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EU enlargement and differentiated integration: discrimination or equal treatment?

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ABSTRACT What is the effect of European Union (EU) enlargement on differentiated integration? And is it driven by the relative bargaining power of old and new member states or by the equal or even preferential treatment of weaker candidates? This article analyses differentiation in EU treaty and secondary law across the EU's six enlargement rounds. It shows that exemptive differentiation privileging the new member states has been more frequent than discriminatory differentiation. Whereas there is some evidence that poorer new members suffer more strongly from discrimination, most of the variation in differentiation across new member states is explained by differences between enlargement rounds. In addition, the EU grants poorer candidates more time to fully adopt the EU *acquis*. The analysis suggests that bargaining between old and new member states over differentiation is constrained by the equal and even preferential treatment of weaker candidates.

KEY WORDS Accession treaties; differentiated integration; enlargement; European Union; negotiations; new member states.

1. INTRODUCTION

The story of European integration is one of ever increasing 'deepening' (supranational centralization) and 'widening' (expansion of membership). Starting with the supranational regulation of coal and steel industries among six member states in 1952, the European Union (EU) has expanded to 28 member states, is involved in almost all areas of policy and has significant authority in most of them. During its 60-year history, the EU's policy competencies and membership have largely co-evolved: in spite of conflicts on voting procedures or new member state compliance that regularly surface on the occasion of enlargement, a general dilemma or long-term trade-off between deepening and widening for the EU as a whole does not seem to exist (Leuffen *et al.* 2013: 21).

This picture may be too rosy, however. Since the early 1990s, deepening has been accompanied regularly by differentiation: as EU policies have become more integrated, they have ceased to be uniformly valid in all member states. The eurozone and the Schengen area are the most prominent examples of differentiation resulting from deepening. Widening has been an important driver of

differentiation as well. Each accession treaty contains transitional arrangements with derogations from the full and immediate validity of EU rules for the new member states.

The differentiation effect of enlargement can be attributed to increasing heterogeneity. The integration and policy preferences and capacities of new member states often differ from those of the old member states. Differentiation then results from the desire to reduce the costs of enlargement, and the concerns that old or new member states might have about each other, by exempting or excluding the new member states from sensitive rules and policies. 'Exemptive differentiation' refers to those transitional arrangements that favour the new member states by postponing undesired obligations of membership such as environmental or safety standards. In contrast, transitional arrangements causing 'discriminatory differentiation' exclude the new member states temporarily from desired rights and benefits of EU membership such as passport-free travel or subsidies from the EU budget.

Why have discriminatory and exemptive differentiation varied across new member states? Two analytical perspectives can be brought to bear on this question. The rational bargaining perspective (Moravcsik 1998) claims that constellations of preferences and power explain the amount of differentiation. In general, the old member states possess strong bargaining power (Moravcsik and Vachudova 2005); they are in a position to demand the full adoption of EU law from the candidate countries and restrict their access to costly benefits of membership such as agricultural subsidies or freedom of movement (Schneider 2009). Not all candidate countries are equally weak, however. I hypothesize that wealthier new member states, or those that are more Eurosceptic, possess more bargaining power. They have better alternatives to EU membership and should more quickly reach the point at which an accession deal produces negative utility for them. As a result, they should be better able to negotiate exemptions from EU law and avoid discrimination by the old member states than poorer or less Eurosceptic countries that need or want membership more strongly. The rational bargaining approach has been the dominant theoretical perspective on enlargement negotiations (Moravcsik and Vachudova 2005; Schneider 2009).

In this contribution, I question the exclusive empirical relevance of rational bargaining and bring up an alternative explanation. According to a normative-institutionalist approach (Schimmelfennig 2003; Thomas 2009), the EU's bargaining power is constrained by integration norms of legal unity and equal – or even preferential – treatment of the weak. Equal treatment implies that countries joining the EU at the same time experience similar kinds and levels of differentiation regardless of how wealthy or Eurosceptic they are. Preferential treatment implies that poorer countries are subject to less discriminatory differentiation and more favourable exemptions than wealthier or more Eurosceptic countries.

I assess the controversial claims of the rational bargaining and the normative constraints approaches with comprehensive data on differentiation in the EU's

treaty and secondary law. I find partial evidence supporting the rational bargaining perspective: comparatively wealthy new members do, indeed, suffer less from discrimination; that is, they are less often excluded from EU rules beneficial to the new member states than poorer candidates. Relative poverty is clearly the strongest predictor of discrimination. By contrast, the findings on differentiations temporarily exempting new member states from obligations of membership are difficult to explain by bargaining power and point to equal treatment of new member states. First, there is no systematic correlation between the wealth of a new member state and the amount of exemptions it benefits from. Second, participation in the same enlargement round has by far the strongest effect on exemptions. Finally, exemptive differentiation has been much more frequent than discriminatory differentiation.

