



The Danish Opt Outs from the European Union: developments since 2000

INTRODUCTION

This report examines developments since 2000 in relation to the areas covered by the four Danish EU opt-outs, including developments that can be assumed to be consequences of the Lisbon Treaty. The report also evaluates the impact on Denmark within each opt-out area as well as on Denmark's position in EU.

Since 1993, Denmark has had four opt-outs covering defence policy, the Economic and Monetary Union (EMU), Union citizenship, and Justice and Home Affairs (JHA). The opt-out for Union citizenship has no practical significance today, but in the three other areas the consequences now are considerably greater than they were in 2000. The Lisbon Treaty will further increase the significance of the Danish opt-outs, especially in relation to JHA.

In general, the areas affected by the Danish opt-outs have changed during the last 16 years in ways that were hardly foreseeable when they were formulated in 1992. These developments have been influenced by two closely linked sets of changes: First, *extensive changes* have occurred at the global, European and national levels; and second, a *new agenda* has emerged in the EU, with different political priorities.

The wars in former Yugoslavia, terror attacks in New York, Madrid and London, increased pressure of immigration at EU's borders, a growing need for immigrant labour, and recent years' global financial problems have been the driving forces behind EU member states' attempts to create a strong EU security and defence policy, expanded judicial cooperation and improved coordination of economic and financial policy. This has meant that today these policy areas are three of EU's fastest growing projects with highest priority. Furthermore, since 1992, the number of EU members has more than doubled. This expansion represents a development that Denmark has warmly supported and which has in many ways essentially changed the EU. Finally, Denmark has also undergone considerable changes – e.g. public sector and labour market reforms, tightened immigration policy and revised security and defence policy. These

developments have contributed to changing the context for the EU opt-outs.

SECURITY AND DEFENCE POLICY

More specifically in relation to the defence opt-out, much has happened during the period from the ratification of the Maastricht Treaty in 1993 until the European Security and Defence Policy (ESDP) was declared operational in 2003. Global and European developments, including the wars in former Yugoslavia in the 1990s and the terror attack against USA in 2001, have strengthened the political will to establish and use ESDP, and have stimulated growing recognition among most EU countries that Europe must be able to manage its own security and defence policies. Also the UN and NATO have increasingly expressed the wish for EU to contribute to conflict resolution.

As a consequence of the defence opt-out, Denmark does not participate in drafting, implementing and financing decisions that affect the area of defence. Since 2000, Danish *non-participation* has, for example, led

'MANDATE'

In November 2007, the Danish Parliament commissioned the Danish Institute for International Studies (DIIS) to report on developments in the EU since 2000 in relation to the areas of the four Danish opt-outs. According to the terms of reference, the report should include the developments that a new treaty (the Lisbon Treaty) leads to.



to the withdrawal of Danish forces from Macedonia and Bosnia-Herzegovina as a consequence of the transition from NATO-led to EU-led operations, and to Denmark's non-participation in battlegroups, including the Nordic battlegroup. Less visible but significant consequences include Danish non-participation in the European Defence Agency and general EU discussion about future European defence policy. Furthermore, the defence opt-out can create *confusion* about the policies that the Danish Parliament and shifting governments wish to implement, e.g. regarding the connection between civilian and military means, which can also have an impact on Denmark's actions in UN and NATO.

Since no country can be forced to provide troops for EU operations, and all participating countries have the possibility to veto developments within the area of security and defence policy, the Danish opt-out is judged to *limit* Danish freedom of action more than protect Danish autonomy.

ECONOMIC AND MONETARY UNION

Since 1992, EU has developed economic and monetary cooperation through introduction of a common currency, the euro, and establishment of the European Central Bank with several associated bodies, including the Eurogroup. Fifteen countries have now adopted the euro and more are expected to follow within the near future. Denmark is not participating in the third phase of EMU cooperation and has not adopted the euro. The Danish krone, however, is closely tied to the euro through the *fixed exchange rate policy* and Denmark participates in the fixed exchange rate cooperation, ERM II ('Exchange Rate Mechanism').

Perhaps the most tangible consequence of the Danish EMU opt-out is that Denmark's currency is still the Danish krone. A country's currency can have symbolic value for its people; therefore, a decision to adopt the euro involves economic considerations and questions of political influence as well as considerations related to national identity.

During stable periods, from an *economic perspective* there are several smaller but inevitable costs incurred by not being part of the Euro cooperation. These costs relate to, for example, exchange expenses and slightly higher interest rates. During unstable periods for the Danish economy, however, the costs of remaining outside the euro cooperation are hard to estimate, but could be large.

The Danish opt-outs' greatest significance for Denmark is in relation to *political influence* on the development of EU's economic and monetary policy. Denmark does not participate in the Eurogroup, which is presently the forum where agreement is reached on many questions of broader economic relevance that also affect Denmark. Nor does Denmark participate in the European Central Bank's Governing Council, which

sets the Euro area's interest rate and therefore also the Danish interest rate.

