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EUROPE À LA CARTE: DENMARK AND THE OPT-OUT OF JHA

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ABSTRACT

Denmark has a unique opt-out of the policy area of Justice and Home Affairs, and an evolving European Union in a different speeds complicates the old agreement from the Maastricht Treaty. The purpose of this thesis is to examine how differentiated integration within the EU can entail obstacles in the member states. This thesis is constructed as a single case-study, examining the obstacles for Denmark, whereas the following research question has been the aim to respond:

How does differentiated integration entail obstacles in the policy area of JHA in the case of Denmark?

In order to conduct the analysis, a complex theoretical framework have been utilized, consisting of social constructivist elements, like norms, interests and identities, horizontal Europeanization and differentiated integration containing interdependence and politicization. These concepts have functioned as tools to obtain a profound and nuanced analysis of different possible obstacles. The analysis has been based on official statements from the prime minister, official documents from relevant authorities, and semi-structured interviews with member of The European Affairs Committee and the Danish Police.

The findings from the analysis indicate, that one of the main obstacles for Denmark is the issue about giving up sovereignty and leaving decision-making process to the supranational EU, however, now choosing to stay out of it with a special agreement, it enhances the difficulties in solving transnational security threats rapidly and efficiently. Denmark loses influence in the policy area of JHA, even though some decisions might affect the state, for instance regarding the different instruments and databases within the Europol. It is shown through the theory of differentiated integration, where the EU is considered as a system of horizontal internal differentiation, since the member states are participating in different terms, where Denmark is one participating in its way with having the opt-out of JHA, which put Denmark on the sideline during negotiations and access to important instruments. The obstacles of differentiated integration have been produced due to high degree of interdependence and politicization. The interdependence demonstrates the Danish dependency on the access to Europol, and on a broader issue how interdependent all the member states are, now the EU has turned out so comprehensive and integrated with legislation on all kinds of areas. The politicization is illustrating, that deeper integration entails surrender of sovereignty to the EU, which

not all member state will go along with. The interdependence illustrates, that the member states have achieved convergence in some policy area, but after all in the area of JHA, Denmark does not converge with the other member states, who have approved the supranational cooperation.

The EU system proves to be a system containing of very different member states with different approaches to the integration on certain areas, and furthermore it proves to be a complex system of interdependence between member states, involving a high degree of politicization, which turns it into a case of horizontal internal differentiation.

Keywords: Denmark, opt-out, JHA, differentiated integration, counter-terrorism, European Union,

LIST OF ABBREVIATIONS

AFSJ = Area of freedom, security and justice

CDSP = Common Defence and Security Policy

CFSP = Common Foreign and Security Policy

CTA = Center for Terroranalyse

ECTC = European Counter Terrorism Centre

EMU = European Monetary Union

ESS = European Security Strategy

EU = European Union

Europol = The European Union Agency for Law Enforcement Cooperation

FE = Forsvarets Efterretningstjeneste

Interpol = International Criminal Police Organization

JHA = Justice and Home Affairs

JITs = Joint Investigation Teams

PET = Politiets Efterretningstjeneste

PNR = Passenger Name Record

INTRODUCTION

Differentiated integration, multiple-speed integration, flexible integration, Europe à la carte - it goes by many names. National preferences on the EU integration is acting more and more as as key entrants in shaping the relation between member states and the EU, where some member states choose to opt out of key European policies rather than opting in (Leruth, 2015).

During the years, the EU has met a constant deepening in the supranational institutionalization and broadening in the enlargement of new member states, expanding to 28 member states, that are under supranational regulation in almost all areas of policies. However, the perfect picture of the development of the EU “*may be too rosy*”; with the further integration on several policy areas and enlargement, it has entailed differentiation in the stances of the member states, which for instance is seen in the area of EMU and JHA (Schimmelfenning, 2014:681).

Differentiated integration is a quite new phenomenon when talking about European studies, where neofunctionalism and intergovernmentalism have been debating about the integration process and decision-making for years. The dichotomy between membership of the EU and non-membership have existed since the beginning in the 1950s, where the differentiated integration has later entered as an alternative, changing the relationship between the two parts. It is all about the relation between the member state and the EU; both the question of member states varying their stances towards EU policies, but also non-member states cooperating with the EU in different policy areas (Leruth, 2015:816, Schimmelfennig et al., 2015).

Since the beginning of the 1990s, the deepening of the EU policies has been inducing obvious differentiations: “*as EU policies have become more integrated, they have ceased to be uniformly valid in all member states*” (Schimmelfennig, 2014:681). The differentiated integration is clearly demonstrated through member states opting out of key EU policies, where Denmark is a great example with four opt-outs from the Maastricht Treaty in 1992. Not participating in the supranational JHA cooperation was one of the opt-outs; exactly the Danish opt-out of JHA will be the focus of this thesis with emphasis on the cooperation on fighting terrorism (Adler-Nissen, 2015:7, 118).

Fighting terrorism was mainly at national level until the terror attacks in New York (2001), Madrid (2004) and London (2005), where the EU cooperation on the area accelerated into common policies

and a common strategy, meaning that now a ‘European interest’ is represented making the security threat more collective (Kaunert et al., 2012:475-478; Rees, 2014:453, 464). However, Denmark is not able to participate on equal terms as the other member states regarding the cooperation on this area because of the opt-out - this is clear through the supranationalization of Europol, complicating the access to relevant databases (Adler-Nissen, 2015:7, 118; Sørensen, 2015:2).

Research question

How does differentiated integration entail obstacles in the policy area of JHA in the case of Denmark?

Problem area

On the basis of the introduction above, the delimitation of the subject will be briefly explained in this section. Modern EU is considered as a differentiated integration project, in which some states earlier have chosen to opt-out of policy areas, which has been the case with Denmark. This thesis will take form of a single case-study of Denmark regarding differentiated integration with emphasis on the opt-out of JHA, and hereunder further delimited to examine obstacles regarding counter-terrorism politics. Different aspects play a role regarding the analysis of the subjects, among other things possible reasons for it, practical perspectives, and how it can provide broader reflections. The delimitation of the case will be further elaborated in the chapter of Methodology.

Counter-terrorism is a societal subject relevant because of the current threat of terrorism in Europe, which have been evolving during the years. Several more terrorist attacks are happening across Europe, which possess a large role in politics and medias, and not least among societies. The aim of this thesis is to contribute to the existing literature on EU-counter terrorism, however, with another perspective with the differentiated integration in relation to the Danish opt-out. It will provide a comprehensive analysis of the obstacles the opt-out entails. It is not the aim to make a general conclusion on possible obstacles for all the member states, but instead the purpose is to enlighten Denmark individually and the obstacles the particular member state meets by differentiated integration. Afterwards, the discussion will be based on the results of the obstacles of Denmark, and it is believed draw more general conclusions on what these obstacles can demonstrate on a broader EU level.

Thesis structure

This thesis contains of eight chapters, each chapter with an overall title and smaller sections to make the content comprehensible.

This first chapter had the purpose of giving an introduction to the research area and question, as well to provide a general outline of the thesis. The second chapter reviews the existing literature of the subject. The third chapter will present the methodology applied throughout the thesis, it describes the research strategy, research design and research method, containing the empirical choices, data collection and semi-structured interviews. Furthermore, the chapter will also contain a clarification of the choice of theory. The fourth chapter consists of the theory utilized in the analysis. The fifth chapter provides a more detailed introduction to the analysis, consisting of a description of the Danish opt-out of JHA and the Danish terrorism policy, as well as the counter-terrorism strategy by the EU. The sixth chapter is the analysis of the thesis, containing of several sections and a discussion. The seventh chapter will provide a conclusion of the analysis in chapter six, answering the research question. The final chapter features the bibliography.

LITERATURE REVIEW

The following chapter will present some existing literature concerning the topic of this thesis. It will take form of a narrative review to clarify what is already known about the topic to function as overview and prelude to the thesis' analysis, and furthermore, to ensure that the thesis does not provide an already-known research (Bryman, 2016:90-91). Since the thesis is focusing on just one case without much attention, this chapter will only provide an overview of relevant existing literature to bring different perspectives in mind.

Differentiated integration - British and Danish opt-out of JHA

Adler-Nissen (2009) examines the management of the British and Danish opt-out of JHA, and whether or not they still possess influence regarding the policy area. Both states have avoided further integration within this policy area, since both are preoccupied with national sovereignty. She proposes three different factors, that can affect the member states' representative to participate in and have influence on the area of an opt-out: national role conceptions, rules and norms (Adler-Nissen, 2009).

Adler-Nissen argues, that *“particular national role conceptions influence how national representatives manage the opt-outs. Structurally, the rules or the particular legal design of the opt-out protocols give more or less room for manoeuvre and the informal norms are more or less favourable to state representatives managing opt-outs. Together, the three factors shape the management of the opt-outs.”* (Adler-Nissen, 2009:65). She emphasizes, that most of the Council decisions are made by consensus, so if the British and Danish ministers act on the best of the EU, they might be able to have influence on the policy-making process, even though they have lost the formal voting right. This means, that in practice, Danish and British representatives are adopting and participating in the shaping of new EU legislation, also in sensitive high politics covered by them opt-outs from JHA, even though they officially do not have a vote: *“opting out does not necessarily imply that member states are out in the cold”* (ibid.:62).

Furthermore, Adler-Nissen also argues, that it makes a difference how the opt-out protocol is designed and interpreted, meaning that the UK and DK have different access. For instance, Denmark is almost completely a member of Schengen despite the opt-out, while the UK is facing obstacles in the participation due them not being a part of the cooperation. Lastly, she emphasizes, that informal norms do not exclude member states because of opt-outs, instead, consensus-oriented norms enable inclusion (ibid.:64). She emphasizes the opt-outs of UK and Denmark represents differentiated integration, meaning that it will not lead to disintegration, but instead suggesting that *“rather than fragmenting the Union, opt-outs confirm the objective of continued integration”* (Adler-Nissen, 2011:1108).

