



# On the Legitimacy of Differentiated Integration in the European Union

*Part II of the research project „Germany and Poland in a differentiated  
European Union“ funded by the German-Polish Science Foundation*

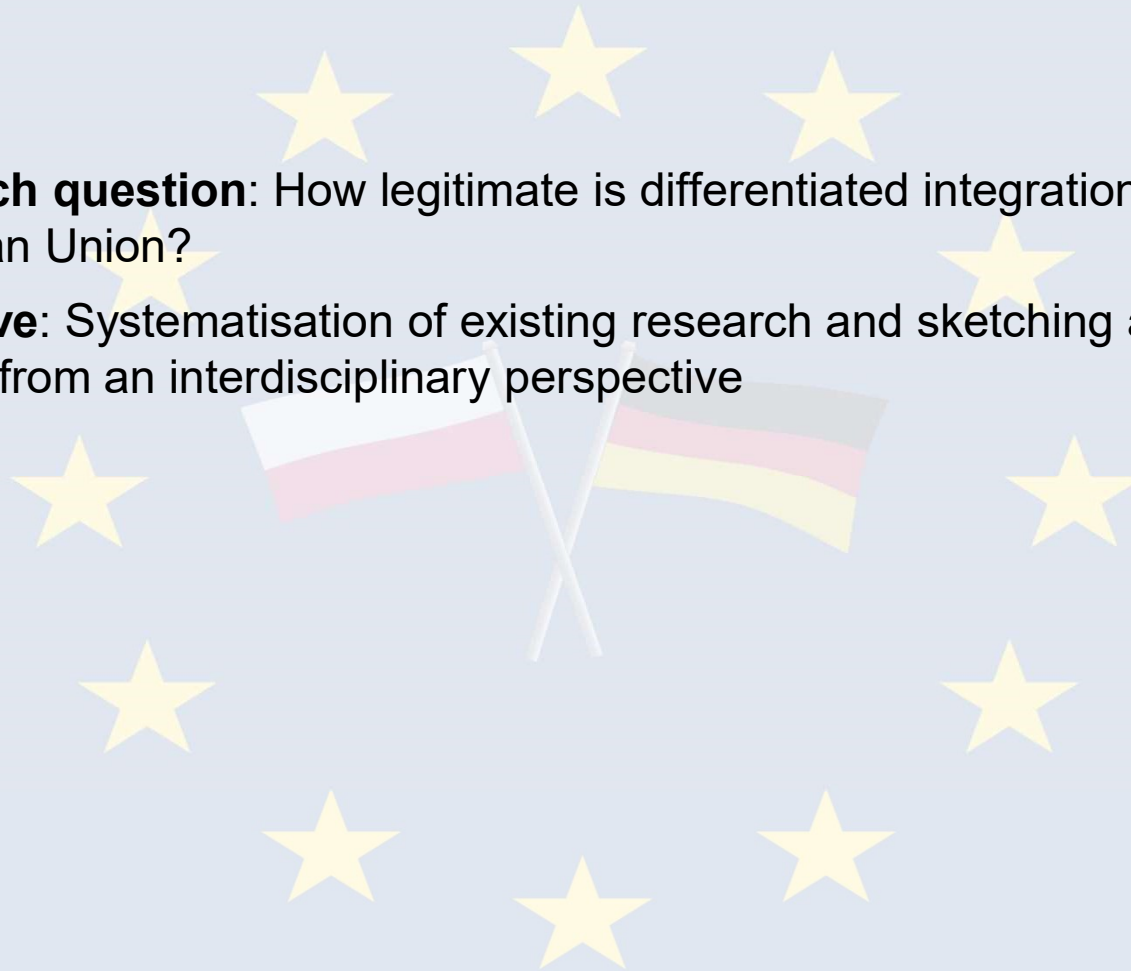
7 November 2022, University of Warsaw

# Structure

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# Research design

- **Research question:** How legitimate is differentiated integration in the European Union?
- **Objective:** Systematisation of existing research and sketching a research agenda from an interdisciplinary perspective



# Models of EU differentiation

- **Definition:** European integration is differentiated, if at least one member state does not participate in a common policy field for an unspecified period of time.
- **Conceptual ambiguity:** Alexander Stubb counts more than 30 models of DI
- **Ideal types:** Analysis of the two extreme models of (internal) differentiation
- **Multi-speed Europe (time):** common goal of (uniform) integration, fragmentation only temporary, commitment to the community method and EU treaties
- **Europe à la carte (matter):** flexible coalitions of the willing within and beyond EU Treaties, disintegration likely due to highly intergovernmental decision-making

