With the increasing heterogeneity among EU Member States the concept of differentiated integration has become a reality. Particularly EU policy fields that touch upon core sovereignty rights of the nation state, such as the Area of Freedom, Security and Justice, give evidence of a variety of flexible and differentiated integration.

The present book substantially extends the research that acknowledges differentiation to form EU-integration-reality. Based on a profound treaty analysis the term differentiated integration is unearthed from the semantic avalanche of (inter)related concepts.

Building on this definition, an in-depth and thorough analysis of the implementation of the British, the Irish and the Danish opt-outs in the AFSJ generates insights on the functional and structural patterns of integration that result from the interplay of institutionalisation and implementation of opt-outs. To this end the analytical frame of the paths of differentiated integration at work has been developed by mutually fusing assumptions of historical institutionalism and of an extended version of differentiated integration theory. Furthermore, the book takes the reader on an expedition through the different facets and particularities of the AFSJ drawing a concise picture of its complex provisions, its incomplete communitarisation and the inter-linkage of its policies.
The „Studies on the European Union“ Series

Series Editor:
Wolfgang Wessels
Jean Monnet Chair for Political Science
University of Cologne

Volume 6
Differentiated Integration at Work

The Institutionalisation and Implementation of Opt-Outs from European Integration in the Area of Freedom, Security and Justice

Nomos
Table of Contents

List of Graphs, Tables and Charts 15

List of Abbreviations 17

1. Introduction of the Research Subject ‘Differentiated Integration at Work’ 19
   1.1 A Structuring Approach to Differentiated Integration: State of the Art, Key Aspects and Core Research Questions 19
   1.2 Research Design: The Case, Variables, Assumptions, Methodology 27
   1.3 Le Fil Rouge: Structure and Outline of the Study 36

2. Conceptualisation and Theorising of Differentiated Integration at Work 38
   2.1 Differentiated Integration: Conceptualisation of a Blurry Term 38
      2.1.1 Structuring the Supercharged Debate on Differentiated Integration 39
      2.1.2 Theorising Differentiated Integration: The Neglected Case in Traditional European Integration Theory? 46
   2.2 Theorising Differentiated Integration at Work: Bringing Historical Institutionalism Back in 50
      2.2.1 Theoretical Findings on Differentiated Integration as Second-Best Solution and Its Rationale 52
         2.2.1.1 Formation of Structures of Differentiated Policy-/Decision-Making 54
         2.2.1.2 Introducing Path Dependence to the Analysis 58
      2.2.2 The Stickiness of Structures of Differentiated Policy-/Decision-Making 61
      2.2.3 Review of the Explanatory Benefits and Limits of Historical Institutionalism in Light of the Paths of Differentiated Integration at Work 66
   2.3 Theorising Differentiated Integration at Work: The Influence of Centripetal and Centrifugal Effects 70
      2.3.1 Relevance of Externalities and Member State Action 72
      2.3.2 Structural and Functional Differentiation and Externalities: Establishing the Net-Benefits of the General Opt-out 80
2.4 The Paths to Differentiated Integration at Work: Guiding Assumptions and Working Theses 86

3. Operationalisation of the Analytical Frame and the Case of the Area of Freedom, Security and Justice 93

3.1 Legal Framework: Delineation of Flexibility and Differentiation 95

3.1.1 Flexibility Tools: Uniform Primary Law and Differentiated Secondary Law 101

3.1.1.1 Asynchronous but Common Integration: Safeguard Clauses and Principal Derogations 103

3.1.1.2 General Authorisation of Different Rules for Different Member States: Much Ado about Nothing? 108

3.1.1.3 Constructive Abstention: Case-by-Case Flexibility within CFSP 112

3.1.2 Differentiated Integration Tools: Actual Differentiation in Primary Law 114

3.1.2.1 The Economic and Monetary Union 115

3.1.2.2 The Common Security and Defence Policy 118

3.1.2.3 The Charter of Fundamental Rights 119

3.1.2.4 The Area of Freedom, Security and Justice 122

3.1.3 A Conclusive Assessment of the Institutionalisation of Opt-Outs in the Area of Freedom, Security and Justice as Independent Variable 125

