



ARTICLES

DIFFERENTIATED GOVERNANCE IN A EUROPE IN CRISES

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INTRODUCTION TO THE *SPECIAL SECTION*: DIFFERENTIATED GOVERNANCE IN A EUROPE IN CRISES

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ABSTRACT: This *Article* introduces the *Special Section* on “Differentiated Governance in a Europe in Crisis”, outlining the focus of the *Special Section* and summarising the contents of its various contributions. The *Article* defines the notion of differentiated governance and highlights its manifestation both within and outside the EU, and underlines how recent crises affecting the EU have increased differentiated governance.

KEYWORDS: Brexit – crises – differentiated governance – European Union – future of Europe – integration.

I. INTRODUCTION

The governance of the European Union has been significantly altered by the multiple crises – of the euro, migration, rule of law, Brexit, and Covid-19 – that it has endured over the last decade. This has often led to increased differentiation in which the authority of

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structures of governance varies across different regions and territories within and around the EU. In many cases this differentiation has taken forms that do not conform to the standard definition of “differentiated integration”, which is generally focused on the variation in the applicability of EU rules across EU Member States, or the variation in their participation in common EU policies. For example, Schimmelfennig and Winzen define differentiation as a situation arising “when the legally valid rules of the EU, codified in EU treaties and EU legislation, exempt or exclude individual member states explicitly from specific rights or obligations of membership”.¹ Other scholars use different terms to refer to this phenomenon, such as (merely) “differentiation”² or “variation”.³ In this *Special Section* we use “differentiated governance” as an alternative term that could apply more broadly to the forms of differentiation that have emerged post-crisis.⁴ What this term emphasizes is the extent to which there is differentiation not only in the application of rules but in the authority of new structures of governance – institutions, procedures, mechanisms, agencies – within and outside the EU, some of which are outside the EU’s legal framework.

The term governance is frequently used in the international relations literature to denote forms of rule or order which may lack a hierarchical state structure; hence global governance is “governance without government”.⁵ This notion also applies to the EU which is not a “government” in the traditional sense (*i.e.* a State), but possesses many of its attributes.⁶ A couple of decades ago there was a “governance turn”⁷ in EU studies which shifted the focus from European *integration* – grand theories explaining the historical development of the EU polity – to a *governance* approach which took the EU polity as a given but sought to study its structure and functions. A good example of the latter approach is the literature

¹ F Schimmelfennig and T Winzen, *Ever Looser Union? Differentiated European Integration* (Oxford University Press 2020) 3-4.

² JE Fossum, ‘Europe’s Triangular Challenge: Differentiation, Dominance and Democracy’ (18 December 2019) EU3D Research Papers 1.

³ EH Ballin and others, *European Variations as a Key to Cooperation* (Springer 2020) 1.

⁴ Several scholars have studied differentiation and governance together. See *e.g.*, S Fabbrini, ‘Alternative Governance Models: “Hard Core” in a Differentiated Europe’ (2019) *Comparative European Politics* 278–293; S Lavenex and I Križić, ‘Conceptualising Differentiated Integration: Governance, Effectiveness and Legitimacy’ (EU IDEA Working Papers 29 November 2019) 1; T Nguyen, ‘Differentiated Integration and Accountability in the European Union – An Analytical Framework’ (24 November 2020) EU IDEA Research Papers 1; M Pilati and F De Angelis, ‘Differentiated Integration in the EMU: Impact on Policy Effectiveness and Political Unity’ (30 June 2020) EU IDEA Policy Papers 1.

⁵ J Rosenau and E Czempiel (eds), *Governance Without Government: Order and Change in World Politics* (Cambridge University Press 1992).

⁶ See *e.g.* F Fabbrini and others (eds), *What Form of Government for the EU and the Eurozone?* (Hart 2015) 1.

⁷ B Kohler-Koch and B Rittberger, ‘Review Article: The ‘Governance Turn’ in EU Studies’ (2006) *JComMarSt* 27.

on multi-level governance.⁸ Recent scholarship on governmentality in the EU takes this line of inquiry even further.⁹

A similar point could be made regarding the difference between differentiated integration and differentiated governance: the former may refer to the historical development of a multi-speed EU, in which certain Member States integrate further and faster,¹⁰ whereas the latter would refer to the system of differentiated governance as it exists at present. Moreover, integration may imply a one-way or teleological process, making it less suitable to denote instances in which the process is at a standstill or going backwards – towards disintegration.¹¹ This notion of differentiated governance is thus intended to be deliberately broad, so as to capture myriad forms of differentiation that have emerged post-crisis that do not conform to the common, narrow definition of differentiation as deviation from the uniform application of EU rules.