Section 2 elaborates the theoretical arguments linking enlargement and differentiation. Section 3 describes the differentiation data. Section 4 provides a descriptive analysis of differentiated integration across enlargement rounds, new member states and policies. Section 5 presents the results of a regression analysis of the variation in differentiation across new member states. Section 6 concludes.

2. RATIONAL BARGAINING AND NORMATIVE CONSTRAINTS: THEORETICAL ARGUMENTS

According to the basic story in the general literature on the subject (e.g., Dyson and Sepos 2010: 5–6; Jensen and Slapin 2012; Kölliker 2006; Leuffen *et al.* 2013; Majone 2009: 221), differentiated integration is best understood as an institutional response to the increasing heterogeneity of member state preferences and capacities resulting from both the widening and the deepening of the EU. In the case of widening, it can be assumed that the original members were the most willing and able to integrate. In the 1950s, the ‘less willing’ European countries refused to join a supranational community and settled for more conventional, intergovernmental regional organizations, such as the Council of Europe or the European Free Trade Agreement (EFTA). Absence of willingness can be attributed to high levels of wealth or growth that reduce the need to join and/or high levels of national identity and Euroscepticism that reduce the desire to join. This applies to Britain, the Nordic countries and Switzerland (Gstöhl 2002). The ‘less capable’ European countries may have been willing to join, but were denied membership for a mix of political and economic reasons and had to content themselves with ‘association’. This has been the case, for example, for Greece, Portugal, Spain and Turkey in the 1960s.

Many of the less willing countries have eventually come around to seeking membership when they felt the negative externalities of exclusion from a large and dynamic market. Although these countries have remained relatively wealthy and Eurosceptic, trade and investment diversion, threats of relocation by major industries, or a growth deficit *vis-à-vis* the member states led them to recalculate the costs and benefits of membership and reconsider their

initial rejection of integration (Ingebritsen 1998; Mattli 1999: 80–94; Moravcsik 1998: 164–76). By contrast, the initially less-capable countries had to engage in a multi-dimensional political, economic and administrative process of modernization to meet the membership requirements of the EU. Democratization has been the most important hurdle for the Southern European countries and, more recently, for the Central and Eastern European countries (Schimmelfennig 2001, 2003).

In general, the EU requires candidates for membership to adopt the entire body of EU rules, the *acquis communautaire*, and to follow these rules upon accession. In addition, the EU and the candidates agree on transitional arrangements; that is, they set a period of time during which particular rules do not apply. In the remainder of this section, I derive (partly opposing) hypotheses from the ‘rational bargaining’ and the ‘normative constraints’ approaches to enlargement.

2.1. Rational bargaining

Christina Schneider (Plümper and Schneider 2007; Schneider 2007, 2009) analyses transitional arrangements as instruments to overcome intergovernmental deadlock in accession negotiations deriving from conflict about the distribution of gains and losses from enlargement. In this perspective, 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). Likewise, new member states fear popular opposition against membership if, for instance, citizens from the old member states are allowed to buy homes and land without restrictions. Differentiated integration is an instrument to placate the relative losers – ideally until preferences, economies and administrative capacities have converged sufficiently to minimize their losses.

Following Schneider’s analysis of distributional conflict and bargaining, I suggest that the amount and content of enlargement-induced differentiation depend on the constellation of interests and bargaining power between old and new member states. Heterogeneity of preferences and capacities creates demand for differentiation; the extent to which this demand is realized depends on relative bargaining power. I further suggest that both demand and bargaining power can be explained by the wealth of the candidate countries or by their attitudes toward integration.

Relatively poor candidates produce the strongest concerns about ‘integration capacity’ and redistribution and thus create demand among the old member states for differentiation in the form of discriminatory exclusion. In addition, the old member states also possess the bargaining power to impose such discriminatory exclusion on poorer candidates. Whereas wealthier countries are more

able to afford remaining outside the EU, poorer countries have an overwhelming interest in market access and transfers from EU funds.

R1: Discriminatory differentiation increases with the relative poverty of the new member state.

Both wealthy and poor candidates have an interest in exemptions upon accession, but not necessarily to the same extent or on the same issues. Wealthier candidates may want to reduce their contributions to the redistributive policies of the EU and protect national regulatory standards that are higher than in the rest of the EU. By contrast, poorer candidates (and future net recipients from the EU budget) have no interest in being exempted from the EU's redistributive policies. They may, however, seek derogations regarding demanding regulatory policies of the EU that would burden their industries or national budgets with considerable costs. Hypothesis (R2) builds on the assumption that, for the reasons stated above, wealthier candidates have the stronger bargaining power to realize their demand.

R2: Exemptive differentiation increases with the relative wealth of the new member state.

In contrast to wealth, Euroscepticism only affects the demand of the new member state. It captures non-material motivations to seek exemptions such as perceived threats to national identity and sovereignty. In particular, the supranational integration of core state powers is likely to trigger differentiation (Rittberger *et al.* 2014). Euroscepticism also strengthens the bargaining power of candidate countries as governments can point to sceptical public opinion to achieve a better accession deal.

