

Huysmans, Martijn

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## Heterogeneity, Vetoes, and Exit Clauses in Federal Systems

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# Heterogeneity, Vetoes, and Exit Clauses in Federal Systems

*Martijn Huysmans*

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Poschingerstr. 5, 81679 Munich, Germany

Telephone +49 (0)89 2180-2740, Telefax +49 (0)89 2180-17845, email [office@cesifo.de](mailto:office@cesifo.de)

Editors: Clemens Fuest, Oliver Falck, Jasmin Gröschl

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# Heterogeneity, Vetoes and Exit Clauses in Federal Systems

## Abstract

The vast majority of federations lack exit clauses. Existing theoretical explanations of this stylized fact focus on issues of credible commitment, signaling, and the risk of strategic exploitation. However, such accounts are unable to explain the adoption by the European Union (EU) of Article 50, which allows withdrawal. I contend and demonstrate empirically that in the case of the EU, an exit-voice logic lies at the basis of Article 50. More generally, in heterogeneous (quasi-)federations formed through voluntary accession, prospective members may require an exit right in order to join, especially if they will not have a veto against policy changes. This hypothesis is borne out empirically by a probit regression on the positions of 94 delegates at the European Convention, which shows that heterogeneity drove support for an exit right.

JEL-Codes: D700, H770, P480.

Keywords: exit, withdrawal, secession, federalism, European Union.

*Martijn Huysmans*  
*Utrecht University*  
*School of Economics*  
*The Netherlands - 3584 EC Utrecht*  
*m.huysmans@uu.nl*

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## Introduction

Temporary escape clauses (Rosendorff and Milner 2001) and withdrawal clauses that regulate exit are relatively prevalent in most types of international treaties (Helfer 2005; Koremenos 2016). In contrast, the vast majority of federations or (quasi-)federal systems lack exit clauses. Two notable exceptions are the European Union (EU), which allows unconditional exit after two years (Athanassiou 2009), and Saint Kitts and Nevis (Weinstock 2001). This article advances and tests an explanation for the case of the EU.

In the literature on the size of nations the benefits of larger jurisdictions are usually assumed to consist of economies of scale minus welfare losses from centralized decision-making in the presence of heterogeneity (Alesina and Spolaore 2003; Tullock 1969). If relevant, fiscal transfers should also be taken into account (Bolton and Roland 1997; Desmet et al. 2011; Hug 2005). This logic can also be applied to federal systems: the members will benefit from economies of scale, but may suffer from centralized policy-making on federal competencies (Riker 1964). The more heterogeneous the members of the federation, the harder the problem of designing appropriate constitutions and the more important the need for power-sharing mechanisms (Lijphart 2004) to avoid civil wars (Collier and Hoeffler 2004).

Exit clauses can mitigate two important risks of being a member of a federal system. First, they provide insurance against adverse exogenous shocks to benefits from the federation (Huysmans and Crombez 2017). By creating a peaceful exit option, exit clauses can help avoid violent and costly secession wars aimed at obtaining independence. Second, exit clauses can protect against endogenous undesired policy changes – which is the point addressed in this article. If an undesired policy is adopted and a member stops benefitting, it may exit the union. Anticipating this, credible exit threats may prevent exploitative policy changes and overreaching by the federal government (Apolte 1997; Buchanan 1995; Buchanan and Faith 1987; De Figueiredo and Weingast 2005; Hirschman 1970; Slapin 2009; Weinstock 2001).

The state-of-the-art formal model in the literature on optimal secession rules was developed by Bordinon & Brusco (2001). They find that even in the presence of exogenous shocks to benefits from the federation, constitutions may optimally avoid exit clauses. The reason is that the benefits of a federation may depend on its perceived stability: “The absence of explicit secession rules can be seen as a commitment device to increase the stability of the federation. By not introducing these rules, the federation raises the exit cost for its members, thus reducing the probability of a break-up in the future.” (Bordinon and Brusco 2001: 1812).

Regarding international agreements, Koremenos and Nau (2010) and Koremenos (2016) demonstrate that when exit clauses are present, they have longer notice and wait periods in the presence of enforcement and commitment problems. Extending this logic, one could easily conclude that given the importance of stability and credible commitment for their success, federations and quasi-federations such as the EU should lack exit clauses.

As pointed out by Spier (1992) and Rainer (2007), contracts may also be incomplete regarding exit because of signaling. Parties committed to the success of the cooperation may want to signal this by foregoing exit provisions. Finally, exit clauses may be avoided because they may be exploited strategically for blackmailing the rest of the federation into concessions, especially in the presence of incomplete information (Chen and Ordeshook 1994; Gradstein 2004; Sunstein 1991).

However, none of these theoretical arguments can explain why the EU has an exit clause, and even less why it was only adopted later in its institutional development. This is the contribution of this article. It is, to the best of my knowledge, the first to address theoretically and empirically why and when the EU adopted an exit clause. Accession bargaining is shown to be key. Since most federations are formed through decentralization or annexation rather than voluntary accession, the explanation is consistent with most other federations lacking exit clauses.

The first section of this paper presents its central theoretical argument. The empirical part starts by providing the context and facts of the EU's 2002-2003 Convention on the Future of Europe, where the EU first adopted an exit right. At the time of the Convention, 10 Candidate States were expected to join the EU in 2004. The heterogeneity-veto argument developed in this article is shown to be able to account for the timing of the EU's adoption of an exit clause, since these Candidate States were the first new Member States to both differ significantly from the existing Member States and to enter when the EU had moved from unanimity decision-making to qualified majority voting.

After discussing the timing of the EU's adoption of an exit right, a set of probit regressions are presented on the positions of Convention delegates and their national parties, coded by the author from Convention documents. The results of these regressions further support the hypothesis that heterogeneity leads to a desire for an exit right. They also show that the heterogeneity-veto theory predicts well which member states would support an exit right, namely those with outlying preferences.

## Vetoes and exit clauses in heterogeneous federations

Hirschman (1970) started a tradition of exit-voice-loyalty models (e.g. Slapin 2009). The central heterogeneity-veto argument of this article fits in this tradition. It also relates to the work by Buchanan and Tullock (1962) and Buchanan (1991) regarding the need for minority protection in the form of a policy veto or an exit right giving rise to effective voice.

The argument is as follows. When thinking about joining a federation, prospective members reflect on the benefit this will yield them. A first proxy may be the estimated benefit under the federation's existing policies – or, if it is a new federation, under the initial policies that are agreed prior to its formation. However, depending on the policy-making rules, prospective members realize that these policies may be changed later on.

With a policy veto, they can block any unwanted changes.<sup>1</sup> Without a veto, policies may be changed to such an extent that a given member stops benefitting from the union. Given the reputational costs of unilateral exit (Helfer 2005) and the potential eruption of a costly secession war, members may be forced to stay even in such cases. In contrast, if they are given an ex-ante exit right, they know that they will be able to leave the federation at a more limited cost.

The problem of unwanted policy changes is most urgent for prospective members that are very different from the majority of the federation in terms of characteristics and preferences. The more across-member heterogeneity in a federation, the higher the possibility that some members will be consistently outvoted. This is especially true in a setup where there is a relatively homogeneous core of members that has a sufficient legislative majority to push through policy changes at the expense of a periphery with different preferences. The more heterogeneity in such a setup, i.e. the bigger the difference in preferences between core and periphery, the more potential policy changes exist that the core likes and the periphery does not.

At first sight, an important qualification may seem in order. Members of the core may have norm-based reasons for refraining from pushing through legislative programs that would benefit them at the expense of the periphery. In particular, norms of universalism and consensus may counteract purely majoritarian and redistributive politics. In that sense, the argument presented

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<sup>1</sup> Supermajority or qualified majority voting (QMV) can give groups of heterogeneous federal entities a legislative veto without giving each individual entity a veto. For instance, if there were three members, say *A*, *B*, and *C*, with a vote share of 50%, 30%, and 20% respectively, then it matters whether the required legislative majority is above or below 80%. If it is above 80%, then *A*, *B*, and *C* all need to agree (i.e. each member has a veto). If it is in the range 70%-80%, then *A* needs *B* to agree but not *C* (i.e. only *A* and *B* have a veto). If it is in the range 50%-70%, then *A* needs only *B* or *C* to agree to get changes to pass (i.e. *B* and *C* do not have an individual veto).

here is a worst-case scenario for the periphery: it details what could happen to the periphery if the core behaved in a purely instrumental and majoritarian way.

However, in the remainder of this article I assume that even if such norms are present, the periphery will take a worst-case perspective and assume that the norms may not always bind. This can be justified by a story of signaling: if the core expects to be fully bound by norms of universalism, then giving a free exit right to the periphery will not change its own expected benefits. Hence refusing to give such a right might send a signal to the periphery that the core actually expects not to be fully bound by norms of universalism, reinforcing the periphery's expected need for constitutional protection.

