

# The Choice for Differentiated Europe: Why European Union Member States Opt out of Integration

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## Abstract

Since the early 1990s, European integration has become differentiated integration. Treaty revisions and enlargements have resulted in opt-outs for countries such as Britain or Denmark, and in policy areas such as monetary union. Analysing under what conditions member states make use of the opportunity to opt-out or exclude other countries from European integration, we argue that different explanations apply to treaty and accession negotiations respectively. Threatening to block deeper integration, member states with strong national identities secure differentiations in treaty reform, particularly regarding the integration of core state powers. In enlargement, in turn, old member states fear economic disadvantages and low administrative capacity and, therefore impose differentiation on poor newcomers. A logistic regression analysis of the use of differentiation opportunities by member and candidate countries from Maastricht in 1993 to the Croatian accession in 2013 lends empirical support to these arguments.

## Introduction<sup>2</sup>

Since the early 1990s, European integration has become differentiated integration. This period has been characterized by a far-reaching extension of the European Union's policy scope beyond the internal market, a progressive deepening of its competences, above all in monetary policy and justice and home

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<sup>2</sup> This paper builds on the EUDIFF1 database of differentiation in EU treaty law that has been assembled as part of a research project on "Differentiated Integration in Europe", co-directed by Katharina Holzinger (University of Konstanz) and Frank Schimmelfennig (ETH Zurich), and funded by the German Research Foundation (DFG) and the Swiss National Science Foundation (SNSF). For their support in coding the data, we further thank Claudia Baumgartner, Laura Gies, Sebastian Müller, Anna Reimann, Olga Sierocinska, Mario Trost, and Dagmar Zakopalova. For comments on earlier versions, we thank participants at the "Differentiated Integration" workshop (13-14 November 2014, University of Konstanz).

affairs, and by more than a doubling of its membership (from 12 to 28). The EU has continuously been involved in negotiations on revisions to its treaty framework and the accession of candidates for membership. A uniform level of integration across all member states can still be considered the standard and proclaimed goal of these negotiations. As a matter of fact, however, the degree of integration is negotiable. Consequently, differentiated integration has become a permanent and increasingly important feature of the political order of the EU.

To give a few prominent examples, the British and Danish opt-outs from the single currency have been in place since the Treaty of Maastricht (1992). New member states, which joined the EU after the introduction of the euro in 1999, are generally excluded from monetary union upon accession. Although they are legally obliged to adopt the euro, it is in fact a matter of political choice whether or not they work towards meeting the conditions of convergence and apply for joining the euro area. Only seven of the 13 new member states, which have joined the EU since 2004, have adopted the single currency. The UK and Ireland have stayed out of the Schengen free-travel area since it was implemented in 1995, while Bulgaria and Romania have been blocked from joining since 2007. In addition, the UK and Ireland enjoy a flexible opt-out from the justice and home affairs policies subsumed under the Area of Freedom, Security and Justice (AFSJ), which allows them to opt in and out of legislation case by case.

At the same time, differentiated integration is a highly uneven development. Some countries – among them the original six member states – have no treaty-based opt-outs at all; others – most notably Denmark and the UK – have many. Some member states are differentially integrated based on their accession treaties; others as a result of revisions to the main European treaties. Likewise, differentiation is strong in some policy areas but virtually absent from others (Schimmelfennig and Winzen 2014).

This paper analyses the choice for differentiated integration in the EU. We start from the assumption that treaty negotiations present the participating states with opportunities to opt out or exclude other countries from (further) integration in a variety of policy areas and ask which factors make it more likely that states actually use this opportunity. Based on descriptive analyses and findings reported in an earlier paper (Schimmelfennig and Winzen 2014), we further assume that differentiated integration based on revisions of the EU's main treaties (from Maastricht to Lisbon) follows a different logic from differentiated integration originating in accession treaties. Treaty revisions, in which member states agree on the deepening of European integration – either by integrating new policies or by making already integrated policies more supranational – typically produce concerns by some member states that European integration is moving too far. This is true in particular for the more Euro-sceptic member states

and for the integration of core state powers. By contrast, negotiations on EU enlargement typically produce concerns among the old member states that some of the new entrants may not be fully ready to participate in integrated policies, require too much assistance, or become strong competitors on the internal market or for EU budgetary resources. This applies in particular to poorer new member states with comparatively weak administrative capacity.

In this paper, we provide an empirical test of these propositions. Over a time period of 20 years, we examine the country- and policy-specific differentiation opportunities provided by EU treaty negotiations from Maastricht to the accession treaty with Croatia. In a logistic regression analysis, we study the factors that have driven new differentiations in the Treaty on European Union and its revisions, the accession treaties, and more policy-specific treaties such as Schengen and the European Stability Mechanism (ESM) Treaty. In line with our theoretical expectations, we find that exclusive national identities explain new differentiation in deepening, whereas wealth (GDP per capita) accounts for new differentiations in enlargement. In turn, wealth has no effect on DI in treaty revisions, and national identity plays no role in the context of accession. Core state powers are generally more prone to differentiation than other policy areas but this effect is two times stronger in treaty reform than in enlargement. Examining the empirical fit of our parsimonious explanation, we suggest that future research would be particularly beneficial regarding the factors that sometimes *constrain* agreement on DI (e.g. Hvidsten and Hovi 2015), and regarding enlargement (e.g. Schimmelfennig 2014).

## **Theory**

Differentiated integration is an institutional response to the increasing diversity and divisiveness of the EU. As the EU expands to additional countries, it is likely to have an increasingly diverse membership with heterogeneous preferences and capabilities. As it expands its policy scope, it is increasingly likely to include value-laden or redistributive policies that provoke intense conflict. Finally, as European integration deepens further, it triggers concerns about losses of national sovereignty and identity. Because both treaty revisions and accession treaties require unanimous intergovernmental agreement – and, in general, ratification by all member states, too – heterogeneity and conflict threaten the EU with deadlocked negotiations. Differentiated integration offers a solution to deadlock by allowing the member states to cooperate at different levels of integration that fit their preferences and capabilities. Exemptions and exclusions reduce heterogeneity and facilitate agreement on further integration (Schimmelfennig and Winzen 2014). All new European treaties or treaty revisions create opportunities for deadlock and thus for differentiated integration. However, revisions or extensions of the main

treaties and new accession treaties typically constitute diverse negotiation contexts with different drivers and actors of differentiated integration.

