



REPORT

SUMMER SCHOOL *Differentiated Integration in the European Union*

Brussels, 20-24 June 2022

Introduction

The Trans European Policy Studies Association (TEPSA) organised a 5-day summer school funded by the Horizon 2020 Programme of the European Union, which took place in Brussels on 20-24 June 2022. The summer school offered 20 Master students and graduates an opportunity to gain first-hand insights from leading academics, EU officials and think tankers on the state of play and future scenarios for Differentiated Integration in the European Union. Differentiated integration is a form of European integration in which not all Member States participate in all policies to the same degree and at the same time. Differentiated integration is not only an academic concept – the European Commission’s 2017 White Paper on the Future of Europe identified it as one of the possible scenarios for the EU’s future (“Those who want more do more”). During the course of the summer school, different forms and practical examples of differentiated integration were presented and discussed with the students. Coordinated by leading Differentiated Integration expert Frank Schimmelfennig (ETH Zürich & TEPSA), the summer school offered a unique combination of theory and practice, with lectures by renowned academics, meetings with policy practitioners as well as a hands-on simulation exercise. The 20 participants were selected from over 150 excellent applications TEPSA received from students across Europe and beyond.

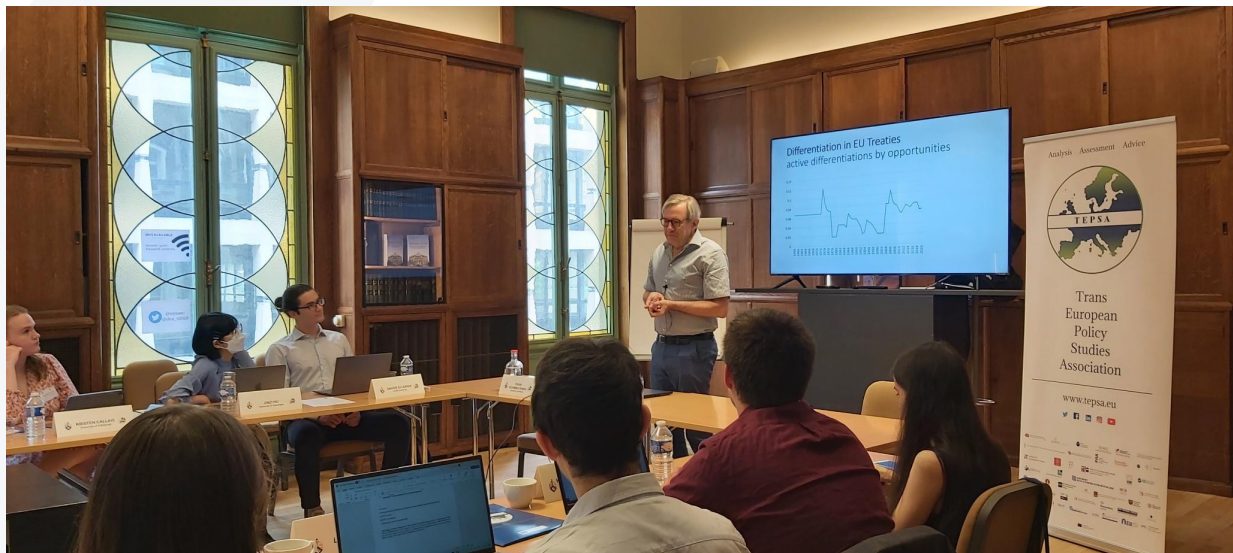
Lecture - Setting the scene: concepts and theories of DI

Monday 20 June 2022

Academic Coordinator **Frank Schimmelfennig** (Professor at ETH Zürich and TEPSA Board member) highlighted that the DI concept has gained ground over time because of the discrepancy between, on the one hand, the normative idea of the EU being a community of uniform integration, and on the other hand, the practice on the ground with rules not equally valid in all Member States, and some EU rules valid also in non-Member States. Despite the absence of one single and consensual definition of DI, there has been some progress in distinguishing different modes of differentiation beyond the initial purely legal approach.