All of this implies that a core could only successfully attract a heterogeneous periphery with (1) a set of initial policies such that under these policies the periphery would benefit from the federation and (2) a legislative veto or a constitutional exit right. With a legislative veto, any member of the periphery could block any unwanted policy change. With an exit right, a member of the periphery could only credibly leave if so many policy changes had occurred that it was no longer benefiting from the federation at all. Hence from the point of view of the core, offering a constitutional exit right is the better option.

In conclusion, in federations that are strongly heterogeneous, the expectation is that the core will offer the periphery an exit right in order to give it some protection against unwanted policy changes. Consistent with the literature on the size of nations, the core will be willing to do this if the additional economies of scale from attracting the periphery are worth it.

Another way to phrase the heterogeneity-veto explanation of exit clauses is the following: veto rights<sup>2</sup> and exit rights can act as substitutes in offering constitutional protection to peripheral members in heterogeneous federations. However, given that veto rights are more costly to the core in terms of inhibiting policy changes desired by it, the expectation is that an exit right will be offered instead.

### Federalization through decentralization

The constitutional choice argument presented above assumed that the federation was formed through voluntary accession. In the terminology of Stepan (1999), it was a model of “coming-together” federalism. However, many real-world federations were formed through decentralization of a previously unitary state, in a process Stepan calls “holding-together”

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<sup>2</sup> Or supermajority voting thresholds, cf. the previous footnote.



federalism. As examples he cites the 1950 Indian Constitution, the 1978 Spanish Constitution, and the 1993 Belgian Constitution (Stepan, 1999: 22).

Unitary states may federalize through decentralization if otherwise secession of the periphery is imminent. By decentralizing part of the policies, the periphery can set those as it wishes. If the core behaves strategically, it will propose just enough decentralization so that the periphery is just willing to stay in the decentralized setup versus the alternative of a costly unilateral exit. The periphery will still have a negative payoff from the federation, but it will have to accept not having an exit right. In contrast to a prospective member of a coming-together federation, it cannot threaten not to join and withhold its contribution to economies of scale.

To the best of my knowledge, there are only three current federal systems with an exit clause: the EU, Saint Kitts & Nevis, and Ethiopia.<sup>3</sup> The first two are cases of coming-together federalism and will be discussed in the empirical section. The case of Ethiopia is one of decentralization: the current constitution, adopted in 1995, transformed Ethiopia from a unitary state into a federal system. The current exit right was also introduced with this constitution. At first sight, the case of Ethiopia hence seems to contradict the conclusion of the argument about federalization through decentralization. However, as argued by Habtu (2005), given the authoritarian nature of the regime the exit right likely exists on paper only.

Allowing for the caveat that the Ethiopian right to secede may be a right in name only, all other cases of currently existing federalization through decentralization indeed do not have an exit right. Examples include India and Belgium, but arguably also Spain and the United Kingdom. While the latter two countries do not call themselves federal, they have devolved certain competencies to entities with outlying preferences, e.g. Catalonia and Scotland. In the case of Catalonia, as recent events have made clear, the central government will do anything it can to prevent secession and to make unilateral exit as costly as possible. In the case of Scotland, it is true that the UK government allowed an independence referendum to take place. However, just as the 1975 UK referendum on EU membership did not establish an EU-wide permanent right

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<sup>3</sup> According to data from the Constitute Project (Elkins et al. 2014; Elkins, Ginsburg, and Melton 2009) among 192 constitutions currently in force, only 23 address the secession of territory. Among these, only 6 explicitly recognize some right to secede: Ethiopia, Liechtenstein, Saint Kitts and Nevis, Sudan, United Kingdom, Uzbekistan. Of these six, only Ethiopia, Saint Kitts and Nevis, and Sudan are federal. After the internationally brokered Comprehensive Peace Agreement of 2005, Sudan's constitution allowed for secession by South Sudan after 6 years. In 2011, South Sudan exercised this option.

to secede, neither has the 2014 Scottish referendum established a right to secede for all devolved entities (Scotland, Wales, and Northern Ireland).

### **Federalization through annexation**

A third mode of federalization next to “coming-together” and “holding-together” is what Stepan (1999) calls “putting together”, i.e. federalization through forceful annexation. Clearly, such federations are based on domination and do not require the core to give a veto right or an exit right to the annexed periphery. The example cited by Stepan is the Soviet Union.

Note that the Soviet Union theoretically allowed a right to secede. However, this right was probably a right in name only. About independence prior to the Gorbachev era, Suesse (2016: 8) writes: “Those few individuals that did dare advocating regional autonomy or even independence were confined to labor camps or psychiatric clinics. Where any form of public unrest did surface on a broader scale, as in the town of Novocherkassk in 1962, Soviet authorities did not hesitate to use lethal military force to quell the unrest. The threat of harsh repression was continuous, and it was credible (Beissinger 2002; Harrison 2002)”.

Forceful annexation implies that giving a credible free exit right would result in immediate exit and is hence not something the core would do after having just conquered the periphery. To conclude, in the case of federalization through annexation, we expect the federation not to have a free exit right. Allowing for the caveat that authoritarian federations created through annexation may have an exit right on paper, there is no example of a federation created through annexation that has an exit right.

## **The EU’s adoption of an exit right at the European Convention**

The second part of this paper assesses the empirical merits of the heterogeneity-veto argument in more detail by investigating the European Union. After discussing the timing of the EU’s introduction of an exit right, regression analyses provide statistical evidence for the role of heterogeneity in driving preferences for an exit right.

The aim of analyzing the EU’s adoption of an exit right is to test the theory that heterogeneity drives preferences over veto rights and/or exit rights. This section starts with summarizing the context of the Convention on the Future of Europe (2002-2003) and the subsequent Intergovernmental Conferences of 2004 and 2007. Next it considers the EU’s broader institutional history and the timing of its adoption of an exit right.

## The Convention on the Future of Europe (2002-2003)

The Convention on the Future of Europe was to adopt its final document, a draft Constitution for the EU, by consensus among its 105 members and their alternates. It was led by a Praesidium which set the agenda and drafted Articles for discussion in the Convention's plenary (European Commission 2007).

The Convention was chaired by Valéry Giscard d'Estaing, and all 15 Member States and 13 Candidate States<sup>4</sup> had one representative of their government, and two representatives of their national parliaments. The European Parliament (EP) had 16 representatives and the Commission two. In this setup, as formulated by van Hecke (2012: 846), "each Convention member was subject to three loyalties: nationality, institution and ideology".

Prior to the Convention the legality of exit from the EU had been a contentious issue (Athanassiou 2009; Berglund 2006; Harbo 2008; Herbst 2006; Hofmeister 2010; Weiler 1985; Wyrozumska 2012). Some scholars and practitioners argued that exit was possible, usually based on the Vienna Convention on the Law of Treaties, the general acceptance of the 1975 British referendum on European Community membership, or the withdrawal of Greenland (a part of Denmark) in 1985. Others argued that unilateral exit was not possible, usually based on the principle of "ever-closer union" and the autonomous and superseding character of the European legal sphere. In any case, exit would have been more difficult and costly prior to the introduction of an explicit exit right.

The Praesidium introduced a first placeholder for a potential withdrawal right in its preliminary constitutional draft of October 28, 2002 (document CONV 369/02). The first substantive draft of a withdrawal right was proposed by the Praesidium on April 2, 2003 (document CONV 648/03). The draft Article 46 (reproduced in Appendix) allowed unilateral withdrawal i.e. exit. If a withdrawal agreement could not be reached within two years, the withdrawing state would no longer be bound by the EU's constitution.

Concerning the decision by the Praesidium to introduce an exit right, Vice-Chairman Jean-Luc Deheane told *Le Monde* (2003): "In certain countries where there is a discussion about membership of the EU, and where there is a certain Eurosceptic tendency, it can apparently be an important psychological point not to be locked in the union". Justifying this view, The

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<sup>4</sup> Of these 13 Candidate States, 10 states acceded in 2004 after signing an Accession Treaty in 2003: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia. The other three Candidate States at the time were Bulgaria and Romania (acceded in 2007) and Turkey (which has not acceded to date).

Economist (2003) wrote the following about the Hungarian fear of losing sovereignty: “Viktor Orban, prime minister in the Fidesz government narrowly beaten a year ago, said that today’s Eurocrats view Hungary much as its former Soviet masters used to”.

The draft Article 46 proved controversial (Spinant 2003), and many amendments were proposed (European Convention 2003). The Convention plenary of April 25, 2003 saw a strong discussion: “the 105-member body was split as to whether such a clause would appease Eurosceptics or give ammunition to them” (Mahony 2003).

Representing the Dutch parliament, Frans Timmermans (plenary of April 25, 2003; intervention 5-066) formulated the following position, which showed understanding for the Baltic countries but still demanded stringent conditions for exit:

*“I understand that some members of our Convention view the Union differently to the way I see it [...] Just think of our Baltic friends: they have indeed lived in a prison and it is important for them to be able to say to their citizens, 'we can leave'. [...] If we maintain Article 46, I would support those who have mentioned three conditions, namely that you can leave at the next stage of European integration, when there is the next treaty; you can leave by the same procedure as that by which you joined; and, thirdly, a mutually acceptable agreement is compulsory before you can leave.”*

In the end, none of the conditions proposed by Timmermans and others were added to the draft, and the unconditional exit right was maintained. The Convention adopted by consensus a final draft and presented it to the European Council in Rome on July 18, 2003. The withdrawal clause, now numbered Article 59 but essentially unaltered, is reproduced in Appendix.