Revisions of the main treaties are about the deepening of European integration. Typically, they expand the policy scope of the EU by removing additional policies from the exclusive competence of the member states, or they increase the level of centralization of already integrated policies by strengthening the pooling and delegation of policymaking, e.g. by moving from unanimous to majority voting, increasing the powers of the European Parliament, or delegating competences to the Commission and other supranational agencies.<sup>3</sup> Mostly, member state governments negotiate and decide on deepening on the basis of efficiency-oriented preferences. Majority voting facilitates decision-making, and delegation improves policy coordination and the credibility of member state commitments (Moravcsik 1998). In addition, however, some member states may have principled objections to transferring powers to the EU for fear of hollowing out national sovereignty. Such principled objections make it harder to reach intergovernmental agreement; they are also prone to triggering popular opposition to integration, which ties the hands of government in the negotiation process or causes domestic ratification to fail.

The likelihood that such principled sovereignty concerns arise varies across policies and member states. As Stanley Hoffmann (1966) pointed out, integration in areas of “high politics” should yield higher autonomy costs compared to integration in “low politics”. Taking Hoffmann’s distinction as a point of departure, Genschel and Jachtenfuchs (2014:10) define “core state powers” (such a state’s army, police and justice system, currency, or public administration) as those functions and policies that have particularly strong “institutional significance for state building” and are thus closely linked to sovereignty. In addition, sovereignty concerns can be assumed to be particularly salient in the more Euro-sceptic member states. If popular Euro-scepticism and national identities are strong, the transfer of national competences to the EU increases the chance that European integration becomes an issue of “identity politics” (Hooghe and Marks 2008), strengthens Euro-sceptic parties, and leads to the defeat of treaty revisions in domestic ratification. According to these considerations, both the integration of core state powers and the strength of national identities increase opposition to treaty revisions independently. In addition, both factors may reinforce each other: when core state powers are on the agenda for integration, the more Euro-sceptic countries are the most likely candidates for differentiated integration.

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<sup>3</sup> See Schmitter (1969) and Börzel (2005) on definitions and measurements of level and scope.

The opponents of further deepening are in a particularly strong bargaining position during negotiations on treaty revisions. They are the status quo powers that can block treaty revisions requiring unanimous agreement. This leaves member states desiring to move beyond what the opponents deem acceptable with two options. They can either offer them an opt-out from the deepening provisions of the treaty revision; or they can conclude an intergovernmental treaty outside the European treaty framework. We see examples for both options in the history of EU treaty-making. The British and Danish opt-outs from monetary union in the Treaty of Maastricht are the most prominent examples of the first option; the 1985 Schengen Agreement, which was only incorporated into the main treaties at Amsterdam in 1997, was the prototypical case of differentiated integration via separate treaty-making. Both cases lead to differentiated integration, in which a group of member states is exempted from areas of further deepening. This brings us to our first hypothesis:

*Hypothesis 1: In treaty revisions, opportunities for differentiated integration are more likely to be used in policies related to core state powers and by member states with stronger national identities.*

Accession treaties are about the widening of European integration. They expand the membership of the EU and extend the integrated policies to additional state territories. In principle, the *acquis communautaire* is supposed to be valid and applied in new member states on the first day of membership. The EU and the candidates may, however, agree on transitional arrangements. They determine a period of time, during which particular rules or policies do not apply.

Accession treaties do not involve any deepening for the old member states and therefore do not trigger the sovereignty concerns typical for treaty revisions. Nonmember states may, of course, have reservations against the depth of sovereignty pooling and delegation entailed by membership but they know that the *acquis communautaire* is non-negotiable – except for brief transition periods, which would not help in the case of principled opposition to the EU's level of deepening. Therefore they would probably refrain from applying for membership altogether if the level of EU integration was unacceptable to them.

By contrast, widening generates concerns about efficiency and redistribution among the old member states. Old member states, or powerful interest groups in these states, fear economic and financial losses as a result of market integration with the new member states (e.g. resulting from the opening up of labour markets), the redistribution of EU funds (e.g. in agriculture or regional policy), or weak implementation capacity (e.g. by expanding the Schengen regime before effective border controls are in place). New member states may in turn be concerned about pressures on domestic producers resulting

from the opening up of their markets and losing competitiveness due to the obligation of implementing demanding regulatory rules.

They are, however, normally in a weak bargaining position vis-à-vis the EU. Their markets are much smaller than the internal market, and bilateral trade with the EU is normally much more important to them than it is to the EU. As a consequence, candidate countries have more to gain from EU membership than the EU has to gain from accession of the candidate country, and candidate countries in the vicinity of the EU usually do not have credible outside options. This is especially true of the Central and Eastern European countries that have made up the bulk of applicants to EU membership in the past two decades (Moravcsik and Vachudova 2005). Under these circumstances, the old member states are generally able to decide on the terms of the transitional arrangements with new member states. Whereas the old member states have always granted new member states temporary exemptions from the obligations of membership to facilitate their adaptation to market pressures and regulatory obligations (such as in the area of environmental standards) or to forestall popular fears and concerns (e.g. about foreigners buying land and holiday homes on a massive scale), they have also been able to exclude them temporarily from policies and rights in order to placate the most enlargement-sceptical member states or alleviate popular concerns in their own countries (Plümper and Schneider 2007; Schneider 2009). Examples are restrictions to the free movement of labour for the new member states, the phasing in of agricultural subsidies, and initial exclusion of new member states from Schengen and the monetary union in Eastern enlargement.