R3: Discriminatory differentiation decreases with the Euroscepticism of the new member state.

R4: Exemptive differentiation increases with the Euroscepticism of the new member state.

2.2. Normative constraints

There are strong grounds for assuming that both material and ideational concerns trigger systematic demand for differentiated integration to accompany enlargement. I claim, however, that the realization of this demand is normatively constrained (Schimmelfennig 2001). I suggest three constraints on bargaining: legal unity; equal treatment; and accommodation of candidate concerns.¹ First, the EU is not only a multilateral but also legally integrated system of governance. Legal systems can be assumed to be normatively and institutionally biased against differentiation. Differentiation may be acceptable to facilitate the integration of new member states for a limited period of time but undesirable for the long term or even permanently.²

Second, I suggest that EU negotiators are constrained to treat candidates equally. Again, European treaty law is based on the principle of state equality. This norm requires that exemptions granted to one country be granted to other candidates as well if they so demand – at least within the same enlargement round. It also means that individual candidates are not singled out for discrimination but that temporary exclusions are applied to all countries of an enlargement round. In addition, equal treatment is likely to facilitate and speed up enlargement negotiations because all candidate countries understand that EU negotiators are unwilling to allow tailor-made transition arrangements and that they will not reap private gains from separate negotiations. Assuming equal treatment, I expect that variation in differentiation is mainly explained by participation in different enlargement rounds, not by wealth or Euroscepticism.

N1: Differentiation varies with enlargement rounds.

In addition, the old member states may be willing to accommodate special concerns of relatively poor and weak candidates. Following Ulrich Sedelmeier's analysis of Eastern enlargement, the EU may have 'discursively constructed a particular role of the EU', ascribing 'to the EU a "special responsibility"' to assist newly democratized and poorer countries in their transformation and modernization by facilitating their integration into the EU (Sedelmeier 2005: 9). One way to facilitate integration is to accord the 'less capable' candidate countries preferential treatment in the form of more numerous and durable exemptions from the costly obligations of membership. This expectation stands in contrast to both the norm of equal treatment and the rational bargaining perspective.

N2: Exemptive differentiation increases with the relative poverty of the new member state.

3. DIFFERENTIATION: DATA AND MEASUREMENT

In order to assess these hypotheses, I use enlargement-related data from the EUDIFF1 and EUDIFF2 datasets on differentiation in EU law. EUDIFF1 captures differentiation in EU primary (treaty) law and is based on article-years. EUDIFF2 collects data on differentiation in secondary legislation and is based on legislative act-years. For each treaty article (including protocol articles) in force in a given year between 1952 and 2012, EUDIFF1 records the countries for which differentiations have been valid (see Schimmelfennig and Winzen 2014). EUDIFF2 does the same for all Council and Council/European Parliament (EP) directives and regulations from 1958 to 2012 as well as for decisions in the area of Justice and Home Affairs based on the Official Journal (Duttler *et al.* 2013).³

In this article, the unit of analysis is the new member state. I measure differentiation as the duration-weighted number of treaty articles and legislative acts

with an actual differentiation for each new member state. The duration-weighted measure is preferable to a simple count because differentiations vary strongly in duration. To arrive at this measure, I first select the treaty articles and legislative acts with an actual differentiation for the new member state starting in the year of its accession.⁴ This procedure raises the issue of the independence of observations. A single decision to differentiate may affect a single treaty article or a whole section of the treaties, a single legal act or a set of related acts. If each article were treated as independent, for instance, exclusion from the freedom of movement for workers, a fundamental economic freedom, would count as one differentiation, whereas exclusion from the Schengen regime, which can affect up to 175 treaty articles, would be weighed 175 times higher. To avoid such distortions, I applied the following rules. For treaty law, differentiations from the same policy area that start and end on the same date are treated as a single differentiation (see Schimmelfennig and Winzen 2014). This mainly corrects for the artificially inflated number of differentiations in the areas of Economic and Monetary Union and Schengen. In secondary law, the problem is much weaker. Here, I treat differentiations that have the same starting and termination dates and refer to the same legal basis as single differentiations. This mainly corrects for the inflated number of differentiations in the area of agriculture resulting from related exemptions or compensations for individual agricultural products. The highest number of aggregated differentiations for secondary law is only four, however. Finally, I count the number of years a single differentiation has been in force since the year of accession and sum up the duration counts for each new member state.

In order to assess the hypotheses, I further need to distinguish between differentiations constituting discrimination and exemptions. As this information is not provided in the EUDIFF datasets, I went back to the texts of the treaty and the legislative acts. Discrimination results from differentiations that exclude new members from rights and benefits of membership such as the introduction of the euro, passport-free travel in the Schengen zone, payments from the Common Agricultural Policy, or the freedom of movement for workers from the new member states. By contrast, exemptions temporarily free the new member states from obligations of membership such as granting foreigners the possibility to buy agricultural land; they give them extra time to approximate their laws to EU environmental, agricultural or public health standards; or they provide them with transitional compensation payments for agricultural products.