Naurin and Lindahl (2010) has tested, if flexible integration entails costs for the member states opting out of further integration within a certain policy area, consequences like for instance lack of influence and status in the EU, by building their analysis on the Danish and British opt-outs of the Euro (Naurin and Lindal, 2010).

By many arguers, opting-out is considered as a free-riding leading to exclusion of e.g. access to information and bad reputation, however, the examinations of Naurin and Lindahl demonstrates, that ‘Euro-outsiders’ in fact are doing well in the informal networking in the Council regarding the policy area rather than being excluded. They conclude, that their findings *“indicate that flexible integration*

may be a more realistic solution for dealing with intensified preference heterogeneity in the EU than previously anticipated” (ibid.:505-506).

Convergence in national counter-terrorism systems

Den Boer and Wiegand (2015) has in an article examined whether EU strategies of counter-terrorism have encouraged ‘deep integration’ between the member states in terms of a common threat assessment, pooling resources, sharing intelligence, and more measures, based on France, UK, Netherlands, Germany, Spain and Italy, focusing on the convergence between them and the EU (Den Boer & Wiegand, 2015, 377-379).

They emphasize Europeanization, enhancing that “*national systems adapt because they are exposed to the same regulatory incentives*” (ibid.:385). EU has legal and strategic instruments on counter-terrorism, which provides a vehicle for national counter-terrorism system to reflect on their role and to strengthen their international position. However, the member states still have different legal systems, and they do wish to ensure, that the characteristics of their criminal justice system remain unaffected by implementation of EU-legislation, hence keeping control of their sovereignty (ibid.).

Den Boer and Wiegand demonstrate, that the states copy very little from each other: “*France ‘homogenized’ its counter-terrorism strategy with that of the UK, and it is without doubt that these two states reacted in the strongest way to the terrorist threat after 9/11, if one compares them with the other four states. This was different in the past, when Spain introduced a policy of repentance based on the successes of Italy, or states at least discussed the introduction of measures that were in force in other states,*” implying, that the horizontal Europeanization between the member states is very limited (Den Boer & Wiegand, 2015:399). However, when talking about vertical Europeanization, Den Boer and Wiegand do recognize the existence of it from the EU level: “*supranational regulations have a strong converging influence on nation states.*” (ibid.:400). Divergence in many aspects of counter-terrorism is still present, so according to Den Boer and Wiegand, the EU’s counter terrorism can not (yet) be characterized as a form of deep integration (ibid.).

Nohrstedt and Hansén (2009) has conducted a quantitative analysis regarding counter-terrorism and the level of policy convergence with member states. They have shown increased policy convergence,

with variations in level and pace of implementation, in their comparison of 27 EU member states' policy development between 2000 and 2006 (Nohrstedt & Hansén, 2009:190). They argue, that it is reasonable to expect that *"the domestic policies of EU member states in this area have developed towards convergence"* (ibid.:193), in the area of counterterrorism with both international organizations and national structures and perceptions in mind. In this context, *"EU institutions take on different 'transfer roles' contributing to policy convergence by exerting different levels of coercion"*, acknowledging the process of vertical Europeanization (ibid.:207).

One of their arguments is, that the level of external pressure is important in order to explain the patterns of national policy change. International institutions have an impact on domestic policy-making through several mechanisms, ranging from coercion to the facilitation of voluntary exchange. External pressure from the EU is an important factor when facilitating policy convergence; when states are forced to adopt certain policies, and softer forms of harmonization, where states adjust to common policy standard (ibid.:192). Furthermore, national interest is another factor: *"member states develop whatever policies and structures they consider necessary and the EU assists in strengthening national capabilities and facilitating European cooperation,"* (ibid.:194) meaning that the member states only adopt counterterrorism policy instruments they find relevant to their own interests, resources and needs. *"National counterterrorism policymaking takes place in the nexus between international organizations and regulations on the one hand, and national structures, ideas, and perceptions on the other"* (ibid.:207).

Relevance to this thesis

This literature review provides an idea of the existing literature, presenting two relevant perspectives to this thesis, namely differentiated integration within the EU and convergence between national counter-terrorism systems. It functions as a stepping stone, since this thesis aims to combine these perspectives with the aim of analysing the counter-terrorism politics in relation to Denmark as an example of differentiated integration. While the writers regarding the differentiated integration are positive towards it, this thesis aims to investigate whether or not it entails obstacles.

In relations to the existing literature on the convergence between counter-terrorism systems, all writers presented in this literature review acknowledges the existence of vertical Europeanization in the area. Since Denmark has the opt-out of JHA, under which the counter-terrorism falls, it is unlikely

to be seen in this case. Instead, this thesis will be focusing more on horizontal soft Europeanization, namely the development towards convergence among member states, that Nohrstedt & Hansen (2009) emphasize.

METHODOLOGY

This chapter contains the used methodology to examine and answer the research question. Different sections will be presented, and will each encompass a definition and the use of the specific method. This chapter consists of four sections: research strategy, research design, research method and theoretical choice.

Research strategy

Research strategy sets the framework for the research. In this, many writers consider a distinction between qualitative and quantitative researches. This thesis is constructed according to the qualitative research strategy, which generally enhances words and specific elements rather than quantification in the collection and examination of data. Normally, the qualitative research strategy puts emphasis on an inductive approach regarding the relationship between research and theory; this signifies, that it describes the process of have the empirical data first, which subsequently produces the theoretical presumptions (Bryman, 2016: 31-33).

Normally, examinations in the area of social science consists of an ontological base about what we study, namely the object of investigation, an epistemological base, which is how we know things, and lastly the methodological base, which is the instruments of achieving the knowledge, which will be emphasized in the section of research method (Porta & Keating 2008:21).

This thesis has been structured from the epistemological consideration of interpretivism and the ontological consideration of constructivism. Interpretivism has been utilized, because it realizes that *“a strategy is required that respects the differences between people and objects of the natural sciences.”* (Bryman, 2016: 26). This signifies, that interpretivism puts emphasis on the importance of making a distinction between objects and people, which requires a social scientists’ stance to comprehend the subjective meaning of social actions. Regarding this thesis, it is structured from interpretivism, since there is a put emphasis on e.g. Different perceptions of the EU integration

process by different actors. Therefore, there exists a clear distance between objects and people, since this thesis is based on the EU as a coalition of populations, meaning that there are different cultures and perceptions across member states. On contrary, a positivist approach believes in natural sciences when studying social interactions, which is not the case in this thesis (ibid.:24-26).

Constructivism has been utilized, because it enhances, that “*social phenomena and their meanings are continually being accomplished by social actors*” (ibid.:29). This means, that social phenomena are produced through social interaction, and in addition, it is also in a constant state of revision. Furthermore, with constructivism it is not possible to understand e.g. A social phenomenon without looking at the perceptions, that individuals possess of the world outside. In this thesis, the constructivism will be applied due to the usage of different subjective writers with different approaches to the topic. With constructivism, language and social interaction are important, which is presented in the thesis through different subjective approaches. Constructivists believe, that a social phenomenon is in a constant state of revision by actors, which is the case of an EU in different speeds - the member states constantly revise their perceptions, and there will be different perceptions of it across member states and cultures. Constructivism is the opposite to objectivism, which believes that social phenomena are independent from actors, meaning that they are beyond our reach and influence (Porta & Keating, 2008:25; Bryman, 2016:29).

Research strategy criteria

In order to evaluate the social research, there are some quality criteria, including: Reliability, concerning if the results of a study are repeatable; Replication, asking if the the research is replicable, meaning that the procedures of the researcher needs to be detailed in order for it to be possible; Validity, regarding the integrity of the conclusion generated from the research (Bryman, 2016:41).

However, among qualitative analysts there has been a debate regarding the relevance of these quality criteria for qualitative research, where some even ignore the factors, while quantitative analysts emphasize it more. Also regarding case-study research design, some writers tend to depict on the quality criteria (ibid.:62, 383). Supporting this, Lincoln and Guba propose, that there is a need for an alternative specification of “*terms and ways of establishing and assessing the quality of qualitative research*”, introducing their two primary criteria in this regard: trustworthiness and authenticity (ibid.:384).

The following paragraph will feature four criteria by Lincoln and Guba based on trustworthiness: Credibility, are the findings believable? - “*confidence in the ‘truth’ of the findings*” (Pandey & Patnaik, 2014:5746); Transferability, are the findings applicable in other contexts?; Dependability, are the findings applicable in other times? - “*the findings are consistent and could be repeated*” (ibid.); Confirmability, has the research been affected by personal bias? (Bryman, 2016:384-386; Pandey & Patnaik, 2014:5746).

For this thesis, the credibility is obtained due to third reasons. Primarily, existing research regarding the topic have been utilized as a base of investigation (hence, the literature review, p. 7), which are granted a certain authenticity. Secondly, there has been conducted semi-structured interviews, that draw members of the social society into the research providing believable and practical knowledge about the topic. The interviewees have also been chosen with precision to obtain the desired perspective and knowledge of the topic. This will be further elaborated in the section of the research method. Thirdly, the thesis is also based on transparency, since all documents and interviews are stated and available, and furthermore it has been clarified how they have been chosen, and how the analysis have been conducted. All details of the conduction of the analysis will be stated clearly in the methodology chapter to be as transparent as possible. Due to these reasons, the choice of topic and the findings are credible.

