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John Erik Fossum

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# Democracy and differentiation in Europe

John Erik Fossum

**ABSTRACT** This contribution addresses two questions. First, what forms and shapes does European Union (EU) differentiation take in the realm of representative democracy in the multilevel constellation that makes up the EU? Second, what are the implications of differentiation for the theory and the practice of democracy? The question is whether citizens are capable of governing themselves in a political entity marked by patterns of authority and/or policy-making that vary in unprecedented ways along territorial and functional lines. Drawing on differentiation rather than the more commonly used term differentiated integration entails a somewhat different research focus and allows considering the democratic challenges of patterns of integration and disintegration actualized by the euro crisis. The contribution establishes a set of democratic standards and assesses the democratic implications of differentiation in the EU. Doing that requires paying explicit attention to the distinctive character of the multilevel EU's structure of democratic representation.

**KEY WORDS** Coping mechanisms; democracy; differentiated integration; differentiation; European Union; representation

## INTRODUCTION

It is widely recognized that the European crisis – an amalgam of financial, fiscal, institutional and constitutional crisis (Menéndez 2013) – exhibits, but also amplifies, asymmetries and tensions in the European Union's (EU) institutional structure and make-up. Many analysts have noted that the crisis may reinforce differentiated integration, where the centralization of authority and its territorial scope vary strongly across policies (Leuffen et al. 2013). Prior to the crisis, much of the discussion of differentiated integration focused on the process as one of different speeds (Piris 2012). All would reach the same destination, but at different speeds, not simultaneously. The crisis has politicized the integration process and has rendered starkly apparent that differentiated integration is not a mere technique of integration or an approach to problem-solving that can be instrumentalized; it is a deeply political process and a way of relating to conflicts. There are winners and losers, and outcomes often reflect prevailing power constellations rather than efficient solutions to policy problems.

The crisis has raised serious questions about the assumption that all EU member states will continue to move in the same integrationist direction.

Even if the responses to the crisis have led to more integration, far from all states are included. Some governments have even proposed rolling back integration – or at least their own participation in it – through greater use of opt-outs, exemptions and even renegotiation. One possible outcome of the crisis is that member states may come to occupy permanently different roles and statuses in the EU, a situation that could manifest itself in differentiated authority structures and patterns of decision-making. Thus, rather than seeing further (uniform) integration, the EU may become more differentiated through a *combination* of differentiated integration and differentiated disintegration.

These developments suggest a need to distinguish *differentiation* from differentiated integration. We might understand differentiation as a wider concept that includes, yet goes beyond, differentiated integration. In other words, it encompasses traditional understandings of differentiated integration as mainly consisting of the same integration only at different speeds. Yet it also includes two new differences between member states that are likely to be wider and more lasting: first, cases where some states integrate more closely whilst, at the same time and for connected reasons, others disintegrate from their previous levels of involvement with the Union; and second, cases where even notionally full members come to be regarded as having different membership status.

This contribution addresses the following two questions. First: what forms and shapes does EU differentiation take in the realm of representative democracy? Addressing that is necessary in order to deal with the second question, namely: what are the implications of differentiation for the theory and the practice of democracy? The question is whether citizens are capable of governing themselves in a multilevel political entity marked by patterns of authority and/or policy-making that vary in unprecedented ways along territorial and functional lines.

In order to address these questions, in the second section the contribution starts by defining democracy and discerning a set of normative standards. These are then applied to the EU in the third section in order to establish how democratically problematic differentiation is for the multilevel EU. Doing that requires spelling out the distinctive features of representative politics and democracy in the multilevel EU. Particular focus is placed on two distinct ‘democratic coping mechanisms’ within the EU context. The most obvious one is a vertical process of developing EU-level representative arrangements. In addition, the EU has developed a unique system of inter-parliamentary co-ordination and co-operation which may help to cope or deal with differences in the territorial scope of policies. The assessment in the third section sheds light on how well (or not) the democratic coping mechanisms actually handle differentiation, including the recent upsurge of EU differentiation in the context of the euro crisis. The final portion of this section queries the democratic implications of a particular form of differentiation: a state that declined EU membership largely for democratic reasons but that nevertheless incorporates most of the EU’s legislation. The fourth section concludes.