In the great majority of the cases, it is clear from the content of the legal text what constitutes discrimination and exemption. In some cases, however, the decision-making context provided important information on the nature of the differentiation. For instance, the preferences of the new Central and Eastern European member states on adopting the euro have varied. For some, such as the Baltic countries, initial non-participation in the eurozone was discrimination; for others, such as the Czech Republic, Hungary and Poland, it may in fact have been an exemption. The EU, however, decided to exclude

all new member states across the board and regardless of their preferences and capacities. This differentiation is therefore coded as discrimination.

According to this measurement, enlargement has produced 267 differentiations: 112 in primary law (treaties of accession) and 155 in secondary law passed in the year of accession. These differentiations have lasted on average for four and a half years (5.75 years for treaty law and 3.6 years for secondary legislation). There is a clear overrepresentation of short-lived differentiations. The median duration is three years; one quarter of differentiations ends after two years; 75 per cent after six years; and 95 per cent after 10 years.⁵ Only one differentiation has lasted longer than 20 years – exempting the United Kingdom (UK) from rules concerning the marketing of certain species of vegetable seeds between 1973 and 2001 (Commission Decision 73/188/EEC).

Regarding types of differentiation, the data show that exemption has been much more widespread than discrimination. Of all differentiations, 78 per cent (and 72 per cent of all differentiation-years) result from exemptions. Discriminatory differentiations last on average for 5.75 years, however, whereas exemptions end on average after 4.1 years. Whereas enlargement is in general based on the one-sided adoption of EU rules by the candidate countries, enlargement-based differentiation accommodates the new member states more strongly than the old member states.

Figures 1 and 2 show marked differences in discrimination and exemptions across both new member states and policy areas.⁶ Figure 1 suggests that wealthy new members (Austria, Denmark, Finland, Sweden and the UK) have, indeed, not been much affected by discriminatory differentiation but benefited strongly from exemptions. It also shows some clustering according to enlargement round, however. Discrimination increases in the order of EFTA, Northern, Southern and Eastern enlargement. The number of exemption-years is highest for the 1973 enlargement and lowest for the 2007 enlargement. In between the extremes, however, there are no clearly visible patterns.

Figure 2 shows that discrimination has been limited to a small number of policy areas: new member states have been temporarily denied agricultural subsidies; full access to the internal labour and services market; and participation in the Schengen area and eurozone. Exemptions cover a broader range of policies but almost all are in the domain of the internal market and the Common Agricultural Policy. Agriculture is by far the largest single contributor to differentiated enlargement. Transitional exemptions from regulation and transitional compensatory payments in agriculture amount to more than 100 differentiations adding up to almost 300 differentiation years. Yet these numbers also show that exemptions in agriculture are short-lived. Whereas the old member states often limit new members' freedom of movement of labour and services, they also agree to initial limitations to their own free movement of capital. Furthermore, they give new member states additional time to adapt their national rules in trade, competition and taxation and to adopt the Union's environmental, transport, or work safety standards. Other policy areas are completely absent from the picture: there are no legal differentiations in the areas of

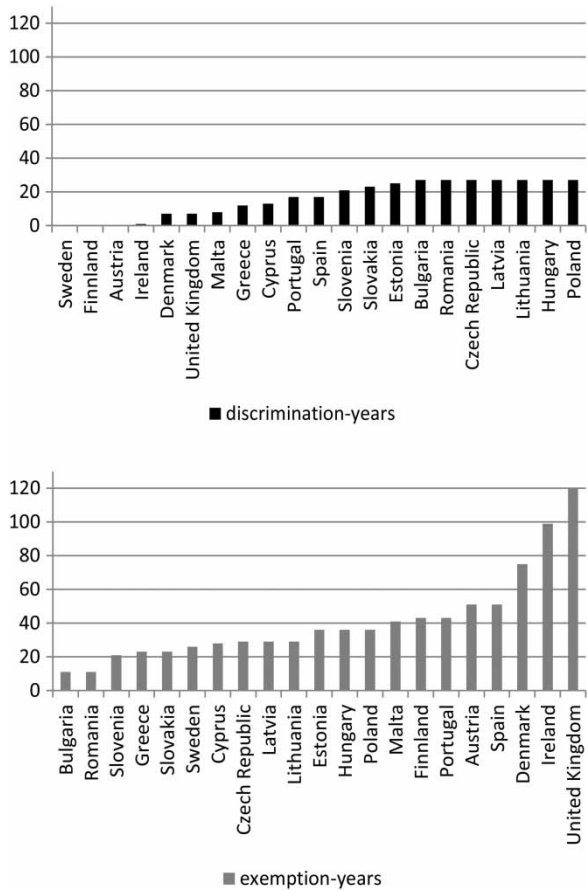


Figure 1 Differentiation originating from enlargement by new member states

economic and social cohesion, the other important area of redistribution besides agriculture. Nor are there any derogations from EU rules in consumer protection, industry policy, research and technology policy and foreign and defence policy, to name just a few.