3.2 Driving Forces of the Paths of Differentiated Integration at Work in the Area of Freedom, Security and Justice 126

3.2.1 The Institutional Design: Determination of the Relevance of Access Points for the ‘Outs’ in Differentiated Decision-Making 127

3.2.2 Externalities: The Pressure for Circumvention of Differentiated Integration 131

3.2.3 Domestic Conditions: Referendum as Key to Joining the European Fold? 138

3.3 Configuration of the Patterns of Differentiated Integration at Work in the Area of Freedom, Security and Justice 141

3.3.1 Catching a Structuring Glimpse on the Policies of the Area of Freedom, Security and Justice 141

3.3.2 Guiding Assumptions Refined: Yardsticks for Patterns of Differentiated Integration at Work 145
4. The Cornerstones of Differentiated Integration at Work in the Area of Freedom, Security and Justice

4.1 The Slow Process of Communitarisation: From Schengen and Maastricht to Lisbon
   4.1.1 The Schengen Agreement as Backbone of Differentiation: Helpful Laboratory or Trauma?
   4.1.1.1 Aspects of Variable Geometries in the Area of Freedom, Security and Justice
   4.1.1.2 Incorporation of the Schengen Acquis into the EU’s Legal Framework: Consequences of the Ventilation Approach for the ‘Outs’
   4.1.2 Intergovernmental and Supranational Policy-/Decision-Making and the Question of Access
   4.1.2.1 Access Points in the Institutional Architecture of the Area of Freedom, Security and Justice
   4.1.2.2 Flexibility Tools in the Light of Differentiated and Undifferentiated Policy-Making

4.2 Spill-over Alarm within a Densely Interconnected Policy Area
   4.2.1 The Full Circle of ‘Freedom’, ‘Security’ and ‘Justice’
   4.2.2 The Inter-linkage of Individual Policies and Policy Measures

4.3 Outsider Member States’ Positions in Light of Centripetal Effects of the Area of Freedom, Security and Justice
   4.3.1 The United Kingdom: A Stranger in the Area of Freedom, Security and Justice?
   4.3.2 Ireland: The Pragmatist
   4.3.3 Denmark: In Defence of Intergovernmental Cooperation

   5.1 The Schengen Protocol: The Permission for Two ‘Outs’ to Opt-In and One ‘In’ to Be Out
      5.1.1 The United Kingdom and Ireland: Legal Rights to Participate in the Schengen Acquis in Spite of the Maintenance of Borders
      5.1.2 Denmark: Preservation of the Intergovernmental Character of the Schengen Cooperation
   5.2 The Title IV TEC / Title V TFEU Protocol: Freedom of Choice vs. Operability of the Acquis
      5.2.1 The United Kingdom and Ireland: Knocking on Open Doors?
5.2.2 Denmark: Knocking on Closed Doors?  

5.3 The Abolition of the Opt-Outs: Rather Low Chances to Terminate Differentiation?  

6. The ‘Living Procedures’ of Differentiated Integration in the Area of Freedom, Security and Justice  

6.1 The European Level: Estimating the Costs of Differentiated Policy-/Decision-Making  
6.1.1 The Commission: The Neutral Broker in the Paths of Differentiated Integration at Work  
6.1.2 The Council Working Structures: Everyone on Board  
6.2 The Domestic Level: Veto Points and the Ability to Fully Exploit the Participation Rights  
6.2.1 Ireland and the United Kingdom: Time Pressure and Parliamentary Scrutiny  
6.2.2 Denmark: Veto Points Determined by the Question of Sovereignty Transfer  

7. Patterns of Implementation of Differentiated Integration  

7.1 Patterns of Implementation of Differentiated Integration: Schengen  
7.1.1 Effects of Structural Differentiation in Schengen: Either in or Out?  
7.1.2 Policy Participation in Schengen Matters: Clear Patterns and No Surprises  
7.1.3 Completion of the Picture of Differentiated Integration at Work: Schengen  