Firstly, multi-speed DI is temporary, and uniform integration will eventually be reached. Secondly, multi-tier DI creates more lasting effects depending on the group of Member States. Finally, with multi-menu DI, membership varies between policy areas. F. Schimmelfennig then explained why DI developed over time, despite representing a deviation from the uniformity norm. The EU has become more heterogeneous both in terms of integration preferences and capacities following the membership's enlargement, but its competencies have also expanded towards more contested, core state powers policies. DI is therefore a mechanism to cope with heterogeneity in an institutional context requiring unanimous decision-making. The lecture then addressed the topic of supply-side factors, highlighting the conditions of size and externalities in the proper functioning of DI. Integration creates economy of scales by agreeing on common policies to create common benefits, which means that the group moving forward should be of significant size. Further, DI only works if externalities between insiders and outsiders are low and manageable. F. Schimmelfennig lastly focused on the two logics of DI co-existing in the EU. Instrumental differentiation is driven by heterogeneity of economic preferences and capacities and is usually limited in time. Constitutional differentiation is rather ideological: stemming from heterogeneity of views on EU integration, constitutional differentiation tends to be more durable and multi-tier, and applies to core state policies. The lecture concluded that it is important to distinguish between DI varieties, as they are driven by different logics, found in different legal documents, and applied through variable modes to specific Member States.



Lecture - A differentiated Union: development and patterns of DI

Tuesday 21 June 2022

Drawing on two datasets, **Frank Schimmelfennig** applied the theoretical framework presented previously to the developments and patterns of DI in the EU. The first dataset, EUDIF1, analyses treaty-based differentiations over the period 1952-2020. It shows that enlargement is the main driver of DI in treaty articles, with very visible picks during important waves. However, it is important to note that such differentiations are temporary, and very minoritarian when compared with the overall EU treaty production. The second dataset, EUDIF2, analyses legislative differentiations on the period between 1958 and 2020. The trend shows that legal acts have become less differentiated over time, which means that the EU has become more uniform. Regarding the modes of differentiation, treaty-based differentiation is predominantly multi-speed, while differentiation in treaty revisions is mostly multi-tier. The latter is driven by integration in core state powers and can be illustrated by an inclusive core with Member States using the Euro and uniformly applying policies in the area of home affairs, a semi periphery outside of the Euro zone, and a periphery having neither the common currency nor shared policies in the area of home affairs. In conclusion, the data confirmed the enlargement-induced differentiation in the accession treaties, whereby poorer Member States will temporarily have a more differentiated membership. When considering treaty revisions, the countries with the most opt-outs are the wealthy Eurosceptics. This means that identity and wealth are two important drivers of deepening and widening differentiation.

Visit to the European Commission – Internal differentiation: the EMU

Tuesday 21 June 2022

During a visit to the European Commission, **Matteo Salto** (Deputy Head of Unit at DG ECFIN) gave a presentation on “Internal Differentiation: the Economic and Monetary Union (EMU)” from a practitioner’s point of view. He opened his presentation by stating that differentiation in the area of economic and monetary policy is sometimes oversold since many policies become adopted by all member states over time. Outlining the EMU governance, he underlined that, according to the treaties, all member states with opt-outs are expected to eventually adopt the euro. He explained that the Commission coordinates its work with the Council’s ECOFIN (and Coreper) on the concrete policymaking within the framework of EMU governance, like for example concerning Croatia’s adoption of the euro. Talking about relations with the non-euro EU members, M. Salto noted that the Commission together with the European Central Bank publishes a Convergence report to the Council every two years on the progress made by non-EU members. It covers Bulgaria, the Czech Republic, Croatia, Hungary, Poland, Romania, Sweden, and Denmark. In the current case of Croatia joining the euro area, Art 140 TFEU defines four aspects as a requirement for member states to join the euro area in addition to the provision of central bank independence:



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1. Price stability,
2. Fiscal stability,
3. Exchange rate stability,
4. Durable convergence (comparatively low long-term interest rates).