# Legitimacy of differentiation integration

- **Relevance:** Legitimacy is the basis for any political order
- **Definition:** We juxtapose three sources of legitimacy
  - **Legal legitimacy:** Political decisions or procedures are legally legitimate if they adhere to positively stated rules.
  - **Social legitimacy:** Political decisions are socially legitimate if citizens believe in their justification.
  - **Political legitimacy:** Political decisions are politically legitimate if they can be plausibly justified with core values (particularly democracy).

# Legitimacy of differentiation integration

- **Standard of legitimacy** (Wimmel 2007): What do we compare the European Union with?
  - **Normative intergovernmentalism**: If the EU is considered an international organisation, the member states as masters of the treaties are its constituencies.
  - **Normative supranationalism**: If the EU is regarded a supranational political entity in the making, the EU citizens are its constituencies.
- **Democracy** offers a third perspective

# Legal Sources of DI Legitimacy

**Research question:** To what extent is differentiation justified under EU law?

- **Main argument:** DI is **only** justifiable within the EU legal order if it is based on EU primary law
- **EU law:** primary law (the Treaties) + secondary law (e.g. directives)
- **Integration through law:** European integration is underpinned by common legal rules and fundamental principles

# Legal Sources of DI Legitimacy

Uniformity of EU law

Equality of EU member states

Relevant EU principles

Legal certainty

Equality of EU citizens





## Legal Sources of DI Legitimacy

- Which DI model is better justified under EU law?

DI model	Examples in EU law	Uniformity of EU law	Equality of EU member states
Multi-speed Europe	<ul style="list-style-type: none"><li>- enhanced cooperation</li><li>- PESCO</li></ul>	long-term	long-term
Europe à la carte	<ul style="list-style-type: none"><li>- opt-outs</li></ul>	none	none

# Legal Sources of DI Legitimacy

- What does DI mean for the legal status of EU citizens?

DI model	Legal certainty	Equality of EU citizens	Legal basis
Multi-speed Europe	long-term	long-term	none
Europe à la carte	none	none	none

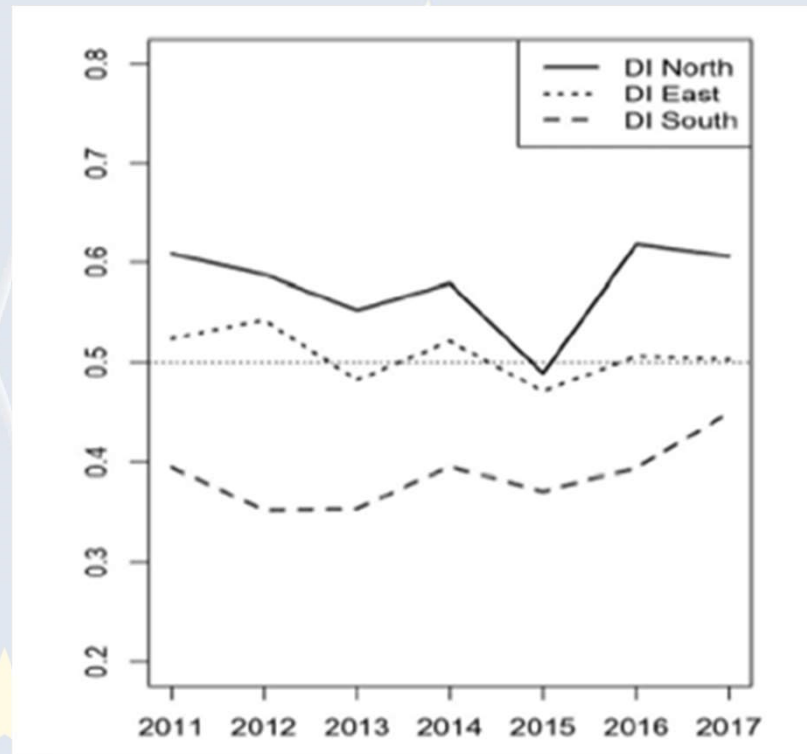
# Social Sources of DI Legitimacy

- **Research question:** To what extent do the citizens approve of EU differentiation?