## DIFFERENTIATION AND DEMOCRACY

Before investigating the EU, it is necessary to clarify in more detail how to study differentiation from a democratic perspective. I approach this from a deliberative democratic perspective which understands democracy foremost as a justification principle. That places the accent on the need for public deliberation, and that decisions must be justified to those who are affected by them. At the same time, democracy also requires political institutions, including systems of representation, to ensure formal equality and governing capability.

Amongst other things democracy requires two components, namely *congruence* and *accountability* (Eriksen and Fossum 2000). *Congruence* is required in order to ensure the greatest possible correspondence between those making the laws and those affected by them. *Accountability* is both about making an account and about holding to account. It is about ‘a justificatory process that rests on a reason-giving practice, wherein the decision-makers can be held responsible to the citizenry, and where, in the last resort, it is possible, to *dismiss*, incompetent rulers’ (Eriksen and Fossum 2012: 20).

In the modern state-based world democracy is territorially confined. Those who are recognized as citizens are those to whom the criteria of congruence and accountability are mostly directed. In the nation-state context, citizenship rights (and notably political participation rights) provide a measure of political equality, and institutions of representative democracy enable citizens to select and to hold a set of leaders accountable for the decisions that affect them.

From the perspective of the EU member states – the mainstays of representative democracy in Europe – globalization and a European integration process driven by executives and experts create the challenge of input and output *incongruence*.<sup>1</sup> That is why I talk about EU democratization as a democratic coping mechanism: instituting democratic procedures at the EU level is intended to reduce the incongruence that the removal of decisions from the level of the member state to the EU level entails.

Incongruence occurs when citizens are affected by decisions that are beyond their control and where they cannot hold the decision-makers to account. That raises the spectacle of arbitrary domination.<sup>2</sup> There is a clear link between incongruence and domination: those affected by actions, decisions or structures that they cannot influence are susceptible to arbitrary domination, whether willed or structural. We may distinguish between two forms of incongruence. Type 1 is where those affected by actions, decisions or structures are totally excluded from any influence. Type 2 is where those affected are sometimes excluded from influence, sometimes not, depending on the policy or the procedure. When member states are not completely excluded from decision-making processes that affect them, they at least get more information and more opportunities to use those decisions that do require their participation to get bargaining leverage over those decisions from which they are formally excluded. Thus, type 1 incongruence is always susceptible to arbitrary domination, whereas type 2 is

only sometimes arbitrary, depending on the case in hand. It is type 2 incongruence that we generally associate with differentiation in polity and policy terms.

We should expect the most problematic cases to occur where actors are excluded, find their basic interests violated, and/or are subject to arbitrary interference. Such problems can exist independently of differentiation as I have defined it. Yet they can also be compounded by differentiation. Indeed, democratic theory lacks well-honed tools to identify where problems of domination and problems of differentiation may compound one another.

In the following section I apply the democratic standards to the multilevel EU context. That requires first spelling out the distinctive features of differentiation and how it manifests itself in the representative-democratic realm in the multilevel EU.

## EU DEMOCRATIZATION AND DIFFERENTIATION

This contribution focuses on the democratic implications of differentiation. That has implications for how the analysis is conducted. It takes as its point of departure (as do the proponents of democracy)<sup>3</sup> that the member states are democracy's mainstays in Europe, and that EU integration unfolds in a setting of already existing constitutional democracies. The Lisbon Treaty claims that the EU has a democratic vocation and democratic arrangements, but the member states are the masters of the treaties, and the member states have been the constitutional-democratic mainstays and guarantors of the EU from its inception (Fossum and Menéndez 2011).

Differentiation is not the same as differentiated integration, and as such also requires a different research focus, especially when we are to establish its democratic implications. The democratic assessment of differentiation in the EU must take into account that the democratization that has taken place at the EU level has generally been a matter of *catching up with* a process of integration that is driven by markets, technology, executives and experts – within Europe and beyond. As part of this process of catching up with integration and globalization, the system of governing at the European level equips citizens with political and other rights, passes laws and interferes with their constitutions. From a democratic perspective, the question is to what extent this serves as a democratic coping mechanism and reduces incongruence and domination at both the EU and member state levels. As we shall see, this process varies across policy fields. Thus, this contribution focuses more attention on differences in the centralization of policy fields (vertical differentiation), than on differences in their territorial scope (horizontal differentiation; Schimmelfennig *et al.* [2015]).