4. ANALYSIS

In this section, I report the results of a multivariate linear regression analysis of enlargement-based differentiation, which puts the hypotheses and the impressions from the descriptive analysis to a systematic test. The dependent variables are the aggregate measures of discriminatory and exemptive differentiation for each new member state. Twenty-one countries have joined the original EC-6 until the end of 2012.

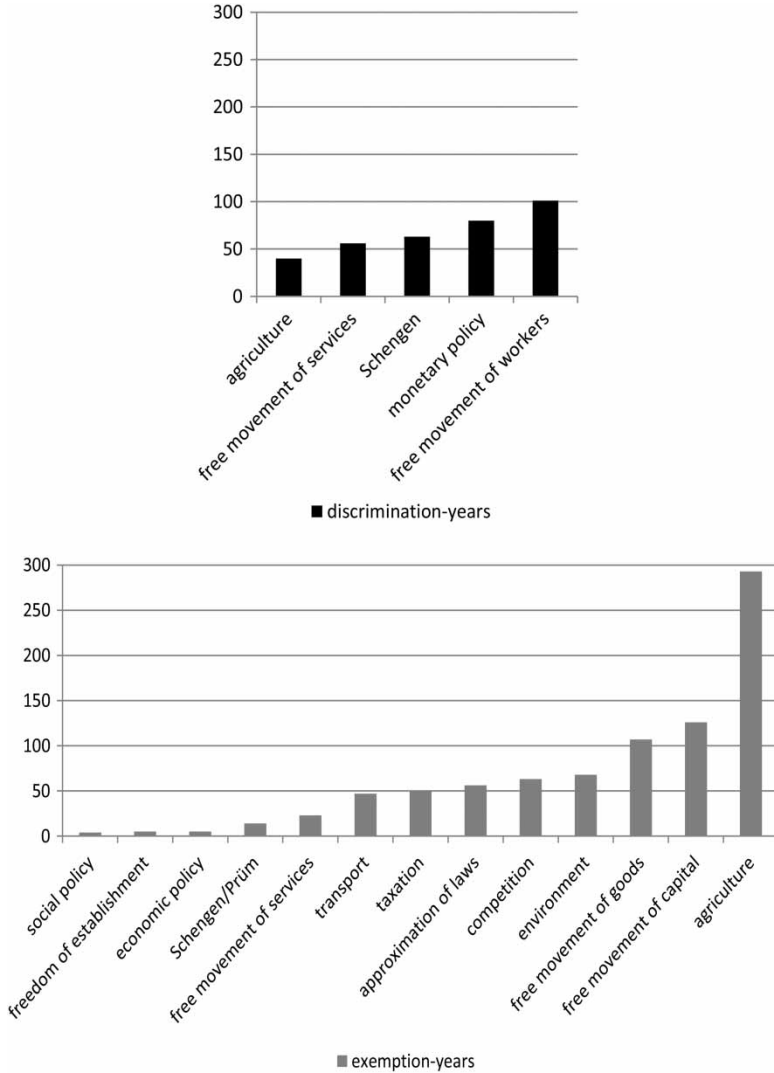


Figure 2 Differentiation originating from enlargement by policy area

The explanatory variables are relative wealth, Euroscepticism, and the enlargement round. The measure for relative wealth is new member state gross domestic product (GDP) per capita as a percentage of EU GDP per capita in the year preceding accession.⁷ Euroscepticism is measured in the year of accession based on Eurobarometer data; it represents the difference between the percentage of respondents saying that the EU was ‘a good thing’ and the percentage of respondents saying the EU was ‘a bad thing’.⁸ In addition, I have included ‘population’ (measured in year 2000 according to the World

Development Indicators)⁹ to control for the size of the new member states as a further indicator of bargaining power and ‘democracy’ based on the Polity IV data set (measured in the year before accession) to control for potential effects of the political system.¹⁰ Neither ‘population’ nor ‘democracy’ (Polity IV) have, however, proven significant in any of the models, and were therefore removed to increase degrees of freedom.

‘Enlargement round’ is a set of six dummy variables representing the six enlargements of the EU. Round 1 is the Northern enlargement of 1973 (Denmark, Ireland and the UK); Round 2 refers to the accession of Greece in 1981; Round 3 is the 1986 enlargement (Portugal and Spain); Round 4 is the 1995 EFTA enlargement (Austria, Finland and Sweden); Round 5 refers to the 2004 enlargement (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia); and Round 6 covers Bulgaria and Romania in 2007. This variable also captures time dependence. In addition, I regularly include the ‘Round 6’ dummy in the models to account for most of the right censorship in the data. Otherwise, the serious underreporting of the likely future duration of the differentiations for Bulgaria and Romania might distort the results. The main results are summarized in Table 1. Because of strong correlation between wealth and Euroscepticism ($r = -0.75$), I introduced these variables separately into the analysis.