7.2 Patterns of Implementation of Differentiated Integration: Title IV TEC / Title V TFEU  
7.2.1 Effects of Structural Differentiation: A History of Abuses, Kick-Outs, and Spill-Overs  
7.2.1.1 Abusing the Opt-in Regime  
7.2.1.2 Cross-References and Participation Spill-Over  
7.2.1.3 Participation in Second Generation Legislation: Neither a Free Ticket nor a Participation Guarantee  
7.2.1.4 Having the Doors Shut in Their Faces: Unintended Denial of Participation  
7.2.2 Finding a Compromise within a Tailor-Made Opt-In  
7.2.3 Policy Participation: Cherry Picking but Still Coherent Participation
Table of Contents

7.2.4 Completion of the Picture of Differentiated Integration at Work: Title IV TEC / Title V TFEU 280

8. Conclusions and Outlook 282

8.1 Differentiated Integration at Work: How to Close the Research Gaps 283
8.2 Patterns of Differentiated Integration at Work in the AFSJ 284
8.3 Acceleration Consolidation Fragmentation: What is it Going to Be? 292
8.4 The Paths of Differentiated Integration at Work: Mission Accomplished? 297
8.5 Outlook and Future Research Agendas 299

9. References 301

9.1 Primary Sources 301
9.2 Interviews 309
9.3 Literature 310
9.4 Newspaper Articles 329
1. Introduction of the Research Subject ‘Differentiated Integration at Work’

1.1 A Structuring Approach to Differentiated Integration: State of the Art, Key Aspects and Core Research Questions

Ever since the initial forms of economic cooperation among six European states in the 1950s the process of European integration has represented a balancing act of finding consensus on common steps of further integration and of including additional Member States. This process of institutional deepening, functional extension and territorial enlargement has brought forward a European Union (EU) comprising 27 Member States that currently finds its legal base in the Treaty of Lisbon (2009). Given the increasing number of Member States, the European Union has to accommodate a substantial degree of heterogeneity of Member States’ objective ability and political willingness as regards scope and content of European integration. This renders the realisation of steps of further common integration increasingly difficult. It took, hence, eight years to prepare, negotiate, complete and ratify the latest treaty revision. Moreover, the European Union is required to constantly reconsider the limits of the scope of its territorial enlargement. The challenges resulting from this continuous deepening and widening of the European Union have repeatedly been reconciled by recurring to various forms of flexible and differentiated integration. Thus, albeit the proclamation of the ‘community orthodoxy’ in terms of joint integration by all Member States within a single institutional framework, differentiation has been acknowledged as a viable “design principle and tool in the political management of European integration” (Dyson/Sepos 2010: 3).

2 Including the Charter of Fundamental Rights and the protocols and declarations annexed to the treaties. The annual details of all treaties presented in this study are named only at the first appearance of the respective treaty in the text and indicate the year of its entrance into force.

3 In December 2001 the European Council in Laeken decided to convene a Convention in order to prepare a Constitution for Europe (European Council 2001). The Treaty establishing a Constitution for Europe was signed in Rome in 2004 but failed to be ratified after the negative referenda in France (May 2005) and in the Netherlands (June 2005). Thus, a new treaty had to be negotiated that represented a slightly thinned out version of the Treaty establishing a Constitution for Europe albeit adopting most of its main features. This treaty signed in Lisbon in December 2007 also encountered ratification difficulties. Ireland ratified the Lisbon Treaty only on the second try, after a first negative referendum in June 2008. The Lisbon Treaty finally entered into force 1 December 2009.

4 Currently, there are five states that are accorded the status of official accession countries to the European Union (see Graph 1). The Commission has just closed the final chapter of its accession negotiations with Croatia in June 2011.
However, even though differentiated integration represents one way out of an integration stalemate the European Union is challenged to avoid a downsizing of its integration by an overuse or misuse of flexibility (see Wessels/Jantz 1997). Differentiated integration in general is nevertheless perceived to represent a motor rather than a brake to European integration (among others Dyson/Sepos 2010; Federal Trust 2005a). Therefore, even though forms of differentiated integration do not represent the most prominent approaches to European integration they actually constitute part of the integration reality (see also Schimmelfennig/Leuffen/Rittberger 2011).