Since the case is an extreme/unique case, it is hard to consider the transferability. However, the results can inspire to other research of other cases similar to this - for instance regarding Denmark with other opt-outs as a result of differentiated integration could be examined with the same framework. Additionally, the thesis contains of a transferability element, namely a ‘thick description’, meaning lots of details of the culture the researcher is investigating: “*a thick description provides others with what they refer to as a database for making judgements about the possible transferability of findings to other milieux*” (Bryman, 2016:384). This will be shown in the introduction to analysis, which will account for several important background knowledge regarding the topic, e.g. The development of EU counter-terrorism through the years and a clarification of the Danish opt-out of JHA.

Regarding the dependability, the findings can be further examined and duplicated, since the topic is very much up to date with new developments, lastly Jean Claude Juncker enhanced the multi-speeded

EU in a white paper of the future on Europe March 2017 (European Commission, 2017a). There is a possibility for further analysis and interpretation of the case, since this perspective has not been deeply analysed. The EU is constantly evolving as a institution, and Denmark will probably stay in the same position with the opt-out for many years, which enhances the opportunity for further examination, thus the criteria has been met.

Lastly, the criteria of confirmability have been fulfilled, because the researcher has acted in good faith. However, it can be biased due to the research strategy of constructivism and interpretivism, which possess a more subjective approach. Anyways, the thesis has been conducted as objective as possible in the way that the researcher has investigated a wide range of different actors, e.g. several expert interviews and widely-chosen documents. In this case, the researcher has the same nationality as the chosen case, which can provide a bias regarding the amount of knowledge of the given case, and additionally personal opinions about it. Despite this, the researcher's objective mind has diminished the bias, and no personal opinions have been involved in the conduction of analysis. All things considered, the analysis has been conducted with objectivity as good as possible, and furthermore, due to the inductive approach, no theoretical explanations have been favoured.

Research design

A research design provides a structure for the collection and analysis of data, while the idea of a research strategy provides the general orientation of the social research (Bryman, 2016:40). This section will feature an explanation of the chosen research design of this thesis, namely a single case-study, and the section will also elaborate the choice of case and the delimitations hereof.

A case-study

The case-study method is widely used in social sciences examinations, though, no common definition among authors has emerged, neither of a case or a case study. One perception of a case-study is made by A. L. George, who believes the goal of a case-study is to apply *“a well-defined set of theoretical questions or propositions to structure an empirical inquiry on a particular analytically defined aspect of a set of events”* (Levy, 2008:2). Also Gerring (2007) has given a definition to a case-study: *“A case study may be understood as the intensive study of a single case, where the purpose of that study is (...) to shed light on a larger class of cases,”* (Gerring, 2007:20) meaning that if analysing a single case, it has the purpose of providing more general conclusions of a large amount of cases.

This thesis takes form of a single case-study, where the aim is to conduct a detailed and intensive analysis of the single case, instead of introducing several cases transforming it to a comparative design (Bryman, 2016:61). If studying a single case, it will be more intensively investigated than if more cases were introduced. If comparing the case of the thesis, Denmark, with other member states, it would have made the analysis of Denmark less comprehensive, thus revealing less unique factors of it: *“The fewer cases there are, and the more intensively they are studied, the more a work merits the appellation “case study””* (Gerring, 2007:20). The purpose is to focus on Denmark with an in-depth analysis, for which reason no other cases have been incorporated in the thesis. This defines the case-study design as idiographic, when focusing on revealing unique factors of a certain case, contrary to nomothetic research design e.g. Cross-sectional design, which generates statements usable in spite of time and place (Bryman, 2016:61).

Talking about a case-study, there are distinctions between types of cases, where Robert Yin is one of the writers making distinctions between five types: 1. Critical case, chosen due to it allowing a better understanding of the circumstances; 2. Extreme/unique case, chosen if the case is rare/special; 3. Revelatory case, chosen to *“analyse a phenomenon previously inaccessible to scientific investigation”* (Yin, 1994:40); 4. Representative/typical case, with the objective of capturing *“the circumstances and conditions of an every or commonplace situation”* (Bryman, 2016:62); 5. Longitudinal case, chosen because of the opportunity to investigate several junctures (Bryman, 2016:62-63; Yin, 1994:38-40). A clarification of this thesis’ case can be done on the basis of Yin’s distinction, and it has been determined to be an extreme/unique case. Also, Flyvbjerg (2006) enhances different types of cases¹, e.g. Information-oriented selected case, which maximizes the applicability of information from small samples or single cases. Here, the case(s) are chosen based on the expectations about the content of information. In continuation of introducing information-oriented cases, he presents different types, among other ‘extreme/deviant case’, which he defines to be applicable in order *“to obtain information on unusual cases, which can be especially problematic or especially good in a more closely defined sense”* (Flyvbjerg, 2006:230). The definition by Flyvbjerg

¹ Flyvbjerg (2006) distinguishes between ‘random selection’, hereunder random sample and stratified sample, and ‘information-oriented selection’, hereunder extreme/deviant, maximum variation, critical and paradigmatic (Flyvbjerg, 2006:230).

supports the determination of the thesis' case of being an extreme case; Denmark and its opt-out of JHA is considered unique and unusual in the entirety of the EU.

Choice of case

The case of this project has been determined as a unique case, according to the distinction presented by Yin and Flyvbjerg. The case-study of differentiated integration occurring with the Danish opt-out of JHA is perceived as an extreme/unique case due to more reasons; first, because Denmark is one of the three EU member states with an opt-out of the area. The other two member states are Ireland, and United Kingdom (who soon will not be a member anymore), however, these member states have other conditions than Denmark, which give them the opportunity to opt-in legislative proposals in the area, if they wish - making Denmark a unique case in this regard (Alder-Nissen, 2009:64). When analysing a case of differentiated integration, Denmark is one of the few great and appropriate examples of it. Secondly, concerning the use of Europeanization as part of the theoretical framework; due to the opt-out, it is unlikely that the process of Europeanization has occurred. This can lead to discussion of whether other opt-out areas have been europeanized, e.g. the Danish defence opt-out, where Denmark is also a unique case. Additionally, the idea of Europeanization happening within a policy area from where a member state has opted-out, can also lead to reflection of whether the Europeanization phenomenon has happened in similar cases, in other member states - for instance even in policy areas outside EU legislation. However, the emphasis is put on the horizontal Europeanization to clarify whether Denmark and the other member states has influenced each other. Thirdly, considering the EU as a whole, Denmark is perceived as unusual and unique regarding the policy area of JHA. The member state appears as unusual and unique in comparison with the other member states, since it is exceptional regarding opting out of JHA.

Regarding the definition by Gerring, enhancing the single case-study with the purpose of providing general conclusions, which can count for several cases, it is believed that the case of Denmark in this regard is able to provide broader conclusions applicable to a larger amount of case, namely the context of the EU as a whole and also in relation to other member states. The EU is a complex system of member states, who are interdependent - with Denmark as a part of it. Further elaboration of Denmark and its unique position in the differentiated EU will happen in the chapter of Introduction to analysis.

To further delimit the analysis, the case-study of the differentiated integration in relation to the Danish opt-out of JHA has been delimited to be based on the EU counter-terrorism policies. This delimitation has been made due to the relevance of counter-terrorism these days. The terror attacks in New York (2001), Madrid (2004) and London (2005) have made the EU a relevant counter-terrorism actor, and placed counter-terrorism at the top of the policy agenda introducing cooperation between the member states (Argomaniz, 2010:5, Kirchner and Sperling, 2007:124). The national security threat of terrorism has been transformed into a more European and common security threat with cooperative instruments and measures to combat it, representing the European interest (Kaunert et al., 2012: 475-478). However, the differentiated EU integration entails obstacles in the way that Denmark for instance can't participate in the EU counter-terrorism cooperation on equal terms with the other member states due to the JHA opt-out.

Delimitations of choice of case

In this thesis the focus has been put on just one case, instead of including several others, inducing some limitations in the way, that only one perspective of the differentiated integration is analysed. Thus, this choice means that the aspect of differentiated integration will not be elaborated comprehensively covering all the 28 member states, but instead just make a profound analysis of Denmark as an extreme. However, it would have been interesting to incorporate other cases, which though would have made the analysis less intensive due to the space and time limit of this thesis. By choosing to do this, the sample size is focused to only the case of Denmark and the counter-terrorism policies, keeping the case study more concentrated. With Denmark as an extreme case, it will on one hand be difficult to draw generalized conclusions on the specific opt-out agreement, since it is unique. However, as explained above, the case is believed to draw general conclusions on the area of differentiated integration and the EU as a complex system regarding this topic.

Research method

“A research method is simply a technique for collecting data,” (Bryman, 2016:40) consisting of different specific instruments. This section will present the research methods applied in this thesis in order to achieve the empirical data: sampling of documents - both primary and secondary, semi-structured interviews and the analytical strategy.

Data collection

The data collected for this thesis will on the one hand be official documents deriving from official EU institutions; Council of the European Union, European Council, European Parliament and European Commission, which all are relevant actors due to legislation, etc. For instance, policy documents regarding counter-terrorism and the security strategy have been applied. Additionally, official reports from Europol will also be utilized, since large part of the thesis is concerned with the supranationalization of Europol. Such materials will function as primary sources, since they derive directly from the point of view in interest, namely the EU, and therefore, the documents are also granted a certain degree of accountability. They are believed to be reliable regarding the specific topic, since the source possess a certain authority. On the other hand, official documents from the Danish state, among others The European Affairs Committee, the Ministry of Justice, Ministry of Foreign Affairs, and official government publications will be used. These documents also are granted authority and authenticity, since they also function as primary sources. Also official speeches from the prime minister have been utilized, since he represents the government and possess certain authority as well (Bryman, 2016: 552-556). Furthermore, secondary sources have been applied, which consists of academic texts and articles concerning theory definitions, methodology, literature review and generally tools for conducting the analysis. The time period covers from 2015, where the Danish referendum occurred till now, since the subject is still very present with evolving approaches. Thus, the documents cover this period, however, some of the legislation documents, etc. will derive back from the beginning of the 00s. Additionally, semi-structured interviews have been conducted and will be utilized as empirical data as well, which will be further described in a following section.