### Defining roles for parliamentary politics in matters of European integration

The process of EU democratization can be construed as a matter of defining roles for parliamentary politics at the EU *and* member state levels, because

national parliaments and systems of representation are clearly affected by the development of a system of representation at the EU level. I find that this process can be associated with two different, yet related democratic coping mechanisms. The first one which will be dealt with in this section is a mainly vertical process associated with the establishment of a system of democratic governing institutions at the European level, with the European Parliament (EP, as the world's first directly elected parliament at the supranational level) and the Council (as the Europeanized collection of national democratic constituencies) as the main institutional manifestations.<sup>4</sup> The complex and composite EU holds a number of distinct features that we need to specify if we are to understand the democratic implications of differentiation in the European setting.

The first distinct feature is that the multilevel EU is an institutionally speaking highly diverse and complex context with: (a) huge discrepancies in the size of the member states; (b) significant differences among the member states and their respective political regimes; (c) different systems of representation and accountability across member states but also at the EU level; (d) different ways of connecting the citizens to the member states' political systems (electoral and party systems); and (e) different ways for parliaments/representative assemblies to relate to/hold executives accountable (with mandating and document-based scrutiny the two main models among member states; see Buzogany [2013]). These brief observations underline that there is a lot of *diversity* in the representative politics of the member states before they have to cope with differences that stem from their differential participation in processes of integration. Some of this diversity translates into democratically relevant EU differentiation. Precisely how much requires a much more broadly based study than can be provided here. Different degrees of citizen input into democratic decision-making across the Union represent a form of political inequality with bearings on citizens' influence on EU decisions. Variations in member state parliaments' ability to hold the executives to account exhibit differences in political accountability. Member states also vary in terms of how well they ensure non-domination, with some member states for instance experiencing considerable back-sliding to less democratic procedures.

A second distinguishing feature is that the EU supranational system is solidly anchored in the member states, many of which prefer interstate interaction and co-operation over supranational integration. The rise of Euroscepticism is certainly reinforcing this. But the strong member state presence in the institutions at the EU level is a key defining feature of the EU as a political system, and has important implications for the integration process, and patterns of differentiation (and co-ordination and de-differentiation). We see this strong member state presence in the EU institutions, especially the Council formations and the European Council. It is a matter of *fusing* levels (EU and member state; see Wessels [1997]; Wessels and Rometsch [1996]) and sharing competencies, more than singling out a distinct European level of government with exclusive competencies. States cede sovereignty *not* to a distant entity but to a common unit in which they all participate directly. That is also reflected in a gradual

increase in national parliament involvement in decision-making at the EU level, and EU citizenship is less vertically grounded than is the case with national citizenship. Persons acquire EU citizenship through being citizens of their respective member states. The strong onus on mobility rights makes this status particularly relevant to second-country nationals (SCNs; see Bauböck [2007]).

Third is that the establishment of an EU-level system of democratic representation is one where the national systems of democratic representation are *reprogrammed* to take the fledgling European-level system of representation into consideration. This is a complex and composite process; it produces quite a lot of ambiguity as to who represents whom and in what capacity. One reason is because of the large number of shared EU – member state competencies. Another is that citizens are now represented at the EU-level by three institutional arrangements: the EP; the Council; and through national parliaments (when consulted through the so-called Early Warning Mechanism [EWM]<sup>5</sup>). A further reason is that bodies such as the Council and European Council combine European mandates with national lines of accountability.

Fourth, and a distinctive feature of this democratic coping mechanism, is that EU democratization, as noted above, has generally been a matter of catching up with a process of integration that is largely driven by executives and experts. *Both*, however, are ongoing, gradual and step-wise processes of putting in place *and* democratizing a supranational system. Therefore, democratic gaps occur, partly through inability to catch up (a feature that has at a minimum been greatly reinforced through the crisis) and partly through variation across policy areas. In effect, a distinguishing feature of the process of defining roles for parliamentary politics in matters of European integration is, as Leuffen et al. (2013) note, marked by a high degree of vertical differentiation, or variation in the level of centralization across policies. We get a good handle on this element of vertical differentiation from Börzel (2005), who operates with six categories of vertical integration, from no policy co-ordination and delegation or pooling to supranational centralization and full delegation to supranational bodies. Different degrees of centralization manifest themselves in differences in member states' participation. The most centralized policy area is monetary policy, which is under exclusive EU competence. Monetary policy is the most (vertically) differentiated policy area in the EU in the sense that only 18 out of the EU's 28 member states are fully incorporated in the Economic and Monetary Union (EMU). Owing to existing opt-outs, there is little likelihood that all will join, which raises the prospects of a permanently differentiated policy area, embedded in a distinct set of institutional arrangements (type 2 incongruence). This problem will only be aggravated if fiscal co-ordination is now intensified more amongst the EMU 'ins' than 'outs'.

