

Article

EU Renewable Energy Governance and the Ukraine War: Moving Ahead Through Strategic Flexibility?

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Abstract

When faced with highly heterogeneous national conditions and preferences, the EU has often resorted to differentiation to ensure political support for advancing common policies. Despite growing scholarly interest in differentiation in the EU, conceptual clarity and empirical evidence of different forms of differentiation are still in a nascent stage. Particularly the use of differentiation in times of crisis needs to be better understood. To address this research gap, we investigate differentiation in the EU renewable energy policy in response to the crisis stirred by Russia's full-scale invasion of Ukraine. We find that the EU successfully used the Ukraine crisis to increase the ambition of renewable energy policy, but this was accompanied by various and often novel forms of differentiation. Rather than formally exempting countries from common EU provisions (differentiated integration), EU decision-makers strategically incorporated flexibility in implementation, often tailored to a few outlier countries. Strategic flexibility was instrumental in overcoming political disagreements among national governments and adopting a more ambitious and comprehensive renewable energy policy. Our findings contribute conceptually and empirically to understanding various forms of differentiation in EU policymaking and how they are employed to facilitate the building of political majorities during crises.

Keywords

climate policy; differentiation; energy policy; European crisis; European Union; renewable energy; Ukraine war

Issue

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1. Introduction

While binding EU legal acts typically provide harmonised rules for all member states, they can also be designed to apply only to certain member states or allow for deviation from common rules in the implementation phase. This phenomenon has been referred to in the literature on European integration and policymaking as differentiation (Leruth et al., 2022). The EU has increasingly

made use of various forms of differentiation to advance common policy solutions among member states with heterogeneous conditions and preferences (Holzinger & Schimmelfennig, 2012; Stubb, 1996). While scholarly efforts to improve the conceptual and empirical understanding of differentiation strategies in the EU have grown recently (Princen et al., 2022; Schimmelfennig & Winzen, 2023; Zbiral et al., 2023), this research is still in the nascent stage. In particular, we know little about

the effects of crises on policy differentiation in the EU. Specifically, it is yet to be properly understood whether, and how, differentiation proliferates in EU policy during crises and what role various forms of differentiation play in facilitating joint policy responses to crises. We seek to address this research gap by investigating the use of differentiation in EU renewable energy policy, particularly in response to the crisis triggered by the Russian invasion of Ukraine in February 2022.

Renewable energy policy is an important and highly salient policy area in the EU, but one which has also been associated with high levels of contestation and heterogeneous national energy mixes and preferences (Solorio & Jörgens, 2020). The roots of the policy challenge largely lie in the Treaty on the Functioning of the EU, which stipulates that the EU should promote the use of renewable energy sources (“renewables”) while at the same time, preserving the right of a member state to “determine the conditions for exploiting its energy resources its choice between different energy sources and the general structure of its energy supply” (Consolidated Version of the Treaty on the Functioning of the European Union, 2012, Art. 194). The promotion of renewables has become one of the cornerstones of the EU’s climate policy efforts, and the von der Leyen Commission, with its 2020 European Green Deal strategy, has placed it at the top of the EU energy and climate agenda. Yet, due to the different political, economic, and material conditions surrounding their energy sectors (Knodt & Kemmerzell, 2022), some governments perceived the ever-increasing ambition of renewable targets as economically costly and politically undesirable and/or technically infeasible (Četković & Buzogány, 2019; Solorio & Jörgens, 2020). This resulted in “soft” governance solutions, however, with the tendency to become gradually “harder” over time (Bocquillon et al., 2023; Knodt et al., 2020). The energy crisis, resulting from Russia’s invasion of Ukraine, has led the EU to adjust its renewable energy policy and launch yet another round of legislative changes aiming towards increased policy ambition. While in 2018, EU decision-makers could agree only on a 2030 renewable energy target of 32.5%, a target in place still at the beginning of 2022, policy revisions in June 2023 increased this to at least 42.5% with “an ambition to reach” 45% (Council of the EU, 2023a). In addition to the amendments to the EU Renewable Energy Directive III (REDIII), several associated legal acts have been adopted, most prominently the delegated acts on hydrogen (European Commission, 2023) and the Council regulation on faster permitting processes for renewable energy projects (Council Regulation of 22 December 2022, 2022). While suggesting increased EU policy ambition and scope, this raises questions about the exact nature of policy change and the role of the Ukraine war as a crisis in driving this development. Although certain differentiation elements have traditionally been part of the broader EU energy and climate policy, this trend has seemingly accelerated in recent years. The exam-

ples include the Polish opt-out from the EU 2050 climate neutrality target and the shift away from binding national targets in the RED enacted in 2018 (Bocquillon & Maltby, 2020).