The utilized sources have been sampled purposely, since the goal is to sample documents in a strategic way, so they are relevant to the before-mentioned research question, instead of being sampled randomly. The documents have been sampled due to their relevance to the subject and to enable an answer to the research question. In this thesis concerning Denmark, it's about a special case, since the state has a special opt-out of the JHA, which is unusual in the EU context. The same apply to the sampling of participants for the semi-structured interviews; the participants have been chosen purposively due to their relevance and knowledge for the research, whom will be further elaborated in the following section (ibid.:408-409).

Semi-structured interviews

The two types of interviews usually applied in qualitative researches are unstructured and semi-structured interviews, where this thesis has utilized semi-structured.

Typically, semi-structured interviews involve the interviewer presenting several questions - an interview guide, but the questions do not have to be asked exactly how they are written in the guide, and questions not included in the guide can be incorporated in the interview to ask further or follow up on replies from the interviewees. This signifies, that the interviewer can depart significantly from the interview guide and vary in their questions, making the interview process more flexible than for instance a structured interview. Some times, semi-structured and unstructured interviews are associated with the term 'qualitative interviews', primarily because of the often use of it in qualitative research, rather than quantitative research, which more often use structured interviews. In qualitative interviews, the interviewee's point of view is emphasized, hence "*'rambling' (...) is often encouraged*" since it provides an "*insight into what the interviewee sees as relevant and important*" (Bryman, 2016:466). The focus in this thesis is on a clear and fairly specific topic, for which reason semi-structured interviews have been applied in order to address specific issues and obtain relevant knowledge. As emphasized before, it is important to get an insight into what the interviewees consider as relevant and important regarding the questions, for which reason it can be an advantage with the opportunity to follow up and ask further questions to their responses (ibid.:466-469). The semi-structured interviews were conducted by the researcher of this thesis in another language - Danish, for which reason the utilized quotes has been translated to English by the researcher herself. All the interviews will be transcribed, and added as Appendix 2, while the interview guide is added as Appendix 1. There are two different interview guides, since not all of the interviewees should be asked the same questions. The interview guides function as stepping stones for the interview, and since the interviews have been conducted continually, the formulation of the questions has turned better and better.

Telephone interviewing

Telephone interviewing has become more common when conducting qualitative research, however, it entails some limitations; for instance, the researcher cannot observe the body language of the interviewee, and is not able to observational material about the surroundings, which might disturb the interview. At the same time, the telephone interviewing entails certain benefits; e.g. The costs, since

there is not need for traveling to conduct the interviews. Additionally, in this thesis, the interviews are not long, for which reason the telephone interviewing is a good choice (ibid.:484-485). The majority of the interviews conducted in relation to this thesis have been made through telephone interviewing, only one face-to-face.

Expert interviews

According to Mauser and Nagel (2002), expert interviews can be considered as its own form of semi-structured interviews. The possible relevant knowledge from the interviewee is much more restricted than in other cases, for which reason the interview guide is way stronger, and does not include irrelevant and unproductive subjects. This means, that only relevant knowledge about the certain subject will be the result of the interview. Also regarding expert interviews, the interviewees are of less interest as a person, since it is their knowledge and expertise in a certain field of investigation, which is interesting. During the expert interviews, there is a chance of failures, for instance, the interviewees can during the interview prove not to be an expert on the certain topic. Furthermore, the interviewee can also be shifting between the role as an expert and the private person, which would limit the expert knowledge, which is the aim of conducting the interview (Flick, 2006:165).

In connection with the explanation of the choice of interview above, the aim of these interviews were to obtain an inside and practical view of the subject of the thesis. The semi-structured interviews for this thesis was conducted with four members from The European Affairs Committee and one special prosecutor from Nordjyllands Politi (The Police of Northern Jutland), who are considered to be experts on the certain topic due to their job positions. On the one hand, there are four politicians, who possess a lot of practical knowledge of the political relationship to EU in the area of JHA, who can clarify whether they as Danish politicians encounter and perceive problems due to the opt-out. When incorporating a wide range of politicians, that represents different parties, and therefore different stances, they will have different discourses towards the subject. This will provide one point of view in the analysis, while the special prosecutor from Nordjyllands Politi will be able to clarify a more practical view, since he works directly with the effects of the opt-out of JHA, and in addition he can further elaborate the practical obstacles for policemen. The combination of the political and practical view provides a nuanced analysis with different arguments from different political point of views and a practical view from the special prosecutor.

They are all believed to provide relevant knowledge to conduct the analysis. The interviewees have all permitted, that they can be quoted in the analysis. Details of the interviewees will be clarified below. The data from the interviews will be referenced to in the following way: (name of interviewee, 2018) - for example “(Holger K. Nielsen, 2018)”.

Interviewees

The European Affairs Committee

Holger K. Nielsen is a Danish politician, who is a member of the Danish Parliament, and furthermore member of the Danish European Affairs Committee. He has been in Danish politics since the 80s, and has possessed several important posts in Danish politics, for instance foreign minister and minister of taxation. He is a member of the Socialist People’s Party, and is the political spokesman regarding EU affairs. With his many years in Danish politics, he is granted a certain authority and is believed to have lots of knowledge and experience to help answer the research question (Folketinget). The interview took place the 8th of May 2018, 10:00-10:15 through telephone interviewing by the researcher herself.

Jan E. Jørgensen is a Danish politician and a member of the Danish Parliament for the liberal party Venstre. Additionally, Jan E. Jørgensen is a member of the European Affairs Committee and he also possesses the role of Venstre’s spokesman for EU affairs. Jan E. Jørgensen is believed to provide relevant knowledge towards the subject of the thesis, and is therefore granted credibility due to his experience in Danish politics since the 90s (ibid.). The interview took place the 9th of May 2018, 9:00-9:15 through telephone interviewing by the researcher herself.

Kenneth Kristensen Berth is a Danish politician, who is a member of the Danish People’s Party, which is right-winged. He is a member of the Danish Parliament, and additionally a part of the European Affairs Committee, where he is vice chairman. Furthermore, he possesses the role of the Danish People’s Party as EU-spokesman. Kenneth Kristensen Berth is also granted credibility due to his experience in Danish politics, and he will also contribute to the conduction of thesis (ibid.). The interview took place the 2nd of May 2018, 11:00-11:30 through telephone interviewing by the researcher herself.

Rasmus Nordqvist is a Danish politician, who is a member of the party The Alternative, which is a green party. He is a member of the Danish Parliament. He is furthermore a part of the European

Affairs Committee, and additionally possess the role of the party's spokesperson regarding EU affairs. Being a member of the Danish Parliament and the European Affairs Committee, in addition also the Alternative's EU-spokesperson, grants Rasmus Nordqvist credibility, and it is believed, that he will contribute to answering the research question (ibid.). The interview took place the 9th of May 2018, 15:00-15:15 through telephone interviewing by the researcher herself.

Nordjyllands Politi

Kim Kristian Kristensen is a special prosecutor handling cases of organized crime at Nordjyllands Politi with knowledge of international cooperation and opt-out of JHA. He is also granted a certain credibility, since he is able to present the more practical views from the Police department. The interview was conducted on the Police Office in Aalborg, 2nd of May 2018, 15:00-15:30, by the researcher herself.

Delimitations

The four Danish politicians are believed to provide a profound and broad perspective of the Danish stance towards the opt-out, since they represent different political parties. However, since they are politicians, some of their answers will be biased. If incorporating more politicians, representing all the parties in the Danish Parliament, it would have enhanced the analysis and nuanced of the answer to research question with more political aspects.

Regarding the perspective of the Police, it would have made the analysis more comprehensive with more aspects than only one. It was the purpose to have interviewees from the PET, however, it was not possible to set up. It would have provided a more practical level when talking about fighting terrorism, since it is the agency, who mainly takes care of that sort of criminality.

Concerning the interviews with the politicians, time constraint proved to be an issue, since not enough time was reserved by their assistants to conduct the interviews comprehensively and calmly. This appeared in the interviews with Holger K. Nielsen, Jan E. Jørgensen and Rasmus Nordqvist, and therefore, these interview are not as long and comprehensive as the others. However, it was possible to get through almost all questions from the interview guide.

Analytical strategy

In order to conduct the analysis, several theoretical concepts have been chosen, which will be clarified in the next section of theoretical choice, and further elaborated in the chapter of theoretical framework. The theories consist of concepts and notions, which will be applied to both the semi-structured interviews and the official documents: horizontal Europeanization, misfit, norms, identity and interests, convergence, differentiated integration, and politicization and interdependence. These concepts will be connected to arguments from the documents and the semi-structured interviews while conducting the analysis, and will be applied in other to identify the obstacles for Denmark.

The analysis will be divided in several sections with each own argument, where all concepts are believed to be applied fluently, where they can elucidate explanations and arguments for answering the research question. Therefore, no concepts are believed to only be utilized on certain sources, but instead to be applied throughout conducting the analysis.

As mentioned above, the interviews have been transcribed. For researcher own use, the transcriptions of the interviews have been coded in colours in relation to the theory in order to find good and relevant quotes throughout the analysis. So for instance the social constructivist concept of interest can be coded green, while the horizontal Europeanization can be coded red. So when utilizing the interviews in the analysis in a certain academic angle, the researcher will go through the color-coded transcriptions to see whether some of the interviewees can support the argument. The aim is, that the interviewees will reflect diverse arguments, that can support answering the research question. The researcher will therefore not be focused on finding common arguments among the interviewees. Quotes have been chosen purposively throughout the analysis, meaning, that they have been chosen due to relevance to support the argument presented in the given paragraph of the analysis. Furthermore, the utilized quotes will derive from trustworthy sources, cf. section of data collection. Regarding the interviewees, they have been chosen on the same basis, namely on their trustworthiness, which were elaborated in a previous section.