Touching upon the history of the EMU, he highlighted the impact of Germany's reunification as well as the political discussions caused by the sometimes-high intra-EU real exchange rates. In addition, M. Salto highlighted potential areas of conflict between the euro area and non-euro area member states, which includes the area of financial market regulation. Similarly, the Stability and Growth Pact (SGP) is likely to be an area of conflict. Concerning external differentiation, he found that economic externalities for neighboring countries and non-euro area member states are rarely taken into account from the perspective of the institutions. An exception is the current analysis of a potential digital currency. Also, it needs to be considered that the euro is highly political since once a country is in, it cannot leave without facing huge expenses. So, M. Salto concluded, many non-eurozone members will not join the euro area although this causes them to pay a high price, which they are willing to pay for sustaining their monetary independence granting them greater flexibility in times of crisis.



Meeting with the Council of the EU – Differentiated integration in law enforcement

Tuesday 21 June 2022

In the afternoon session **Radovan Schida** (Political Administrator at the General Secretariat of the Council of the EU at DG JAI) gave a presentation about “Differentiated integration in law enforcement”. In this area, differentiation starts where member states do not accept to share competencies in the areas of Justice and Home Affairs. In fact, this field sees both internal and external differentiation.



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Regarding internal differentiation, R. Schida analysed the peculiar position of Denmark and Ireland (which have a general opt-out from legislation adopted in the area of freedom, security and justice, but has the possibility to opt in for single pieces of legislation) On external differentiation, he highlighted challenges in the exchange of data. Talking about enhanced cooperation, R. Schida found that the European Public Prosecutor's Office (EPPO) is a good example of differentiation since there are 22 member states participating while Hungary, Poland and Sweden have decided not to join, and Denmark and Ireland have an opt-out from the area of freedom, security and justice. R. Schida concluded that cooperations executing cross-border law enforcement are so delicate issues in terms of competencies that they are often dealt with on a bilateral level creating a massive web of agreements which are complementary to the EU's primary and secondary law.



Lecture – Brexit: from internal to external differentiation

Wednesday 22 June 2022

Fabian Zuleeg (Chief Executive at the European Policy Centre) gave a lecture on “Brexit: from internal to external differentiation”. He pointed out that Brexit poses a major challenge for external differentiation because managing relations with an outgoing member is an unprecedented case for the EU. He explained that the UK got to a referendum on EU membership because EU membership had been contested in the UK for a long time and political elites never fully bought into the political union part of the membership. Some people within the conservative party believed that having a referendum would put the issue to rest. From the EU perspective, there was very little the EU could have put on the table, as F. Zuleeg found it would have been very difficult to come up with an ad-hoc package for just one member state.



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Moreover, when talking about the negotiations of the future post-Brexit relationship between the EU and UK, he noted that the EU invented a new method to negotiate disintegration, the “Barnier method”, which enabled the EU to keep up with the capable negotiators of the UK civil service. The main difference of the new method is having the chief negotiator working very closely with institutions and all member states. Interestingly it showed that not only was the EU united in this, but it was determined not to give special concessions to the UK. Currently we are in a situation where the UK continues to create political and economic friction, in particular on Northern Ireland. For example, and F. Zuleeg described this as a low-point in EU-UK relations, the UK has recently put a bill on the floor in the House of Commons to disapply the Northern Ireland Protocol which is a breach of international law. Therefore, he argued, we now know without any doubt that the UK negotiated in bad faith, that they had no intention to implement what they negotiated. Overall, this has been a unique process. From the beginning, Brexit has been about costs and disbenefits, rather than finding a way to have common benefits. In addition, the focus on distributional questions related to cost-bearing, particularly in the UK, has created this lose-lose situation, with ultimately far greater costs for the UK than for the EU. Consequently, this process does not serve as an example of how you can disintegrate, because it has largely negative lessons. The lessons to be learned are:

1. Method of negotiation, with technical and political aspects gathered together in a chief negotiator: can this method be used also in other areas of negotiation?
2. The framework of the EU, including its laws, conventions, protection of democracy, is actually much more significant than we sometimes give it credit. There is often a focus on problem areas (Hungary, Poland), but we do not ask ourselves how bad these problems would be if these countries were not within the EU.
3. Brexit has also changed the EU. Especially when it comes to security and defence the UK is still an important actor, but the UK has vetoed developments at the EU level in security and defence, so the effect is not necessarily negative. Any new developments we will see in the next months in the area of defence and security will only have been possible because the UK is no longer at the table.