## Normative intergovernmentalism

### Multi-speed Europe

- more popular among Northern member states
  - correlation with net contributors and receivers
- possible to mitigate potential conflicts



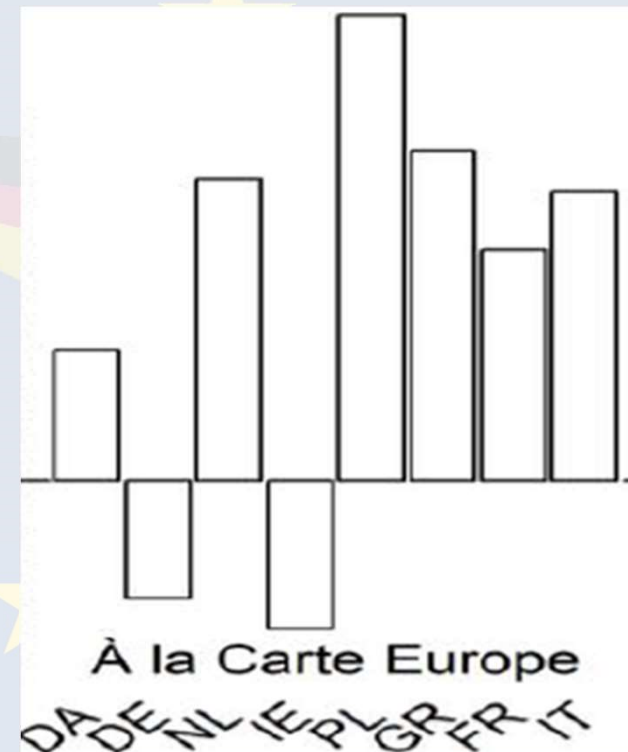
Source: Leuffen et al. 2020: 9

# Social Sources of DI Legitimacy

## Normative intergovernmentalism

### Europe à la carte

- no systematic pattern
- attitudes of rather principled nature (e.g. D)
- difficult to mitigate potential conflicts