At present, given that a number of issues pertain to all member states, and as it is difficult to single out what are eurozone-specific concerns from general EU concerns, there appears to be a discrepancy between the problem structure and the decision-making structure. Simply put, the 18-member eurozone relies on the 28-member EU institutions to foster binding decisions. It raises

the question of how, and in what respect, non-eurozone member states should participate in decisions pertaining to the euro, which clearly affect them, but differently from the manner in which eurozone countries are affected. One problem it raises is how to sort out what are common concerns and what are concerns specific to the eurozone. Another is that of representation: how to devise a democratic decision-making structure that can accommodate these different concerns.

One option that is discussed and to some extent pursued is to establish a set of eurozone-specific procedures and arrangements to handle issues in the eurozone. There is a clear risk that non-EMU countries could be excluded altogether (type 1 incongruence), or only included in such an *ad hoc* way as to provide them with no assurance on which they can rely (type 2 incongruence).

Close to the other end of the centralization scale is the area of security and defence policy which has seen considerable ‘Brusselsization’, but where this has taken a distinct transgovernmental form (Smith [2004]; on transgovernmentalism, see Wallace [2005]). It means that the supranational Court of Justice of the European Union (CJEU) and EP are largely excluded and there may also be legal and political constraints on supranationalization (at European and national levels). Here we see a clear democratic discrepancy in that the EP does not have full access to a range of policies that are addressed at the EU level. The lack of control by a directly elected European body suggests a democratically problematic form of type 1 incongruence.

The fifth and final point is that the euro crisis also contributes to reshaping the process of defining roles for parliamentary politics in matters of European integration. At a general level it shows how important it is to take heed of economic developments when studying democratic governing.<sup>6</sup> With more specific reference to the institutional implications of the crisis, we must underline the strong reliance on intergovernmental means and arrangements (by means of the so-called ‘Merkel method’; see Spiegel International [2011]), including fashioning intergovernmental treaties (e.g., the Treaty on Stability, Co-ordination and Governance in the Economic and Monetary Union [TSCG]), and striking informal intergovernmental bargains through extensive summitry (including bilateral meetings between Germany and France; Fabbrini [2013]). This weakens the integrity of the supranational Community system and the EP’s ability to subject it to democratic requirements. It may also have a democratically deleterious differentiating effect: the more informal intergovernmental approach to crisis handling appears to weaken the supranational structure by making it more transgovernmentalized. That weakens the credibility and legitimacy of the supranational structure, and instrumentalizes it in the sense that it is directed by certain core governments to privilege their particular conceptions of how the crisis is to be dealt with. It also clearly implicates the Commission in the undemocratic reverse quality majority voting system (RQMV<sup>7</sup>). RQMV makes sanctions almost automatic. A large majority is required to overturn a Commission decision; the procedure has a minoritarian bias. The general effect is increased incongruence; thus far it appears to be mainly along type 2 lines.



To sum up thus far, we have seen that the process of defining roles for parliamentary politics in matters of European integration is a matter of contending with various aspects of differentiation – at the EU level as well as in the member states. Increasing EP powers for instance is an attempt to reduce the incongruence that an integration process that is driven by executives and experts necessarily brings in its wake. At least prior to the crisis, the process has served as a democratic coping mechanism; it has produced clear democratic gains and has narrowed the incongruence gap. Democratization extends to the interstate realm, and as such seeks to alleviate the main problem facing nation-state-based democracy, namely the lack of democracy in the interstate realm (Archibugi 2008). At the same time, we have seen that there is a lot of diversity on the ground, in the member states, which shapes the process of establishing the EU-level representative system. How and to what extent that diversity gets politicized, feeds into the EU integration process and fosters differentiation clearly matters, but has not been systematically studied (it is also a very complex undertaking to establish that for the EU-28).

We may surmise that some of the differentiating effects are reined in by the manner in which the integration process unfolds: it is more a matter of fusing member states together with the EU institutions than singling out a distinct EU-level system. Codecision, shared competences and joint EU member state action likely reduce the level of political conflict, and the EU is a consensus-seeking system (Lord 2004). At the same time, contestation over different visions of the EU (coupled with institutional and other differences) shows up in significant differences in degrees of EU centralization. This form of incongruence where type 2 predominates is nevertheless democratically problematic.