Differentiated integration in accession treaties is likely to affect poorer new member states more strongly than wealthier new member states. First, poorer candidates generate particularly strong efficiency and redistribution concerns in the older member states. They will likely be net recipients of the EU budget, have problems of governance quality and capacity, and produce migratory pressure. These concerns strengthen the old member states' interest in excluding them from some of the rights and benefits of membership. Second, they have weaker bargaining power than wealthier candidates because they are less attractive candidates, are more dependent on the benefits of membership, and are less likely to do well outside the EU. For these reasons, the old member states are not only more interested in but also more capable of imposing differentiated integration on them. As efficiency and redistribution concerns cut across the policy areas of the EU, we do not expect any systematic variation between core state powers and non-core state powers for differentiated integration originating in accession treaties. This brings us to our second hypothesis:

*Hypothesis 2: In accession treaties, opportunities for differentiated integration are more likely to be used in the case of poorer new member states.*

## Research design and data

Our research design focuses on “differentiation opportunities”. In order to identify these opportunities as precisely as possible, we first list all treaty revisions and accession treaties since 1990, summarised in Table 1. Before the 1990s, differentiated integration was close to non-existent in European integration (Schimmelfennig and Winzen 2014). Each treaty revision and accession treaty covers a number of policy areas, each of which constitutes an opportunity for a differentiation for any country involved in the negotiations. We demarcate policy areas based on the sections of EU treaties, which EU policy-makers also use to structure treaty revisions and accession negotiations (for an overview, see Table A1 in the appendix). Technically speaking, our unit of analysis, thus, is the “treaty-policy-country” combination. And our outcome of interest is the likelihood that a given country obtains a differentiation from a given policy area during the negotiations of a given treaty.

Let us add clarifications. First, the number of countries that participates in treaty negotiations varies. In treaty revisions, it increases over time as more countries join the Union (cf. Table 1). Thus, 27 states negotiated over each policy area covered by the Lisbon Treaty, in contrast to twelve at the Maastricht intergovernmental conference. In turn, each accession treaty generates differentiation opportunities only for the set of countries that joins at that particular point in time. For instance, Austria, Finland, or Sweden could obtain accession-related differentiations only in 1995, not in any later enlargement.

**Table 1. Treaties generating differentiation opportunities**

<b>Treaty revisions and member states at the time of negotiation</b>		<b>Accession treaties</b>
Maastricht Treaty (1993)	12	Austria, Finland, Sweden (1995)
Schengen Treaty (1995)	12	8 CEECs, Cyprus, Malta (2004)
Amsterdam Treaty (1999)	15	Bulgaria, Romania (2007)
Nice Treaty (2003)	15	Croatia (2013)
Prum Convention (2006)	25	
Lisbon Treaty (2010)	27	
ESM Treaty (2012)	27	
TSCG (2013)	27	

Note: ESM: European Stability Mechanism. TSCG: Treaty on Stability, Coordination and Governance. CEECs: Central and Eastern European countries. In parentheses: year of entry into force.

Second, the set of policy areas that is being negotiated varies. This is important since countries cannot obtain differential arrangements in matters that are not even discussed. Simply speaking, negotiating the

ESM Treaty does not create an opportunity to opt-out of European transport policy. One reason for variation in policy areas is growth over time with every treaty revision. The number of policy areas with EU involvement has grown from 28 at the time of Maastricht to 37 at the time of the Lisbon Treaty. Thus, the Lisbon negotiations produced more opportunities than the ones in Maastricht. Similarly, late joiners such as Croatia have more enlargement-based differentiation opportunities than early joiners, simply because more policy areas are being negotiated at the time of accession.

There is one more reason for variation in the set of negotiated policy areas: Treaty revisions do not necessarily deal with every last one of the EU's competences. Accession treaties cover the entire body of EU law, but treaty revisions may bracket some domains. Policy-specific treaties such as the ESM Treaty consist of only one policy area. Moreover, whereas the Maastricht and Lisbon negotiations encompassed nearly all of the EU's engagements, the Amsterdam and Nice conferences were narrower. Thus, we consulted primary documents and Börzel's (2005) data on the reform of decision-making procedures to identify what areas were in fact negotiated (for an overview, see Table A2).

Finally, we have to identify whether a country does or does not realise a differentiation opportunity. A differentiation is a legal exemption from the validity of the rules that govern a policy area. For instance, Britain obtained a differentiation from monetary policy in the Treaty of Maastricht, whereas Germany did not. We rely on an existing dataset that tells us in detail whether any of the member states is exempted from any EU treaty rules in a policy area at any point in time (for a more detailed discussion of these data, see Schimmelfennig and Winzen 2014).<sup>4</sup> Whenever a country obtains new exemptions in a given treaty and policy area, we say that it realised its differentiation opportunity.

Our measure of differentiations is binary: either an opportunity is realised or not. We acknowledge that, in theory, it makes sense to think that differentiation in one policy area, say monetary policy, might be more or less important or encompassing than in another, say the free movement of persons. Yet, as we explain elsewhere, it has proven hard to measure such gradation in differentiation in any way that does not generate more problems than it solves (Schimmelfennig and Winzen 2014). Thus, we only capture whether new differentiations emerge or not for a country in a given area and treaty. We are also able to control for whether a country already had differentiations in place when an opportunity to acquire new ones arises.

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<sup>4</sup> The EUDIFF1 dataset covers treaty-based differentiation from 1952 to 2013 in the legally binding parties of EU treaties (main parts, protocols and annexes. The dataset has article-years as its unit of observation. For more information on the dataset, see Schimmelfennig and Winzen (2014).



**Table 2. Differentiations and differentiation opportunities**

	Differentiation opportunities	
	Treaty revision	Accession
No differentiation	1581	332
New differentiation	73	88
Total	1654	420

Let us turn to the three main explanatory variables: core state powers, national identity, and wealth. Following Genschel and Jachtenfuchs' (2014) definition discussed earlier, we manually code what of the EU's policy areas qualify as *core state powers*, as shown in Table A1. We cannot classify a small number of policy areas, none of which has seen a single differentiation. To measure the strength of *national identity*, we rely on the widely used Eurobarometer item that asks respondents whether they feel "exclusively national" rather than "national and European", "European and national" or "European only" (e.g. Hooghe and Marks 2005). The strength of national identity is the percentage of respondents feeling "exclusively national". We measure identity using surveys immediately prior to the differentiation opportunity. In the case of some enlargements, this is not possible because countries are included in the Eurobarometer only upon accession – so we use the first survey after accession. In the case of the Lisbon Treaty, we use two surveys from immediately before the signature of the Constitutional Treaty and one from 2010 because the relevant question was not asked in between.<sup>5</sup> Table A3 lists the used surveys. Finally, we measure wealth in the year prior to a differentiation opportunity as GDP/capita in 2005 constant United States (US) Dollars based on data from the World Bank.