F. Zuleeg concluded that Brexit will continue to be the single big issue for the UK in the years to come, it will continue to rip it apart, while the EU will get over it.



Meeting with the European Commission – The EU’s post-Brexit relationship with the UK

Wednesday 22 June 2022

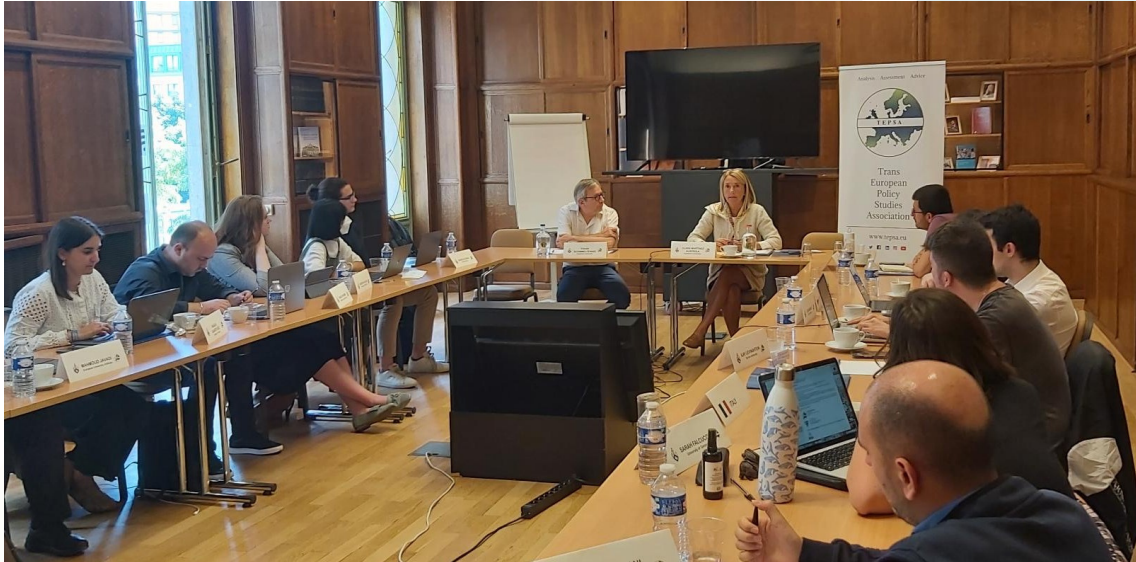
During the following meeting with the European Commission, **Clara Martinez Alberola** (Principal Adviser for relations with the UK at the European Commission) gave a presentation on “The EU’s post-Brexit relationship with the United Kingdom”. She explained that initially, in 2015, David Cameron had asked Jean-Claude Juncker for help to provide him with something he could bring to the British people while he planned to win the Brexit vote in favour of staying in the EU. She found it was a difficult task for the Commission to go to a member state to explain to its people why the EU is good for them, as this is normally the task of the national government. She remembered that after the leave vote, many people on both sides were traumatized. And in the aftermath of the leave vote, Boris Johnson and David Frost negotiated with the upcoming British national election in mind. Once the withdrawal agreement was negotiated, the Trade and Cooperation Agreement (TCA) was negotiated and agreed on in 2020. Now in 2022, C. Martinez Alberola thought it was too early to draw a final conclusion on Brexit which remains driven by political ideology without any economic reasoning behind it. Reflecting on the negotiations for the withdrawal agreement, she found that Juncker’s decision to appoint Michel Barnier as a political negotiator was rather unusual. Also, the factor that Barnier had been a Commissioner before and is a French politician was probably very useful for the negotiations. Barnier then turned out to treat all the member states equally, which was important considering that many smaller member states were facing specific problems caused by Brexit. She then identified three main thematic issues during the negotiations:

1. Citizens, their families and their free movement (concerning both EU citizens going to the UK and UK citizens going to the EU),
2. The financial bill which was still outstanding as part of the ongoing MFF.
3. The Northern-Ireland protocol was particularly difficult due to the commitments of the Good Friday Agreement and the UK leaving the Single Market which meant moving the (customs) border.