A further problem stems from the fact that the crisis (and how it has been handled) has clearly weakened the democratic thrust and created a greater gap between integration and democratization. On the one hand, the crisis has fostered democratically unaccountable centralization within the EMU; on the other, it has shifted the centre of gravity to the European Council and a more intergovernmental approach that parliaments find notoriously difficult to hold accountable. We thus see both exclusion and more scope for arbitrary intervention, in line with a general weakening of the legal basis for integration (Joerges 2014).

The crisis has therefore strengthened incongruence, along both type 1 and type 2 lines. The question is whether the second democratic coping mechanism can alleviate any of these negative effects.

### **De-differentiation, co-ordination and domination**

In the previous section, I presented the first and most commonly appreciated EU democratic coping mechanism – bent on reining in and submitting executives and experts to democratic control and accountability. But the EU's structure, including its strong onus on *fusion* of levels, has helped to unleash a second democratic coping mechanism. EU member states' parliaments have become

more directly involved in EU-level decision-making. By involving national parliaments more directly in EU-level decision-making, this process is an intrinsic part of how EU integration brings national systems in closer contact with each other and introduces a different democratic coping mechanism based mainly on inter-parliamentary co-ordination and co-operation. That process has an element of de-differentiation built into it, in the sense of bringing together and refocusing what were, pre-EU, a collection of formally sovereign, nationally confined, vertically structured and, as noted, quite different and distinct systems of representation.

The Amsterdam Treaty of 1997 introduced the first provisions on national parliamentary involvement in EU-level decision-making. Since then, national parliaments have become increasingly linked together and have also been coupled to the institutions at the EU level (notably the Commission and the EP) through formal arrangements, such as the provisions in the Lisbon Treaty on national parliaments and subsidiarity, and the EWM, as well as through a host of more informal arrangements and interaction patterns.<sup>8</sup>

The structure of the system and the sum total of such patterns of co-ordination and co-operation across parliaments and across levels in the EU (including in a differentiated fashion the sub-unit level in member states) have taken on the shape of a multilevel parliamentary field, which entails that parliamentary systems share certain structural similarities and are connected across states and levels of governance (Crum and Fossum 2009, 2013). The multilevel parliamentary field is the sum-total of two processes: (a) establishing a representative system at the EU level; and (b) a more horizontal process of inter-parliamentary co-ordination that is loosely structured and de-differentiates national representative systems. It is also unevenly developed in democratic terms, due partly to the democratic deficits at the EU level coupled with glaring democratic problems in a range of member states. As such, it is important to underline that it is not a sufficiently democratically self-reinforcing system across levels. Problems in one constituency are not adequately dealt with across the system. At the same time the field may have democratic merits in that it encourages learning (in terms of fostering the spread of more arduous parliamentary scrutiny systems; see Buzogány [2013]) and information exchange, which can be democratically beneficial and empowering (Crum and Fossum 2013). The field can operate as a system of important 'external checks' on what goes on within individual member states (or at the EU level), and as such enhance transparency. But it must be added that the inclusion of national parliaments in EU-level decision-making, as is the case with the EWM, also opens up scope for *co-optation*. Parliaments consulted through the EWM can be held co-responsible for decisions that are made at the EU level. The broader point is that the system of national parliamentary involvement in decisions at EU level upsets established inter-institutional lines of authorization and accountability at both the EU level and the national level. The complex field structure also raises serious issues of accountability: whom to hold accountable for what in a system of deeply interwoven democratic constituencies? The democratic downside of the field is

fragmentation of accountability and heightened scope for manipulation, in terms of credit-taking and blame-shifting.

The euro crisis has affected relations in the field. We may ask whether the crisis is changing the system of co-ordination and its role as democratic coping mechanism to one more akin to *domination*. The crisis has opened up a new difference of power and status between creditor and debtor states within the eurozone. The parliamentary field has not ameliorated those differences. Parliaments' grip on core functions such as budgeting is weakened. All member states are now subject to strict budgetary requirements that constrain their parliaments' leverage, place strong constraints on budgetary policy and subject them to sanctions in cases of non-compliance. Under the European Semester, the EU co-ordinates the budgetary and economic policies of its member states *ex ante* and issues recommendations to them. This has reduced the budgetary scope for national parliaments, and the EP's role in this system is quite marginal. Given its limited role, the EP will not be able to control these processes at the EU level. The emerging system raises the prospect of domination; that is, not only a matter of experts, executives and markets depriving parliaments of control, it also feeds into the realm of inter-parliamentary relations. Benz (2013) has shown that creditor state parliaments (notably Germany's) *de facto* determine many of the operating conditions of debtor state parliaments (notably Greece, Portugal and Ireland).<sup>9</sup> This is a very problematic form of incongruence (type 2): some member state parliaments' decision-making ability extends well beyond their authorized bounds and procedures, whilst at the same time delimiting others', with profound implications for citizens' ability to govern themselves.