II. DIFFERENTIATED GOVERNANCE WITHIN THE EU

The EU is a system of differentiated governance whose effects are to be found both internally and externally. Internal differentiation has started at the time of the Maastricht Treaty, mostly as a result of requests by Denmark and the UK to secure opt-outs from several new common policies. With enlargement and the increasing heterogeneity of the EU, differentiation has further increased. The rise of Eurosceptic parties questioning transnational solidarity¹² has further fueled the trend of variation in member states' involvement in EU law and governance. While austerity measures during the economic crisis fueled populism on the left in some old Member States, in new Member States Eurosceptic populism is nativist and right-leaning in its ideological orientation.

The most well-known instances of internal differentiation are the Eurozone and Schengen (discussed in greater detail below), in which only 19 and 22 Member States participate, respectively. It can also take the form of legislation that does not apply uniformly across all EU-27 Member States. For example, legislation may be passed by enhanced cooperation, as foreseen by art. 20 TEU and arts 326-334 TFEU. To date there have been four legislative measures passed in this manner by a subset of EU Member States, which are:

⁸ G Marks and others, 'European Integration from the 1980s: State-centric v. Multi-level Governance' (1996) *JComMarSt* 341.

⁹ See e.g., J Lawrence, 'Of Politics and Pluralism: Governmentality and the EU Legal Order' in G Davies and M Avbelj (eds), *Research Handbook on Legal Pluralism and EU Law* (Edward Elgar 2018) 243.

¹⁰ F Schimmelfennig and T Winzen, 'Grand Theories, Differentiated Integration' (2019) *Journal of European Public Policy* 1172.

¹¹ Editorial, 'Disintegration Through Law' (2016) *European Papers* www.europeanpapers.eu 3. See also H Vollaard, *European Disintegration: A Search for Explanations* (Palgrave 2018) 1.

¹² See H Krunke, H Petersen and I Manners (eds), *Transnational Solidarity: Concept, Challenges and Opportunities* (Cambridge University Press 2020).

The Law Applicable to Divorce and Legal Separation (17 of EU-27),¹³ European Patent with Unitary Effect (“Unitary Patent”) (25 of EU-27),¹⁴ Property Regimes Rules for International Couples (18 of EU-27),¹⁵ and the European Public Prosecutor’s Office (EPPO) (22 of EU-27);¹⁶ in addition, a group of 11 Member States moved in 2013 to use enhanced cooperation to create a Financial Transactions Tax, but the final legislation has not been adopted so far.¹⁷ A similar example, specifically permitted by arts 42(6) and 46 TEU, is Permanent Structured Cooperation in Defence (PESCO), in which 25 Member States participate.

But differentiation does not just take the form of the non-uniform application of rules; it also takes the form of structures of governance – institutions, mechanisms, procedures, agencies – whose authority is differentially applied. And there has been a proliferation of these structures of differentiated governance in the wake of the EU’s multiple crises. Differentiated governance has been a hallmark of Economic and Monetary Union (EMU) from the beginning, in that a sub-group of EU Member States were subject to the direct governance of one institution, the European Central Bank, which set the monetary policy for the Eurozone, in a way that did not apply to the non-Eurozone States. But in response to the euro-crisis a number of other governance institutions were created.¹⁸ These include three new “mechanisms” – the European Stability Mechanism, the Single Supervisory Mechanism, and the Single Resolution Mechanism – as well as the Euro Summit and the Interparliamentary Conference on Stability, Economic Coordination and Governance, the latter two mandated by arts 12 and 13 of the Treaty on Stability, Coordination and Governance (TSCG).¹⁹ In addition, Eurozone States were subject to far more extensive governance procedures of economic coordination and surveillance in the form of the European Semester. Moreover, differentiated governance is not confined to the field of EMU. For example, Denmark ceased to be a full member of Europol, the EU’s Agency for Police Cooperation, in 2017 following a

¹³ Regulation (EU) 1259/2010 of the Council of 20 December 2010 on implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

¹⁴ Regulation (EU) 1257/2012 of the European Parliament and of the Council of 17 December 2012 on implementing enhanced cooperation in the area of the creation of unitary patent protection.