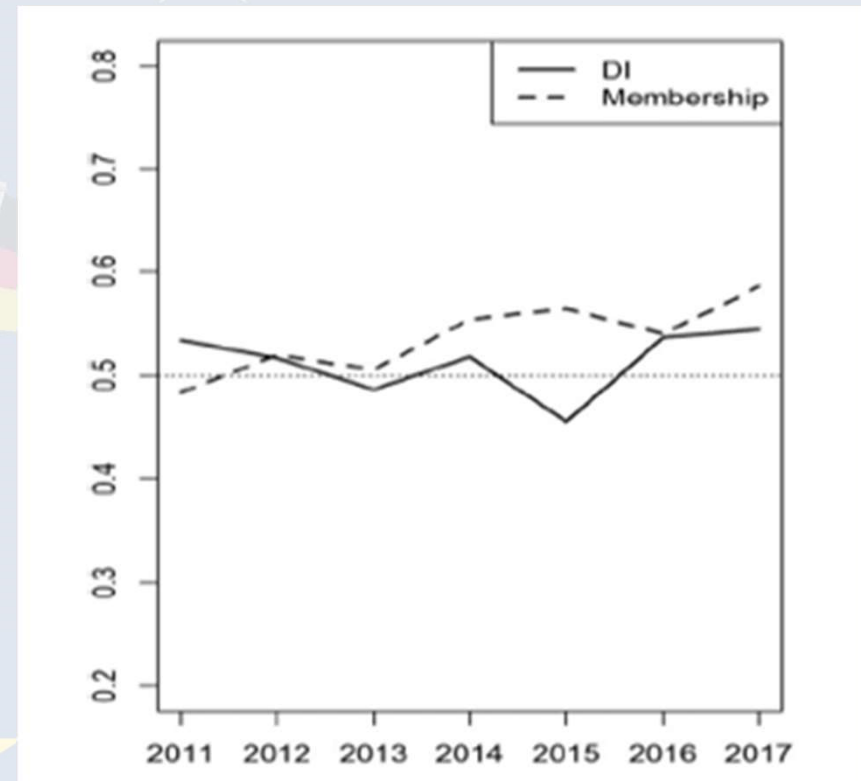
Source: Schüssler et al. 2021: 12

# Social Sources of DI Legitimacy

**Normative supranationalism**

**Multi-speed Europe**

- mostly absolute majority among EU citizens



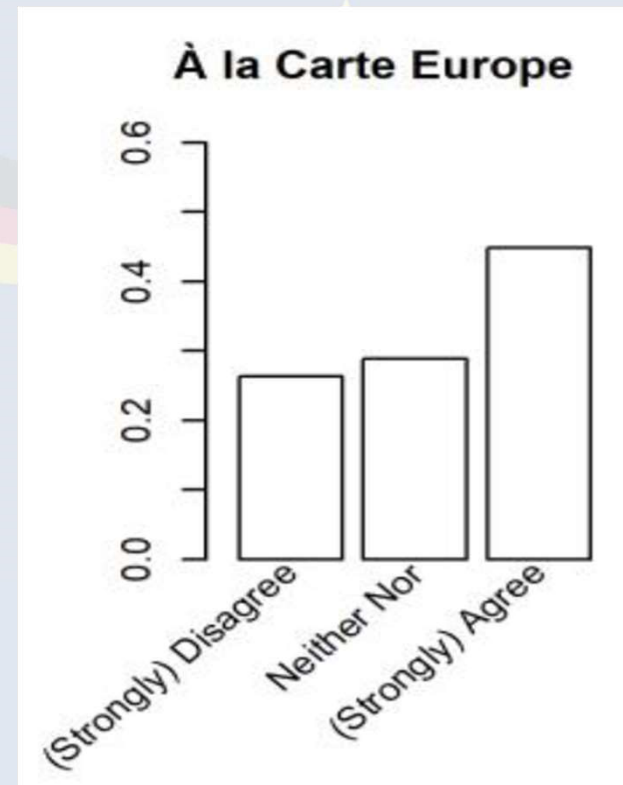
Source: Leuffen et al. 2020: 9

# Social Sources of DI Legitimacy

## Normative supranationalism

## Europe à la carte

- almost a majority in favour of Europe à la carte
- but controversial



Source: Schüssler et al. 2021: 13

# Social Sources of DI Legitimacy

## Intermediate conclusions

- Multi-speed Europe less conflictual than Europe à la carte: higher approval rates, smaller and probably merely temporary variance in public support
  - EU citizens in favour of Europe à la carte tend to endorse disintegration and are economic liberals, those supporting Multi-speed Europe aim at deeper integration and are economic egalitarians
- two camps opposed rather than a broad majority for DI, rather conflictive than consensual, centrifugal effects of DI

# Political Sources of DI Legitimacy

**Research question:** To what extent does the EU adhere to its core value of democracy?

- **Input legitimacy:** extent to which the outcome of a political decision matches the citizens' preferences; solidarity may justify permanently the disregard of someone's preferences
- **Output legitimacy:** prevention of misuse of power and problem-solving capacity



# Political Sources of DI Legitimacy

## DI's potentials

- better match of national preferences and the EU institutional architecture
- higher output due to flexible forms of cooperation
- centripetal effects (role model)

## DI's pitfalls

- club goods can be withheld from other member states causing negative externalities (particularly discriminatory differentiation)
- DI can produce positive externalities providing incentives for free-riding
- the transformation of the structure changes the conditions for the generation of club goods: the preferences might be less aimed at collective goods reducing the willingness to act solidarily in common policy fields with strong redistributive effects

# Political Sources of DI Legitimacy

## Multi-speed Europe

- fragmentation temporal thus supranational institutions remain representative
- however, positive and negative externalities persist and generation conflict increases with the time gap
- compromises more likely due to future discount effect but unanimity on common goals remains

# Political Sources of DI Legitimacy

## Europe à la carte

- higher output given the lack of restrictions on certain policy fields
  - supranational institutions are less representative, intergovernmental decision-making more appropriate, less checks and balances
  - waning solidarity among citizens
- decreasing applicability to common policy fields the model undermines the very preconditions of further integration

# Conclusion I

- **Does differentiation increase or decrease the legitimacy of the EU with regard to its legal, social and political sources of justification?**
    - Legal justification: Multi-speed Europe satisfies the criteria the uniformity of EU law and the equality of member states and citizens in the long term, while Europe à la carte does not.
    - Social justification: A majority of EU citizens endorses DI, but particularly Europe à la carte is controversial.
    - Political justification: Both models may ease conflicts in the short term but in the long run they are likely to undermine European integration.
- DI appears to postpone rather to solve problems while adding further challenges of justification

## Conclusion II

### How legitimate is differentiated integration in the European Union?

The assessment of legitimacy is a matter of standard!