Graph 1: Europe – United in Diversity

In addition to the plethora of treaty articles that allow for different forms of flexible implementation of EU secondary law at the domestic level, several policy areas can be identified in which “one group of EU Member States is not subject to the same Union rules as others” (Tekin/Wessels 2008: 25) as regards both the institutional deepening and the functional extension. Policies on the EU’s territorial en-
1.1 A Structuring Approach to Differentiated Integration

largement, i.e. enlargement policy and European Neighbourhood Policy, add to this differentiated integration reality and increase its complexity (see Graph 1).5

The complexity of differentiated integration reality is reflected in the literature on flexibility in EU integration which implies that the subject and focus of individual analyses might relate to substantially different forms of differentiated integration. A considerable amount of contributions by both academics and stakeholders deals with the conceptualisation of the rather catch-all-or-nothing term ‘differentiated/flexible integration’ and its potential implications for the European Union.6 This debate experiences a cyclical upturn whenever additional countries knock on the door of the European Union asking for membership, the EU is challenged to speak with one voice within the international arena, or yet another treaty revision is to be debated, concluded and ratified. The latter implies a revision of the institutional architecture and decision-making procedures as well as further sovereignty transfer from the national to the supranational level. Thus, concepts of differentiated integration form part of the revisiting and redefinition of the EU’s integration strategies (see Faber 2006; Faber/Wessels 2006; Umbach 2009). In order to single out the structures and implications of the different concepts of differentiated integration some authors apply rather figurative terms such as the “flying geese” (Wallace/Wallace 1995) or the “European onion” (de Neve 2007). More commonly used concepts however are core Europe, multi-speed Europe, l’Europe à la carte and variable geometries (see among others Stubb 1996). Given that such terms might, yet, be applied in even contradictory terms7 an over-conceptualisation of differentiated integration can be identified.

A substantial body of legal science literature, on the other hand, presents an in-depth discussion of differentiated legal provisions in general (see among others Brackhane 2008; Breuss/Griller 1998; De Búrca/Scott 2000; De Witte/Hanf/Vos 2001; Ehlermann 1984; Grieser 2003; Müller-Graff 2007) and of enhanced coop-

5 For the sake of clarity and in compliance with this study’s research design the illustration in Graph 1 comprises only forms of differentiated integration that are pre-defined by the treaties as well as the policies relating to territorial enlargement. This excludes broader forms of variable geometries such as the European Economic Area, the Customs Union, etc. Furthermore, Graph 1 displays the state of differentiated integration reality as of September 2011.


7 The term core Europe, for example, denotes “institutional deepening within a group of ‘willing’ and ‘able’ Member States (outside the TEU framework)” (Stubb 1996: 285; Wessels/Faber 2006: 10) as well as labels a group of able and willing Member States that have forged ahead on the basis of treaty provisions such as the ‘Member States whose currency is the euro’ (see Stubb 1996: 285; Umbach/Wessels 2009).
eration in particular (see among others Ehlermann 1999; Federal Trust 2005a; Missiroli 1999; Philippart/Ho 2000).

Although a number of studies further test and specify particular concepts in the light of several case studies (Grabitz 1984) or of the notion of a federal state of Europe (Giering 1997), complexity remains high. Thus, each future study dealing with differentiated integration shall be advised to precisely define the term that is applied and to highlight the expected implications (see chapter 1.2). To this end, theorising differentiated integration is helpful. However, traditional political science theories on European integration do not comprehensively take account of forms of flexible or differentiated integration, because in general they recur to the principle of ‘community orthodoxy’. So far, merely several attempts to genuinely theorise differentiated integration have been presented. Giering (1997) elaborates on the federal perspective of differentiation while Warleigh (2002) seeks to explain flexible integration in the light of a neo-functional account. There are several authors that deal with the question of theorising regional integration (Lindberg/ Scheingold 1971; Mattli 1999) and aspects of differentiation therein (Allemand 2005; Edwards 2010; Lavenex 2004; Majone 2005; Schnitter 1971; Zielonka 2006). A very limited number of authors have aspired to theoretically grasp the “logic of differentiated integration” (Kölliker 2006: 1) based on a genuine theory of differentiated integration or by building on key assumptions of other mid range theories (see Gaisbauer 2010; Gehring 1998; Gstöhl 2000; Kölliker 2001, 2006; Schimmelfennig et. al. 2011). Having said this, theorising differentiated integration is still in its fledgling stages and, hence, remains a challenging task. The analytical frame of this study will, therefore, thoroughly consider and mutually combine different aspects of different theoretical approaches as to identify patterns of differentiated integration at work.