### The 2004 and 2007 Intergovernmental Conferences

Based on the draft Constitutional Treaty, the IGC started in October 2003 adopted the Treaty Establishing a Constitution for Europe (TCE) on June 18, 2004. The withdrawal clause was now numbered Article I-60 (reproduced in Appendix). However, the implementation of the TCE was prevented by referenda in France and the Netherlands which failed to approve ratification. This setback led to a period of reflection.

When Germany assumed the presidency of the Council in 2007, it decided to strive for a new Treaty that would contain the most important reforms of the failed TCE (König, Daimer, and Finke 2008). Lord Kerr, who had been Secretary General of the European Convention, pushed for the inclusion of the withdrawal clause he had drafted (Kerr 2007). This attempt was

successful and the withdrawal clause was indeed reproduced in the Treaty of Lisbon. Since the Treaty of Lisbon was successfully ratified, the exit clause has been numbered Article 50 of the Treaty on European Union (TEU), reproduced in Appendix.

### The EU's institutional history and the timing of its adoption of an exit right

Table 1 gives an overview of the EU's recent history. More details can be found in Crombez & Hix (2011) and Kelemen, Menon, & Slapin (2014). Before the 1986 Single European Act (SEA), the Council of the EU required unanimity for decision making on all policy areas. Starting with the SEA, qualified majority voting (QMV) was introduced for some policy areas. This change from unanimity to QMV supermajority eliminated the Member States' individual veto on the concerned policy areas. All Treaties adopted after the SEA further expanded the use of QMV to more policy areas: Maastricht (1992), Amsterdam (1997), Nice (2001) and Lisbon (2007).

*Table 1. Treaty Reforms and Accessions to the EU from the Single European Act to the Treaty of Lisbon*

Treaty	Signed	Council decision rule	Member States
Pre-SEA		Unanimity	Belgium, Germany, Denmark, Greece, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, UK (EU-12)
SEA	1986	Introduction of QMV	
Maastricht	1992	Extended use of QMV	
Accession	1994		+ Austria, Finland, Sweden (EU-15)
Amsterdam	1997	Extended use of QMV	
Nice	2001	Extended QMV, incl. to Commission nomination	
Accession	2003		+ A-10: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia (EU-25)
Lisbon	2007	Extended use of QMV	

Importantly, the European Commission holds the legislative initiative right in the EU, and was originally nominated by unanimity in the Council. This implied that Member States could indirectly enforce the legislative status quo by refusing to nominate Commissions that would move away from it (Crombez and Hix 2011). However, since the Nice Treaty the European

Commission has also been nominated by QMV instead of unanimity, thus opening the possibility of majority-approved legislative programs that move away from the status quo.

The decision to abandon unanimity voting allowed the EU, which was relatively homogeneous up to that point (Maggi and Morelli 2006), to escape a joint-decision trap (Scharpf 1988) in which one dissenting country could block efficient collective action. It is important to point out that even the UK and Denmark, two later supporters of a free exit right, accepted to give away their individual veto. In accordance with my theoretical argument, this suggests that they were only mildly heterogeneous from the rest of the EU at that time.

Table 1 also shows the EU's expanding membership. Prior to the SEA, 12 Member States had joined the European Economic Community (the EU's predecessor). This group is often referred to as the EU-12. In 1994, Austria, Finland, Sweden and Norway signed an Accession Treaty. However, ratification failed in Norway and it never became a Member State. The EU-12 plus Austria, Finland and Sweden are known as the EU-15. In 2003, the so-called A-10 Candidate States (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia) signed an Accession Treaty, which took force after ratification in 2004. The EU-15 and A-10 combined are known as the EU-25.

The theoretical argument presented earlier led to the conclusion that prospective members of a federation will require an exit right if (a) they are strongly heterogeneous from the core majority and (b) they will lack a legislative veto. Applying this to the EU, both conditions only apply clearly to the countries that acceded in 2004, and not to those that acceded before.

Austria, Finland and Sweden were arguably much more similar to the EU-12 than the ten states of the 2004 accession were to the EU-15.<sup>5</sup> The A-10 accession states were mostly Eastern European and former communist countries. Average Gross Domestic Product (GDP) in 2003 was 29,124 euros/capita for the EU-15, and only 8,571 euros/capita for the A-10.<sup>6</sup>

Because the A-10 countries were so heterogeneous from the EU-15, in particular so much less developed economically, they expected to benefit from EU policies such as cohesion spending. They were also much more dependent on the agricultural sector, and hence expected to benefit significantly from the Common Agricultural Policy (König and Bräuninger 2004; Swinnen

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<sup>5</sup> For specific sensitive issues on which countries are heterogeneous, the EU also sometimes grants permanent policy derogations at the time of accession. An example of such a derogation is the right of Sweden not to ban the sale within Sweden of an oral tobacco product known as Snus, as codified in Annex XV corresponding to Article 151 of the Accession Treaty of Austria, Finland, and Sweden.

<sup>6</sup> Author calculations based on Eurostat data (Eurostat 2016).

2001). However, in line with my theoretical argument, they knew that once they entered the EU-15 might attempt to reduce these policies. For divergences in economic development as drivers of conflict in the Council more generally, see also Bailer, Mattila, and Schneider (2015).

In terms of lacking a legislative veto to block such policy changes, the prospective Member States in 2003 would clearly have less veto power than those of 1994 due to the expansion of QMV to more policy areas and to the nomination of the European Commission.<sup>7</sup>

The timing of the EU's introduction of an exit right is hence consistent with the heterogeneity-veto argument presented in this article: it came at a time when a set of new and heterogeneous states were about to become members of the EU, knowing that they would lack a legislative veto. This conclusion is supported by statements such as that from Henrik Hololei, representing the Estonian government: "I extend my sincere support for Article 46 [...] Not having this article makes it very difficult for me to defend the new Constitutional Treaty in my own country" (plenary of April 25, 2003; intervention 5-053).

So far, the assessment of the heterogeneity-veto argument has been narrative. The next section provides statistical evidence that heterogeneity drove preferences over an exit right.

## Heterogeneity and the desire for an exit right: empirical evidence

From the Convention documents, amendments and newspaper articles discussed above emerges a consistent picture. The Praesidium of the Convention felt an exit clause was necessary to convince Eurosceptics in the Candidate States and elsewhere (mostly the UK and Denmark) that the EU was not a prison. The Candidate States required an exit right in order to join, and the other Member States accepted this in order to benefit from increased economies of scale. This picture is also broadly consistent with expert judgments collected in the research project Domestic Structures of European Integration or DOSEI (Hug and König 2007), according to which only 8 out of 25 countries favored an unconditional exit right as was adopted.

In order to assess more directly the theoretical claim developed in this article that heterogeneity creates a desire for an exit right, this section systematically analyzes all amendments and plenary interventions made at the Convention plenary on April 25, 2003 regarding the proposed

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<sup>7</sup> As a group, the A-10 countries would have 37 votes out of 124 in the Council, versus 87 for the EU-15 countries. A qualified majority in the Council would require 88 out of 124 votes, giving the A-10 countries as a group a blocking minority of just one vote. Leaving out Cyprus and Malta, with two votes each, the 8 Eastern European countries among the A-10 would have only 33 votes, leaving a qualified majority of 91 votes for the EU-15 plus Cyprus and Malta.

Article 46. The analysis is conducted at the level of Convention delegates. On the basis of their amendments and plenary statements, delegates were coded as being either in favor or against a free exit right. Using a probit regression, the positions regarding a free exit right are regressed on a measure of heterogeneity and a set of control variables.

**Dependent variable: positions in favor or against a free exit right**

The European Convention published summaries of the amendments to Article 46 (CONV 672/03) and the plenary debate of April 25 (CONV 696/03) on its website. The full text of all amendments was collected from the Convention's website (European Convention 2003), while the verbatim text of the plenary interventions was obtained from the European Parliament after a request under the right of access to documents.

A total of 43 amendments were submitted to Article 46, and 60 plenary interventions were made on title X "Union Membership" which contained Article 46. Of these, 36 amendments and 39 plenary interventions from EU-25 delegates substantively addressed the withdrawal right.<sup>8</sup> All of these were classified as being either in favor of a free exit right or against. Observations proposing to delete the clause, or arguing exit was only possible at certain moments (e.g. Treaty change) or on certain conditions (e.g. a negotiated exit agreement), were counted as being against a free exit right. Indeed, taking a game-theoretical perspective, an exit clause that would only allow exit with a negotiated exit agreement does not provide heterogeneous members with effective insurance against unwanted policy changes.