Theoretical choice

In order to create a profound and nuanced analysis of the given subject, several theoretical aspects and assumption have been chosen to be incorporated in the theoretical framework. It is believed, that it will enable answering the research question comprehensively. The choice of theory will be

elaborated in this section, and a detailed overview of them individually will occur in the chapter of Theoretical framework.

First of all, since the analysis is based on the relationship between the EU and Denmark, Europeanization has been chosen as a phenomenon. Since Europeanization can be considered as a multi-faced phenomenon, several authors have been incorporated to represent different academic disciplines and different perspectives of it (Wach, 2015:11-13). Among others, acknowledged authors like Ladrech (1994), Radaelli (2000) and Börzel and Risse (2000 & 2003) have been utilized to explain the theory. Since the thesis is focusing on a relationship between the EU and national member states, to be more exact Denmark and its position, thus the horizontal perspective will be utilized, since it is already known that top-down perspective is not present due to opt-out. It will help explore whether there has been influence between member states, and furthermore help investigate a possible misfit, hence the obstacles for the opt-out. It will further raise the theoretical question of the idea of misfit is applicable in a case of horizontal Europeanization.

Regarding Europeanization, a sociological institutionalist view will be emphasized, which additionally leads to the incorporation of different social constructivist aspects, where acknowledged authors, for instance Alexander Wendt (1994) and Emanuel Adler (1997), have been applied. As described in the research strategy, social constructivism functions as an ontological consideration of the thesis. In addition, social constructivism does not represent a substantive theory of integration itself, but can function as a meta-theory, which is how it has been applied as part of the theoretical framework of this thesis. Social constructivist perspectives will be utilized in order to generate theoretical propositions on for instance collective identity and norm construction, their cause and effect on the integration process as a result of socialization/social interaction between actors (Bryman, 2016:29; Risse, 2009:158). The social constructivism is connected to the sociological institutionalism through the theoretical framework of Europeanization, since the two perspectives share several aspects. For example, Risse (2009) emphasizes, that “*sociological institutionalism as the constructivist inspired version of institutionalist research can be used to generate hypotheses about the impact of Europeanization on domestic change*” (Risse, 2009:158), which also emphasizes elements like norms, identity and interests, like constructivists, that focus on among other things “*social identities of actors in order to account for their interests*” (ibid.:148). Social constructivism is believed to help enable either a confirmation or disconfirmation of influence among member states

in the counter-terrorism/security area, and how the actors utilize identity, interest and norm in their discourses.

Also the notion of convergence is added to the theoretical framework of Europeanization, since the convergence between member states is questioned, hence the usage of the horizontal perspective. Moreover, Schimmelfennig et al. (2015) and their definitions of differentiated integration have been chosen to define the case of Denmark. They emphasize different types of differentiated integration: vertical and horizontal, and in relation to horizontal they differentiate between internal and external differentiation. Politicization and interdependence are key elements in the definition; politicization acting like an intervening mechanism inducing obstacles, which may lead to failed or differentiated integration, and interdependence functioning as the main driver for integration. Since the thesis is dealing with a case of differentiated integration, it is relevant to incorporate this theory of different definitions and elements like politicization and interdependence in order to examine the Danish opt-out of JHA, which enables the question of the significance of respectively politicization and interdependence.

The two parts of theory are believed to be complementary to each other in the way that differentiated integration can define the case and explain the evolvement of it by the use of interdependence and politicization. Social constructivism will supply with the more socially elements of norms, identities and interests, and furthermore the idea of the EU as a collective constellation. It will be able to elaborate the obstacles for integration on the policy area, and what matters in this regard - it will help disconfirm or confirm whether a social perspective can be obstacle to the further integration of JHA area, which Denmark do not wish to be part of. Lastly, the phenomena of horizontal Europeanization will provide the relationship between member states, and enable a discussion of whether the member states have influence on each other, in this regard on Denmark despite the opt-out.

The chapter of Theoretical framework will contain section of operationalization, which will further explain the theories. Furthermore, it consists of a model with all the different theoretical concepts and explanation, illustrating how they are connected and in what relation they will provide answers towards research question.

THEORETICAL FRAMEWORK

In the following chapter, the theoretical framework will be explained. Firstly, the different theoretical aspects, among others Europeanization and differentiated integration, will be presented in general with concepts relevant to the subject of the thesis. Afterwards, a section of operationalization will appear to elaborate the theoretical concepts in relation to conducting the analysis; that is enhancing how the concepts will be utilized through the analysis.

Europeanization

Intergovernmentalism and neofunctionalism have been dominating the area of European Studies as the main theoretical approaches, that explain the European integration processes. Thus, there have not been lot of space to examine the relationship between domestic and regional politics, and this is where the concept of Europeanization emerges as another approach. Here, the emphasis is on the domestic area, and the changes, that can occur within the national political system in relation to European integration. The focus is put on the impact of EU institutions and policies, and the adaption of it in the national political systems (Graziano and Vink, 2012:32-37). According to Börzel and Panke, it is important to analyse the influence of the EU on the member states and their domestic structures, and thereby investigate the domestic change, that the EU can trigger (Börzel and Panke, 2016:113).

There exist different definitions of Europeanization. Radaelli (2000) defines Europeanization as a set of: *“Processes of (a) construction (b) diffusion and (c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies”* (Radaelli, 2000:4). This means, that Europeanization can be understood as both a construction and diffusion of discourses and national identities, political structures, domestic institutions and public policies.

Almost similarly, Börzel (2002) defines Europeanization as a two-way process, which includes the bottom-up and top-down perspectives: bottom-up accounting for *“the evolution of European institutions as a set of new norms, rules and practices”*, and top-down explains *“the impact of these new institutions on political structures and processes of the Member States”* (Börzel, 2002:193).

More emphasis has been put on the top-down perspective, rather than the bottom-up perspective, which many scholars have been concerned with for a long time; without denying the two-way process of Europeanization, scholars are now more focused on analysing “*the impact of the evolving European system of governance on the domestic institutions of the Member States*” (ibid.), meaning that the focus has changed to be on the top-down perspective of how the EU impacts national constellations. Howell (2004) defines this two-way process of Europeanization as a process of downloading and uploading (Howell, 2004:20). Also Ladrech (1994) has a definition for this approach with focus on the top-down perspective; he defines Europeanization as “*an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making*” (Ladrech, 1994:69) Moreno (2002) suggests, that Europeanization should be considered as a process of multi-level governance integrating existing cultural systems and collective identities of both national and sub-national levels (Moreno, 2002:16).

There are two conditions for Europeanization to induce domestic changes. Firstly, some degree of a ‘misfit’ between the domestic and European policies, institutions and processes must be present; the “goodness of fit” determines the degree of adaptational pressure, which are generated by the Europeanization on the member states: “*The lower the compatibility between European and domestic processes, policies, and institutions, the higher the adaptational pressure*” (Börzel & Risse, 2000:5), meaning that if the compatibility between the norms, rules and the understandings of these between the domestic and European level are high, it will be easier to incorporate them into existing domestic institutions, and also most likely the production of domestic change will be smaller. Based on Börzel and Risse, Radaelli defines it as following: “*the (...) ‘goodness of fit’ (in plain English, the degree of institutional compatibility) between domestic institutions and European policy*” (Radaelli, 2000:16). If the adaptational pressure is low - simply because the EU policy already exists in the certain member state, there is no need to change the domestic institutions. This means, that there is a good ‘fit’ between the EU policy and the national policy. Thus, it is easy to adapt to Europe. On the contrary, when there is a large distance between the EU policy and the national one, hence a high adaptational pressure, meaning that the member state will have troubles adapting the EU policy (Radaelli, 2000:20). Adaptational pressures are generated by policy-making by the European polity, which might be clashing with the national structures of policy making, inducing low compatibility meaning that a misfit is existing between domestic and EU level. The second condition is the need for various

facilitating factors, e.g. Institutions or actors, responding to these adaptational pressures, hence inducing the domestic change (Börzel & Risse, 2000:1-6; Börzel & Risse, 2003:58-61).

A sociological/constructivist perspective on Europeanization

The adaptational pressure can be conceptualized in two ways, namely the rational choice institutionalism and the sociological/constructivist institutionalism. This thesis will emphasize the sociological institutionalism and constructivism in a combined approach. From this perspective, *“Europeanization is understood as the emergence of new rules, norms, practices, and structures of meaning to which member states are exposed and which they have to incorporate into their domestic structures”* (Börzel & Risse, 2000:7).

A sociological perspective puts emphasis on a ‘logic of appropriateness’, which explains the actors as guided by collective understandings influencing the way the actors are defining their goals, and what they understand as rational action. Thus, the domestic changes are results of a collective understanding of what is understood as appropriate in a given social situation, where the actors are affected by the social institution in which they are embedded (ibid.). According to Wendt (1994), who is one of the acknowledged authors within constructivism, there are three core claims in this theory; first, states are primary units of analysis; second, the key structures in the states system are intersubjective; and third, state identities and interests are important parts, which are constructed by the (social) structures (Wendt, 1994:385).

Additionally, constructivists focus on the actors’ social identity, and believe, that they can not be described without relation to the social structure (Börzel & Risse, 2000:7; Risse, 2009:148); *“sociological institutionalism suggests that Europeanization leads to domestic change through a socialization and collective learning process, resulting in norm internalization and the development of new identities”* (Börzel & Risse, 2003:59). Identity describes the actors, their preferences and interests, and how those preferences might inform their actions. Interest can not be pursued without a certain identity, and this signifies, that *“the identities, interests and behaviour of political agents are socially constructed by collective meaning, interpretations and assumptions about the world”* (Adler, 1997: 324; Agius, 2010:53). It is also possible to possess multiple identities, and the identity and interests of states differs over time and place; for instance, being a country, and also being a

member of the EU induces multiple identities because of different social construction and relationships (Agius, 2010:50-52).