In line with the rational bargaining perspective, the bivariate regressions of discrimination on wealth and Euroscepticism (Models 1 and 2) support the hypothesis that poorer and more Europhile new member states are more likely to incur discriminatory differentiation. An increase in 10 percentage points of relative poverty *vis-à-vis* the old member states results in two additional years of discrimination; a shift in 10 percentage points between citizens thinking EU membership is a good thing and those thinking it is a bad thing accounts for roughly two years and ten months of discrimination. When wealth and Euroscepticism are entered in the same model, wealth remains significant whereas Euroscepticism does not; it also provides for better model fit. For this reason, I retain wealth for the full model. If the dummies for all enlargement rounds are added, wealth becomes insignificant (Model 3).¹¹ Because discriminatory differentiation was absent from the 1995 EFTA enlargement, the coefficients are positive for all other enlargement rounds when the Round 4 is defined as the reference category. The differences are not significant for Northern enlargement or the Greek accession, however, and only barely so (at the 10 per cent level) for the Southern enlargement of 1986. By contrast, the Eastern enlargement rounds of 2004 and 2007 have been characterized by comparatively strong discrimination. The same can be found when comparing Eastern with Southern enlargement – in spite of similar levels of relative poverty *vis-à-vis* the old member states.¹² This seems to be the main reason why wealth becomes insignificant when enlargement rounds are introduced into the model. Because Schengen and EMU account for almost half of the discrimination in Eastern enlargement, the difference of enlargement rounds also captures an effect of the deepening of the EU.

Table 1 Linear regression results of differentiation

Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Dependent	Discrimination (sum of years)			Exemption (sum of years)			Total
Wealth	−0.20*** (0.04)		0.05 (0.06)	0.24 (0.15)		−0.18 (0.11)	−0.24 ⁺ (0.11)
Euroscepticism		0.28** (0.09)			−0.42 (0.27)		
Round 1			4.08 (4.53)			54.9*** (8.5)	Reference
Round 2			8.16 (7.54)			−30.1* (14.2)	−80.9*** (13.6)
Round 3			12.4 ⁺ (7.06)			−8.66 (13.3)	−55.2*** (12.3)
Round 4			reference			reference	−59.0*** (8.76)
Round 5			18.5** (5.67)			−22.9* (10.7)	−63.4*** (9.52)
Round 6	2.52 (5.47)	5.35 (6.83)	21.5** (7.76)	−21.9 (19.7)	−23.0 (19.7)	−47.6** (14.6)	−85.0*** (13.6)
Constant	32.2*** (3.84)	5.39 (3.86)	7.51 (8.80)	23.7 (13.8)	59.0*** (11.1)	65.6*** (16.6)	132*** (15.2)
N	21	21	21	21	21	21	21
Adj. R²	0.58	0.33	0.74	0.16	0.15	0.86	0.79

Notes: Standardized regression coefficients for Wealth and Euroscepticism. ⁺ Significant at 10 per cent level; * significant at 5 per cent level; ** significant at 1 per cent level; *** significant at 0.1 per cent level. Standard errors in parentheses.

Bargaining power does not explain exemptions, however. Neither wealth nor Euroscepticism has a significant impact on the amount of exemptive differentiation across new member states (Models 4 and 5). By contrast, Model 6 supports the normative-institutionalist account. First, enlargement rounds have a strong influence on exemptions. Although both the Northern and the EFTA accession rounds have been composed of comparatively wealthy countries, participation in the 1973 enlargement has resulted in 55 additional years of exemptions on average as compared to the 1995 enlargement. The countries of the 2004 enlargements obtained on average 14 years less of exemptions in spite of being equally poor in relative terms as Portugal and Spain in 1986. Model fit is again very good: regressing exemptions on the round dummies alone produces an r^2 of 0.88 (not shown in Table 1). Thus, there is strong evidence for equal treatment of countries participating in the same round. There is also some, albeit inconclusive, evidence that poorer countries are treated preferentially in the case of exemptions. 'Wealth' has the correct negative sign, and although it misses the 10 per cent significance level ($P > |t| = 0.121$) in Model 7, it becomes significant at the 10 per cent level when 'democracy' is entered into the model.

This finding is confirmed by an analysis of total differentiation, combining discriminatory and exemptive differentiation (Model 7). Wealth is almost significant at the 5 per cent level, showing that relatively poorer new member states obtain more differentiated integration upon accession in general. Because this differentiation may be discriminatory or exemptive, this result cannot be clearly interpreted in favour of one or the other approach. It shows, however, that poorer countries are more likely to receive 'special treatment' by the EU than richer ones. Again, enlargement rounds account for most of the variation by far. Defining Northern enlargement as the reference category demonstrates the exceptional role of the EU's first enlargement in producing differentiated integration. In comparison, all other rounds have produced significantly less differentiation (see Model 7 in Table 1). Differences among the other enlargement rounds are smaller. Yet, if the reference category is moved to the 1986 Southern enlargement, it is still significantly different from Greek accession and the 2007 enlargement – two other enlargement rounds with relatively poor candidates (not reported in Table 1).