Thus, forms of national parliamentary involvement that were set up to ameliorate democratic problems may have started to create their own forms of domination. Much of this comes down to a structural asymmetry – monetary union without an attendant fiscal union – that in turn renders the EU's multilevel parliamentary field incapable of wielding effective democratic control and oversight of fiscal policy co-ordination. From the perspective of the EP, the problem is one of decisional exclusion, i.e., incongruence type 1, whereas from the perspective of the member states it is more a matter of incongruence type 2. The system interferes most directly with the actions and dispositions of the debtor states.

If parliaments are to re-assert themselves in such a structure, inter-parliamentary co-ordination appears necessary (and is also listed in Article 13 in the TSCG). There is a paradox here: the manner in which the EU has handled the crisis *increases the need* for a multilevel parliamentary field, but the crisis is *reducing the ability* of the EU to form a viable multilevel parliamentary field.<sup>10</sup> We see a greater gap between the need for a viable field on the one hand and an ability to foster a viable multilevel parliamentary field on the other.

One of the implications of the crisis and how it has been handled thus far is to render the realm of inter-parliamentary relations more vulnerable to domination. This runs counter to inter-parliamentary co-ordination understood as a democratic coping mechanism.

### Patterns of horizontal differentiation

I have argued that the Union has developed two democratic coping mechanisms. So far I have shown how these coping mechanisms can run into difficulties where vertical differences in integration create problems of incongruence or even domination. What, though, of horizontal differences? Can variation in the territorial extension of EU policies also complicate the operation of the two coping mechanisms? Certainly there is much horizontal variation in the external territorial application of Union policies. Gstöhl (2015) distinguishes no fewer than six such differences. However, whether horizontal differentiation also creates problems of incongruence is most starkly illustrated through the case of Norway.

Norway is a special case of horizontal differentiation: it is deeply integrated in the EU, but has a different status because it is not an EU member. It is, however, a member of the European Economic Area (EEA), is affiliated with the Schengen Agreement, the Dublin II Regulation, the Prüm Convention, and participates in CFSP (including joint strike forces), and a host of other arrangements (Leruth 2015). Through this very dense affiliation it in effect incorporates 75 per cent of EU's regulations and directives, arguably making Norway the EU's most incorporated non-member (Outside and Inside [2012]; see also Egeberg and Trondal [1999]).

This contribution focuses on the democratic implications of differentiation. It is therefore interesting to consider what the democratic implications of this form of differentiation will be: a state that is an EU norm and decision-taker but cannot avail itself of the two democratic coping mechanisms discussed above because it is not an EU member state. The question is what the democratic implications of this particular form of differentiation will be (with obvious relevance to member states that seek to renegotiate their formal EU membership status). A major reason for Norwegian citizens' rejection of EU membership was that EU membership would entail loss of democratic sovereignty.

The reality is that even if Norway's relationship to the EU is based on a two-pillar structure with an own set of EEA institutions, it is a matter of unilateral Norwegian adoption of EU regulations. Norway has no politically elected representatives in the EU's decision-making bodies,<sup>11</sup> so it thus has very limited scope to influence the process of legislation at the EU level. For Norway, the formal process only starts when legislation that has already been passed is presented to the EEA institutions in which Norway participates. This lack of upstream access creates a profound form of incongruence, with Norwegian citizens subjected to an ever-expanding body of legislation that they have not participated in making. This deep democratic incongruence is if anything amplified by a very limited scope for altering the substance of EU legislation. Thus, politically speaking, we may say that EU citizens residing in Norway (but voting in EP elections in their respective EU member states) have more say than Norwegian citizens on EU legislation that Norwegian authorities incorporate and apply in

Norway. Norway also has very limited access to the second democratic coping mechanism and its limited access provides it with no influence on decision-making.