¹⁵ See Regulation (EU) 2016/1103 of the Council of 24 June 2016 on implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

¹⁶ See Regulation (EU) 2017/1939 of the Council of 12 October 2017 on implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (“the EPPO”).

¹⁷ See Decision 2013/52/EU of the Council of 22 January 2013 authorising enhanced cooperation in the area of financial transaction tax.

¹⁸ See F Fabbrini, *Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges* (Oxford University Press 2016) 1.

¹⁹ I Cooper, ‘The Politicization of Interparliamentary Relations in the EU: Constructing and Contesting the “Article 13 Conference” on Economic Governance’ (2016) *Comparative European Politics* 196.

national referendum – although it remains in close cooperation with the agency.²⁰ And five EU Member States remain outside the EPPO.

In addition to these semi-permanent structures of differentiated governance, there are also procedures and mechanisms that may apply to particular Member States on a temporary basis, in particular when a Member State is in difficulty or is subject to tutelage or correction by the EU institutions. While all Member States have always been subject to the authority of the European Court of Justice (ECJ), which can enforce compliance with EU rules, there are other extra-judicial, technocratic governance procedures whose numbers have increased in response to recent crises. The Excessive Deficit Procedure has been in place since the launch of the single currency to enforce the Stability and Growth Pact, with mixed success. But at the height of the euro-crisis new, more intrusive structures were put in place for the economic governance of Member States which needed a financial bailout – most notably the *troika* (the Commission, ECB and IMF).²¹ A parallel may be drawn between these technocratic procedures and some of the elements in the rule of law toolkit, such as the Cooperation and Verification Mechanism (which applies to Romania and Bulgaria) and the art. 7 TEU Procedure (which has to date been triggered only for Poland and Hungary).²²

This raises a broader debate about whether differentiation should even be allowed with respect to the founding values enshrined in art. 2 TEU, especially the rule of law, given that it could lead to the downfall of the EU as a legal order based on shared values.²³ However, while the European Arrest Warrant, with a strong emphasis on mutual cooperation, is the top example of integration, the Area of Freedom, Security and Justice shows multiple points of fragmentation, if not outright disintegration. Another possible example of differentiated governance in this field is Protocol No. 30 attached to the Treaties concerning the applicability of the Charter of Fundamental Rights in Poland and the UK, and later Czechia as well; on closer examination this was not “opt-out” of the Charter but rather a clarification that it did not alter the *status quo ante*, and so was called a “non-opt-out opt-out”.²⁴

III. BREXIT AND DIFFERENTIATED GOVERNANCE OUTSIDE THE EU

External differentiation is the phenomenon in which there is variation in the extent to which EU rules and governance structures exert authority on States and territories outside the

²⁰ S Morgan, ‘Europol: Denmark Closes Front Door, Opens Back Door’ (2 May 2017) Euractiv www.euractiv.com.

²¹ See S Baroncelli, ‘Le specificità dell’unione economica e monetaria europea’ (2009) *Diritto dell’Economia* 35.

²² See R Uitz, ‘The Perils of Defending the Rule of Law through Dialogue’ (2019) *EuConst* 1.

²³ See Editorial, ‘Sovereign Within the Union? The Polish Constitutional Tribunal and the Struggle for European Values’ (2021) *European Papers* www.europeanpapers.eu 1117. See also D Kelemen and others, ‘National Courts Cannot Override CJEU Judgments: A joint Statement from Academics in Defense of the EU Legal Order’ (31 May 2020) *The Irish Times* www.irishtimes.com.

²⁴ C Barnard, ‘The EU Charter of Fundamental Rights: Happy 10th Birthday?’ (2011) *EUSA Review* 5.

EU. The EU has quite different kinds of relationships with its nearest neighbors, including association countries and partners, such as Turkey with which the EU has a partial customs union.²⁵ The case of Brexit helps to illustrate this point. Throughout the negotiations over the EU-UK relationship, one major point of contention was over the question of “governance”, i.e. what structures would be put in place to oversee the agreement? As it turns out there is differentiation even within the very complex structures governing the new relationship, as they are divided into three distinct layers: The Trade and Cooperation Agreement (TCA),²⁶ which governs the new trading relationship, has separate governance structures from those of the Withdrawal Agreement (WA),²⁷ which set the terms of the withdrawal, but which also features separate governance arrangements for the Ireland/Northern Ireland Protocol.²⁸ The authority of EU law is different in each of these three layers, as is apparent in the varying role of the ECJ which is excluded from the TCA, has a transitional role in the WA, and has a continuing role in overseeing the Protocol.

