhetoric and paper but spur little action that makes a difference”. A shift needs to occur from on-paper discussions to pivotal ground actions to enforce the long-held talks on the best possible ways to integrate. Significant suggestions can be picked from the Technical Working Group’s Report on Governance on ‘Managing Mature Regionalism’.

Even though CARICOM has not achieved as much integration as the EU, some of the latter’s principles may benefit the former. Taking lessons from the EU, CARICOM can include the principle of ‘proportionality’: “*the content of and the institutional arrangements devised for Community action shall not exceed what is necessary to achieve the objectives of the Revised Treaty.*”¹⁰⁹ Complementary to it, the principle of Subsidiarity can also improve integration, which proscribes regional action in light of an individual state’s action (which is sufficient to achieve the agenda), provided the particular states showcases its commitment in pursuing that action.

As followed by the EU through the rules of the Common Foreign and Security Policy (“CFSP”), CARICOM must posit external solidarity over internal divisions. The CARICOM member states must respect the arrived commitment of the EU as a whole and restrain themselves from adopting any policy untoward to it. ‘Constructive Abstention’¹¹⁰ can serve as a possible means of adopting a unanimous decision in this regard. Precisely, it allows for reconciling dissenting opinions of the member states with the stance of the majority. A practical application of the same can be traced to Article 31(1) of the TFEU, wherein if one-third of the member states comprising one-third of

¹⁰⁹ Report accepted by Caricom sees shared sovereignty in ‘agreed areas’ <[¹¹⁰ ‘EU60: RE-FOUNDING EUROPE THE RESPONSIBILITY TO PROPOSE Differentiation in CFSP: Potential and Limits’ <\[https://www.iai.it/sites/default/files/eu60_5.pdf\]\(https://www.iai.it/sites/default/files/eu60_5.pdf\)>](https://www.landofsixpeoples.com/news701/ns0702253.html#:~:text=The%20principle%20of%20'proportionality'%20(supported%20by%20the%20principle%20of%20'></p></div><div data-bbox=)

the population of the Union constructively abstain from the decision, such decision shall not be adopted.

The decision-making process of CARICOM must prioritise the Union's interest with regard to foreign policy. All the member-states must synergise their interests with those of the Union and refrain from undertaking a contrarian stance. This can be affected by dividing the labour among CARCIOM member states, small and large, to suit their specific interests. Furthermore, 'positive differentiation'¹¹¹ as observed in the implementation of Permanent Structured Cooperation ("PESCO"), aids in accommodating varied national interests and facilitating integration. Not to mention, vertical differentiation in the form of PESCO enables legitimacy to the decisions arrived when taken in unanimity, and simultaneously restricts its abuse by requirement limitations. It achieved inclusivity by revamping PESCO as a non-binding framework for capacity building rather than a defence cooperation as intended in the Lisbon Treaty.

Furthermore, CARICOM can adopt the framework of reintegration by default,¹¹² which involves coupling an opt-out with conditions not met at present once the conditions are fulfilled. For instance, the Danish constitutional opt-out was to come to an effect as soon as the Qualified Majority Voting ("QMV") was adopted in the policies of Justice and Home Affairs. Denmark continued to comply with political and judicial cooperation until the Lisbon Treaty put an end to unanimity requirement.

Apart from that, reintegration by legal engineering¹¹³ also seems as a viable mode for closer participation. A case in point can again be of Denmark which exploited the unused rules of EU Law, in this case, basing European Defence Fund ("EDF") on industry rather than defence, it was allowed to participate in spite of the opt-out from 'defence implications'. Primarily, such involves moving the policy scope or the treaty base.

Moreover, Reintegration can also be realized through a separate agreement¹¹⁴ by limiting the exclusionary implications arising from the constitutional opt-out and defining the scope of involvement through the agreement. On the negotiation front, small states can posit themselves as "impartial brokers" and in the meanwhile, advance their interests in the Council.

¹¹¹ Jolyon Howorth, 'Differentiation in security and defence policy' (2019) 17 Comparative European Politics.

¹¹² Phillip Genschel, 'Differentiated integration as symbolic politics? Constitutional differentiation and policy reintegration in core state powers' (2022) 24(1) EUP <<https://journals.sagepub.com/doi/10.1177/14651165221128291>>

¹¹³ *ibid*

¹¹⁴ *ibid*

Referring to the asymmetrical relations mentioned above,¹¹⁵ small states of the OECS should not exclude the possibility of exerting pressure on the large states through supranational bodies established by the Revised Treaty of Chaguaramas. For that, the CARICOM member states must aim to effectively implement supranationalism along with intergovernmentalism. Rather, OECS can also exert pressure collectively for realizing their interests in CARICOM. Minilateralism and Macro regionalism serves well for the small states to achieve cooperation and realise their objectives.

A distinct reading of the Parliamentary debates of Malta can provide substantial assistance in evolving a small-states-centric approach in CARICOM. Out of all, 'Ioannina Compromise' strikes at the heart of the matter. It involves delay of the decision or reconsideration of the same by a substantial minority, even though the same is not enough to block the decision.

The CARICOM member states must carry forward the spirit exuded in the Commitments of the St. Ann's Declaration (2018)¹¹⁶ (For e.g. calling for abidance with Article 50 of the Revised Treaty of Chaguaramas dealing with accelerated implementation) and Article 142(1) of the same Treaty – positively enforcing a regime sympathetic to the concerns of disadvantaged countries.¹¹⁷

¹¹⁵ Elżbieta Opilowska and Monika Sus, 'Poland and Germany in the European Union The Multidimensional Dynamics of Bilateral Relations' (2021) https://ruj.uj.edu.pl/xmlui/bitstream/handle/item/268044/dyduch_bilateralism_within_the_european_union_2021.pdf?sequence=1&isAllowed=y

¹¹⁶ <https://publications.iadb.org/publications/english/viewer/CARICOM-Report-Progress-and-Challenges-of-The-Integration-Agenda.pdf>

¹¹⁷ <https://edit.wti.org/document/show/7fdf653d-12f1-4bb6-865e-4931bc6b2960>

Part VII: Conclusion

While CARICOM's interpretation of variable geometry diverges from the European model, it offers a flexible pathway to integration, accommodating varying levels of participation. However, despite theoretical frameworks and commitments, execution remains a challenge within CARICOM. The region must transition from rhetoric to action, implementing mechanisms for effective integration. Drawing from the European Union's principles, such as proportionality and subsidiarity, could enhance CARICOM's integration efforts, ensuring decisions align with collective interests.

Additionally, strategies like constructive abstention and positive differentiation can foster consensus and accommodate diverse national interests. Reintegration mechanisms, whether by default, legal engineering, or separate agreements, offer pathways for closer participation and collaboration within CARICOM.

Moreover, small states in the region, particularly within the OECS, can leverage supranational bodies and collective pressure to advance their interests effectively. Learning from the experiences of other small states, such as Malta, can inform a small-states-centric approach within CARICOM, promoting inclusive decision-making processes and addressing disparities.

Ultimately, OECS states must uphold its commitments, as outlined in declarations like the St. Ann's Declaration, and prioritize the concerns of disadvantaged countries to foster a more cohesive and equitable regional integration framework. By embracing these principles and mechanisms, CARICOM can navigate the complexities of differentiated integration and move towards a more robust and inclusive union.

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