Against this background, this article asks two main questions. First, has the scale-up in the ambition and scope of EU renewable energy policy after the Russian invasion of Ukraine been accompanied by further differentiation, and if yes, in what form? Second, how did different EU actors position themselves on the use of differentiation, and what role did differentiation play in reaching an agreement over the revisions of the EU’s renewable energy policy during the Russian war on Ukraine?

Our analysis contributes to the existing literature in three respects. Firstly, we add to the conceptual and empirical understanding of various differentiation forms in EU policy based on a new framework applied to EU renewable energy policy. With this, we also advance understanding and assessment of EU policy more generally, based on the identification of the varying forms and levels of policy differentiation. Finally, we contribute to the literature on the effects of crises on EU policies (for an overview, see Riddervold et al., 2021), highlighting, in particular, the use of differentiation in reaching joint policy responses.

2. Theoretical Framework

2.1. Differentiation in EU Legislation

Two main forms of differentiation in the EU have been identified in the literature: differentiated integration (DI) and flexible implementation (FI). DI refers to the practice of explicit exclusion of specific member states from common EU provisions (Schimmelfennig et al., 2015). DI can be introduced at the level of the primary EU law (treaties) when some member states formally opt out from transferring the competencies to the EU in a given field, or it can be part of the secondary EU law, such as regulations or directives. In the former case, certain member states are temporarily or permanently exempted from specific binding provisions in the EU legislation. DI can come in the form of actual differentiation when member states are explicitly exempted or potential differentiation when member states can request to be exempted (Schimmelfennig & Winzen, 2022). DI can be provided for a specified time period or be permanent. While in the case of DI, the rules do not apply to some member states, FI occurs when EU legal provisions apply to all member states but provide a certain level of discretion to member states in deviating from the commonly agreed provisions. FI thus can occur only in EU secondary laws (and by-laws) and can be defined as discretion which “explicitly authorizes member states to make choices in transposing, applying and enforcing EU law” (Princen et al., 2022, p. 9). Princen et al. (2022) identify five different forms of discretion that can characterise flexible EU provisions: (a) elaboration discretion, (b) reference to national legal

norms, (c) minimum harmonisation, (d) scope discretion, and (e) discretion in application on a case-by-case basis. The provided discretion in EU legal provisions also comes with varying levels of constraint (Zbiral et al., 2023, p. 108). EU legislators can, for instance, require member states to justify the reasons for exercising discretion or limit the scope of discretion. In principle, FI can also have a temporal or permanent character. Overall, both DI and FI are responses to the growing heterogeneity of national preferences in the EU, but they differ in the way of addressing those differences. It is also important to note that DI and FI are not mutually exclusive as some policy provisions can formally differentiate among member states while also providing flexibility to the countries to which they are legally binding.