To ensure the reliability of the coding, a second coder independently coded each of the 75 amendments and plenary interventions from EU-25 delegates which addressed the withdrawal right. The coding was different for 6 of these 75, yielding an intercoder reliability of 92%. Results with the alternative coding are reported as a robustness check to the main regressions.

Next, these positions in favor or against were traced to the delegates who signed the amendments or made the plenary interventions. While plenary statements are always made by one person, amendments can be signed by multiple delegates. This yielded a list of 94 delegates, 23 of which had more than one amendment or plenary intervention. Of these 23, only one had

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<sup>8</sup> The other amendments either were not from an EU-25 delegate, did not take a stance on the exit right (for instance proposing a related article on associate membership) or were double counted literal translations into another language. The other plenary interventions either addressed other articles in title X, took no stance regarding a free exit right, or were interventions by Mr. Amato in his capacity as President of the plenary.



items against and in favor. Having two items against and one in favor, this delegate was coded as being against.

The result of this coding process is a dummy variable “Exitfree” with a value of 1 for delegates in favor of a free exit right, and a value of 0 for delegates against. As an example, consider the plenary statement made by Frans Timmermans quoted above (intervention 5-066 of April 25, 2003). Given the conditions mentioned, this statement is clearly against a free unconditional exit right, and was coded as a 0 by the author and independently by the second coder. Since there was no other relevant amendment or plenary statement for Frans Timmermans, he was coded as a 0, i.e. being against a free exit right.

In terms of sample size, 94 delegates were observed out of a total of 189 EU-25 delegates.<sup>9</sup> To deal with the 95 delegates without information, two robustness checks are reported later.

Because some of the control variables to be introduced later are at the party level, each of the delegates was linked to their national party at the time of the Convention, using a list of the delegates and their parties (Coffey 2003: 133-137) complemented with Convention documents, the repository of the EP, and national parliament and party websites. Five delegates without affiliation (4 diplomats and 1 academic) were attributed to the party of the Minister who appointed them. Parties were coded by their PartyID used in the ParlGov database (Döring and Manow 2016).

The 94 observed delegates belong to 65 different national parties.<sup>10</sup> As a robustness check, the regressions will also be run at the level of the parties with errors clustered at the country level. This requires addressing the problem of parties with multiple observations, i.e. multiple amendments or plenary interventions made by delegates from the same party. Of the 65 parties, 31 have multiple observations, of which three parties have conflicting observations. One party had 4 against and 1 in favor, and so was coded as being against. The other two parties had an equal number of observations in favor and against, requiring an overall judgment in order to code these two parties’ positions.

To illustrate the process of linking delegates to parties and deriving parties’ positions, I return to the example of Frans Timmermans. Since he belonged to the Dutch party PvdA or “Partij

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<sup>9</sup> The Convention had 105 delegates and 102 alternates. Of this total of 207 delegates, 18 were from outside the EU-25 (Romania, Bulgaria and Turkey) and 189 from within the EU-25.

<sup>10</sup> In total, the population of 189 EU-25 delegates belonged to 99 different national parties, so at the party level 65 out of a total of 99 parties were observed in the sample.

van de Arbeid” (Labor Party) his party was coded as 742, the ParlGov code for this party. There were no other delegates belonging to PvdA, so the PvdA received the same coding as its only delegate, i.e. a 0 representing “against a free exit right”.

#### **Independent variable: measuring heterogeneity and identifying the periphery**

In the theoretical section of this article, the periphery was defined as the members of the federation that stand to lose from majority-approved legislative programs because of their level of heterogeneity from the rest of the federation. In the context of the EU, one key hurdle that legislation needs to pass is obtaining a qualified majority in the Council (Crombez and Hix 2015). This section describes how the rules for QMV can be used to identify the periphery at the time of the European Convention.

After the accession of the A-10 countries, a qualified majority in the Council would require 88 out of 124 votes. In the context of a spatial model, this threshold can be used to compute a Council gridlock interval between its left and right pivot (Crombez and Hix 2015). After having sorted the Member States according to their ideal policies along a dimension and adding up their votes, the right pivot is the country with the 88<sup>th</sup> vote starting from the left. Similarly, the left pivot is the country with the 88<sup>th</sup> vote starting from the right. The interval between these two pivots is a gridlock interval: policies can be moved into this interval, but there will never be a qualified majority to move policies out of this interval.

Given that policies can only move into the gridlock interval, a natural way to identify the periphery is to look at countries outside of the gridlock interval defined by the pivotal Member States in the Council.

As noted before, the A-10 accession countries were on average much poorer than the existing EU-15. To investigate the importance of heterogeneity along this dimension, each delegate was associated with the 2003 per capita GDP of its country, calculated based on Eurostat (2016). The pivotal countries in the Council were calculated as described above, yielding a left pivot of €13,994/capita (Portugal) and a right pivot of €27,293/capita (Belgium).

One can expect policy changes approved in the Council to favor countries with levels of economic development in the Council gridlock interval. In particular, compared to countries in the gridlock interval or above it, poorer countries will prefer not to reduce policies such as the Common Agricultural Policy or Cohesion policy.

As reported in the Appendix, all of the A-10 countries except for Cyprus had a level of GDP per capita below the gridlock interval, while none of the EU-15 did. This means that the EU-15 together with Cyprus had a qualified majority to adopt policies that would be more favorable to Member States with higher levels of economic development. Conversely, the 9 countries below the gridlock interval can indeed be said to constitute the poor periphery of the EU-25 in terms of economic development.

The dummy variable “GDP\_Peripheral\_below” captures this as follows: it is equal to 1 for delegates from countries with levels of GDP/capita below the left pivot of €13,994. In terms of theory presented above, the expectation is that delegates for whom GDP\_Peripheral\_below is equal to 1 are more likely to be in favor of a free exit right. In the case of Frans Timmermans, being from the Netherlands with a GDP/capita of €31,290, i.e. not below the gridlock interval, GDP\_Peripheral\_below takes a value of 0.

#### Control variables

The independent variable GDP\_Peripheral\_below is equal to 1 for delegates from countries with levels of economic development below the gridlock interval. Broadly speaking, this periphery consists of the A-10 countries. On the other hand, countries with levels of economic development above the gridlock interval constitute a different kind of periphery. Indeed, they may fear increases in regulation or immigration. Since also rich countries may fear policies moving into the gridlock interval, the dummy variable “GDP\_Peripheral\_above” is equal to 1 for delegates from countries with levels of GDP/capita above the right pivot of €27,293. In the case of Frans Timmermans, being from the Netherlands with a GDP/capita of €31,290, i.e. above the gridlock interval, GDP\_Peripheral\_above takes a value of 1.

Since the economies of scale from the EU may be less relevant for larger countries, the regression will control for country population (Eurostat 2016). The variable “Pop\_M” captures the 2003 population in millions. In the example, the Netherlands in 2003 had a population of 16,192,572, yielding a value of 16.2 for the variable Pop\_M.

Because of the history of their countries, delegates from ex-Soviet countries may have a particular desire for a free exit right. The dummy variable “Ex\_Soviet” is equal to 1 for countries that were part of the Soviet Union, i.e. the Baltics (Estonia, Latvia and Lithuania).

Individuals and parties may have ideological objections to European integration, and hence desire a free exit right from the EU irrespective of whether their country is peripheral. To control for this, a variable capturing parties’ stance on European integration is added to the regression.

The variable “Anti\_EU” is constructed based on the variable “eu\_anti\_pro” in the ParlGov database (Döring and Manow 2016). This latter variable presents expert judgments on a 10-point scale, where 0 is completely against the EU and 10 is completely in favor. The transformed variable Anti\_EU is calculated as follows:  $\text{Anti\_EU} = (10 - \text{eu\_anti\_pro})/10$ . Returning to the example of Frans Timmermans, his party PvdA has an eu\_anti\_pro score of 8 out of 10, i.e. a relatively pro-European score. Using the formula above, a score of 8 on eu\_anti\_pro results in a value of 0.2 for the variable Anti\_EU.

Parties with peripheral positions on the left-right dimension may also be more in favor of a free exit right. To score the national political parties of the EU-25 on this dimension, the variable “left\_right” of the ParlGov database was used (Döring and Manow 2016). These are expert judgments on a 10-point scale, where 0 is extreme left and 10 is extreme right. To compute Member States’ positions on this dimension, for each country the positions of the parties in government on April 25, 2003 were weighted by their number of seats in the cabinet. The pivotal member states in the Council were identified as described earlier, yielding a left pivot of 4.0 (Slovenia) and a right pivot of 7.1 (Slovakia).

Next, a dummy variable “LR\_Peripheral” was constructed to identify peripheral parties on the left-right dimension. Political parties with a left-right score outside of the Council gridlock interval [4.0, 7.1] received a score of 1, parties within the interval a score of 0. Returning to the example of Frans Timmermans, since his party, PvdA, has a left-right score of 3.6, which is outside of the Council gridlock interval, he was coded as a 1 on LR\_Peripheral.