Thus, so far, literature on differentiated integration has dealt with its conceptualisation including limited attempts of theorisation, on the one hand, and with the legal provisions, on the other hand, rather than with questions of implementation of differentiated integration. In spite of some in-depth studies on asymmetric implementation of the EU’s legislation (Andersen/Sitter 2006a, 2006b), on managing the opt-outs in one way or another (Adler-Nissen 2008, 2009a, 2009b; Puetter 2006) and the influence of the Court of Justice of the European Union on policy-making in the Area of Freedom, Security and Justice (AFSJ)\(^8\) (Fletcher 2009) the ways and means of how differentiated integration is actually handled in everyday policy-

\(^8\) The author is aware of the incorporation of the former third pillar of Justice and Home Affairs (JHA) cooperation into Title V TFEU on the Area of Freedom, Security and Justice. Given that this study generally applies the terminology introduced by the Lisbon Treaty, in general the latter term will be used. However, references to decisions that date back to the time when the pillar structure still existed, e.g. the Maastricht Treaty (1993), and to the Danish opt-out, might use the term Justice and Home Affairs. In such cases the terms are used interchangeably.
making and what impact this might have on the overall integration process of the European Union remains a rather neglected subject in differentiated integration research.

On that account, and based on the argument that in light of its complexity differentiated integration cannot be perceived and studied as one comprehensive single integration phenomenon, this study aspires to present a refined catalogue of patterns of differentiated integration. By doing so, the present study generates new insights on the functional and structural patterns of integration that result from the interplay of institutionalisation of differentiated integration and its implementation within differentiated policy areas in general, and the AFSJ in particular. It is argued that such patterns of the so-called ‘differentiated integration at work’ might potentially lead to three different outcomes, namely

(1) to new forms of (differentiated) European integration,
(2) to the establishment of these differentiated practices, or
(3) to the dissolution of integration.

Graph 2: Three Pillars of the Research on Differentiated Integration

This structuring approach to differentiated integration has been derived from the identification of three pillars inherent to the research on differentiated integration, i.e. the debate on differentiated integration, its institutionalisation, and patterns of
its implementation in everyday policy-making, as well as two gaps in-between them (see Graph 2).

Building on the observation that the debate on differentiated integration conceptualises scenarios that are not necessarily included in the legal offer of differentiated integration (Gap I)\(^9\) and the blurriness of some concepts that are discussed, this study assesses an over-conceptualisation of this subject. This gap between the complexity of the terminology and differentiated integration reality directs the focus of this study to the question of actual forms of differentiated integration, i.e. the opt-outs,\(^10\) their (institutionalised) structures and how they are handled. The different concepts that are offered by various authors will provide, nevertheless, basic background information.

Thus, questioning Tony Blair’s conviction that opt-outs get “the best of both worlds” (Geddes 2005: 723) and if so how this affects structures of integration in a given policy area this study starts from the analysis of institutionalisation of differentiated integration. This term is defined to denote

the transposition of legal provisions on differentiated integration into (institutionalised) structures of differentiated policy-/decision-making in terms of formal and informal “standardisation of procedures and routinisation of practices” (Brunsson in Peters 2000: 9) within the European Union, in which particular Member States are granted so-called opt-outs.

In consideration of this basic definition of the institutionalisation of opt-outs the implementation of differentiated integration denotes

patterns of ‘everyday practice’ of differentiated integration within the EU (see Gstöhl 2000), i.e. policy-/decision-making of rationally acting Member States within differentiated policy areas, applying institutionalised differentiated policy-/decision-making structures “after the grand bargains have been concluded and after treaties have been written” (Olsen 2000: 7).