The reference to Northern Ireland highlights another aspect of differentiated governance, that the authority of the EU can vary not only across States but also across other territories. Northern Ireland is a territory that is part of the UK, therefore formally outside the EU, but that remains closely linked to the EU, within the single market for goods and *de facto* within the customs union. It is no coincidence that there are three protocols to the WA, because this is exactly the number of cases in which a UK territory abuts an EU territory – not just Northern Ireland but also Gibraltar, which is now likely to join the Schengen agreement on passport-free travel, and also the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, which use the euro as a currency and are integrated into the EU customs union.

More generally, the distinction between the Member States of the EU and close neighbours that are EU non-members is most striking in the fact that many non-member States are not only subject to EU rules but to some extent subject to EU governance structures. Yet this external governance is also differentiated insofar as the authority of the EU varies not only across states and territories but by policy area. A good indicator of this is the variation in neighboring States’ relations with the most important economic institutions of the EU – the Single Market, the Customs Union and the euro currency. A number of neighbouring States are implicated in each of these EU institutions, but in each case the States in question are different. The Single Market comprises all the EU-27 plus

²⁵ J E Fossum and others, ‘The EU’s Non-Members: Key Principles, Underlying Logics and Types of Affiliation’ (2020) EU3D Report 1.

²⁶ See F Fabbrini (ed.), *The Law & Politics of Brexit: Volume III. The Framework of New EU-UK Relations* (Oxford University Press 2021) 1.

²⁷ F Fabbrini (ed.), *The Law & Politics of Brexit: Volume II. The Withdrawal Agreement* (Oxford University Press 2020) 1.

²⁸ F Fabbrini (ed.), *The Law & Politics of Brexit. Volume IV. The Protocol on Ireland/Northern Ireland* (Oxford University Press 2022) 1.

seven non-EU States that are partially integrated within it, which are: Iceland, Liechtenstein and Norway, by virtue of the European Economic Area (EEA); Switzerland, through numerous bilateral agreements; and Georgia, Moldova, and Ukraine, each of which has an Association Agreement with a Deep and Comprehensive Free Trade Area (DCFTA) with the EU.²⁹ The Customs Union comprises the EU-27 plus four neighbouring States which have a customs agreement with the EU – Turkey and three microstates (Andorra, Monaco and San Marino). Finally, in addition to the nineteen Eurozone States within the EU, six States outside the EU use the euro as their currency – four microstates (Andorra, Monaco, San Marino and Vatican City) which do so by agreement with the EU, and two States which do so on a unilateral basis, Kosovo and Montenegro.

External differentiation is also a feature of the EU's cooperation with neighbouring countries on migration policy. The four EFTA States (Iceland, Liechtenstein, Norway, and Switzerland) are part of the Schengen area of passport-free travel (even while five EU Member States are outside of it) and are also participants in the Dublin Regulation on asylum. Ireland, one of the EU's non-Schengen States, has its own bilateral arrangement for passport-free travel with a non-EU State, the Ireland-UK Common Travel Area.

IV. STRUCTURE OF THIS *SPECIAL SECTION*

This *Special Section* brings together contributions which were produced in the framework of the Jean Monnet Network BRIDGE (Brexit Research and Interchange on Differentiated Governance in Europe), which were originally presented by academics of the BRIDGE Network at a Conference hosted online at Dublin City University (DCU) in October 2021. The BRIDGE Network – a multi-year EU-funded project led by DCU Brexit Institute and involving also Central European University, the Free University of Bolzano/Bozen, and the University of Copenhagen – was designed to explore the impact that Europe's recent crises had on EU governance. This *Special Section* offers an overview of the outcome of this transnational research dialogue, with *Articles* examining differentiated governance in economic and banking affairs after the euro-crisis, in the area of freedom, security and justice after the migration crisis and rule of law crisis, and in the space of interstate cooperation after Brexit.