In general, she summed up that the UK followed the narrative that they always want to continue cooperating, however they no longer want to be bound by agreements and legal frameworks. The TCA is also unique while it also looks a bit more like a normal trade agreement. It is very broad in terms of policy areas, however very limited in terms of integration. In fact, this TCA reflects the kind of Brexit and future UK-EU relations the Johnson government wanted. Areas covered include Economic and Financial Affairs, Judicial cooperation (which is unique for this kind of agreement), fisheries, energy, transportation, and many more. On the other hand, this agreement clearly does not represent full membership. Hence, EU requirements like product standards have to be applied within the UK without them having the chance to influence the policymaking of these rules. Reflecting on the present, she found we are currently at the lowest level of the bilateral EU-UK relationship.



The recently approved Northern-Ireland Protocol Bill is a clear violation of international law which is also breaching the Good Friday Agreement. From the European perspective this is unacceptable as it shows a will to no longer make the future relationship work. Looking ahead, C. Martinez Alberola remained cautiously optimistic that the relation will improve and normalize.



Meeting with the European Commission – The adoption of EU legislation by non-EU states: the example of the EEA

Wednesday 22 June 2022

In another meeting with the European Commission, **Matúš Minárik** (Policy Coordinator, EC Secretariat-General) talked about “The adoption of EU legislation by non-EU states: the example of the European Economic Area”. He started his intervention by outlining the parallel track between European integration and the integration of the European Free Trade Association (EFTA). After showing the first steps leading to the entry into force of the EEA Agreement in 1994, he pointed out that over time several EFTA members joined the EU. Furthermore, the European Economic Area (EEA) brings together EU Member States and three EEA EFTA States (Iceland, Liechtenstein, and Norway) in the Internal Market. The EEA is characterized by a two-pillar structure built by the EEA Council and the EEA Joint Committee. Besides the Internal Market, no other areas are foreseen for further inclusion. In general, it is often observed that the EFTA Surveillance authority aligns itself with the views of the European Commission, while in other cases the two sides meet in the EEA Council and EEA Joint Committee to negotiate. M. Minárik explained that the EEA mostly covers the four freedoms (goods, services, capital, and persons), and some horizontal policies, like environmental and social policies, consumer protection, and company law. In addition, common rules for state aid and competition are included. However, importantly, some areas are not covered, like Customs Union, Common Trade Policy, Justice and Home Affairs (apart from Schengen), EMU, Common Foreign, Security and Defence Policy.



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Describing the process whereby EU laws become EEA law, he highlighted that non-EU members can already voice their position on EU proposals during the drafting and negotiation process. Today, there are around 11 thousand legal acts in EEA law. Adoption procedures on the EU side include Inter-Service Consultations, the adoption by the European Commission and the Council of the EU, and then the adoption of the EEA Joint Committee. Sometimes, it is possible to have the law adopted and entering into force on both sides on the same day. Despite being old, the EEA agreement is considered to be working well still today. Although the three EEA EFTA countries have a very limited role in the EU decision-making process, they are not planning to become full EU members since they rather want to protect their unique sovereignty as small, wealthy outsiders who then often follow EU decision making and EU laws. On the other hand, making the link to current discussions about neighbourhood and EU accession, some consider the EEA to be one possible step towards accession (similarly, it was briefly discussed during the Brexit discussions). In the case of Switzerland, a member of EFTA, it is unlikely for them to join the EEA. Concluding the discussion, M. Minárik found that it is unlikely for the EEA to change, since the EEA agreement is so beneficial for the three countries and there is not really any incentive to move ahead in integration.