The extent to which DI and FI feature in EU legal acts is an important aspect of policy design which potentially influences policy harmonisation and effectiveness. The extensive use of differentiation, particularly if permanent and tied to few constraints, signals a more limited geographical scope and less transformative potential of EU policies. As noted by Zbiral et al. (2023, p. 116), “too much flexibility may rob joint policy arrangements of the harmonising effect that they are supposed to have.” In the literature, there is a gap when it comes to systematically mapping the design of EU policy based on the form of differentiation across individual provisions in EU acts. Drawing on the differentiation literature (Princen et al., 2022; Schimmelfennig & Winzen, 2022; Zbiral et al., 2023), we categorise DI and FI along two dimensions: time and constraint. The *temporal dimension* relates to whether the differentiation provision is permanent or temporary, with permanent differentiation having a more far-reaching impact on the geographical scope of the provision. The *constraint-related dimension* refers to the conditions attached to differentiation which can, for instance, request previous authorisation by the Commission or specify substantive circumstances under which discretion can be utilised (Zbiral et al., 2023). While in the literature the temporal restriction is understood as one of the constraints (Zbiral et al., 2023), we treat it as a separate category given its importance. In contrast to Zbiral et al. (2023), who count the number of constraints per provision and treat them equally, we propose to differentiate between low and high constraints qualitatively. We assign “low differentiation” when the provision lacks any constraint or defines the constraints broadly, while “high differentiation” is when constraints are more detailed and stricter. If a provision does not feature either DI or FI, this implies that it has a uniform character. It is important to note that constraints are also an important feature of uniform provisions. This specifically concerns the bindingness of uniform provisions, given that the EU law operates with binding and non-binding or indicative provisions. We thus describe the constraints in uniform provisions as binding or non-binding rather than high and low.

2.2. How Do Crises Affect Differentiation in EU Policy?

One of the pertinent but underexplored questions is about the actors advancing the use of differentiation in EU policy in times of crisis and the reasons they do so. As noted earlier, DI is generally expected to be employed when a few member states are unwilling to be subject to harmonised EU rules. Such differentiation usually occurs when EU policies penetrate core state powers leading some national governments to opt out from EU-wide rules in a bid to preserve full sovereignty in a respective domain (Rittberger et al., 2013; Zbiral et al., 2023). In their study on the effects of crises on DI, Schimmelfennig and Winzen (2022) found that if the EU is successful in adopting a common policy response this is accompanied by an increase in differentiation. Such differentiation, however, proceeds along the established insider-outside lines meaning that the included member states receive explicit exemptions from certain provisions in secondary law but neither are they excluded from the entire policy nor do previously excluded countries decide to join the common policy. FI, in contrast to DI, is likely to be employed in cases of widespread concerns among member states linked to implementation costs and lack of capacity (Princen et al., 2022). Here, member states acknowledge the need for a common EU policy approach but seek to preserve a certain level of discretion when implementing some of the common rules. Although there is no research on how crises affect FI, Zbiral et al. (2023) offer a useful distinction between strategic and substantive use of FI. The former refers to the situation when flexibility is introduced to overcome political disagreements by offering more autonomy to member states in the implementation phase. Substantive flexibility, on the other hand, is related to the content of EU law. It occurs when implementation flexibility is required due to the high complexity of the legal act and the considerable misfit between national legal norms and the proposed EU norms. Zbiral et al. (2023) do not specify whether the difference in the strategic and substantive use of FI will also be mirrored in the use of different forms of discretion. It is plausible to expect, however, that discretion in application on a case-by-case basis is likely to be employed for strategic reasons, while elaboration discretion and reference to national legal norms should be more common in the substantive use of flexibility. Furthermore, if the strategic use of flexibility aims at overcoming political disagreements, it is likely to particularly target certain member states deemed pivotal to ensuring sufficient collective political support. This implies that although FI is generally associated with offering flexibility to all member states, it can also be utilised to accommodate the concerns of outlier countries.

Based on a quantitative study of 164 EU directives, Zbiral et al. (2023) found that substantive use of flexibility dominates over strategic use. While this seems plausible for general EU decision-making, we explore

whether strategic use of flexibility may proliferate in times of crisis which require overcoming political conflicts and negotiating joint responses under pressure. Thus, if the forces in the EU for a resolute joint policy response to the crisis are strong enough, strategic flexibility may be used to overcome the resistance of more reluctant member states. Regarding the role of different EU institutions, one can expect that supranational institutions, such as the Commission and European Parliament, will advocate for higher policy ambition (Buzogány & Četković, 2021) and more stringent policy response meaning less flexibility. This is because the Commission and European Parliament usually strive to ensure better control over policy implementation by limiting the interpretation space available to member states (Zbiral et al., 2023). Following the neo-functional assumption, during crises, supranational and transnational groups will also be the main drivers behind a common EU policy response, particularly under conducive conditions such as the symmetric character of the crisis and high EU competence in the respective policy area. According to Ferrara and Kriesi (2022), in areas of high EU competence, in both symmetric and asymmetric crises the supranational institutions can be central to reaching policy agreements either by capitalising on the lack of disagreement among member states under symmetric crises or by brokering the agreement among opposing national positions in asymmetric crises. Schimmelfennig (2018) shows that the existence of inherited supranational capacity and vocal transnational groups combined with high interdependence among member states are the main explanatory factors for a successful common EU response to the euro crisis compared to the failure in collectively dealing with the migration crisis from 2015.