Finally, compared to delegates from national governments and parliaments, delegates representing supranational institutions (i.e. the European Commission and the European Parliament), could be expected to have more integrationist preferences, i.e. to be against an exit right (Vaubel 2002). To control for this, the dummy variable “Supranational” is 1 for delegates from the European Commission and the European Parliament (EP), and 0 for delegates from national governments and parliaments. In the example, Timmermans represents his national parliament and is hence coded as a 0 for the variable Supranational.

### **Descriptive statistics**

A descriptive summary of the data is provided in Table 2. Tables with delegate level, party level and country level data, as well as a correlation table are presented in the Appendix.

The highest correlation is 0.56, occurring between Ex\_Soviet and GDP\_Peripheral\_below. On the whole, multicollinearity does not appear to be a substantial concern.

Table 2. Regression variables: descriptive statistics and sources.

Variable	Min	Max	Average	Source of underlying data
Exitfree	0	1	0.33	Coding of plenary statements and amendments
GDP_Peripheral_below	0	1	0.18	Eurostat (2016)
GDP_Peripheral_above	0	1	0.41	Eurostat (2016)
Pop_M	0.40	82.5	24.7	Eurostat (2016)
Ex_Soviet	0	1	0.06	Countries that used to be in the Soviet Union
Anti_EU	0.03	0.95	0.25	Parlgov (Döring and Manow 2016)
LR_Peripheral	0	1	0.59	Parlgov (Döring and Manow 2016)
Supranational	0	1	0.27	List of Convention delegates

N = 94 delegates

### Empirical strategy and results

This article contends that in the absence of a veto, members of a heterogeneous periphery will require a veto right in order to join a federation. This can be tested by investigating whether delegates from the EU's less developed periphery (roughly corresponding to the A-10 accession states) were indeed more likely to be in favor of a free exit right.

Considering delegate  $i$  from party  $p$  and country  $c$ , one can model her utility from having a free exit right as follows:

$$U_{ipc}(\text{exit right}) = \alpha + \beta \cdot \text{GDP\_Peripheral\_below}_c + X'\gamma + \epsilon_{ipc} \quad (1)$$

where  $\alpha$  is a constant,  $\beta$  the coefficient of interest,  $X'$  a vector of control variables with coefficients  $\gamma$ , and  $\epsilon_{ipc}$  an error term. The control variables contained in  $X'$  are  $\text{GDP\_Peripheral\_above}_c$ ,  $\text{Pop\_M}_c$ ,  $\text{Ex\_Soviet}_c$ ,  $\text{Anti\_EU}_p$ ,  $\text{LR\_Peripheral}_p$  and  $\text{Supranational}_i$ .

Delegates' utilities from having a free exit right are unobserved. However, the unobserved utilities can be seen as the latent variable driving their position on the free exit right. It is natural to assume that a delegate would be in favor of a free exit right in case her utility from it would be positive. Assuming that the error term in (1) follows a standard normal distribution with cumulative density function  $\Phi(\epsilon)$ , this results in the following probit model:

$$\begin{aligned} p(\text{Exitfree}_i = 1 | \text{GDP\_Peripheral\_below}_c, X') &= p(U_{ipc}(\text{exit right}) > 0) \\ &= \Phi(\alpha + \beta \cdot \text{GDP\_Peripheral\_below}_c + X'\gamma) \end{aligned} \quad (2)$$

In order to assess the role of heterogeneity in driving the preferences for a free exit right, the above probit model was estimated for the 94 observed delegates. Standard errors were clustered at the party level. The results of this regression are reported in Table 3.

Table 3. Probit regression of Exitfree at the delegate level (1 = in favor of a free exit right).

Probit of Exitfree	Probit coefficients	Marg. effects at means	Variable coding
GDP_Peripheral_below	1.675*** (0.609)	0.542*** (0.197)	1 if GDP/capita below €13,994
GDP_Peripheral_above	1.443*** (0.479)	0.461*** (0.159)	1 if GDP/capita above €27,293
Pop_M	0.017** (0.008)	0.005** (0.003)	Population in Million
Ex_Soviet	1.230 (0.775)	0.398 (0.253)	1 if ex-Soviet country (Baltics)
Anti_EU	2.851*** (1.077)	0.923** (0.373)	Strength of anti-EU position, range [0,1]
LR_Peripheral	0.184 (0.422)	0.060 (0.136)	1 if 0-10 left-right position $\notin$ [4.0,7.1]
Supranational	1.038*** (0.321)	0.336*** (0.107)	1 if delegate from EP or Commission
Constant	-3.130		
N (delegates)	94	94	

Robust standard errors clustered at the party level in brackets. \* $p < 10\%$ , \*\* $p < 5\%$ , \*\*\* $p < 1\%$

The results are consistent with the heterogeneity-veto theory presented in this article. Delegates from countries in the less developed periphery, i.e. those with GDP\_Peripheral\_below equal to 1, are significantly more likely to be in favor of a free exit right. The probit coefficient is significant at the 1%-level, and the marginal effect (computed at the means of all variables) is substantial: delegates from countries with a level of GDP/capita below the Council gridlock interval are 54 percentage points more likely to support a free exit right.

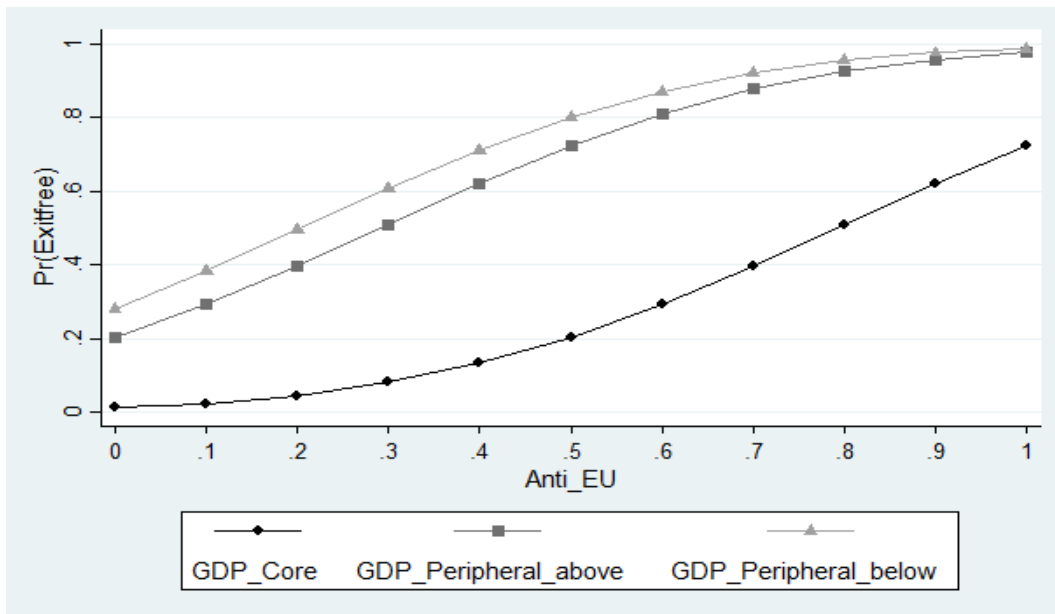
The results for all control variables but the last are intuitive. Delegates from the rich periphery, i.e. from countries with a level of GDP/capita above the gridlock interval, are 46 percentage points more likely to support a free exit right. For each additional million inhabitants in their country, delegates are 0.5 percentage points more likely to want a free exit right. Delegates from ex-Soviet countries are 40 percentage points more likely to be in favor, while an increase in a delegate's party anti-EU score is associated with a marginal effect of 92 percentage points. Delegates from parties with a peripheral left-right position are 6 percentage points more likely to be in favor of a free exit right.

Finally, delegates from Supranational institutions are 34 percentage points more likely to be in favor a free exit right. This finding goes directly against the expectation that self-interested supranational delegates will favor integration. Although this issue merits further study, one speculative explanation is that directly elected Members of European Parliament were

responding to electoral fears of a European superstate at least as much as delegates from national institutions. Alternatively, some supranational delegates may have preferred deeper integration over wide integration, and hence wanted to give doubters an elegant way out.

The estimated effect of `GDP_Peripheral_below` is strongly statistically significant, and of substantial magnitude. While the focus of the model is on the lesser developed periphery, those in the rich periphery are also significantly more likely to support a free exit right. Hence on the whole, I argue that the results of this regression support the theory developed in this article: heterogeneity from the rest of a prospective federation drives preferences for a free exit right.

Figure 1 illustrates the predicted probabilities of being in favor of a free exit right. The x-axis corresponds to the anti-EU position of a delegate's party, while the three different graphs show the predicted probabilities for the different categories of economic development. Those in the core, i.e. with a level of GDP/capita in the Council gridlock interval of [€13,994; €27,293], are much less likely to support a free exit right. Those in the rich periphery are more likely to support a free exit right, and those in the lesser developed periphery more likely still. Irrespective of whether a delegate's country is peripheral, the probability of supporting a free exit right rises with a delegate's anti-EU position.