Lecture – Differentiated integration and democracy

Thursday 23 June 2022

Christopher Lord (Professor, University of Oslo) held the fourth academic lecture on “Differentiated Integration and Democracy”. Building on the students’ definitions of democracy, the following minimum standards were identified: public control with political equality and a right to justification. This means that citizens must be able, as equals, to use their own democracies to control the making, application, and amendment of all their own laws; but also to accord one another rights and obligations. Rights, public sphere, civil society, rule of law, knowledge, choice, and political community were further presented as conditions for a working democracy.



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EU democracy is however particular, as institutions at both the national and European institutions levels have a role in allowing citizens to exercise democratic control of EU policy and laws. This has been defined in the literature as a compound democracy. When considering the existence of an EU democracy, C. Lord pointed out the problems linked with the limited EU public sphere, as well as public controlled delivered by the EU wide elections (i.e. the European Parliament does not have power over the nomination of the European Commission's President). More broadly, European elections tend to be about national politics, which is conceptualised within the second order theory framework. All these elements impact the possible construction of a democracy at the EU level. DI could here facilitate compromises between national democracies, different preferences and levels of integration. C. Lord nonetheless stressed that the democratic implications of DI eventually depend on which model of EU democracy is preferred, because such framework is difficult to reconcile with the idea that the EU should construct its own democratic system. The downsides of DI in this context are that it could constrain the development of a shared EU political identity, and even the process of integration eventually. The lecture ended on the democratic implications of external DI: as non-member states do not have the same decision rights and protections, it impacts the core standard of citizens being able to control the making of their own laws as equal.



Lecture – Differentiated Integration and the future of Europe

Thursday 23 June 2022

Sandra Lavenex (Professor, University of Geneva) provided the participants with the final academic lecture on the topic of “Differentiated Integration and the Future of Europe”. Building on the European Commission’s White paper on the future of Europe: Five scenarios, published in 2017, she highlighted that the third scenario “those who want more, do more” directly relates to DI. In order to understand how DI could shape the future of Europe, she stressed that one should distinguish between two types of governance: multi-level governance and sector specific organisation.



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The latter is characterised by a horizontal coordination driven by specific bodies, which more broadly mobilises actors at the sectoral level. This is especially important as this type of governance has been persisting and proliferating in the EU, a process mostly illustrated within the EU agencies. S. Lavenex then invited the students to concretely apply this theoretical framework to the European Economic and Monetary Union; Justice and Home Affairs; candidate countries; European Neighbourhood Policy; European Environmental Agency; and Switzerland. Moving ahead with her presentation, S. Lavenex analysed the 37 decentralised EU agencies. Focusing on third-country access to these agencies, she showed that agencies cooperating with more countries are also more willing to engage civil society in their management board level. In terms of scope, after the EEA, the USA cooperate with around 13 agencies, and China and Australia both have 7 cooperation agreements. Agencies with decision-making authority also tend to cooperate more with third countries. This broader analysis of DI can be of key importance in a context where alternatives to full membership might be required due to an increased heterogeneity and changing political environment.



Meeting with the Council of the EU – How Enhanced Cooperation works

Tuesday 23 June 2022

During the meeting with the Council of the EU **Guy Milton** (Head of Unit Analysis and Research Team) elaborated from a practitioner's point of view on "How Enhanced Cooperation works". He commented that the role of the Council in differentiation and enhanced cooperation is a special one, since it is the most affected institution. As national interests are the very reason for differentiation, the Council is responsible and by now familiarized with it. Summarizing the general dynamics of how the Council functions, he stated that the Council is the place where member states have the most direct impact on policymaking by defending their national interests.



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Consequently, he found it striking that the Council is probably the least well-known institution. This shows some simplistic views of how the EU functions where myths and half-truths tend to dominate national discussions, where Brussels is portrayed like the institutions are dictating legislation to the member states without them having a say. Unfortunately, this misconception of how national interests are represented within the EU is often reflected in public opinion polls where usually the Commission and the Parliament are wrongly named as the representatives of national interests. He explained that the Council is more than just a co-legislator in the EU, although that is now an important part of its work. However, the Council also proposes policy in areas where it is less common for legislation to be decided by the EU27, like in Common Foreign and Security Policy (CFSP). Hence the nature of the Council does not fit into any singular spot. Having 10 configurations, the Council enables the member states to send appropriate ministers to discuss certain relevant topics. Interestingly, member states are free to choose whom to send to each configuration.