- normative intergovernmentalism: DI as an opportunity
  - normative supranationalism: DI as a challenge
- More research on the implications from a democratic perspective is needed.

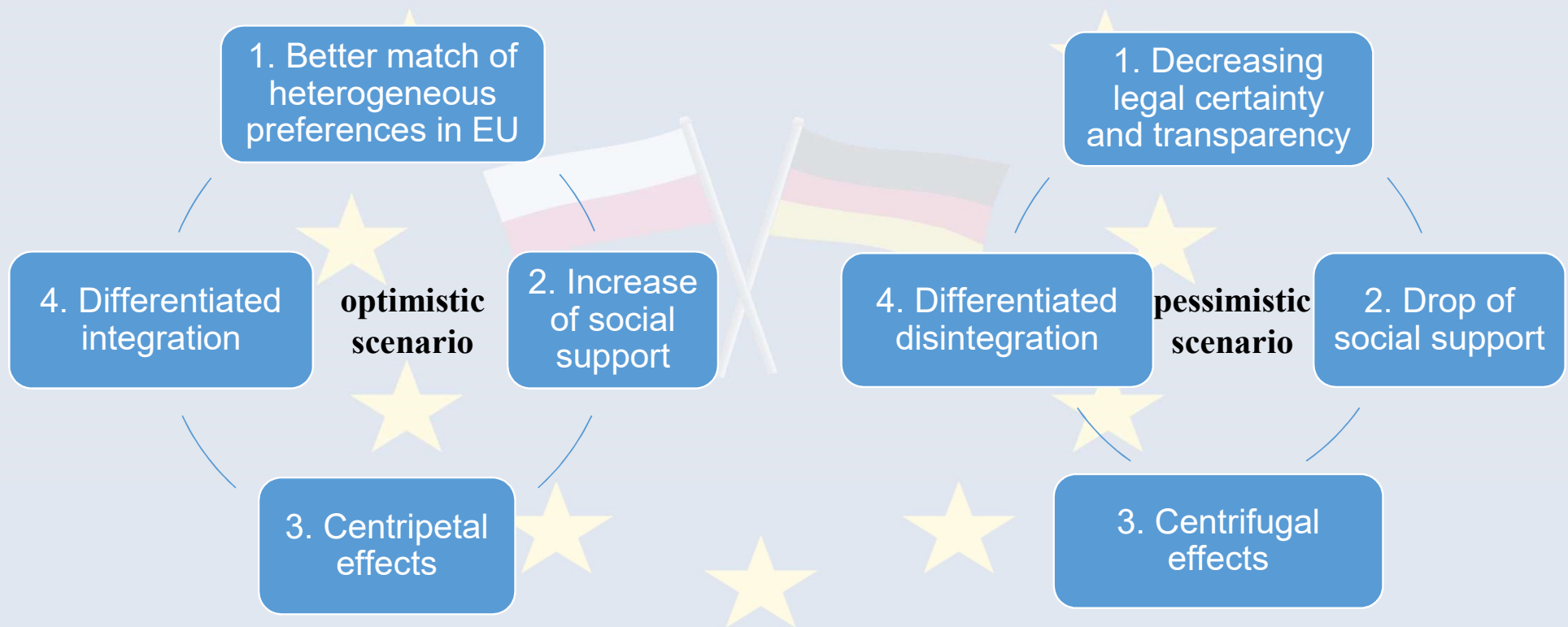
# Research agenda

**Which need for further research does our findings unearth?**

- interdisciplinary analysis of **other DI models** (e.g. Core Europe)
- acknowledgment of DI in the debate on the EU's **democratic deficit**
- **democratic** argumentation

# Research agenda

- Which dynamic may DI ignite in the interplay of the three sources of justification?



→ We expect the vicious circle to be more likely than the virtuous circle.

# Outlook

## **Which impact does further DI have on German-Polish relations?**

- Germany and Poland are the largest fully and partially integrated member states (particularly EMU), thus German-Polish relations are likely to be the predefined breaking point of differentiation (structurally disparate preferences)
- Poland might increasingly see its political aspirations within the EU undermined by further differentiation
- the question of legal uncertainty due to DI will gain further momentum should Poland keep challenging the supremacy of EU law





**Thank you very much  
for your attention!**