The *Article* by Stefania Baroncelli focuses on differentiated governance in Europe's Economic and Monetary Union.³⁰ As Baroncelli points out, differentiated governance was an original feature of EMU even prior to the crisis, given the fact that some Member States did not join the single currency. After the crisis hit, however, the EU passed legislative measures, most notably the "six-pack" and the "two-pack", which significantly increased

²⁹ L Pedreschi and J Scott, 'External Differentiated Integration: Legal Feasibility and Constitutional Acceptability' (EUI Working Paper RSCAS 54-2020) 24.

³⁰ S Baroncelli, 'Differentiated Governance in European Economic and Monetary Union: From Maas-tricht to Next Generation EU' (2022) *European Papers* www.europeanpapers.eu 867.

surveillance and coordination for the Eurozone, widening the difference between governance of Eurozone and non-Eurozone States. Moreover, new governance structures were created outside the EU legal framework, with the ESM and the TSCG. The TSCG imposed different rules for Eurozone and non-Eurozone States, while permitting non-Eurozone States to adhere to some parts of the treaty on a voluntary basis. Most significantly, the TSCG authorized the creation of two new economic governance institutions, namely the Euro Summit (meeting of heads of State and government of the Eurozone States) and the Interparliamentary Conference on Stability, Economic Coordination and Governance. As Baroncelli underlines, nevertheless, in response to the recent Covid-19 pandemic, the Recovery Fund “Next Generation EU” – arguably the most important development in EU fiscal policy in many years – was established for all EU Member States, which could suggest a new phase in EMU governance.

The *Article* by Christy Ann Petit focuses on differentiated governance in Europe’s Banking Union, exploring one of the most sprawling areas of post-euro-crisis EU development.³¹ Petit shows that even within a single policy area, significant territorial and institutional differentiation may arise. In the beginning, membership of the Banking Union was identical to membership of the Eurozone; while it was permissible in theory for non-Eurozone States to join, none initially did so. This changed, however, in 2020, when two non-Eurozone States, Bulgaria and Croatia, joined the Banking Union; both did so just a few months after joining the Exchange Rate Mechanism II (ERM II), the Eurozone “waiting room” where prospective members shadow ECB’s monetary policy and maintain a stable exchange rate, and may be permitted to join the single currency after two years. (The only other State in ERM II is Denmark, which has an opt-out from joining the Eurozone.) This pairing of Banking Union and ERM II membership for Bulgaria and Croatia arguably creates a new category of States, that are outside the single currency but are nonetheless very closely aligned with the Eurozone governance regime. This policy area also features differentiated governance insofar as the institutions of the Banking Union are partly within and partly outside the EU legal framework: The Single Supervision Mechanism is firmly embedded in EU institutions but the Single Resolution Mechanism is partly outside them, and the Single Resolution Fund is established by an international treaty approved by all EU Member States but one, Sweden.

The *Article* by Janine Silga details the extent of differentiated governance in the field of migration policy.³² There is both internal and external differentiation in this area, as illustrated by the Schengen area of passport free travel that includes most but not all EU Member States (22 of EU-27) and some non-EU member states. As Silga underlines, differentiated governance in the area of migration results institutionally from a number of

³¹ CA Petit, ‘Differentiated Governance in the Banking Union: Single Mechanisms, Joint Teams, and Opting-ins’ (2022) European Papers www.europeanpapers.eu 889.

³² J Silga, ‘Differentiation in the EU Migration Policy: “The Fractured” Values of the EU’ (2022) European Papers www.europeanpapers.eu 909.

opt-outs and derogations, enshrined in the Treaties and allowing Denmark, Ireland and the UK (while it was still a Member State) opt-outs from the EU's Common European Asylum System (CEAS). However, in contrast to the euro-crisis, the problem of migration has not led to the proliferation of new structures of governance within the EU. Nevertheless, as Silga argues, cases of *de facto* differentiation have recently emerged in this area in the form of non-compliance with CEAS rules, notably by Visegrad countries opposing the relocation of EU asylum seekers. Indeed, the European Commission proposal for a New Pact on Migration and Asylum seems to accept this state of affairs as it would introduce a system of "flexible contributions" which would in effect allow Member States to refuse to take in asylum seekers. As Silga persuasively claims, though, there is a danger that "normative differentiation" could split the EU as a community founded on a shared set of common values – which also raises the spectre of the EU's growing rule of law crisis.