### **Description of differentiations and differentiation opportunities**

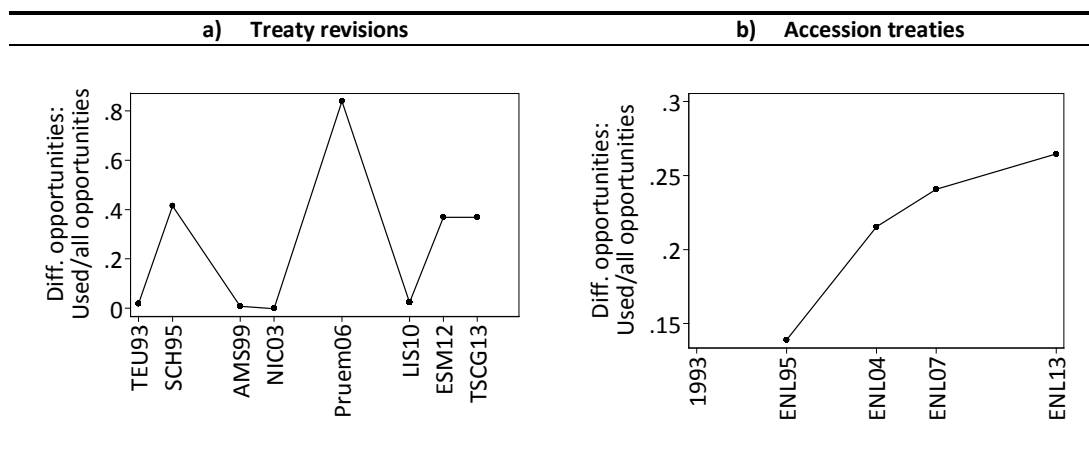
A first look at the data highlights that differentiation is a rather rare phenomenon. As Table 2 shows, the member states used only 73 of the 1654 opportunities to opt out of treaty revisions. New member states, however, have had to accept differential treatment more frequently, namely in 88 out of 420 opportunities. Furthermore, Figure 1 shows that there is no general trend in European integration for members to use more of their opportunities to opt-out. Rather they used around two percent at Maastricht and only marginally more at the time of the Lisbon Treaty. It is clear, however, that the policy-specific treaties in the areas of justice and home affairs as well as economic and monetary union strongly raise the share of used differentiation opportunities. In light of our theoretical arguments, this is plausible because the only areas at stake in the negotiations of these treaties are core state powers in

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<sup>5</sup> Note that the Lisbon Treaty took over most of the substantive agreements made in the Constitutional Treaty. Thus, our measurement, even if taken several years before the Lisbon Treaty, should nonetheless capture the conditions under which policy-makers negotiated.

contrast to a broader array of policies in other intergovernmental conferences. In accession treaties, in turn, we see that the use of possibilities for opt outs has clearly been on the rise. The accession of wealthy Austria, Finland and Sweden in 1995 resulted in little differentiated integration compared to any of the following enlargements of the Union towards the East. The Croatian accession has so far given rise to most differential legal arrangements, covering more than 25 per cent of the EU’s policy portfolio. Again, from a theoretical perspective, this trend is not surprising, as one would expect stronger distributional conflicts and capacity problems in the successive Eastern enlargements compared to the 1995 cohort (cf. Schimmelfennig 2014).