This is related to the constitutive effects of social norms and institutions of constructivism, believing that norms *“not only regulate behaviour, they also constitute the identity of actors in the sense of defining who ‘we’ are as members of a social community”* (Risse, 2009:148). Norms and identities do shape the national interests, since the EU is dominated by national preferences and interests by the member states when political bargaining is taking place. These national preferences and interests are produced through social interaction, and are then affected by different values, ideas and norms, meaning that norms have influence in relation to political problems, the search for policy alternatives and finally national preferences. Consequently, the member states perception of their identity and their interests are affected by norms (Kaunert et al., 2012:480). Finnemore (1996) emphasizes norms of international security and how it affects the states identities and interests instead of emphasizing the social interaction; *“State behaviour is defined by identity and interest. Identity and interests are defined by international forces, that is, by the norms of behaviour embedded in international society. The norms of international society are transmitted to states through international organizations”* (Jackson and Sørensen, 2006:169).

By incorporating a social constructivist approach, it enables the illumination of the dynamics of mutual adaptations. Identity formation is one of the constructivist aspects, which will enable examination of both change and continuity. There exist several definitions of social constructivism, where one fundamental presumption is the idea of social constructed reality. Risse (2009) defines constructivism as insisting *“that human agents do not exist independently from their social environment and its collectively shared systems of meanings”* (Risse, 2009:145), and in the same line Adler (1997) describes it as *“the manner in which the material world shapes and is shaped by human action and interaction depends on dynamic normative and epistemic interpretations of the material world”* (Adler, 1997:322).

Intersubjectivity is fundamental for social constructivism, which signifies, that the identity of social entities emerges from structure, which consist of shared knowledge, practices and material resources. At the same time, structures emerge through interaction among agents (also called actors) (Aalberts, 2005:12; Risse, 2009:147). Aalberts (2005) defines the intersubjectivity as following: *“Interaction*

and practice result in the constitution of shared meaning, which develop into structures that in turn affect behaviour and constitute identities”, hence that key structures are intersubjective; they exist due to interaction, and are constantly in process (Aalberts, 2005:12). Institutions are conceptualized as social structures with impact on agents and their behaviour, so for instance, in this case, the social structure is the EU institution, and the actors are the member states (Risse, 2009:147). According to Adler (1997), *“Constructivism shows that even our most enduring institutions are based on collective understandings; that they are reified structures that were once upon a time conceived ex nihilo by human consciousness; and that these understandings were subsequently diffused and consolidated until they were taken for granted”* (Adler 1997: 322), hence the EU being based on collective understandings. Similarly, Kaunert et al. (2012) enhances the EU as being structured through *“a saturated regime of legal and institutional norms, that is, the *acquis communautaire*”* (Kaunert et al., 2012:478).

According to Risse (2009), constructivists’ emphasis on the mutual constitutiveness of structures and agency have become more relevant with the more focus on the EU impact on member states and domestic policies, politics and political, hence Europeanization process, where policy-making and institutions-building on EU-level are brought into member states and their structures and political processes. By accepting the idea of mutual constitutiveness of structures and agencies, constructivism provides a better and more profound understanding of Europeanization and its impact on domestic level (Risse, 2009:147, 151). Also with this sociological institutionalism, it enables possible clarification of the constitutive effects of the Europeanization process on social identities: *“The EU not only increasingly regulates the daily lives of individuals in various respects; also constitutes ‘Europe’ as a political and social space in people’s beliefs and collective understandings”* (ibid.:156).

Summarizing the prior paragraphs with Europeanization through a social constructivist lens, it can be concluded that everything relies on intersubjectivity; mutual constitutiveness of structures, interests, preferences and identities are not given in advance, but instead a part of a constantly revising social interaction between actors within the EU structure. As Risse (2009) describes, that social structure of the EU *“deeply affects discursive and behavioural practices, that it has become part of the ‘social furniture’ with which social and political actors have to deal on a daily basis”* elaborating, that it implies that *“EU membership entails socialization effects”* (Risse, 2009:148-149). Connecting

Europeanization with this social constructivist perspective, Europeanization are happening due to the socialization process, where the EU member states obtain new preferences, interests and identity.

In regards to the utilization of social constructivism in an area of Foreign and Security policy, Wendt (1994) presents a distinction between alliances and collective security arrangements; alliances as temporary coalitions of self-interested states only joined for instrumental reasons in order to fight one certain threat, and collective security systems consisting of states making “*commitments to multilateral against nonspecific threats*”, where collective identity provides an important foundation for the collaboration due to common principles of conducting the politics (Wendt, 1994:386). Thus, the EU collaboration in the policy area are conceptualized as a collective security system, since the member states have made commitments to a cooperation combating nonspecific threats. A collective security system like the EU is joint to control organized violence, which potentially can affect transnational space, like for instance terrorism. Collective security systems are based on multilateral norms, rules and principles, which defines the behaviour expectations (hence, e.g. collective policy discussions), which gives all member states a say in policy-making processes (ibid.:391), although not meaning that the member states will implement the legislations the same way, hence the aspect of differentiated integration, that emphasizes, that member states implement EU-legislation differently due to distinct rules of the implementation (Kelstrup et al., 2017:449). Constructivism argues and can demonstrate how security is a socially constructed idea, through how different actors give the construction of security different meanings - some believing that action is rational, while others believing it is not. It is the same with terrorism, it is necessary to understand how it is socially constructed (Agius, 2010:52).

Europeanization can have distinct influence on domestic policies, politics or polities, according to several authors. Furthermore, just a few expect Europeanization to induce increased convergence in domestic politics and institutions. According to Börzel and Risse (2003), the issue has changed: “*the issue is no longer whether Europe matters but how it matters, to what degree, in what direction, at what pace, and at what point of time*” (Börzel & Risse, 2003:60), hence, the question of differentiated integration and a multi-speeded Europe can be conceptualized through this citation, questioning the direction, degree and pace.

Convergence

All the member states of the EU have different institutions and actors facilitating or inhibiting the change in response to the adaptational pressures. Börzel & Risse (2000) presents the idea of ‘clustered convergence’, where only some of the member states converge towards similar policies or institutions, while other member states do not. This can be explained by the different facilitating actors, which explains the absence of a full convergence between the member states. According to Börzel & Risse, “*Europeanization might lead to convergence in policy outcomes, but at best to ‘clustered convergence’ and continuing divergence with regard to policy processes and instruments, politics, and polities*” (Börzel & Risse, 2000:12) Radaelli (2000) elaborates, that Europeanization is not the same as European integration; he also explains, that Europeanization does not equal convergence, but instead it can be produced by Europeanization. However, Europeanization can also produce divergence due to variations in policy implementations and therefore, it should neither be confused with harmonization (Radaelli, 2000:5-6).

Wiener (2008) emphasizes that several studies on security communities has demonstrated, that membership of a community, for instance the EU, “*is likely to enhance norm convergence*” (Wiener, 2008:208), which is one of the constructivist elements. Norms are translating into a specific behaviour in the area of foreign and security policy, and as earlier emphasized, social constructivists believe in interests, ideas and norms being mutually constituted. A social structure entailing norm construction, interests and preferences might converge into a common European interest, which has happened with for instance the common EU counter-terrorism policy (Kaunert et al., 2012:478; Wiener, 2008:208).

Critique of applying Europeanization in an analysis of Foreign and Security Policy

Regarding the area of foreign and security policies, there have not been many studies in relation to Europeanization due to its uniqueness nature of the policy area, since the cooperation was established outside the EU treaties to prevent creation of common institutions. Additionally, it is also difficult to apply a definition of Europeanization, which initially was formulated for policy areas in the first supranational pillar, to this policy area located in the second intergovernmental pillar of the EU (Major 2005:182-183). Foreign and security policies are different than other policy areas, due to e.g. the member states’ unique strategic cultures and traditions. This has made the cooperation of EU-level more difficult. “*Europeanization of foreign and security policy is indeed less a clear-cut domestic adaptation and more a gradual ‘transformation in the way in which national foreign*

policies are constructed, in the ways in which professional roles are defined and pursued and in the consequent internalization of norms and expectations arising from a complex system of collective European policy making’” (ibid.:185).

According to Major, the mechanism of vertical adaptational pressure from the EU and the concept of ‘misfit’ is not best suited to explain domestic change in this regard, because of the non-existing prescribed clear CFSP mode. Instead, she points at horizontal Europeanization, where the member states in between exchange and shares policy principles; *“Europeanization of foreign and security policy can therefore be considered a learning process about good policy practice for elites for which the EU sets the scene, offering a ‘forum for discussion and a platform for policy transfer’” (ibid.:186).* Thus, according to Major, social integration has taken place in the certain area and have brought European integration forwards - just not vertically.

Instead, Major presents the idea of ‘cross loading’, as a supplement to the two dimensions of Europeanization, ‘uploading’ and ‘downloading’, with the ideas of horizontal patterns and socialisation. With this cross loading dimension, the domestic change might not only be generated at the EU level but might come indirectly through transfer of ideas, norms and ways of doing things, that are exchanged between domestic entities and policy areas. There are not only changes because of Europe, but also within Europe, which underlines the salient role of the actors (and their socialisation) in the area of foreign and security policy, who act as a ‘transmission belt for change’. According to Major, Europeanization in this policy area is considered more as a process of socialisation than forced adaptation (ibid.:186).

In an area like CFSP, there is not as much supranational power like in other policy areas, which according to Bulmer & Radaelli (2004) explains the horizontal patterns of Europeanization, concerning convergence of ideas and horizontal exchanges between member states and the result of learning of shared policy principles (Bulmer & Radaelli, 2004:7).