Figure 3 combines separate bivariate scatter plots of wealth and differentiation for each enlargement round. They generally show different levels of discriminatory and exemptive differentiation across rounds, thus supporting the finding that differentiation varies by enlargement round. Horizontal lines showing 'equal discrimination' and 'equal exemptions' for the candidates of each round further corroborate the equal-treatment hypothesis (N1). Equal treatment can generally be observed in the 1986, 1995 and 2007 enlargements. Interestingly, discrimination increases with relative wealth, and exemptions increase with relative poverty in the 1973 enlargement. Ireland has thus clearly received preferential treatment, and Denmark has been treated least favourably. The enlargement round with the most pronounced differentiation thus does not conform to the expectations of the rational bargaining perspective.

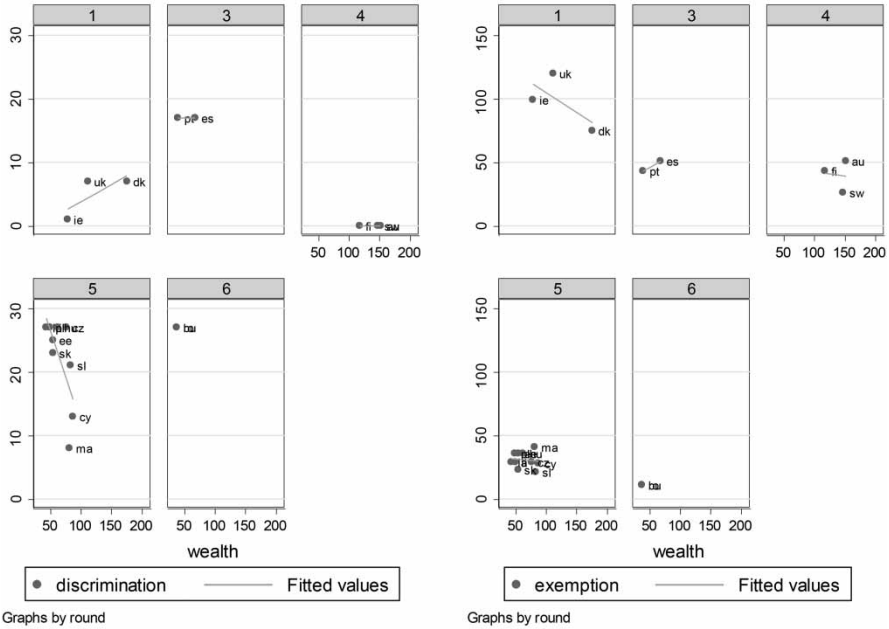


Figure 3 Bivariate plots of differentiations and wealth by enlargement rounds

By contrast, discrimination increases with relative poverty in the 2004 enlargement in line with the rational bargaining approach. In particular, relatively wealthy Cyprus and Malta have been less discriminated than the ex-communist countries. The plot for exemptions, however, shows equal treatment regarding exemptions in the 2004 round.

The analysis provides corroborative evidence for the hypothesis that differentiation varies strongly by enlargement round and that countries participating in the same enlargement round are highly likely to be treated similarly – and more similarly to each other than to countries participating in other enlargement rounds. It cannot conclusively show that equal treatment results from normative constraints rather than from simple commonality of new member state characteristics or from the specific context of each enlargement round. Arguably, the most important factors that bring countries together in one enlargement round are wealth and democracy. Whereas the 1973 and 1995 clustered comparatively wealthy countries and traditional democracies, the other enlargement rounds consisted of comparatively poor countries and recent democratizers. As the analysis has shown, these factors do not explain variation in differentiation across enlargement rounds, however. Moreover, there is no discernible trend in the amount of exemptions and discrimination over time. An increase in discrimination over time is only visible if the 1995 enlargement is excluded, and there is no trend in exemptions at all. In sum, equal treatment of candidates in each enlargement round remains the most plausible explanation.

5. CONCLUSIONS

What drives the variation in differentiated integration across new EU member states? Are discriminatory exclusion and transitional exemptions driven by differences in bargaining power or do they reveal equal or even preferential treatment of weaker new member states? This study supports the claim that intergovernmental bargaining about the terms of accession is normatively constrained. First, exemptions that postpone undesired or costly adaptations to European policies account for most of the enlargement-induced differentiated integration by far. Moreover, new members of the same enlargement round are in general treated equally – both when being excluded from benefits of membership (discriminatory differentiation) and when being granted exemptions from the obligations of membership (exemptive differentiation). In the few enlargement rounds, in which differentiation varies by wealth, it is not generally the richest candidates that benefit most.

On the other hand, new members are not treated equally across enlargement rounds – equal treatment is not inter-temporal. But the differences are particular to each enlargement round: there is no systematic influence of wealth, Euroscepticism, democracy or size across enlargement rounds. Nor is there a clear temporal trend: enlargement does not become consistently more or less differentiated, nor does the amount of discrimination or exemptions systematically decrease or increase, as time progresses and integration deepens.