*GDP\_Peripheral\_below: Latvia, Lithuania, Poland, Slovakia, Estonia, Hungary, Czech Republic, Malta, Slovenia. GDP\_Core: Portugal, Greece, Cyprus, Spain, Italy, France, Germany, Belgium. GDP\_Peripheral\_above: Austria, Finland, United Kingdom, Netherlands, Sweden, Denmark, Ireland, Luxembourg*

Figure 1. Predicted probabilities of being in favor of a free exit right.

To assess the overall fit of the model, Table 8 in Appendix shows the percentages of correctly and incorrectly predicted observations. Overall, 81% of the observations are predicted correctly versus 67% in an empty model. The corresponding proportionate reduction of error is 42%.

### Robustness

Of the 189 EU-25 delegates, only 94 have an observation for Exitfree. The Appendix reports the results of an ordered probit regression assuming that the remaining 95 delegates had no strong opinion. Since this is an ordered probit regression with three possible outcomes, two cutpoints were estimated for the index function, and the sizes of the coefficients are not directly comparable to the previous regression. However, the coefficient for GDP\_Peripheral\_below is again positive and significant at the 1%-level. Note that the coefficient for Supranational is no longer significant, so that the finding for national versus supranational delegates is not robust.

An alternative assumption is that the remaining 95 delegates did not voice their opinion because they were actually in favor of the Praesidium's proposal to introduce a free exit right. The results of a probit regression making this assumption are reported in the Appendix.

Under the assumption that the 95 unobserved delegates were actually in favor of a free exit right, most of the marginal effects are a smaller than in the main regression. The marginal effect of GDP\_Peripheral\_below drops from 54 percentage points to 32 percentage points. However, the effect remains of substantial magnitude and is still statistically significant at the 1%-level.

As a further robustness check, the regression was also conducted at the party level (excluding the delegate-level variable Supranational). The results of this regression, with standard errors clustered at the country level, are reported in the Appendix. The estimated coefficients are similar to the regressions at the individual level. In particular, the marginal effect of GDP\_Peripheral\_below is 51 percentage points, significant at a p-value of 1.3%.

A final robustness check, reported in the Appendix, shows that the results are robust to using the second coder's coding of the dependent variable: the marginal effect of GDP\_Peripheral\_below is 50 percentage points, significant at a p-value of 1.2%.

### Discussion

This section starts by showing how the heterogeneity-veto argument can also explain a case other than the EU, namely that of Saint Kitts and Nevis. Next follows a discussion of the UK's role in the adoption of Article 50 and of Brexit.



### The case of Saint Kitts and Nevis

Outside of the EU, the conclusions of the heterogeneity-veto argument presented above are also consistent with the case of Saint Kitts and Nevis, a two-island federation in the Caribbean. Nevis obtained a right to secede during the 1982-1983 constitutional conference in London aimed at establishing a constitution for an independent Saint Kitts and Nevis.

The islands of Saint Kitts and Nevis were very different from one another economically: while Saint Kitts produced sugar cane, the inferior soil of Nevis did not allow this (Veenendaal, 2015: 593). In spite of their differences, representatives from the two islands had to agree on a post-independence constitution in order to achieve the larger goal of independence from the United Kingdom. Anticipating that Nevisian representatives would constitute a minority without veto in prospective federal governments, the Nevisian negotiators at the 1982-1983 London constitutional conference successfully obtained a constitutional right to secede for Nevis (Midgett 2011).

The Nevisian expectation of lacking a veto turned out to be correct. In fact, with only three of the eleven seats in the federal parliament, Nevis is often not represented at all in the ruling federal coalitions (Veenendaal, 2015: 594). Perhaps paradoxically, the fact that the federation has survived to date may be due precisely to Nevis' right to secede: consistent with the theoretical argument presented above, it gives Kittitian politicians an incentive to limit policies that are unfavorable to Nevis.

### The UK's role in the adoption of Article 50

Because the documents relating the Convention are public, the empirical part of this paper focused on the position of delegates at the Convention, rather than on the Intergovernmental Conferences (IGCs) leading to the Treaty Establishing a Constitution for Europe and the Lisbon Treaty. The data confirmed the hypothesis that more heterogeneous members were more likely to want a free exit right.

As can be seen from the data presented in the Appendix, the UK was peripheral on the dimension of economic development: it was richer than the core of the EU-25 (rather than poorer, like the A-10 countries). It might hence have feared more regulation or more immigration as EU-policies are brought into the gridlock interval. Consistent with the hypothesis that heterogeneity drives the desire for an exit right, the UK hence was a strong supporter of introducing Article 50.

However, contrary to the accession states the UK could not bargain at the European Convention on the basis of not becoming a member if it did not get an exit right. That is why I argue that, consistent with the theoretical model, the exit right made it into the draft Constitution because of the A-10 countries. Indeed, according to Le Monde (2003a), the exit clause was “chiefly aimed at reassuring the future members of the EU”.

On the other hand, I am far from claiming that the support of the UK and Denmark (members of the rich periphery) hurt the adoption of an exit right. In reality, their support was important too, especially at the IGCs. Consistent with this observation, the drafter of Article 50, Lord Kerr, has said that it was included “partly to undermine an argument made by British opponents of EU membership” about being trapped in an ever-closer union (Gray 2017).

A final observation on why the A-10 countries were so crucial to the adoption of an exit right is the following. If the UK and Denmark were so desiring of an exit right, and if they had the necessary bargaining power to obtain it, then why did they not obtain one prior to the Convention, for instance in the 2001 Nice Treaty?

### **The Brexit referendum**

The Brexit referendum of June 23, 2016 has shown that when an exit right is in place governments may be willing to take recourse to uncertain referenda. This may be attributed to purely intra-party or domestic politics. Alternatively, consistent with the logic of two-level games (Hug and König 2002; König, Daimer, and Finke 2008; Putnam 1988) and brinkmanship (Schelling 1980), the decision to call a referendum may also have been a deliberate attempt to generate uncertainty and use this to extract surplus from the rest of the federation.

Once the UK called a referendum, the decision to leave was effectively outsourced to the median voter, whose preferences were uncertain. Allowing for heterogeneity among the voters, the median voter may also simply be different from the average voter or from British political decision-makers. In particular, the benefits from the EU may accrue disproportionately to the educated and the wealthy, leaving the median voter worse off than the average. In addition, the median voter may have an anti-EU bias in his perceived benefits. Because of uncertainty and lower EU preference, outsourcing the decision to the median voter can be expected to lead to bigger concessions from the rest of the EU as it tries to prevent loss of scale through exit.

This line of reasoning is consistent with the observation that in anticipation of the Brexit referendum David Cameron obtained an emergency brake on welfare payments to immigrants, should the UK have decided to remain in the EU. However, because of uncertainty the

concessions may not suffice to make the median voter accept to stay. And indeed, as the facts have shown the strategy of brinkmanship is a dangerous one: although it allowed the UK to extract some concessions, the end result was the decision to leave the EU. Article 50 was triggered on March 29, 2017.

While Article 50 allows for a free and complete exit after two years, the UK and the EU-27 may negotiate a future relationship that involves keeping part of the costs and benefits for both sides. It is with respect to these negotiations that the UK may be willing to pay a settlement to the rest of the EU, even though from a strictly legal point of view it can leave the EU per Article 50 without having to pay any money to the EU (House of Lords 2017, 30-43). This is because the commitments of the UK under the Multiannual Financial Frameworks and the legal authority of the European Court of Justice to enforce these commitments follow from the Treaties, which, according to Article 50, would cease to apply.

## Conclusion

This article presented a theoretical argument and empirical evidence regarding heterogeneity, vetoes and exit clauses in (quasi-)federal systems. By including an exit right at the constitutional stage, federations can ex-ante insure prospective members against undesired policy changes. Members of a periphery that is strongly heterogeneous from the core of the federation will require an exit right if they will lack a legislative veto. This conclusion is supported by detailed evidence from the EU and by the case of Saint Kitts and Nevis.

In contrast to federalization through voluntary accession, a discussion of federalization through decentralization and annexation showed that an exit right is not to be expected in these cases.

The EU adopted a free exit right during the 2002-2003 Convention on the Future of Europe, which developed a draft Constitution for the EU. The draft Constitution was ultimately not ratified, but through the 2007 Treaty of Lisbon the withdrawal clause containing the free exit right was adopted as Article 50 of the Treaty on European Union.

The case of the EU presents a twofold puzzle from the point of view of the most common theories about exit clauses in federations. These theories tend to explain the absence of exit clauses in federations by referring to stability and commitment problems, signaling, or the risk of strategic exploitation. The first puzzle is that these theories cannot explain why the EU would have an exit clause. The second puzzle is that they cannot account for the timing of its adoption.

The heterogeneity-veto argument can solve both puzzles. In addition, it correctly predicts that preference outliers will support an exit right.

The Candidate States which would join the EU in 2004 were the first new Member States to both differ significantly from the existing Member States and to enter when the EU had largely moved from unanimity decision-making to qualified majority voting, eroding Member States' veto power. Knowing that they would lack a veto, the Candidate States feared post-entry reductions in the Common Agricultural Policy and other subsidies.