In the Danish case the top-down perspective is not that relevant, because Denmark has the opt-out, and therefore, it should not be happening. However, it can possibly induce questions of whether the EU has influence anyway, for which reason it will be kept for reflection. This thesis will not be focusing on the bottom-up perspective either, since it is not relevant to elaborate, how Denmark has

influence on EU politics. Instead, on the basis of the critique of Major, the horizontal Europeanization will be relevant in this case to clarify, how the member states affect each other, and questioning whether this has happened in the case of Denmark in relation to the elements of social constructivism.

Differentiated integration

Differentiated integration suffuses institutions, policies and international actorness of the EU. This means, that the EU is differentiated internally, and also externally in the actorness and boundaries with states outside the EU, signifying that *“the Union’s character as an international actor is also differentiated”*, and yet there is not a lot of study on it in relation to European integration (Leruth & Lord, 2015:755-756). In this context, the notion of differentiated integration has been perceived more as a temporary side effects of the negotiations and bargaining about more EU integration. However, it is necessary to study the differentiated integration as a more permanent and normal feature of European integration (ibid.:754). The discussions of differentiated integration started in late 1970s, where the author Dahrendorf introduces the notion of Europe á la carte, defined as *“Common policies where there are common interests without any constraint on those who cannot, at a given point of time, join them”* (ibid.:755).

Schimmelfennig, Leuffen & Rittberger (2015) presents a perspective on differentiated integration; they conceptualize the EU and elucidate its development as a *“system of differentiated integration”* (Schimmelfennig et al., 2015:765). Differentiated integration is permanent and essential characteristic of the EU, which have been concomitant through the development of the widening and deepening EU. Schimmelfennig et al. (2015) believe, that there do not exist ‘many Europes’ with own jurisdictions and organizations, but instead *“one Europe with a single organizational and member state core and a territorial extension that varies by function”*, which is their definition of a system of differentiated integration (ibid.:767). A system of differentiated integration is a polity, that displays variance across policy areas and across space, while maintaining an institutional core. The EU is an example of this, since it varies across participation of the member states in policy areas, but also incorporate non-member states in certain areas, meanwhile sustaining the institutional core of the EU: *“the emergence, configuration and development of the EU’s system of differentiated integration can best be understood by focusing on properties of its constitutive components: policies and countries”* (ibid.:770).

They present two distinct types of differentiation: vertical differentiation and horizontal differentiation, and additionally they emphasize two main factors of classic European integration theories: interdependence, understood as a driver of integration; and politicization, acting as an obstacle (ibid.:765-767).

Vertical differentiation signifies, that policy area has been integrated in diverse speeds and thereby, it has attained diverse levels of centralization over time. Horizontal differentiation, on the other hand, refers to the territorial dimensions, and emphasizes, that “*many integrated policies are neither uniformly nor exclusively valid in the EU’s member states*” (ibid.:765). When defining differentiation, the emphasis is put on a policy, containing of a set of rules and procedures, that governs a specific issue or issue area, that then has a certain degree of centralization (vertical integration) or territorial extension (horizontal integration). Regarding the horizontal differentiation, they distinguish between internal and external differentiation. Internal differentiation means, that at least one member states do not participate in the integration, e.g. Opt-out of an EU policy. External differentiation signifies, that at least one non-member state is participating in the EU policy (ibid.:765-767). In this thesis, the external horizontal differentiation is not relevant to further elaborate, since it is not examining a non-member state.

The concepts of interdependence and politicization enables an explanation of differentiated integration. Generally, the concept of interdependence is conceptualized as a factor creating a demand for and promoting integration. It varies across policies, countries and time, and all of these can be affected differently by the interdependence. Interdependence is considered as a driver for EU integration, whereas politicization often is hindering integration. De Wilde defines politicization of European integration as “*an increase in polarization of opinions, interests or values and the extent to which they are publicly advanced towards the process of policy formulation within the EU*” (Schimmelfennig et al., 2015:771), signifying e.g. polarization of opinions regarding one policy area turns into supranational cooperation. Also politicization differs across areas, countries and policies (ibid.:770-72).

Consequently, Schimmelfennig et al. (2015) believes, that the interaction of interdependence and politicization are explaining the general pattern of differentiation and integration in the EU. As mentioned, interdependence is perceived as the main driver of integration, while it is depending on

politicization, which acts as an intervening mechanism between interdependence and integration. If the interdependence is low, the politicization does not matter that much, since there initially is no major demand for substantial integration. Contrary, if there is a high interdependence combined with no or weak politicization, the demand for integration will probably be fulfilled. If there is a high level of both interdependence and politicization, the integration will probably fail, remain at low level or turn into differentiated integration. Politicization can therefore be characterized as “*a factor that constrains governments in translating integration demand into integration outcomes*” (Schimmelfennig et al., 2015:772). Additionally, institutional factors do not have much importance in comparison with politicization, signifying, that national governments are free to design vertical and horizontal differentiation corresponding what match the constellation of interdependence and politicization best (ibid.).

Concluding, the EU seems to be a consolidated system of differentiated integration with varying policies regarding levels of centralization and territorial extension. Vertical differentiation is primarily a result of interdependence, while horizontal differentiation is triggered by politicization. Horizontal internal differentiation, happening among EU member states that for instance opt out of policies, results from supranational integration due to a combination of high level of interdependence and politicization. Contrary, external differentiation, opt-ins by non-member states into EU policies, occurs in highly interdependent policy areas, but with weak politicization. Differentiated integration is not going to vanish on the interdependence keeps growing, additionally the politicization of integration and the interdependent pressures are expected to persist (Schimmelfennig et al., 2015:764, 779-780).

Operationalization

In this section, the concepts of the theoretical framework of both Europeanization, social constructivism and differentiated integration will be operationalized, signifying that some of the concept will be clarified, and it will therefore be more evident how these will contribute to answer the research question. The concepts will be explained through the illustrative figure, made by the researcher herself, at the bottom of the section to clarify the connections between the concepts and make it more comprehensible.

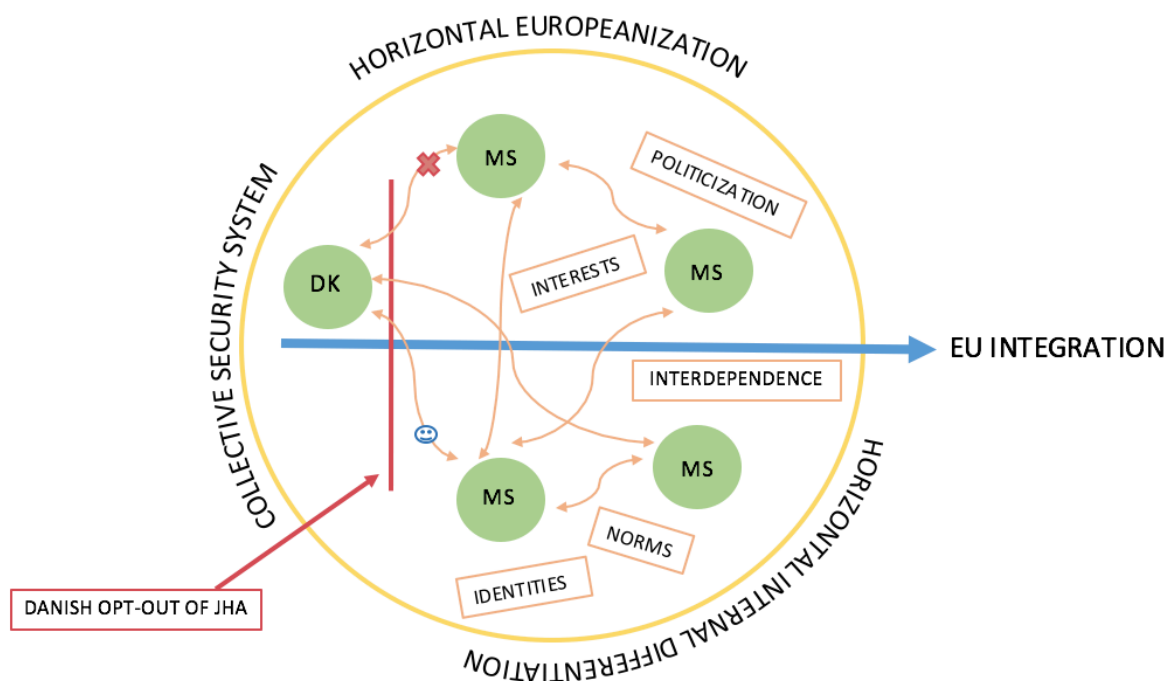
The yellow circle is signifying the EU as a whole, in which the member states (MS) coloured green are socially interacting. Also Denmark (DK) is present in the circle as a specific member state, however Denmark is stuck behind the red wall, functioning as the Danish opt-out of JHA. The red wall is hindering the EU integration on the area, which is illustrated through the blue arrow going to the right. Horizontal Europeanization is a fundamental perspective of the analysis to examine the relationship between the other member states and Denmark, and how and if they influence each other. It is a phenomenon, that is happening inside the circle, and the influencing is illustrated through the orange arrows moving around the circle, showing different member states and Denmark affecting each other.

As Wendt (1994) emphasizes, the EU can be considered as a collective security system, and as Schimmelfennig et al. (2015) presents, the case is expected to be defined as a case of horizontal internal differentiation, for which reason these two also are demonstrated around the yellow circle, signifying that the yellow circle of the EU also involves a collective security system and a case of horizontal internal differentiation in addition to the horizontal Europeanization.