That structure of representation is more similar to virtual than political representation (Burke 1792). For Norway this situation is deeply problematic, constitutionally speaking (Eriksen and Fossum 2014). The point is that in the EU the member states pool their sovereignty and handle joint affairs in institutions in which they are represented (European Council, Council and EP). These (and other) EU bodies increasingly define the scope and the terms under which member states govern themselves, i.e., the issues that have not been Europeanized. With regard to Norway, there is no similar access; hence Norwegian citizens are deprived of access to those bodies that determine the issues that affect them all. What also needs to be stressed, however, is that these bodies increasingly determine the nature of and the conditions under which EU states govern themselves; thus, they increasingly also help to set the terms of Norwegians' ability to govern themselves (as a sovereign state). The result is a peculiar form of dominance: a self-chosen status of hegemonic submission because of Norwegian citizens' increasing inability to set the terms under which they live. From the Norwegian angle, then, the EU appears as a hegemon even if it does not do so in relation to its member states, which collaborate in setting the terms of their joint co-operation and their self-governing. In congruence terms we see that the more closely incorporated a non-member is, the more the structure of association moves from type 2 to type 1 incongruence. Viewed in domination terms, we may say that at least prior to the crisis the real problem was not arbitrary domination, as the EU's influence was legally based, but exclusion and absence of participation. The issue that requires attention is how much the crisis is altering this.

## CONCLUDING REFLECTIONS

This contribution has provided a brief overview of how differentiation manifests itself in the realm of representative democracy in the multilevel constellation that makes up the EU, and has sought to establish some of the democratic effects of differentiation. The crisis has made differentiation a more pressing concern, through politicizing integration, stimulating movements in both integrationist and disintegrationist directions simultaneously, and raising the prospect of permanent membership status differences.

Differentiation raises more profound democratic challenges than differentiated integration. The analysis in this contribution also suggests that it requires a shift in research focus. For one, the point of departure could not be the process of integration as such but the EU's member states. The member states are the EU's democratic mainstays and guarantors, and the assessment of democratic effects had to take that role properly into account. The member states do not renege on their sovereignty when entering the EU; they pool it in institutions they participate in directly and submit to oversight and control. Given that

EU integration has long been a process largely driven by executives and experts, EU democratization had to be studied in the shape of democratic coping mechanisms bent on reducing incongruence. I specified two distinct democratic coping mechanisms, both focused on defining roles for parliamentary politics in matters of European integration, with the first a vertical process of EU-level democratization and the second a growing tapestry of inter-parliamentary co-ordination and co-operation. These coping mechanisms, and in particular the latter, underlined that from a democratic perspective it was necessary to focus not only on differentiating factors and patterns but also co-ordinating ones.

Democratic coping mechanisms are intended to reduce incongruence. How such mechanisms relate to differentiation cannot be established *a priori* but must be considered in relation to the case at hand. In order to address that, it was pointed out that democratic incongruence could take several forms; the main distinction being between two forms of incongruence, with type 1 signifying general exclusion and type 2 signifying incongruence that varies with territory and function. The former has no specific relevance to differentiation, whereas the latter is relevant to capture the democratic problems associated with differentiation.

The general assumption that the contribution set forth was that we should expect the most pressing democratic problems in those cases where actors were excluded, found their basic interests violated and/or were subject to arbitrary interference. That broad assumption was borne out. At the same time, it was also shown that both patterns of differentiation and structures bent on co-ordination ended up engendering forms of domination. That underpins the notion that the relationship between democracy and differentiation is complex and composite.

Three findings stand out with regard to the EU. The first is that it does not appear to be differentiation as such, but rather the crisis and the built-in problems in the EU structure that the crisis has exposed that are engendering the most serious democratic problems. The crisis has weakened the role of parliaments – at both EU and member state levels. We have seen problems of democratic exclusion and increases in the scope for arbitrary interference – whether willed or structural. The crisis has also produced forms of horizontal domination. Because the process of establishing an EU-level system of democratic representation is marked by different levels of centralization, there are elements of democratically problematic incongruence type 2 that have, if anything, been amplified by the crisis.