Applied to the EU, the hypothesis that heterogeneity leads to a desire for an exit right is further supported by probit regressions at the level of 94 Convention delegates and their 65 national parties. In these regressions, delegates were coded as being peripheral if their country fell outside the Council gridlock interval in terms of GDP/capita. Nine of the 10 Candidate States from the Eastern enlargement had a level of GDP/capita below the gridlock interval. For the dependent variable, two independent coders classified all amendments and plenary statements made at the Convention on April 25, 2003 as either in favor or against a free exit right.

In the main regression, the expected effect of being from a country with a level of GDP/capita below the gridlock interval is a 54 percentage point increase in the probability of being in favor of a free exit right. For delegates from countries above the gridlock interval, i.e. those in the rich periphery of the EU-25, which includes the UK and Denmark, the corresponding increase is 46 percentage points.

Unsurprisingly, the regressions also show that the stronger the anti-EU ideology of a delegate's party, the stronger the desire for a free exit right. Delegates from larger countries were also found to be somewhat more likely to support a free exit right. Finally, in the main regression delegates from supranational institutions (the European Parliament and the Commission) were found to be more likely to support a free exit right than those from national governments and parliaments. However, this result was not robust to different specifications.

Although the underlying argument is different, this article empirically confirms the surprising theoretical finding of Bolton and Roland (1997) that poor members may also want to exit a union. In their case, the reason was that poor members may want more internal fiscal redistribution. In contrast, this article has argued that poor members may fear unwanted federal policy changes just as much as rich members. A second contrast is that instead of focusing on exit directly, this article has focused on exit rights as constitutional protection. As the case of Saint Kitts & Nevis illustrates, if the protection is effective, it is not needed in equilibrium.

While this article advances a heterogeneity-veto argument rather than an argument about commitment, signaling and strategic exploitation, it does not deny that such phenomena can and do occur. The Brexit referendum is a case in point. However, such arguments cannot account for the adoption of Article 50, while the heterogeneity-veto argument can.

An area for future empirical work is to investigate more systematically the vast majority of federal systems: those without an exit right. In order for the heterogeneity-veto argument presented in this article to hold, such federations should either (a) have been formed through decentralization or annexation, (b) be relatively homogeneous, or (c) have other constitutional safeguards such as veto rights.

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## Appendix

### Article 46, Draft Constitutional Treaty published on April 2, 2003

#### Article 46: Voluntary withdrawal from the Union

1. Any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the Council of its intention. Once that notification has been given, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the assent of the European Parliament. The withdrawing State shall not participate in the Council's discussions or decisions concerning it.

3. This Constitution shall cease to apply to the State in question as from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2.

### Article 59, Draft Constitutional Treaty presented to the Council on July 18, 2003

#### Article 59: Voluntary withdrawal from the Union

1. Any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention; the European Council shall examine that notification. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded on behalf of the Union by the Council of Ministers, acting by a qualified majority, after obtaining the consent of the European Parliament.

The representative of the withdrawing Member State shall not participate in Council of Ministers or European Council discussions or decisions concerning it.

3. The Constitution shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in

paragraph 2, unless the European Council, in agreement with the Member State concerned, decides to extend this period.

4. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 57.

**Article I-60, Treaty Establishing a Constitution for Europe published on August 6, 2004**

**ARTICLE I-60 Voluntary withdrawal from the Union**

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article III-325(3). It shall be concluded by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Constitution shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in European decisions concerning it. A qualified majority shall be defined as at least 72% of the members of the Council, representing the participating Member States, comprising at least 65% of the population of these States.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article I-58.

Article 50, post-Lisbon consolidated TEU published on May 9, 2008

Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

## Data

Table 4. Delegate-level data

Country	Delegate	Party	Institution	Exitfree
Austria	Einem	SPO	Parliament	1
Austria	Farnleiter	OVP	Government	0
Austria	Rack	OVP	European Parliament	0
Austria	Tusek	OVP	Government	0
Austria	Lichtenberger	Gruene	Parliament	0
Austria	Voggenhuber	Gruene	European Parliament	0
Belgium	Nagy	Ecolo	Parliament	0
Belgium	Michel	MR	Government	0
Belgium	Van Lancker	SP	European Parliament	0
Belgium	Chevalier	PVV VLD	Government	0
Belgium	De Gucht	PVV VLD	Parliament	0
Belgium	Di Rupo	PS	Parliament	0
Cyprus	Demetriou	DISY	Parliament	0
Czech Republic	Zahradil	ODS	Parliament	1
Czech Republic	Zieleniec	ODS	Parliament	0
Czech Republic	Kroupa	KDU-CSL	Parliament	0
Denmark	Dybkaer	RV	European Parliament	1
Denmark	Bonde	JuBe	European Parliament	1
Denmark	Thorning-Schmidt	Sd	European Parliament	1
Estonia	Hololei	ERP	Government	1
Finland	Vanhanen	KESK	Parliament	1
Finland	Kiljunen	SSDP	Parliament	1
Finland	Korhonen	KOK	Parliament	0
Finland	Peltomäki	KOK	Government	0
Finland	Tiilikainen	KOK	Government	0
Finland	Seppänen	DL VAS	European Parliament	1
France	Andreani	RPR	Government	0
France	de Villepin	RPR	Government	0
France	Haenel	RPR	Parliament	0
France	Lamassoure	UDF	European Parliament	0
France	Badinter	PS	Parliament	0
France	Berès	PS	European Parliament	0
France	Duhamel	PS	European Parliament	1
France	Abitbol	RPF	European Parliament	1
Germany	Kaufmann	SPD	European Parliament	0
Germany	Meyer	SPD	Parliament	0
Germany	Fischer	B90/Gru	Government	0
Germany	Brok	CDU+CSU	European Parliament	0
Greece	Giannakou	ND	Parliament	0
Greece	Stylianidis	ND	Parliament	0
Greece	Avgerinos	PASOK	Parliament	0
Hungary	Szajer	Fi-MPSz	Parliament	0

Hungary	Vastagh	MSZP	Parliament	1
Ireland	Roche	FF	Government	1
Ireland	Cushnahan	FG	European Parliament	0
Ireland	Gormley	Green	Parliament	1
Italy	Fini	AN	Government	1
Italy	Muscardini	AN	European Parliament	1
Italy	Basile	FI-PdL	Parliament	0
Italy	Paciotti	DS	European Parliament	1
Italy	Dini	DL-M	Parliament	0
Italy	Speroni	LN	Government	1
Latvia	Zile	TB/LNNK	Government	0
Latvia	Kalniete	JP	Government	1
Latvia	Piks	TP	Parliament	0
Latvia	Liepina	JL	Parliament	1
Lithuania	Jusys	NS	Government	1
Luxembourg	Wagener	Greng	Parliament	0
Luxembourg	Fayot	LSAP	Parliament	0
Luxembourg	Schmit	LSAP	Government	0
Luxembourg	Santer	CSV	Government	0
Malta	Dolores	PN	Parliament	0
Malta	Frendo	PN	Parliament	0
Netherlands	Maij-Weggen	CDA	European Parliament	0
Netherlands	Van Der Linden	CDA	Parliament	0
Netherlands	Van Dijk	CDA	Parliament	0
Netherlands	de Bruijn	D66	Government	0
Netherlands	De Vries	D66	Government	0
Netherlands	Timmermans	PvdA	Parliament	0
Poland	Fogler	PO	Parliament	0
Poland	Hübner	PO	Government	0
Portugal	Queiró	CDS-PP	European Parliament	1
Portugal	Lobo Antunes	PS	Government	0
Portugal	Marinho	PS	European Parliament	0
Portugal	Vitorino	PS	European Commission	0
Portugal	Azevedo	PSD	Parliament	0
Portugal	Lopes	PSD	Government	0
Portugal	Nazaré Pereira	PSD	Parliament	0
Slovakia	Migas	SDKU-DS	Government	0
Slovenia	Rupel	SDS	Government	1
Spain	Alonso	AP-P	Parliament	0
Spain	Cisneros	AP-P	Parliament	0
Spain	Borrell Fontelles	PSOE	Parliament	0
Sweden	Lennmarker	M	Parliament	0
Sweden	Kvist	V	Parliament	0
Sweden	Lekberg	SAP	Parliament	0
United Kingdom	Heathcoat-Amory	Con	Parliament	1
United Kingdom	Kirkhope	Con	European Parliament	1

United Kingdom	Stockton	Con	European Parliament	1
United Kingdom	MacCormick	SNP	European Parliament	1
United Kingdom	Duff	LD	European Parliament	1
United Kingdom	Hain	Lab	Government	1
United Kingdom	McAvan	Lab	European Parliament	1
United Kingdom	Stuart	Lab	Parliament	1