**Figure 1. The use of differentiation opportunities**

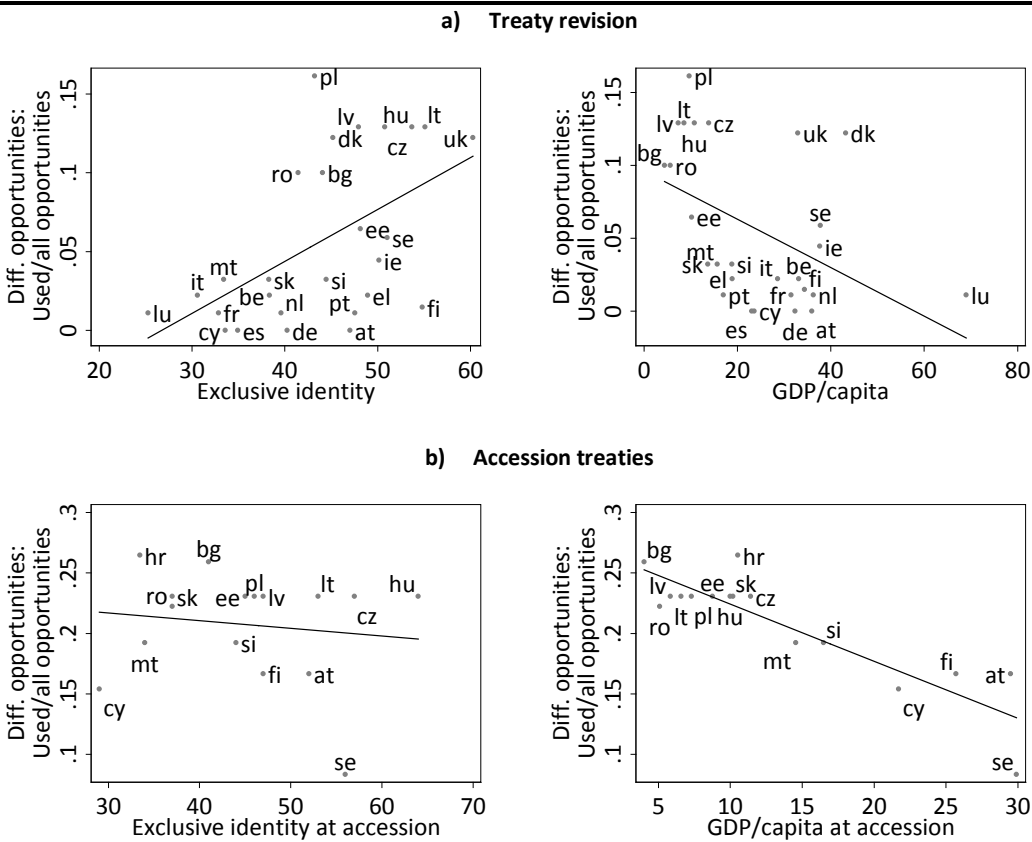


Turning to the relationship between differentiation and our explanatory variables, we first note signs of a core state power effect (see also Figure A1). Of the 73 differentiations in treaty revisions, 69 fall within policy areas at the heart of national sovereignty. With very few exceptions, differentiation does not exist outside core state powers. The picture is more balanced in accession treaties. Of the 88 differentiations, 54 are in “normal” policy areas and 34 in core state powers. Nonetheless, the share of used opportunities for differentiation is higher in core state powers, even in the case of enlargements (not shown, see Figure A1). In light of our hypotheses, the core state power effect in treaty revisions is expected. It is also plausible that this effect should be less pronounced in accession treaties – we had, however, anticipated to find no effect at all in the enlargement context, whereas there might in fact be a weak one.

In Figure 2, we see first evidence of the theoretically expected relationships between differentiation, identity and wealth. First, in treaty revisions, there is a clear tendency for countries with strong national

identities to use more of their differentiation opportunities than their more “cosmopolitan” counterparts. In contrast, whether or not a country has a strong national identity at the time it joins the EU has no bearing on how many differentiations it obtains. This pattern is in line with the idea that nationally-oriented countries use their bargaining power in treaty reforms to secure differential treatment, whereas at accession such countries, even if they seek differentiations, are not in a sufficiently strong position to do likewise. Second, the patterns are less clear-cut in the case of wealth. In line with expectations, rich countries realise fewer differentiations when they join the EU than poor countries, which suffer the consequences of the old members’ distributional and efficiency concerns. Unexpectedly, though, the same pattern appears to exist in treaty revisions: poor countries do not only obtain DI at accession but also in treaty revisions. Having said this, one should be aware that this relationship is strongly driven by the post-2004 Eastern accession countries, whose treaty-based differentiations lie in the same areas from which they were excluded when they joined the Union. Thus, we should control for ongoing differentiations before we draw conclusions.

**Figure 2. Differentiations, identity and wealth in treaty revisions and accession treaties**



## Logistic regression analysis

We investigate the data further, presenting two logistic regression models in Table 3, one for the use of differentiation opportunities in treaty revisions and one for their use in accession treaties. These models include our variables of interest: identity, wealth and core state powers. In the analysis of treaty revisions, we additionally control for ongoing differentiations that countries may have acquired in earlier years. We also insert a dummy variable that identifies the policy-specific treaties in justice and home affairs and economic and monetary union. As we have seen, these treaties have led to more differentiation than the other treaties. Indeed, the inability of the member states to achieve agreement on revising the main treaties gave rise to the conclusion of policy-specific treaties in the first place. In principle, this is what we would expect given the salience of the negotiated policies. However, we want to ascertain that our results particularly regarding the core state power variable do not merely capture the difference between comprehensive and policy-specific treaty revisions. These two additional control variables, ongoing differentiations and policy-specific treaties, are not applicable in the analysis of accession treaties: There are no policy-specific accession treaties and new members cannot have obtained opt-outs in earlier years.

**Table 3. Models of the likelihood that countries use differentiation opportunities**

	<b>1) Treaty revisions</b>	<b>2) Accession treaties</b>
Identity	0.05 (0.02)*	0.00 (0.00)
Wealth	0.00 (0.01)	-0.03 (0.01)*
Core state power	2.44 (0.61)*	0.92 (0.1)*
Policy-specific treaty	3.19 (0.36)*	
Ongoing differentiation	3.14 (0.6)*	
Constant	-8.56 (0.97)*	-1.21 (0.21)*
N	1654	420
Log-pseudolikelihood	-129.21	-207.51

Note: \*  $p < 0.05$ . Logistic regression models with country-clustered standard errors in parentheses.

Let us first examine the direction and statistical significance of the estimated effects before turning to their substantial relevance. In line with the expectations, we find that national identity significantly enhances the likelihood of a country obtaining a differentiation in treaty revisions but not so in accession treaties. Supporting our hypothesis further, a country's wealth has no impact on DI in treaty revisions. Yet, in the enlargement context, richer countries have to accept fewer differential arrangements than poor countries. As the previous section already indicated, differentiations are more likely to be in core state powers than other policy areas, both in treaty revisions and enlargements – thus, matching our expectations only partly. A possible reason is that old member states oppose the participation of

accession countries in core state powers not only because of capacity concerns, that is, the ability of newcomers to comply with EU requirements such as the management of Schengen borders. Old member states might additionally be particularly reluctant to welcome new members in areas that they deem essential for their national sovereignty and identity. Finally, and unsurprisingly, policy-specific treaties generate more differentiated integration than the other treaties. Furthermore, countries that already have differentiations are likely to acquire follow-up opt-outs when a policy area comes up for negotiations again.

**Table 4. Explanatory variables and the probability of differentiation**

	Predicted probability: new differentiation		
	Variable absent	Variable present	Change
Core state power			
Treaty revision	0.015 (0.006-0.024)	0.0649 (0.048-0.082)	4.3-fold increase
Accession treaty*	0.169 (0.156-0.183)	0.337 (0.309-0.365)	2-fold increase
Ongoing differentiation	0.024 (0.013-0.036)	0.164 (0.126-0.202)	6.8-fold increase
Policy-specific treaty	0.023 (0.016-0.031)	0.169 (0.095-0.244)	7.3-fold increase

Note: Cell entries are predicted probabilities based on the results shown in Table 3. 95 percent confidence intervals are in parentheses. \*These predicted probabilities are based on model 2 in Table 3, whereas the other cell entries are based on model 1.