The *Article* by Renata Uitz addresses differentiation in the context of the rule of law crisis.³³ The rule of law crisis – a process of democratic and human rights backsliding at play in a number of EU Member States – has also led to the creation or activation of differentiated governance mechanisms that subject certain Member States to more intensive scrutiny regarding the rule of law, but the effectiveness of these has been questionable. Some of these are part of the so-called rule of law "toolkit". The art. 7 TEU procedure, intended to sanction Member States in breach of the EU's fundamental values, including the rule of law, has been triggered for the two worst offenders, Poland and Hungary, but thus far the results have been inconclusive. The Commission relies on infringement action in select cases, without aiming to address systemic violations. And while the ECJ is developing increasingly robust jurisprudence to protect the rule of law, the resistance of the Member States has turned into full fledged attacks against the primacy of EU law and the authority of the ECJ. As a possible source of leverage, most recently, a new mechanism to introduce Rule of Law conditionality into the EU budget and the Covid-19 Recovery Fund was introduced in late 2020, but it is unclear how this will be triggered or how effective it will be. In the meantime, offending member states continue to benefit from differentiated governance. The EPPO – whose mission is to prosecute crimes against the EU budget – was created via enhanced cooperation by 22 Member States, without the participation of Denmark, Ireland and Sweden, as well as Poland and Hungary – two serial rule of law offenders.

The *Article* by Ian Cooper and Federico Fabbrini addresses one more form of differentiated governance that deserves our attention, the increasing importance of regional groups of Member States within the EU.³⁴ Through a thorough mapping exercise, Cooper and Fabbrini reveal that there are currently thirteen bottom-up regional groups (BURGs)

³³ R Uitz, 'The Rule of Law in the EU: Crisis, Differentiation, Conditionality' (2022) European Papers www.europeanpapers.eu 929.

³⁴ I Cooper and F Fabbrini, 'Regional Groups in the European Union: Mapping an Unexplored Form of Differentiation' (2022) European Papers www.europeanpapers.eu 951.

within the EU which touch all regions of the EU and all EU-27 Member States. The rise of such regional groups predates the recent decade of EU crises, but some of them have certainly been brought to the fore by crisis. In particular, the establishment of the so-called “New Hanseatic League” of Northern and Western EU Member States constituted a response to Brexit and the desire to influence EU economic policy after the withdrawal of an integration-skeptic Member State. Similarly, efforts to address the migration crisis was the propellant for resistance to the CEAS by the Visegrad Group. Cooper and Fabbrini identify the features that distinguish regional groups of Member States, classify them by their features and discuss their roles.

The *Special Section* is finally concluded by a post-face by Jean-Claude Piris, former Director General of the Council Legal Service, and a leading intellectual voice on EU law and integration.³⁵ Piris’ *Article* completes the *Special Section* with broader reflections on the EU’s multiple crises and its options for the future. As Piris claims, the essential problem is that the aims given to the EU by its Member States in the EU Treaties cannot be achieved by the EU with the means it was given, which are ill-adapted to the number of its members. In his view, the problem can be dated back to the “original sin” of the Nice Treaty, in which the then-15 Member States, despite their legal commitment to do so, did not adequately reform the EU’s governance to prepare for the accession of ten new Member States in 2004. In particular, they did not reform the Council’s decision-making procedures, which require common agreement or unanimity on all major decisions, effectively giving each Member State a frequent right of individual veto. Piris therefore recommends amending the EU Treaties to vastly cut back the number of decisions and areas subject to common agreement or unanimity in favour of the introduction of a collective veto of three to five States representing 10 to 15 per cent of the EU population and different thresholds of qualified majority voting. As such, Piris’ *Article* suggests that while differentiation is not key to resolving the EU’s core problems, different forms of differentiation should be introduced to permit flexibility within the EU’s system of governance.

This provides a cautionary tale, which should be borne in mind after Brexit, also in the ongoing debate on the future of Europe, particularly within the framework of the Conference on the Future of Europe.³⁶ This *Special Section* hopes to enrich that debate.

³⁵ JC Piris, ‘The European Union in Crisis: What Should the Member States Do?’ (2022) European Papers www.europeanpapers.eu 971.

³⁶ See also F Fabbrini, *Brexit and the Future of the European Union: The Case for Constitutional Reforms* (Oxford University Press 2020) 1.