In contrast, as an intergovernmental body, the Council is more likely to advocate for higher differentiation in proportion to higher levels of conflict between member states (Zbiral et al., 2023). This should particularly be the case for the acts adopted only by the Council, where the Council enjoys more freedom in setting the legal terms. From the crisis perspective, if the integration forces in the EU are weaker and the conflicts prevail, the Council may be expected to defend more exceptions to the common rules. In the aftermath of the 2009 economic crisis, this was the case when binding national renewable energy targets, defined in a top-down manner, were opposed by the majority of member state governments. Borrowing from liberal intergovernmentalism, we can thus expect member states to be able to significantly shape the terms of the deal, particularly if they are economically strong and if the issue is of high salience to them (Moravcsik & Schimmelfennig, 2019). Such assertive outlier countries are thus likely to secure additional concessions through differentiation. DI is a possible but less likely method of addressing outlier concerns in EU renewable energy policy given that renewable energy does not belong to core state powers and there is no legacy of DI in this field. Another possible way

of addressing outlier concerns is a more targeted strategic use of FI.

3. Methods

Our research strategy relies on qualitative content analysis and process tracing of the positions of crucial EU actors. We drew on official EU documents, media reports, and position papers that present the positions and motivations of the main actors concerning the changes in EU renewable energy policy, especially when referencing the war in Ukraine. When investigating the level of differentiation, we focus on the main legislative documents in the field of renewable energy sources, namely the amendments to the RED (Council of the EU, 2023a), the delegated act on the definition of renewable fuels of non-biological origin (hydrogen definition; European Commission, 2023), and the Council's regulation on renewable energy permitting (Council Regulation of 22 December 2022, 2022), all adopted in the aftermath of the 2022 Russian invasion of Ukraine. This offers a variety of legal acts in terms of the legislative process and allows for discerning the influence of different EU institutions and actors on differentiation. While the RED is adopted jointly by the Council and the European Parliament, the Council regulation is adopted solely by the Council. The delegated act is only approved by the Council and the European Parliament without the possibility of amending the text. We exclude some related non-legislative initiatives launched during the same time period, such as the European Solar Photovoltaic Industry Alliance. Given the very detailed and broad character of the three selected legal acts, we limit the analysis to the central provisions in four main thematic areas: (a) headline renewables target; (b) sectoral targets in transport, industry, and buildings; (c) permitting process; and (d) renewable hydrogen definition. While the Council regulation and the delegated act have been formally adopted during our analysis period, the assessment of the RED is based on the agreement text concluded between the European Parliament, Commission, and the Council in March 2023, and endorsed by the Council and European Parliament committee in June 2023 (European Parliament, 2023b, 2023c). The European Parliament officially voted in favour of the text of the revised RED on 12 September 2023 (European Parliament, 2023a) while the Council's formal approval followed on 9 October 2023, with Czechia and Bulgaria abstaining and Poland and Hungary voting against it (Council of the EU, 2023b).

4. Empirical Analysis

In 2018, the Council and the European Parliament approved the RED recast, setting goals and measures through 2030. In July 2021, the European Commission proposed amendments to REDII to bring policy efforts in line with the new 2030 goal of a 55% emissions reduction set by the European Green Deal strategy and the

European Climate Law 2050 net zero target (Regulation 2021/1119). In May 2022, the Commission published the REPowerEU plan in response to the Russian invasion of Ukraine, proposing an accelerated deployment of renewables to reduce dependence on Russian fossil fuels and a revised REDIII, renewable hydrogen delegated act, and regulation on faster permitting of renewable energy projects.