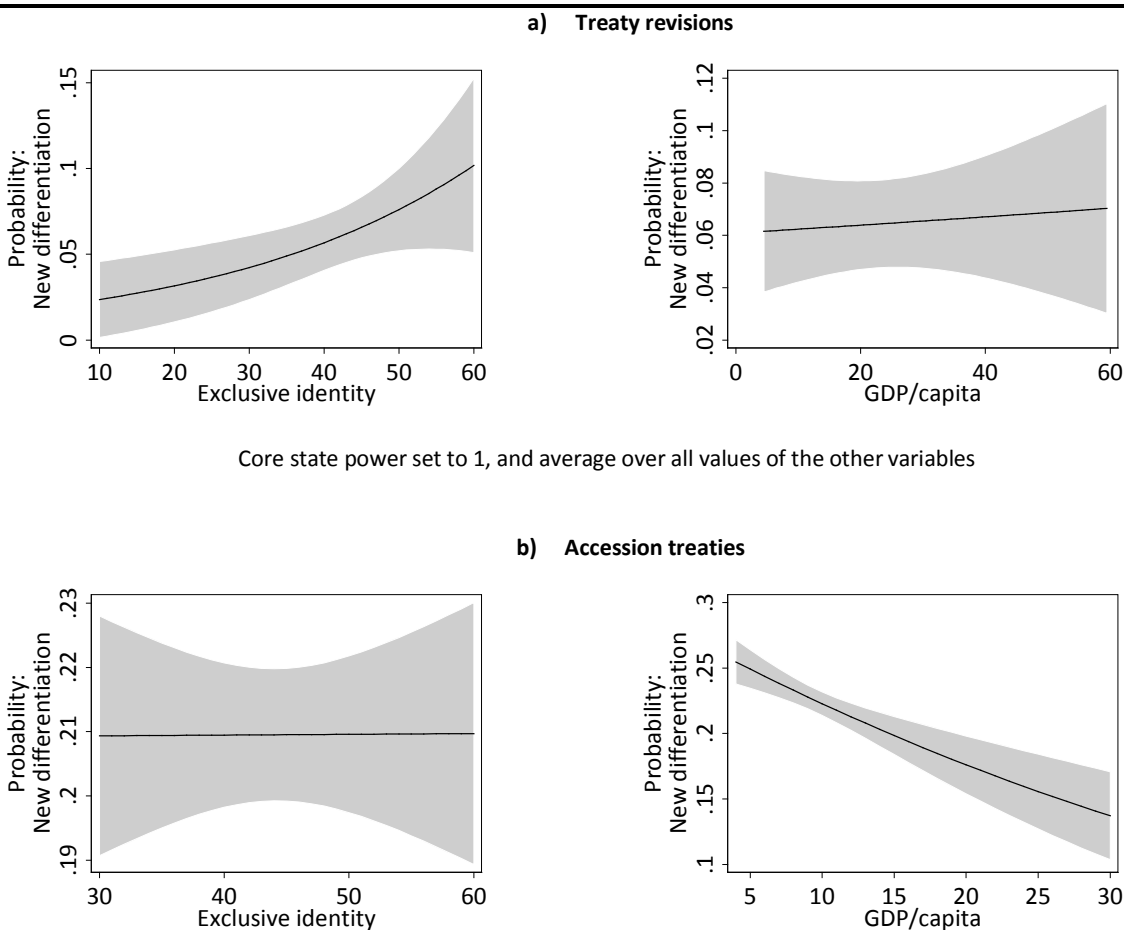
How substantial are these effects? Table 4 shows changes in the predicted probability that a country realises a differentiation opportunity, given the presence or absence of all binary explanatory variables.<sup>6</sup> In treaty revisions, an opt-out is four times more likely in core state powers compared to other policy areas. In accession treaties, the core state power effect is about half the size. Ongoing differentiations and policy-specific treaties raise the probability of differentiations even more strongly, by about a factor of seven. Given that differentiation is generally a rather rare phenomenon, particularly in treaty revisions, these are all substantially important effects. Figure 3 shows the effects of our continuous explanatory variables, identity and wealth. In treaty revisions, moving from the least to the most nationally-minded countries that we actually observe in our data, the probability of a new differentiation increases by a factor of about four from 2.5 percent to around ten percent. Estimating this effect, we hold the core state power variable at one. Otherwise, changes in identity also increase the probability of differentiation, but the absolute level remains extremely low – effectively zero.<sup>7</sup> This corresponds to what we have seen earlier in the data: in treaty revisions, differentiations scarcely exist outside core state powers. Turning to accession treaties, moving from richer to poorer countries raises the chance of

<sup>6</sup> All predicted probabilities presented in the following were calculated using STATA's "margins" command.

<sup>7</sup> For the mechanisms underlying this type of interaction in logistic regression models, see Berry (2010).

the EU agreeing on differentiated integration by about ten percent. Finally, there are no discernible wealth effects on treaty revisions, nor identity effects on enlargement.

**Figure 3. The effects of identity and wealth on differentiation in treaty revisions and accession treaties**



Core state power set to 1, and average over all values of the other variables

Average effect over all values of other variables.

Note: Predicted probabilities based on the results of the models presented in Table 3.

Let us clarify additional questions one could ask about these results. One issue is whether the results are robust to including country- or cohort-effects. In the case of treaty revisions, we would expect that the identity variable mainly captures differences between countries – there is only limited variation in the strength of national identity of countries over time. The core state power effect, however, should not depend on differences between countries but policies. Testing these suspicions well is problematic because many countries and policy areas predict the absence of differentiation perfectly and, thus, we lose the corresponding dummy variables and observations in our robustness checks (not shown here). Tentatively, however, we find that the core state power variable has no effect with policy area dummies

in the model, and the identity variable has no effect with country dummies included. Turning to accession treaties, the obvious hunch arising from earlier figures is that the wealth effect mainly reflects differences between enlargement cohorts. Furthermore, recent studies argue that norms of equal treatment have prevented the EU from treating candidates that join at the same time too differently (Schimmelfennig 2014). Robustness tests also underline this suspicion. Inserting cohort dummy variables in the model, the wealth effect disappears.