UNION CITIZENSHIP

The Danish opt-out on Union citizenship is today of *no significance*. The *Amsterdam Treaty* of 1998 made clear, almost directly copying the formulation of the Danish opt-out, that Union citizenship is a supplement to national citizenship and does not replace it. Thus, it can be said that the other EU countries *followed the signal* sent by Denmark in its formulation of the Danish opt-out with regard to Union citizenship.

JUSTICE AND HOME AFFAIRS

Today, the Danish opt-out regarding supranational cooperation on justice and home affairs has a *completely different*, more concrete and practical significance than when it was formulated in 1992. Today, Denmark participates completely in inter-governmental cooperation involving the police and criminal law but does *not participate in decisions* involving border control, immigration, asylum and civil law, which all involve supranational areas of cooperation. Basically, Denmark is not bound by joint EU rules in these areas, which on the one hand provides Denmark in some cases with the possibility to carry out a more independent policy. On the other hand, this opt-out means a loss of influence, since Denmark does not have the right to vote and has a significantly reduced opportunity to influence development of EU policy in these areas.

The *Lisbon Treaty* gives the JHA opt-out much greater significance. In the future, all aspects of JHA cooperation will involve supranational cooperation, including the police and criminal law cooperation.. If the opt-out for justice and home affairs is maintained, Denmark will stand completely outside the whole area of JHA cooperation in the course of a few years. It is therefore be impossible to maintain status quo with regard to this opt-out. As something new, the Lisbon Treaty opens the possibility for Denmark, after having held a public referendum, to change the opt-out into an opt-in arrangement. With this arrangement, Denmark can decide from case to case whether it wishes to accept a given law or not. The arrangement presents several challenges and can best be compared with an 'a la carte' menu, where Denmark can choose only the dishes it likes.

DENMARK'S POSITION IN THE EU

The report also examines four special aspects of EU cooperation that are not directly covered by the opt-outs, but where the opt-outs can nevertheless affect the conception of Denmark and Denmark's possibilities for action. First, the price for ensuring the opt-outs' transfer during *treaty negotiations*, most recently during the government conferences in 2003-04 and 2007, is deemed to have been that Danish possibilities to promote other priorities were significantly re-

duced. Secondly, the opt-outs mean that today it will be more difficult for Denmark to act in the capacity of the *EU Presidency*. While the EU chairmanship in 2002 was a great success for Denmark, foreign sources point out that Denmark's coming Presidency in 2012 will be a very difficult exercise if the opt-outs remain intact.

The picture is more mixed regarding the conception of Denmark and Danish possibilities to enter *partnerships* with other countries. In some cases, the opt-outs limit Denmark's possibilities, even though Denmark is generally considered to be a positive and constructive team player in EU. Finally, it is not yet proven that the opt-outs have a strong affect on opportunities for Danes to be appointed to *administrative positions* in EU's institutions.

PERSPECTIVES

The report's analyses indicate that in general the opt-outs have significance for *EU cooperation*. Opt-outs can on the one hand be understood to be a signal that a country in principle wishes to lead the cooperation in another direction than the majority wishes to follow. On the other hand, opt-outs break with EU's basic principle that it is a binding cooperation with common rules for all members. Since the opt-outs cover political areas that involve sharing considerable risks and burdens, Denmark's relationship to the EU is affected in situations where the opt-outs have consequences for international solidarity (e.g. when the UN requests EU to provide military support in crisis areas). Thus, the opt-outs can also have potential consequences for other member countries or the EU as a whole.

Finally, the report points out the considerable development that has occurred in the relationship between Denmark's *autonomy and influence* in relation to the areas covered by the opt-outs. One of the original goals of the opt-outs was to maintain Danish autonomy, i.e. the possibilities for more independent policies in the opt-out areas. However, not all the opt-outs ensure this autonomy. For example, this does not seem to be the case for the area of defence; even if Denmark participated fully in ESDP, the Danish Parliament would have the right to decide questions of Danish participation in any operation. On the other hand, the JHA opt-out makes it possible for Denmark to maintain another immigration policy than the other EU countries.

In relation to influence, the opt-outs mean in general that it is considerably harder for Denmark to influence EU policies within the opt-out areas. For example, Denmark is not represented in such influential forums in the areas of EMU and defence as the Eurogroup and the European Defence Agency. In the JHA area, Denmark does not have the right to vote in the areas of supranational cooperation, which in the Lisbon Treaty will apply to the whole area. The lack of the right to vote

also applies to Schengen, although due to the tradition for consensus within this area, decisions are usually made in full agreement.

The existence of the opt-outs is, broadly speaking, the most stable factor since 1992. Marked global, European and national changes have given the EU another position and role during the last 16 years. These changes have meant that today the opt-outs have *completely different consequences* for Denmark than could have been foreseen when they were formulated in 1992. Therefore, a decision about the Danish opt-outs in 2008 must necessarily be made on another basis than in 1992. This report seeks to contribute an evaluation of the basis for making this decision.



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