4.1. Headline Renewables Target

The headline 2030 renewable target was set at 32.5% in 2018, and the Commission proposed in its 2021 Fit for 55 legislative package to increase this to 40%. The Commission's May 2022 REPowerEU strategy proposed 45% "speeding up the phase-out of EU's dependence" (European Commission, 2022c). The European Parliament supported a 40% target in February 2022, but by the beginning of March, the rapporteur called for an increase to 45% as "the only way we can become more independent and show Putin that we can do without him" (EPP Group, 2022). This position was adopted by 418 votes to 109 in September 2022 (European Parliament, 2022). Immediately after Russia's invasion, all member states "agreed to phase out our dependency on Russian gas, oil and coal" (European Council, 2022). Whilst there was an ambitious group—Austria, Denmark, Estonia, Germany, Greece, Lithuania, Portugal, and Spain—whose position was that "an increase of the renewables target to 45% is indispensable" (EURACTIV, 2022), there was also a group pushing to maintaining the previous 40% target—Bulgaria, Hungary, Poland, and Slovakia (Simon, 2023)—and others not ready to back the increase to 45%—France, Netherlands, and Ireland (Simon, 2022). In March 2023, a binding target of 42.5% was agreed upon, with "an aim" to reach 45%. The implementation architecture remained the same, set out in the EU's energy governance regulation (Bocquillon & Maltby, 2020), with no binding national targets but a prominent role for the Commission in monitoring, reviewing, and coordinating national efforts to ensure the fulfilment of the collective EU target. Targets are indicative and include flexibility in implementation. Underperforming countries are obliged to respond through additional measures if the fulfilment of the EU target is threatened but they have discretion in how to contribute to the collective ambition gap, for example through contributing to the EU budget for renewables projects. Where the collective target is not threatened then member states falling behind their national reference points are only required to say how they will respond without obligation to implement this (Regulation 2018/1999).

The debates in the Council about the renewables target largely reflect the main cleavage which has emerged on renewable energy policy dividing member states into the renewable-friendly and the nuclear-friendly camp. The renewable-friendly camp consists of countries which

share the highest ambition on renewable energy policy and seek to maintain the focus of EU support on renewable energy sources as the main future low-carbon energy technology. Launched at the initiative of the Austrian Ministry of Climate Action and Energy, the renewable-friendly group of countries held its first formal meeting in March 2023 which included representatives from Austria, Denmark, Estonia, Germany, Ireland, Latvia, Lithuania, Luxembourg, Portugal, and Spain, while the Netherlands and Belgium attended as observers (Messad, 2023a). The nuclear-friendly camp includes countries which are concerned with preserving the role of nuclear power in the EU energy structure and ensuring that the promotion of renewable energy sources does not put nuclear power at a disadvantage (Messad, 2023b). Led by France, the formal meeting of the nuclear-friendly groups of countries took place in May 2023 with the participation of Belgium, Bulgaria, Croatia, Czechia, Estonia, Finland, Hungary, the Netherlands, Poland, Romania, Slovenia, Slovakia, and Sweden, with Italy as an observer (Messad, 2023c). It is important to note that while some members of the nuclear-friendly group, particularly the Central-Eastern European countries, display little enthusiasm for renewable energy sources, France but also Belgium, the Netherlands, and Sweden have been favourable towards both nuclear and renewable energy sources. In a bid to meet the growing electricity demand and strengthen its industrial competitiveness, the French government declared the goal of accelerating the deployment of renewable energy sources and nuclear power (Moussu, 2022). This even led France to join the renewable-friendly group of EU countries (Jack, 2023; Messad, 2023a). Sitting in both camps gives France an important broker role but also a solid bargaining position.