Another question is how well our models, reflecting a parsimonious theoretical argument with few explanatory factors, accounts for the use of differentiation opportunities in treaty revisions and enlargements. One way to answer this question is to ask how well the models classify the outcomes of each differentiation opportunity. In treaty revisions, the observed share of DI in our data is 4.4 percent. Let us say that our model should at least predict a higher probability than that for each case that actually resulted in a differentiation. By that standard, we classify 63 of the 73 positive cases correctly. However, this comes at the cost of mistakenly classifying 95 cases as differentiated. In other words, the model performs well but expects more differentiation than there actually is. We proceed in a similar fashion with our model for accession treaties. Here we are able to correctly classify 34 of the 88 differentiation cases, and we mistakenly classify 66 cases as positive. Overall, the enlargement model appears to leave more open questions, having not only false-positive but also a substantial number of false-negative cases.

We learn from this assessment of explanatory power that our explanatory factors add notably to our understanding of the conditions under which the EU opts for differentiation. However, there are also open questions remaining. First, studies of differentiated integration in treaty revisions and enlargement should still become better in telling when and why opt-outs do *not* occur, given that the model proposed here has a particular weakness regarding false positives (for an example of a study moving in this direction, see Hvidsten and Hovi 2015). Second, in the study of accession treaties, there is still ample room to improve predicting positive cases of differentiation. One plausible starting point for further research would be to distinguish policy areas more effectively, given that the core state power variable in our analysis has a weaker effect in the enlargement context compared to treaty revisions (cf. Kölliker 2001). Another line of attack might be to study more precisely under what conditions new countries are being excluded by old members with superior bargaining power, and under what conditions the Union is willing to afford preferential treatment to newcomers in dire economic situations (Schimmelfennig 2014).

## **Conclusion**

Differentiated integration has become a standard and durable feature of EU treaty-making. Both treaty revisions and accession treaties regularly contain provisions granting policy-specific opt-outs and exemptions to some countries and excluding others from full integration into the EU's policies. In this paper, we analysed why some countries and policies are more strongly characterized by differentiated integration than others.

Our analysis started from the assumption that differentiated integration responds to increasing heterogeneity of preferences and capabilities resulting from the expansion of the EU to additional policy areas, higher levels of centralization, and new member states. We also built on earlier descriptive work suggesting that deepening and widening constitute different contexts of differentiated integration, which require different explanations. In the case of deepening, the more Euro-sceptic countries are concerned about the EU undermining national sovereignty. Because of their bargaining power as defenders of the institutional status quo, these countries are able to achieve opt-outs from undesired deepening. In line with this reasoning, our analysis found that differentiation opportunities provided by negotiations on treaty revisions are, indeed, more likely to be realized in policy areas related to core state powers and by member states with a more nationalist population. By contrast, in the context of widening, superior bargaining power rests with the old member states. They are concerned about losses resulting from inefficiency, competition, and redistribution due enlargement. By showing that poorer new member states, which are likely to suffer from weak governance capacity, provide low-cost labour, and become net recipients of the EU budget, are more affected by the transitional differentiation arrangements of accession treaties, our analysis found support for this conjecture, too. In addition, the assumption of two qualitatively different contexts of differentiated integration is corroborated by the fact that identity does not account for differentiation in accession treaties and wealth does not explain differentiation in treaty revisions.

By focusing on three factors – identity, wealth, and core state powers – the paper offers a parsimonious explanation of differentiated integration. Yet our models tend to predict more differentiation than actually occurs. This suggests that more attention needs to be paid to factors that dampen or constrain differentiated integration. In addition, future research should take into account that differentiated integration is not only regulated in EU treaties but can also result from EU secondary law. For a full assessment of differentiated integration, we need to know more about exemptions in EU regulations and directives – and whether they simply follow primary-law differentiation or differ in terms of the policies and countries affected.



The explanation of differentiated integration put forward in this paper suggests that differentiation will continue to characterize treaty-making in the EU. First of all, existing differentiations tend to persist and even produce more differentiation in later treaty negotiations. Second, future enlargements are most likely to integrate the relatively poor countries of the Western Balkans. Already the accession treaty with Croatia exhibited a record number of differentiations. Finally, exclusive national identities show no tendency of diminishing, and any future treaty revision is likely to affect core state powers.

## Appendix

**Table A1. Policy areas and core state powers**

<b>Policy area</b>	<b>Core state power (1=yes; 0=No)</b>
Principles	.
Institutional provisions	.
Overseas territories	.
Financial provisions	.
General, final provisions	.
Taxation	1
Monetary policy	1
Visa, Asylum, Migration	1
Foreign and security policy	1
JHA pillar of TEU & PJCCM	1
Schengen	1
Administrative cooperation	1
Charter of Fundamental Rights	1
Pruem	1
ESM Treaty	1
TSCG	1
Free movement (goods)	0
Agriculture	0
Free movement (workers)	0
Freedom of establishment	0
Free movement (services)	0
Free movement (capital)	0
Competition	0
Approximation of laws	0
Economic policy	0
Social policy	0
Public health	0
Consumer protection	0
Trans-European networks	0
Industry	0
Economic and social cohesion	0
Research and Technology	0
Environment	0
Development cooperation	0
Transport	0
Employment	0
Civil protection	0
Energy	0
Tourism	0