The other finding is that, democratically speaking, a most troubling aspect of differentiation is seen in those countries that are subject to EU rules and regulations but do not partake in the political processes at the EU level where these are made. The EU's democratic coping mechanisms are configured along EU membership lines, not along the territorial reach of EU policies. As a democratic polity the EU is less differentiated than is the case with the reach of EU policies. That, as the case of Norway has shown, has democratically deleterious

implications for the EU policy takers that are not EU members. We may say that the more closely a state is affiliated to the EU without being a member, in incongruence terms, the greater the move is from type 2 to type 1 incongruence. The more such a state is incorporated, the less functional differentiation there is; the main discrepancy lies in that state's very limited access to influence. If the relationship is close enough we might talk of subjection or even hegemonic domination. An interesting point is that this form of domination in the EU, certainly pre-crisis, was a matter of democratic exclusion but not a case of arbitrary interference (a substantial majority of Norwegian citizens support the present arrangement, which is considered more a protection than a violation of basic Norwegian interests).

Third, and finally, the contribution has shown that the EU is so complex and composite that insofar as the EU is capable of sustaining democracy, its very democratic development requires paying attention to patterns of differentiation and co-ordination and how they interact. That in turn may raise important challenges to democratic theory. The sheer complexity of the EU compels us to consider the broader patterns and systems of representation and how they interact, which naturally places the focus on the multilevel parliamentary field and the role it is able to play in tackling the EU's representative-democratic problems. That in turn (in the sunshine scenario of EU survival and democratic recuperation) may require rethinking core tenets of democratic theory.

**Biographical note:** John Erik Fossum is professor at the ARENA Centre for European Studies, University of Oslo.

**Address for correspondence:** Prof. John Erik Fossum, ARENA Centre for European Studies, PO Box 1143 Blindern, Oslo, Norway. email: [j.e.fossum@arena.uio.no](mailto:j.e.fossum@arena.uio.no)

## NOTES

- 1 The EU case is a particularly pronounced example of a more general trend in an increasingly globalized world. Habermas (referring to Held *et al.* [2000]) goes so far as to argue that: '(g)lobalized networks in all dimensions have long since made nonsense of the normative assumption in democratic theory of *congruence* between those responsible for political decision-making and those affected by decisions' (Habermas 2008: 325; emphasis original).
- 2 There are different conceptions of this term. Pettit (1997) focuses particular attention on arbitrary domination and law and rights to prevent it, whereas Shapiro (1999, 2011, 2012) focuses on power relations and the need to counter it through democratic means.
- 3 Consider in particular Cheneval and Schimmelfennig (2013) and Nicolaidis (2012, 2013). This contribution focuses on democratic coping mechanisms and does not seek to specify which models of democracy they may result in.
- 4 The analysis here focuses mainly on the EP; even if the Council is a key legislator and an attempt to reduce incongruence, there are important differences. The EP is directly elected by the European citizens and ensures citizens' say on the decisions that affect them in their capacity as European citizens. The Council's role in

- ensuring congruence is far more complex. Under unanimity it can be seen as a national safeguard; under qualified majority voting (QMV) it is a matter of the collective of national constituencies. It deviates from a traditional legislature in that it also has explicit executive functions. There is also a question of whether the Council is internally operating as a legislature or rather more as a glorified bureaucracy (Häge 2013). It is composed of government ministers and well over 250 working parties and committees that are composed of national officials and diplomats.
- 5 Ian Cooper (2012) argues that the EWM can be understood as a kind of ‘virtual third chamber’ for the EU.
  - 6 See notably Streeck (2014). This point is also forcefully made in the many contributions to the analysis of the crisis in Fossum and Menéndez (2014), especially the chapters by Scharpf, Joerges, Leaman, Majone and Menéndez.
  - 7 See Article 7, TSCG, available at: [http://www.consilium.europa.eu/media/1478399/07\\_-\\_tscg.en12.pdf](http://www.consilium.europa.eu/media/1478399/07_-_tscg.en12.pdf).
  - 8 For an overview of formal and informal arrangements, see the various contributions in Crum and Fossum (2013).
  - 9 In Germany, for instance, this was amplified by the Federal Constitutional Court’s ruling on the rescue of Greece, which stressed the budgetary autonomy of the German Bundestag. BVerfG, 2 BvR 987/10 vom 7.9.2011, Absatz-Nr. (1 – 142), available at: [http://www.bverfg.de/entscheidungen/rs20110907\\_2bvr098710en.html](http://www.bverfg.de/entscheidungen/rs20110907_2bvr098710en.html).
  - 10 The newly established ‘Article 13’ [TSCG] Inter-parliamentary Conference is a most feeble effort at retaking parliamentary control.
  - 11 Norwegian elected executives are allowed access to Schengen-relevant meetings in the Council but do not have voting rights.

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