Within the Council hierarchy, there are 150 working groups which then feed into the Coreper, in turn feeding into the Council meetings. At some point, some political files might be forwarded to the ambassadors to resolve outstanding issues. However, many files are completely negotiated on the level of the working groups where agreements are reached by the civil servants involved. Interestingly, there are strong group dynamics within all levels of diplomats and civil servants which pressure everyone into finding an agreement. Qualified majority voting (QMV) is rather a radical element of the functioning of the EU, since it means that member states enter the EU accepting to be potentially outvoted. Compared to unanimity, member states are incentivised to cooperate (on the issues they do not like) to then find common deals and agreements. It is also important to remember that being outvoted puts the ministers in a tough spot towards their national press, hence there is another incentive for finding an agreement. G. Milton then focused on areas of differentiation. Regarding the Eurozone, the President of the Eurogroup gives recommendations to the European Council. Similarly, ECOFIN (including non-Euro members) is briefed by the Eurogroup President. In the area of Justice and Home Affairs, it gets even more complicated as there are both opt-ins and opt-outs. Looking at the Common Foreign and Security Policy, the possibilities for moving towards QMV is possible even without treaty changes.



Interestingly, there are no limits to what the Union could do, especially since it is basically the only policy area without these limits. Moving on to enhanced cooperation, he found the whole CFSP field provided a way of introducing QMV through the backdoor. The requirement for enhanced cooperation is either 9 MS or a third of member states. He underlined a tendency to consider enhanced cooperation rather as a temporary tool (like it is the case with the Euro). Lastly, G. Milton found that enhance cooperation remains a measure of last resort, since there is a real pressure to uphold cooperation and solidarity. Generally, there does not seem to be a wish to stop those members wishing to go further ahead.

In the evening, the students had the chance to participate in a networking event where they could exchange views with and receive career advice from think tankers working in the field of European affairs. Guests included **Emily Fitzpatrick** (Junior Policy Analyst at European Policy Centre), **Ilke Toygür** (CATS fellow at Stiftung Wissenschaft und Politik and TEPSA Board member), **Klaas Lenarts** (Research Analyst at Bruegel), **Krystal Gaillard** (Programme Executive at Friends for Europe) and **Ward Den Doven** (Associate Fellow at Egmont Institute).



Simulation game

Friday 24 June 2022

Organised under the academic lead of **Michael Kaeding** (Professor at the University of Duisburg-Essen and TEPSA Honorary Board member), the Simulation exercise was based on a real political issue in the European Union (EU): the adoption of a Directive on the Financial Transaction Tax (FTT) within the Council, potentially a first tangible step for taxing such transactions at the global level.

During the Simulation students were divided in teams of two, each representing one Member State (including the Council Presidency) or the European Commission. They took part in daily negotiation sessions during the training week with a view to finding an agreement during a final session on the last day, Friday 24 June.



About DiCE



DiCE establishes a large, open and inclusive research network designed to ensure that state-of-the-art research on differentiation is translated into policy advice made accessible to policy-makers at European, national and regional levels. DiCE clusters three large EU-funded research projects on differentiation and the dynamics of integration: EU3D, InDivEU and EU IDEA. The three Research and Innovation Actions, as well as the DiCE project, are funded by the Horizon 2020 programme of the European Union.

More information on DiCE activities can be found at <https://www.dice.uio.no/>

About TEPSA



The Trans European Policy Studies Association - TEPSA - was established in 1974 as the first trans-national research network in the field of EU affairs. It comprises leading research institutes throughout Europe, with an office in Brussels. Its aim is to provide high quality research on European integration in order to stimulate discussion on policies and political options for Europe. This is achieved by interaction between the European and national institutions as well as the academic and research community. TEPSA is active on a wide range of research topics, with a particular focus on differentiated integration, the EU's external relations, democratic participation and citizens' engagement.

More information on our activities can be found at <http://www.tepsa.eu/>



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