5. Sectoral Targets

REDIII specifies several sectoral and sub-sectoral targets. While FI is traditionally associated with discretion in implementation, the targets can be formulated to entail varying levels of differentiation. In the transport sector, the Commission proposed in 2021 to replace the renewable energy target with a binding national target of reducing the greenhouse gas intensity of transportation fuels by 13%. It further sets binding sub-sector national targets of 2.2% for advanced biofuels and 2.6% for hydrogen produced by renewables—4.8% total (European Commission, 2021). REPowerEU proposed increasing the hydrogen sub-target to 5.7% (European Commission, 2022a), a position that was shared by the European Parliament. During the trilogue negotiations with the Council, a combined 5.5% binding sub-target for advanced biofuels and hydrogen was set, with a minimum share of 1% for hydrogen. The combined sub-target provided flexibility for member states to decide on the extent to which they wish to prioritise biofuels and hydrogen. The overall transportation target was

amended, increasing the ambition of the greenhouse gas intensity target from 13% to 14.5% and introducing an alternative target of 29% of renewable energy share in transportation by 2030 on the proposal of the Council (Council of the EU, 2023a). With this, further flexibility to the increased binding targets was introduced, with member states having the discretion to choose targets to meet.

For industry, the 2021 Commission proposal envisaged an indicative national target of a 1.1% annual increase in renewables and a binding national 2030 target of 50% of hydrogen from renewables (European Commission, 2021). REDII included no specific industry targets. Following a European Parliament proposal to increase the indicative target to 1.9%, it increased from 1.1% to 1.6%. REPowerEU proposed increasing the 2030 industry renewable hydrogen target to 70%, and the negotiated outcome was 42.5% by 2030 and 60% by 2035. The final text included a new provision, at the request of the Council, stipulating that member states can reduce their hydrogen target by 20% if they meet two additional conditions: (a) if on track in contributing to the overall renewables target and (b) that the share of hydrogen from fossil fuels does not exceed 23% by 2030 and 20% by 2025 (Council of the EU, 2023a). This novel flexibility provision was a concession to several countries highly reliant on nuclear power, particularly France. Even after the agreement was reached in the trilogue, the French government signalled that it would not support the text in the Council and successfully negotiated the inclusion of a preamble that acknowledges the special challenge of some ammonia production facilities to switch to renewable hydrogen (Abnett, 2023). Such a provision can create legal room for excluding some ammonia production plants from the renewable hydrogen target on a case-by-case basis.

In the buildings sector, the Commission's proposal to increase ambition in 2022 was rejected, and an indicative 49% target and 0.8% binding annual increase by 2026 and 1.1% from 2026 through 2030 was agreed upon, almost identical to its 2021 targets.

5.1. Permitting Process

Some of the most tangible changes to renewable legislation relate to permitting procedures for renewables. REDII set the maximum duration of permitting for renewable energy projects to two years in 2018. However, environmental legislation and the standard legal rules in member states continued to apply, so actual permitting time could significantly exceed this. There were no new Commission proposals in 2021, but 2022's REPowerEU highlighted that "slow and complex permitting processes are a key obstacle to unleashing the renewables revolution and for the competitiveness of the renewable energy industry" and that "varying permitting times between member states demonstrate that national rules and administrative capacities compli-

cate and slow down permitting" (European Commission, 2022b, p. 11). The Commission proposed defining renewable energy projects as in the overriding public interest until the EU achieves climate neutrality. This would allow member states to partly bypass other rules, such as those related to environmental impact when deciding on granting renewable permits. Industry representatives, including renewable energy groups and the association of electric power companies, called for legislation that would apply to all technologies, in line with the position of the Commission and the European Parliament (Eurelectric et al., 2023). The Council supported this view but introduced the possibility for member states to restrict the application of the overriding public interest provision to certain technologies, projects, and parts of the territory in "duly justified and specific circumstances" (Council of the EU, 2023a). The provision stipulates that member states must inform the Commission about every planned exception and provide justification.

In December 2022, the EU adopted, at the proposal of the Commission and prioritised by the German government (Giegold, 2022), an emergency regulation on faster permitting processes (Council Regulation of 22 December 2022, 2022). The time scope of the regulation is limited to 18 months as a temporary solution until REDIII is formally adopted and transposed into national legislation. The regulation defines strict uniform deadlines for all member states concerning the permitting processes for specific technologies and projects, including rooftop solar photovoltaic, heat pumps, and upgrading of existing renewable energy plants. The regulation, however, also contains an important FI provision related to the overriding public interest. Based on the amendment to Art. 3 introduced by the Council, member states are given substantial room to restrict the application of this provision to specific technologies, projects, or geographic areas without needing to justify such exemptions. As stated above, substantially higher constraints to this discretion were incorporated in the REDIII text.