The second gap in the research on differentiated integration relates, thus, to the interplay of the institutionalisation of differentiated integration and the implementation of such institutionalised differentiated policy-/decision-making structures, namely to ‘differentiated integration at work’ (see Gap II in Graph 2). Building on the general assumption that “there is an enormous gap between [these] formal provisions and the Realpolitik manifestation of power in Community life” (Weiler 1981: 280) it is not only questioned whether the legal and institutional offer of opt-

\(^9\) A genuine l’Europe à la carte that entirely abolishes the common integration framework allowing states to pick and chose their preferred ‘menu’ of policies of cooperation and the United States of Europe complying with a federal approach represent the two extremes of the broad body of concepts, which currently do not necessarily represent reality.

\(^10\) The European Commission defines an opt-out as follows: “Opting out is an exemption granted to a country that does not wish to join the other Member States in a particular area of Community cooperation as a way of avoiding a general stalemate” (Europa Glossary, download: http://europa.eu/scadplus/glossary/opting_out.en.htm). For a detailed elaboration of why only provisions on 'opt-outs' matter for this research design see chapter 1.2 and chapter 3.1.
outs is actually implemented but also and more importantly how institutionalised structures of policy-/decision-making are used and what impact this has on the outcome of (differentiated) European integration in a given policy area. Thus, the research in this study is motivated by the assumption that differentiated integration at work generates multiple forms of differentiated integrations that deserve further in-depth elaboration. Consequently, in consideration of the definition of the institutionalisation and the implementation of differentiated integration to form the key aspects of “differentiated integration at work” (see above), the present study is guided by the following core research questions:

| How are forms of differentiated integration in the legal architecture in terms of opt-outs transposed into the living architecture\(^{11}\) of the EU, and what impact do these living forms have on differentiated policy-/decision-making in the Union?
| More specifically, |
| - what patterns of differentiated integration at work can be identified in terms of the transposition of opt-out provisions defined by the treaties into real-life decision-making structures in formal and informal ways? |
| - and in how far is differentiation, itself, either reinforced or diluted by such patterns? |

Three scenarios are offered in order to conceptually grasp this process derived from its degree and effects of functional and structural differentiation in a given policy area: *acceleration*, *consolidation* and *fragmentation*. As to test these three “standards of achievement” (Philippart/Ho 2001: 168) this study will develop “yardsticks” (ibid.: 168) for the scaling of the patterns of differentiated integration at work. To this end the following sub-questions guide the analysis:

- In how far does the evolution of the scope and content of the policy area affect the implications of the opt-out regime?
- How volatile is the opt-out regime? Thus, do formal participation rights for the ‘Outs’ exist and what other formal and informal access points to the policy-making of the ‘Ins’\(^{12}\) are available?

---

\(^{11}\) On the definition of the dual term of ‘legal’ and ‘living’ institutions see Olsen 2000: 6-7.

\(^{12}\) The term ‘Outs’ labels such Member States for whom the treaties, i.e. the primary law, explicitly define exemptions for reasons of political willingness to participate in EU cooperation – the term ‘outsider Member States’ is used interchangeably. The term ‘Ins’ labels the Member States that are not subject to such an exemption but that have rights and obligations under the EU law.
In how far does the process of the constitutionalisation of the EU affect the functional and structural dimension of differentiated integration\textsuperscript{13} in the policy area, i.e. the outreach of the opt-out?

This research focus significantly enhances the existing research that deals with managing the opt-outs. The research presented by Adler-Nissen (2008, 2009a, 2009b, 2009c) aims at assessing the consequences of opting-out for the diplomatic activities of Member States in empirical terms, and at developing a political sociological approach to European integration in theoretical terms (Adler-Nissen 2009a: 3). Puetter (2006) who deals with the question of “how a secretive circle of finance ministers shape European economic governance” (Puetter 2006: 1) is predominantly interested in the informal aspects of policy-making within the policy area that is perceived to represent the prime example of clear-cut differentiated integration (see Louis 2001; Marcussen 2009a), namely the single currency. Another study aims at providing a comprehensive account of the opt-outs in the AFSJ and their underlying logic (Sion-Tzidikiyahu 2008a).