This article adds empirical and theoretical value to existing studies on the differentiated integration of new member states. It is based on a comprehensive dataset of differentiated integration and advances an alternative to the bargaining approach. My findings do not in any way refute Schneider's analysis of 'discriminatory membership' but put it in a larger perspective. Whereas her work shows why old member states demand, and new member states accept, discrimination in specific (and important) areas of redistributive policy, this analysis points out that discriminatory exclusion constitutes only a small part of differentiated integration produced by enlargement, is more strongly driven by the particularities of enlargement rounds than by bargaining power, and has a considerable 'equal treatment' component.

For several reasons, these results should be treated with caution, however. First, the instances of differentiation represent very different cases ranging from the extension of the time period for the use of old national driver's licences to the blocking of labour market access and agricultural subsidies. Some weighting according to policy issue and material value in addition to the number and duration of differentiation would produce a more adequate analysis but is difficult to do in a non-arbitrary way. Second, the strong and robust effects of enlargement rounds provide only indirect evidence for the relevance of integration norms. In addition, the variable picks up temporal effects unrelated to norms (even though they do not seem to follow a specific temporal pattern, trend or cycle). More qualitative, process-tracing evidence is required to support the reasoning that considerations of equal or preferential treatment drive the

negotiation outcomes. Third, the right censorship in the data requires future checks. Fourth, the highly aggregated results of this article should be checked in a more fine-grained analysis at the level of individual treaty articles or legal acts.

Finally, the debate about the driving forces of enlargement-induced differentiated integration needs to be put in the right perspective. First, both the rational bargaining and the normative constraints agree on the assumption that the EU uses differentiated integration as an instrument to smoothen the enlargement process and to reduce the costs of enlargement for both old and new member states. Second, enlargement is generally characterized by a massive and uniform adoption of EU law by the candidates. Only around 15 per cent of treaty articles, and less than 1 per cent of secondary legislation, has been affected by enlargement-induced differentiated integration in the enlargement rounds since the 1990s. Third, this differentiated integration is temporary: after 10 years, 95 per cent of the rules that became differentiated as a result of enlargement revert to uniformity (or remain differentiated for reasons other than enlargement).

Biographical note: Frank Schimmelfennig is professor of European politics at the Centre for Comparative and International Studies, ETH Zurich, Switzerland.

Address for correspondence: Prof Frank Schimmelfennig, ETH Zurich, IFW D 45.1., 8092 Zurich, Switzerland. email: frank.schimmelfennig@eup.gess.ethz.ch

NOTES

- 1 For another argument about how shared European integration norms have shaped and mitigated differentiated integration (in cases of differentiation produced by deepening rather than widening), see Adler-Nissen (2011).
- 2 Schneider points to the norm of legal unity as a constraint on the duration of discriminatory arrangements for new member states (2009: 69), but does not test its impact systematically.
- 3 The secondary-law data is based on a preliminary version of EUDIFF2. The records used for the present analysis can be obtained from the author.
- 4 Most such enlargement-related differentiations can be found in the accession treaties as amendments to existing law. These provisions of the accession treaties were not entered in the dataset as new records but coded in the records of the treaty articles and legislative acts they refer to.
- 5 Note, however, that the data are right-censored because of ongoing differentiations in 2012. Nineteen differentiations were ongoing in 2012, likely to produce a higher average duration of enlargement-based differentiations in the years to come.
- 6 The classification of policy areas is oriented towards the chapter titles of the EU treaties.
- 7 For the 2004 and 2007 enlargement rounds, the data were directly taken from Eurostat (<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&lang=en&pcode=tec00114>). For the earlier enlargement rounds, it was

calculated by the author based on <http://www.indexmundi.com/facts/european-union/gdp-per-capita> for EU per capita GDP, the World Development Indicators (<http://databank.worldbank.org>) for country GDP after 1980, and UN data (<http://data.un.org>) for 1972 data on Denmark, Ireland and the UK. All GDP per data are based on current US dollars.

- 8 See Item 4 at http://ec.europa.eu/public_opinion/cf/step1.cfm.
- 9 See <http://data.worldbank.org/data-catalog/world-development-indicators>.
- 10 See <http://www.systemicpeace.org/polity/polity4.htm>. I also measured democracy based on Freedom House data but this indicator proved to be too strongly correlated with wealth ($r = -0.73$). When entering the Freedom Index instead of relative wealth into the models, wealth always performs better and seems to capture the variation better than democracy.
- 11 Adding 'Euroscepticism' to this model reduces model fit (according to the Adjusted R^2 statistic) and reduces significance for the enlargement rounds. The difference between Eastern enlargement and the 1995 enlargement remains significant, however.
- 12 If Greek accession is taken as the reference category, both Round5 and Round6 are significant at the 10 per cent level. If the 1986 round is used as the reference category, Round 5 and Round 7 are just below the 10 per cent significance level.

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