5.2. Renewable Hydrogen Definition

REDII of 2018 required the Commission to submit by the end of 2021 a delegated act to specify the conditions for defining and calculating renewable fuels of non-biological origin, mainly hydrogen. Upscaling the production and use of hydrogen was a REPowerEU priority (European Commission, 2022c, p. 2). There were two main contested issues related to the design of the delegated act. Firstly, whether renewable electricity for producing renewable hydrogen must come from new renewable energy projects installed for that specific purpose, the so-called "additionality criteria." Secondly, what criteria will be used to prove the match between renewable electricity and green hydrogen production? The Commission was under strong pressure from member states and industry groups to design the rules flexibly enough which delayed the final adoption (Kurmayer,

2022). The rules were to apply to both domestically produced and imported hydrogen. The countries that aimed to import a substantial amount of renewable hydrogen, such as Germany, were also interested in keeping the rules flexible enough. The additionality and matching criteria were relaxed between the Commission's first proposal of the delegated act in May 2022 and the final text in February 2023. The final text maintained that the calculated hydrogen must come from renewable energy sources (European Commission, 2023). However, until 2030 monthly (instead of hourly) matching will apply. Furthermore, the additionality criteria will now apply

only from 2028 and not for bidding zones in which the carbon intensity of electricity is below 18 g CO₂ per megajoule. While this provision opens the possibility for all countries to deviate from the rule under the defined conditions, only two countries in the EU can fulfil the envisaged criteria, France and Sweden, and France due to its large nuclear-based low-carbon electricity sector is particularly set to economically benefit from this rule (Hancock et al., 2023).

Table 1 provides an overview of the examined legal provisions and the type and level of differentiation following the adopted analytical framework.

Table 1. Differentiation in EU renewable energy policy.

	Differentiated integration	Flexible implementation	Temporal	Constraints
Headline renewable energy target 42.5% up to 45%		X		High: The 42.5% target is binding, while the 45% target is indicative. The Commission must be informed and monitor and assess compliance.
Transport target: Greenhouse gas intensity target 14.5% or 29% renewable energy share		X		High: Member states have only the discretion to choose among the two targets during the implementation.
Transportation sub-target: Combined 5.5% target for advanced biofuels and hydrogen		X		
Renewable energy target in industry: 1.1% annual increase for each member state				The target is non-binding (indicative).
Renewable hydrogen target in the industry: 42.5% by 2030 and 60% by 2035, but can be reduced by 20%		X		High: The target can be reduced by 20% but only if two strict conditions apply. First, the member state is on track renewable energy target and second, the share of hydrogen from fossil fuels does not exceed 23% by 2030 and 20% by 2025.
Exception from renewable hydrogen target for ammonia production plants		X		Not clear under what conditions the exemptions will be granted on a case-by-case basis.
Buildings target: National 49% target of renewable energy sources				Non-binding.
Buildings target: Annual increase in the share of renewable energy sources by 0.8% through 2026 and 1.1% from 2026 to 2030				Binding.
Overriding public interest		X		Low: Member states have full discretion to limit the application of this provision.

Table 1. (Cont.) Differentiation in EU renewable energy policy.

	Differentiated integration	Flexible implementation	Temporal	Constraints
Overriding public interest (RED)		X		High: Member states have the discretion to limit the scope of the provision only in exceptional cases and subject to approval by the Commission.
Additionality criteria in the hydrogen definition		X	Temporary until 2028	Low: Member states can freely choose not to apply additionality criteria by 2028.
Exception to the additionality criteria for bidding zones of below 18 g CO ₂ per megajoule of carbon intensity		X		High: Exception only under strict conditions that effectively can apply only to a few countries.

6. Conclusions

In this article, we set out to explore the extent of differentiation in EU renewable energy policy and asked about the role of differentiation in negotiating the common EU renewable energy policy response to the crisis triggered by Russia’s invasion of Ukraine.