*Table 5. Party-level data.*

Country	Party	left_right	LR_Peripheral	Anti_EU
Austria	SPO	3.7	1	0.2
Austria	OVP	6.5	0	0.1
Austria	Gruene	2.5	1	0.3
Belgium	Ecolo	2.6	1	0.2
Belgium	MR	6.7	0	0.2
Belgium	SP	3.2	1	0.2
Belgium	PVV VLD	7.0	0	0.1
Belgium	PS	2.9	1	0.2
Cyprus	DISY	8.7	1	0.1
Czech Republic	ODS	7.4	1	0.6
Czech Republic	KDU-CSL	5.8	0	0.2
Denmark	RV	4.9	0	0.2
Denmark	JuBe	2.6	1	0.9
Denmark	Sd	3.8	1	0.3
Estonia	ERP	8.5	1	0.1
Finland	KESK	5.8	0	0.4
Finland	SSDP	3.6	1	0.1
Finland	KOK	7.2	1	0.1
Finland	DL VAS	2.2	1	0.5
France	RPR	7.5	1	0.3
France	UDF	6.1	0	0.1
France	PS	3.2	1	0.2
France	RPF	7.4	1	0.9
Germany	SPD	3.6	1	0.2
Germany	B90/Gru	2.9	1	0.2
Germany	CDU+CSU	6.3	0	0.1
Greece	ND	6.7	0	0.1
Greece	PASOK	4.5	0	0.1
Hungary	Fi-MPSz	6.5	0	0.3
Hungary	MSZP	2.9	1	0.0
Ireland	FF	6.1	0	0.2
Ireland	FG	6.4	0	0.1
Ireland	Green	2.4	1	0.7
Italy	AN	8.1	1	0.6
Italy	FI-PdL	7.1	1	0.5
Italy	DS	2.6	1	0.1
Italy	DL-M	4.0	1	0.1
Italy	LN	7.8	1	0.7



Latvia	TB/LNNK	8.3	1	0.3
Latvia	JP	7.4	1	0.2
Latvia	TP	7.8	1	0.1
Latvia	JL	7.3	1	0.1
Lithuania	NS	4.3	0	0.1
Luxembourg	Greng	2.5	1	0.3
Luxembourg	LSAP	3.3	1	0.2
Luxembourg	CSV	6.4	0	0.2
Malta	PN	5.7	0	0.1
Netherlands	CDA	5.9	0	0.2
Netherlands	D66	4.5	0	0.1
Netherlands	PvdA	3.6	1	0.2
Poland	PO	6.2	0	0.1
Portugal	CDS-PP	8.0	1	0.6
Portugal	PS	4.0	0	0.1
Portugal	PSD	6.3	0	0.2
Slovakia	SDKU-DS	7.4	1	0.1
Slovenia	SDS	7.0	0	0.1
Spain	AP-P	7.6	1	0.2
Spain	PSOE	3.7	1	0.1
Sweden	M	7.9	1	0.1
Sweden	V	1.5	1	0.9
Sweden	SAP	3.4	1	0.3
United Kingdom	Con	7.4	1	0.8
United Kingdom	SNP	3.6	1	0.2
United Kingdom	LD	4.1	0	0.1
United Kingdom	Lab	4.4	0	0.3

Table 6. Country-level data.

Country	Pop_M	GDP/Cap	GDP_Peripheral_below	GDP_Peripheral_above
Austria	8.1	28 517	0	1
Belgium	10.4	27 293	0	0
Cyprus	0.7	18 034	0	0
Czech Republic	10.2	8 630	1	0
Denmark	5.4	35 916	0	1
Estonia	1.4	6 333	1	0
Finland	5.2	29 113	0	1
France	61.9	26 468	0	0
Germany	82.5	26 898	0	0
Greece	10.9	16 390	0	0
Hungary	10.1	7 416	1	0
Ireland	4.0	36 718	0	1
Italy	57.1	24 343	0	0
Latvia	2.3	4 557	1	0
Lithuania	3.4	4 858	1	0
Luxembourg	0.4	57 723	0	1
Malta	0.4	12 068	1	0

Netherlands	16.2	31 290	0	1
Poland	38.2	5 031	1	0
Portugal	10.4	13 994	0	0
Slovakia	5.4	5 594	1	0
Slovenia	2.0	13 184	1	0
Spain	41.8	19 209	0	0
Sweden	8.9	32 821	0	1
United Kingdom	59.5	30 175	0	1

## Correlation table

Table 7. Correlations between the regression variables.

correlations	Exitfree	~below	~above	Pop.	Sov.	Anti_EU	LR_Per.	Supra.
Exitfree	1.00							
GDP_Peripheral_below	0.08	1.00						
GDP_Peripheral_above	0.19	-0.40	1.00					
Pop_M	0.14	-0.29	-0.21	1.00				
Ex_Soviet	0.19	0.56	-0.22	-0.23	1.00			
Anti_EU	0.44	-0.17	0.19	0.24	-0.12	1.00		
LR_Peripheral	0.18	-0.05	-0.04	0.19	0.13	0.38	1.00	
Supranational	0.29	-0.28	0.13	0.29	-0.16	0.22	0.02	1.00

## Correctly predicted observations

The predictions were made using the estimates of the main model. A delegate was predicted to be in favor if her predicted probability of being in favor exceeds 50%. Note that out of 94 observations, 31 are in favor and 63 against. An empty model would hence correctly predict 63 out of 94 observations, or 67%. The estimated model correctly predicts 76 observations out of 94 or 81%. The proportionate reduction of error is  $\frac{76-63}{94-63} = \frac{13}{31} = 42\%$ .

Table 8. Fit of the model.

	Observations	% of sample
Correctly predicted in favor	20	21%
Correctly predicted against	56	60%
Incorrectly predicted in favor	7	7%
Incorrectly predicted against	11	12%
Total	94	100%
Correctly predicted	76	81%

## Robustness checks

*Assumed that unobserved delegates have no strong opinion*

Table 9. Ordered probit regression of Exitfree at the delegate level (-1 = against, 0 = no information, 1 = in favor).

Ordered probit of Exitfree	Probit coefficients
GDP_Peripheral_below	0.718*** (0.246)
GDP_Peripheral_above	0.574** (0.284)
Pop_M	0.010** (0.004)
Ex_Soviet	0.576* (0.295)
Anti_EU	1.650*** (0.510)
LR_Peripheral	0.135 (0.194)
Supranational	0.265 (0.249)
Ordered Probit cuts	0.670, 2.260
N (delegates)	189

*Robust standard errors clustered at the party level in brackets. \*p<10%, \*\*p<5%, \*\*\*p<1%*

*Assumed that unobserved delegates are in favor of a free exit right*

Table 10. Probit regression of Exitfree at the delegate level (0 = against, 1 = in favor of a free exit right or no information).

Probit of Exitfree	Probit coefficients	Marg. effects at means
GDP_Peripheral_below	0.981*** (0.300)	0.315*** (0.105)
GDP_Peripheral_above	0.331 (0.285)	0.117 (0.099)
Pop_M	0.006 (0.005)	0.002 (0.002)
Ex_Soviet	0.511 (0.467)	0.181 (0.164)
Anti_EU	1.461** (0.590)	0.516** (0.206)
LR_Peripheral	0.177 (0.219)	0.062 (0.078)
Supranational	1.022* (0.605)	0.361* (0.215)
Constant	-0.548	
N (delegates)	189	189

*Robust standard errors clustered at the party level in brackets. \*p<10%, \*\*p<5%, \*\*\*p<1%*

*Conducted regression at party level*

*Table 11. Probit regression of Exitfree at the party level (1 = in favor of a free exit right).*

Probit of Exitfree	Probit coefficients	Marg. effects at means
GDP_Peripheral_below	1.380** (0.568)	0.508** (0.206)
GDP_Peripheral_above	1.307** (0.611)	0.482** (0.232)
Pop_M	0.014 (0.011)	0.005 (0.004)
Ex_Soviet	0.841 (0.594)	0.310 (0.220)
Anti_EU	2.525*** (0.963)	0.930** (0.380)
LR_Peripheral	0.114 (0.335)	0.042 (0.123)
Constant	-2.328	
N (parties)	65	65

*Robust standard errors clustered at the country level in brackets. \*p<10%, \*\*p<5%, \*\*\*p<1%*

*Used second coder's coding of the dependent variable*

*Table 12. Probit regression of Exitfree (1 = in favor of a free exit right).*

Probit of Exitfree	Probit coefficients	Marg. effects at means
GDP_Peripheral_below	1.453** (0.593)	0.504** (0.201)
GDP_Peripheral_above	1.153** (0.482)	0.400** (0.167)
Pop_M	0.009 (0.009)	0.003 (0.003)
Ex_Soviet	0.356 (0.710)	0.124 (0.247)
Anti_EU	2.137** (0.976)	0.741** (0.347)
LR_Peripheral	0.353 (0.405)	0.123 (0.134)
Supranational	0.755** (0.327)	0.262** (0.115)
Constant	-2.468	
N	94	94

*Robust standard errors clustered at the party level in brackets. \*p<10%, \*\*p<5%, \*\*\*p<1%*