

**DIFFERENTIATION – A NEW ELEMENT IN THE
EUROPEAN LEGAL ARCHITECTURE**

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Abstract

This thesis analyzes a new legal structure used in European law known as differentiation. Differentiation in European law means any form of partial integration through law that takes place between only some European Union Member States. This legal structure has been used on a larger scale from 1986 on. The best-known examples are the European Social Charter, which was implemented by all Member States except the United Kingdom, which refused to take part because of political reasons, and the European Monetary Union (EMU). Within the EMU, four countries did not take part in the final stage of the EMU, two, Denmark and the United Kingdom, because of their political unwillingness and the other two, Greece and Sweden, because they did not fulfill the necessary economic criteria for participation.

Different concepts have been developed within the scientific and political discussion to explain differentiation. Among these concepts, the most important are the multi-speed concept, variable geometry and Europe à la carte. In different variations these concepts combined two reasons for the non-participation of certain countries (political unwillingness and economic ability) and the element that differentiation should take part inside or outside the European Union law, to construct their concept of differentiation.

The thesis argues that all these established concepts should be revised after the implementation of closer cooperation by the Amsterdam Treaty. Closer cooperation implements the general provisions for the use of differentiation in the European Union law and does not follow the structure of differentiation of the existing concepts. Moreover,

closer cooperation equalizes the two reasons for the non-participation in accepting them both as grounds for using differentiation and therefore refuses to use the distinction made by the established concepts of differentiation. Closer cooperation replaces this distinction by the idea that every form for differentiation can be used as long as it supports full integration as the final objective of differentiation. However, the thesis argues that the integration concept alone can not explain all the existing rules of differentiation and has therefore be amended by the subsidiarity concept, which represents the ideas behind the existing provisions not following the integration concept. The specific features of both concepts as they are represented in the European legal architecture are then analyzed and their opposites are compared. Finally, the thesis analyzes the cases of the European Social Charter and the EMU further to gain preliminary results and to show some initial problems of using differentiation according to the integration concept.

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