We found that since 2022 renewable energy legislation has demonstrated increased ambition and scope including headline renewables targets as well as sub-targets. The Commission, the European Parliament, and a group of member states were quick to frame the crisis as one which highlighted the risk of fossil fuel imports from Russia, a warning with echoes of the 2006 and 2009 gas supply crisis (Judge & Maltby, 2017; Maltby, 2013). In turn, accelerating efforts to deploy renewable energy sources has been proposed as one of the main measures to address the problem. Russia’s invasion of Ukraine was essentially a symmetric crisis for the EU, given that almost all countries relied on Russian fossil fuels to some extent and experienced energy price shocks. Combined with a degree of common security concerns toward Russia, the new situation created a sense of solidarity among member states which spilled over to the renewable energy field. This spirit of solidarity and the perceived urgency of the problem increased the pressure for ramping up renewable energy efforts. However, important differences among member states in the level of enthusiasm for renewable energy sources and the approach to nuclear power had to be overcome (Žuk et al., 2023).

As to our main research question, the analysis has shown that the increase in ambition was accompanied and facilitated by the usage of FI in various provisions (see Table 1). This echoes the finding by Schimmelfennig and Winzen (2022) that achieving a common EU policy response to the crisis will be coupled with increased differentiation with differentiation serving as a facilitator of joint policy. Although formal DI has not occurred, as

no country has explicitly been exempted from common provisions, nearly all examined major provisions entailed some level of flexibility in implementation but were often tied to high constraints. Concerning the position of different actors, our expectation has found support given that the supranational institutions, particularly the Commission, have consistently advocated uniform measures while virtually all flexibility provisions were introduced by the Council’s amendments. This is particularly visible in the level of discretion attached to the provision on “overriding public interest” with the regulation which was adopted only by the Council providing few constraints while the RED text, adopted by both the Council and the European Parliament, substantially narrowed the room for discretion by member states. This deviates from the findings in Zbiral et al. (2023) which found no effect of the conflicts in the Council and the role of the European Parliament on the level of discretion. Certain flexibility provisions in the analysed legislation, such as the possibility to choose among two different transport targets or secure temporary exemptions from the Council regulation on permitting, were formulated broadly enough to address a larger number of member states. More contested flexibility provisions, however, were explicitly designed to accommodate the concerns of a few outlier countries through the permission to deviate from the rule under specific conditions. Those exceptions were made not through DI explicitly mentioning the exempted countries but based on a set of criteria which, in practice, apply only to France alongside a handful of other countries. This shows that, contrary to the dominant assumption in the literature (Princen et al., 2022), FI can be strategically used by the EU to accommodate the concerns of a few outlier countries. Our findings also lend support to the assumption that the strategic use of FI will rely on particular forms of discretion. Discretion on a case-by-case basis has featured most prominently, which includes the discretion to deviate from the hydrogen additionality rule or exempt ammonia production

plants from a renewable hydrogen target in an individual case. From the perspective of the literature on EU policy-making under crises, although the Ukraine war in general terms was a symmetric crisis for the EU, the national differences concerning the role of renewable and nuclear energy were still relevant and hardly affected by the crisis. This dissensus among national governments did not empower supranational institutions, as suggested by Ferrara and Kriesi (2022), but crisis pressures combined with high supranational efforts, strong transnational interests, and energy market interdependence rather forced governments to find a consensus. The support from France which sat in both camps (pro-nuclear and pro-renewable) was central to ensuring the qualified majority in the Council. Strategic flexibility provisions were then employed to reach an agreement with France. Other countries that were less enthusiastic about ambitious renewable energy policy but also less pivotal for building the Council majority, such as those from Central Eastern Europe, received no country-tailored flexibility provisions. In sum, EU decision-makers succeeded in achieving a relatively ambitious agreement by allowing exemptions to France while keeping the overall constraints high to ensure sufficient harmonisation.

Overall, the case of EU renewable energy policy following the outbreak of the war in Ukraine demonstrates that the strategic use of flexibility may prevail as an instrument for forging the political majority in times of crisis. This may hold further lessons for resolving conflicts in other EU policy fields characterised by high interdependence but also strong outliers among the member states.

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Conflict of Interests

The authors declare no conflict of interests.

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