These studies are less interested in the interplay between the legal and the living architecture of the European Union and the potential impact on both functional and structural integration in a given policy area. This research interest clearly distinguishes this study from and substantially adds to the existing studies in the research field that deals with managing differentiated integration and that has been only lately and slowly building up (see among others Adler-Nissen 2009a; Puetter 2006; Sion-Tzidikiyahu 2008a). Moreover, the general theoretical considerations of this study joins and endorses a new trend in differentiated integration research that first of all acknowledges that the “EU is best understood as a system of differentiated integration” (Schimmelfennig et. al. 2011: 2), and that, furthermore, seeks to find the most appropriate framework as to theoretically grasp the phenomenon of differentiated integration and its impacts (see Kölliker 2006, 2010; Schimmelfennig et.al. 2011; Sion-Tzidikiyahu 2008a).

Thus, the present study contributes to a considerably under-researched aspect of differentiated integration. The overall aim of this study is to combine the analysis of institutionalisation of differentiated integration with the analysis of implementation of institutionalised structures of differentiated policy-/decision-making as to shed light on the patterns and outcome of differentiated integration at work. Thereby, the explanatory value reaches beyond the consideration of the logics of the opt-outs (Sion-Tzidikiyahu 2008a) by elaborating on the various forms of differentiated integration.

---

\textsuperscript{13} Building on economic theories (e.g. Buchanan/Stubblebine 1962) the functional dimension of differentiated integration is defined to form the consumption of differentiation, i.e. participation or non-participation in given policies. The structural dimension, on the other hand, denotes the production side of differentiation, i.e. the participation or exclusion from the policy-/decision-making of given policies. This is further elaborated in chapter 2.3.2.
integration that can impact on European integration. Thus, this study forms part of the research camp that deals with differentiated integration reality (Adler-Nissen 2009a; Puetter 2006; Schimmelfennig et. al. 2011; Sion-Tzidkiyahu 2008a, 2008b), but extends the approach to coin the notion of ‘differentiated integration at work’.

To this end, in a first step, the theoretical approaches of the path to European integration (Pierson 1996) and the logic of differentiated integration (Kölliker 2006) are mutually fused to provide the theoretical foundation of the paths of differentiated integration of work in a given policy area. Thereby, the relevance of externalities that the theory on differentiated integration emphasises in terms of the functional dimension (Kölliker 2006, 2010) is tested in matters of the implementation of differentiated integration. In this regard, the logic of differentiated integration is extended by establishing a causal link between functional and structural differentiation. In a second step, it is empirically tested whether this link that allows for the circumvention of negative effects of being outside a particular policy by making use of institutionalised differentiated decision-making structures can hold true. Moreover, the study aspires to establish what type of patterns of differentiated integration can be identified to result from such implementation of differentiated integration. The following subchapter further defines this research design.

1.2 Research Design: The Case, Variables, Assumptions, Methodology

The term differentiated integration as applied in this study denotes a device of European integration management at primary law level that, like similar tools of issue linkage and side-payments, takes account of the increasing heterogeneity among Member States (see Dyson/Sepos 2010). Thus, this study clearly distinguishes between the forms of flexible integration and of differentiated integration. Consequently provisions on asymmetric implementation of joint EU legislation at domestic level, such as the definition of minimum standards, the provision on constructive abstention in the Common Foreign and Security Policy (CFSP), provisions on enhanced cooperation or transitory periods for the application of particular parts of the acquis communautaire are contrasted against pre-defined differentiation in primary law in terms of scope, structure, Member States and the time horizon. The former is excluded from the research design of this study for reasons that are explained in chapter 3.1. The latter represents the so-called opt-outs that are granted particular Member States in terms of specific policy areas and is argued to represent the relevant subject of analysis. Thus, the terms ‘differentiated integration’ and ‘opt-outs’ are used interchangeably in this study.

The Maastricht Treaty (1993) represents a turning point in European integration. In constitutional terms it established the three pillar structure of the European Union