**Table A2. Policy areas covered and negotiated in revisions of the EU founding treaties**

All policy areas	SEA	Maastricht		Amsterdam		Nice		Lisbon	
	Coverage	Coverage	Negotiated	Coverage	Negotiated	Coverage	Negotiated	Coverage	Negotiated
Principles	1	1	1	1	1	1	1	1	1
Free movement (goods)	1	1	1	1	0	1	0	1	0
Agriculture	1	1	0	1	1	1	0	1	1
Free movement (workers)	1	1	1	1	1	1	1	1	1
Freedom of establishment	1	1	1	1	0	1	1	1	1
Free movement (services)	1	1	1	1	0	1	0	1	1
Free movement (capital)	1	1	1	1	0	1	0	1	1
Competition	1	1	1	1	1	1	1	1	1
Taxation	1	1	0	1	1	1	1	1	1
Approximation of laws	1	1	1	1	1	1	1	1	1
Economic policy	1	1	1	1	1	1	1	1	1
Monetary policy		1	1	1	1	1	1	1	1
Social policy	1	1	1	1	1	1	1	1	1
Public health		1	1	1	1	1	0	1	1
Consumer protection		1	1	1	1	1	0	1	0
Trans-European networks		1	1	1	0	1	0	1	1
Industry		1	1	1	1	1	1	1	1
Economic and social cohesion	1	1	1	1	1	1	1	1	1
Research and Technology	1	1	1	1	1	1	0	1	1
Environment	1	1	1	1	1	1	1	1	1
Development cooperation		1	1	1	1	1	1	1	1
Visa, Asylum, Migration				1	1	1	1	1	1
Institutional provisions	1	1	1	1	1	1	1	1	1
Foreign and security policy		1	1	1	1	1	1	1	1
JHA pillar of TEU & PJCCM		1	1	1	1	1	1	1	1
Overseas territories	1	1	0	1	1	1	1	1	1
Financial provisions	1	1	1	1	1	1	1	1	1
General, final provisions	1	1	1	1	1	1	1	1	1
Schengen				1	1	1	0	1	1
Transport	1	1	1	1	0	1	1	1	1
Employment				1	1	1	1	1	0
Civil protection								1	1
Administrative cooperation								1	1
Charter of Fundamental Rights								1	1
Energy								1	1
Tourism								1	1
Prum Convention								1	0

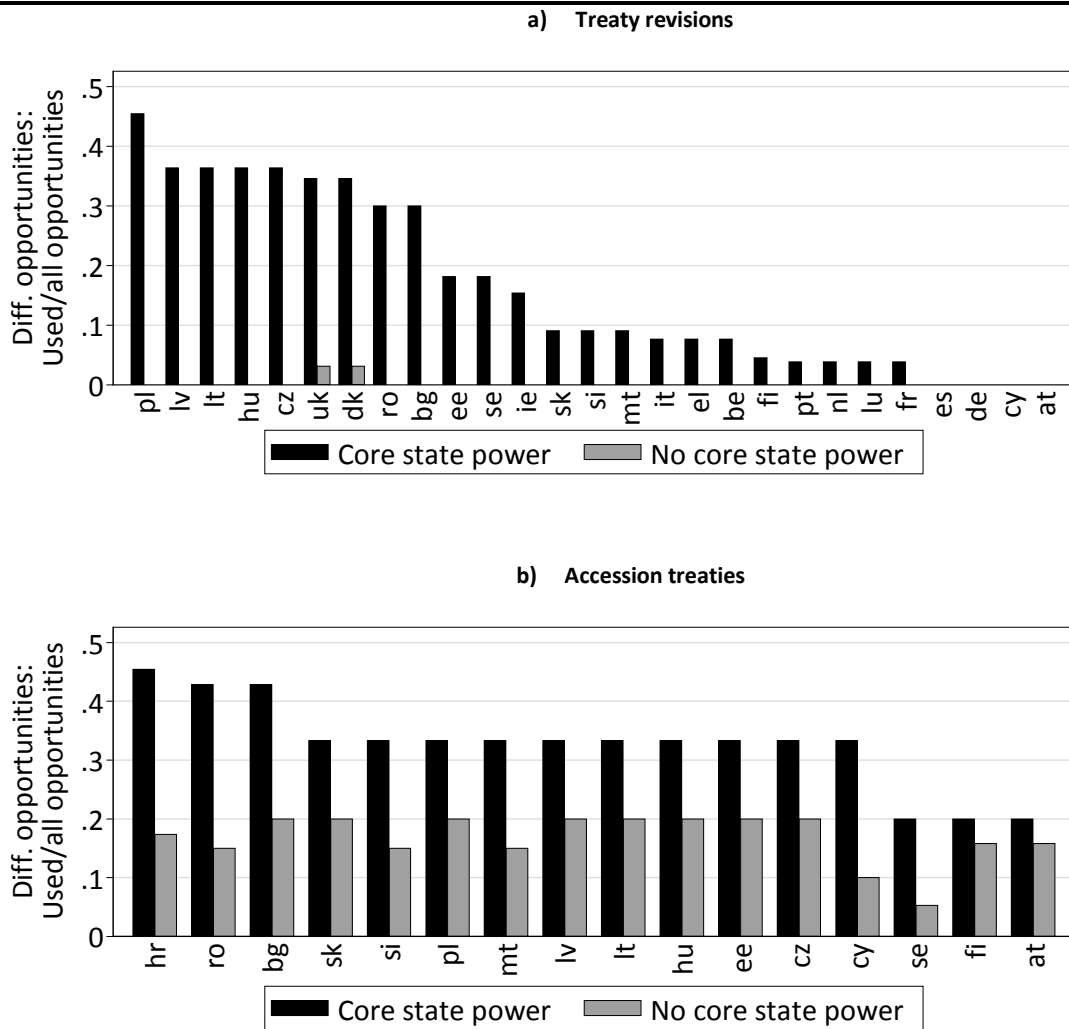
Note: SEA: Single European Act. Sources: For Maastricht: European Commission (1991a, 1991b). For Amsterdam: European Parliament (1997). For Nice: Conference of the Representatives of the Governments of the Member States (2000). For Lisbon: Conference of the Representatives of the Governments of the Member States (2003, 2007). ESM Treaty and TSCG omitted because they enter into force only after Lisbon.

**Table A3. Eurobarometer surveys used to measure national identity**

<b>Treaty</b>	<b>Surveys</b>
Maastricht 1993	April 1992
Schengen 1995	November 1993, December 1994
ENL 1995	June 1995
Amsterdam 1999	April 1997, May 1998, November 1998
Nice 2003	January 2001, November 2001, November 2003
ENL 2004	October 2004
Prüm 2006	October 2005
ENL 2007	October 2005
Lisbon 2010	October 2004, October 2005, June 2010
ESM 2012	December 2011
TSCG 2013	November/December 2012
ENL 2013	November/December 2012, 2013 (no month available)

Note: ENL: Enlargement Treaty.

**Figure A1. Differentiation in core state powers and other policy areas compared**



Note: Country abbreviations are official EU abbreviations.

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