Regarding the social constructivist idea of the EU as a collective security system, it is also within this circle, that the actors (the member states and population within it) socially interact and create their identities and interests. Norms will contribute to emphasize whether there are different perceptions of appropriate behaviour, and identities and national interests will contribute to identify the affiliations, that Denmark has concerning the opt-out. It will also help clarify the different stances, that possibly can be presented through the analysis. Additionally, the concepts of politicization and interdependence are applied to examine the obstacles, and therefore, they are also floating around the yellow circle.

The red cross on one of the influencing-arrows signifies the misfit, which will be used to examine if any misfit is existing between the member states and Denmark. However, normally the misfit is applied in relation to vertical Europeanization, so the analysis will further test whether the concept of misfit is applicable in a case of horizontal Europeanization. Additionally, it will also be able to elaborate a misfit between the EU and Denmark, hence the minor question of top-down Europeanization. On the other hand, the blue smiley demonstrates the convergence between member states.

Obstacles are the focus of the thesis, for which reasons all of the introduced concepts are believed to enhance the examination of the obstacles the differentiated integration entails in the case of Denmark.



INTRODUCTION TO ANALYSIS

This chapter will present an introduction to the subject of the thesis providing a profound overview of relevant necessary background knowledge. It will contain of a clarification of the EU counter-terrorism strategy, and the evolvement of it. Furthermore, it will elaborate the Danish opt-out of JHA, and in addition clarify the Danish stance towards fighting terrorism.

Counter-terrorism in the EU

Prior the terrorist attacks in New York in 2001, most of the Western European states had only limited cooperation within the field of counter-terrorism. Hereafter, when talking about regional cooperation in the policy area, the EU is the only international organization, that has taken significant steps towards a common strategy for fighting terrorism (Rees, 2014:464). The first step towards fighting terrorism happened with TREVI in the 70s, a working group of police and interior officials dealing

with subjects like terrorism, integration and asylum. The TREVI groups were reorganized under the third pillar of EU with the Maastricht Treaty in 1992, where Europol were created, however terrorism was not included in Europol's mandate until 1999 (Coolsaet, 2010:857, 862).

The EU agreed on a common definition of terrorism and a terrorist act in December 2001, which were further narrowed in the Framework Decision on Terrorism in 2002 to a terrorist group to include only structured rather than random groups of individuals (Kirchner & Sperling, 2007:160). Furthermore, the EU established a list of persons, groups and entities, which have been involved in terrorist act and subject to restrictive measures (Council of the EU).

Even though, EU was the first international organization with common definition of terrorism and a list of terrorist offenses and penalties, it was not until the terrorist attack in Madrid in 2004, that it took crucial action and induced a distinct area of European governance, namely the 'European Council Declaration on Combating Terrorism' entailing reinforced cooperation among member states, faster implementation and clear guidelines in order to reach the objectives. With the terror attack in London in 2005, the EU introduced the EU counter-terrorism strategy with the four pillars: Protect, Respond, Prevent and Pursue (Rees, 2014:464).

The pillar of Prevent is a key priority for the EU, since it involves addressing the causes of radicalization and terrorist recruitment. This signifies, that it is a strategy to prevent the evolving trends of foreign-fighters and the utilization of social media by terrorists. The pillar of Protect is about protecting the citizens and the infrastructure, in addition to reduce the vulnerability to terror attacks. This includes securing external borders, improving transport security, protecting strategic targets and reducing the vulnerability of critical infrastructure. For instance, the EU has adopted the directive of passenger name record (PNR) to provide information of passengers of airplanes, because organized crime and terrorist activities often involves international travel. The pillar of Pursue is aiming to hinder the terrorists' capacity to plan and organize, and further to bring the terrorists to justice. There have been focus on strengthening national capabilities, improving cooperation and information exchange between police and judicial authorities, tackling terrorist financing, and divesting the terrorists of their means of support and communication. The last pillar of Respond is to manage and minimize the consequences of a terrorist attack by improving the capabilities to deal with the

aftermath. For instance, it includes EU crisis coordination arrangements and to assist the victims of terrorism (Council of the EU; Council of the EU, 2005).

Europol has been the principal agency for sharing criminal intelligence among the member states, and it has become the source of analytical reports on terrorism, with an important function of coordination of approaches and developing shared knowledge. Complementary, Eurojust developed to decide on complex prosecutions, that cut across several national jurisdictions (Rees, 2014:464). In 2016, the European Counter Terrorism Center (ECTC) were created and is functioning as an operation centre and a hub of expertise to response to terrorist attacks. It provides sharing of intelligence, international cooperation, operational support, and more, and in addition ECTC has specialist teams of analysts to establish a wider EU perspective of counter-terrorism for both operational and strategic goals. The ECTC strengthens Europol and its capabilities to fight terrorism, and is assisting Eurojust and Interpol (Europol, n.d.a.).

Regarding fighting terrorism, the EU is cooperating with third countries, like Africa and the Middle East. Additionally, also the US plays an important role, since the country is a fundamental component of the strategy, and is working closely with Europol and Eurojust as well. The EU also works together with the UN and the Global Counter Terrorism Forum, as well as with the Council of Europe, the OSCE, and more (Council of the EU).

Danish opt-out of JHA

Regarding the case of Denmark, the EU's strategy for countering terrorism comes within a wider subject, namely the Danish opt-out of JHA covering several policy areas, which the member state has had since 1992. A small majority of the Danish population voted 'no' to the Maastricht Treaty in 1992. Since all member states has to approve new treaties, it was necessary to find a solution, which introduced the four Danish opt-outs, among others the opt-out of JHA, cf. The Edinburgh decision. The opt-out of JHA was designed as an exclusion from supranational cooperation, meaning that Denmark can participate as long as the cooperation remained intergovernmental. By various observers, this opt-out was interpreted as a question of preservation of sovereignty (Adler-Nissen, 2015:117; Sørensen, 2015:26).

With the Amsterdam Treaty in 1997 the member states made a significant move towards integration of asylum and immigration policies, border control and civil law. Here the cooperation was defined as AFSJ, and again Denmark resisted. A new title was incorporated to the Treaty, namely title IV TEC, which concerned visas, immigration and other policies related to the free movement of persons, so it covers external borders, asylum, judicial cooperation in civil matters, and more, which Denmark opt-outed from. When some elements of the cooperation turned into supranational, the Danish government had to revise its Maastricht protocol to guarantee that Denmark would remain excepted. Furthermore, Denmark signed the Schengen agreement in 1996, which turned into supranational cooperation with the Amsterdam Treaty. Therefore, to continue respecting the Danish opt-out, a protocol guaranteed that Denmark still was able to participate in Schengen-related measures under the title IV, turning it into a free choice agreement (Adler-Nissen, 2015:117-118; Sørensen, 2015:39). By the other member states, this opt-out were perceived as problematic, since it concerns issues like border, immigration, asylum and justice cooperation, which are complicated and difficult to manage (Adler-Nissen, 2015:122).

However, it is difficult to separate ‘insiders from outsiders’ regarding internal security and justice cooperation. Therefore, Danish ministers and officials are still participating in the Council of Ministers in negotiations about new proposals, even when they have no voting right (ibid.:124). Denmark possessed the EU presidency from January 2012, where one priority was a ‘safe Europe’, which including working on a common asylum policy and measures to fight terrorism, but Denmark can not be participating in initiatives like these because of the opt-out; “*The Danish position is ambiguous to say at least*” (ibid.:134). A contradiction is clearly present between the motivation of cooperation on the area, but at the same time a current motivation to maintain the opt-out. The Danish sovereignty can not be undermined by supranational integration because of the opt-out. UK has opt-out in the same area, but their agreement is different; they can pick and choose as they please, while Denmark only can participate in intergovernmental cooperation (ibid.:132-136). Denmark is becoming more precluded, since more legislation increasingly is changed to supranational. The Treaty of Lisbon eliminates the division between intergovernmental and supranational cooperation, signifying that Denmark increasingly will be excluded from all cooperation on police and criminal matters, since the opt-out prevents Denmark from adopting legislation in almost every part of AFSJ. The more integrated the internal security and justice cooperation becomes, then Denmark’s exclusion will increase (ibid.:142-146).

Referendum in 2015

In December 2015, the Danes were voting about, whether the opt-out of JHA should remain as originally or revised due to Europol being changed to be supranational instead of intergovernmental complicating the Danish access to it. In this case, the Danish opt-out signifies, that even though Europol turns into supranational, the opt-out still counts, since Denmark will not be participating in supranational cooperation. So, Denmark will not give up sovereignty on the area of Europol, giving the EU direct influence to legislate on the police cooperation in the member state. Therefore, Denmark needed to leave the Europol cooperation, making it difficult to fight cross-border crimes. The politicians asked for a free choice arrangement, so that Denmark had the opportunity to opt-in certain proposals if wishing to do so. However, the referendum ended up with 53,1 per cent voting 'no' to the revision (Sørensen, 2015:2-3; Toft, 2015).

New agreement between Denmark and Europol

A special agreement has been made between the Danish government and Europol to create cooperation between the parts, including exchange of information between Denmark and other member states (Justitsministeriet, 2017a). The Danish government adopted legislation in April 2017 based on the agreement about operational and strategic cooperation with Europol. The agreement does not correspond to being a member of Europol, but instead, according to the Ministry of Justice, it is satisfying for Danish Police, which has obtained a satisfactory access to Europol's databases, for instance EIS and QUEST. Denmark do not have direct access to search in the databases, but instead Danish employees in Europol will do the search and registration of information, making in a process of several steps. Furthermore, Denmark still participates in meetings and contributes to the financing, but is now possessing the role of an observer without voting rights (Justitsministeriet, 2017b). However, with the Danish 'no', it can not participate in other parts of the opt-out, for instance Eurojust and PNR. Denmark only achieved an agreement with Europol, and not with Eurojust. With opt-outs like the British and Danish ones from JHA is a classic example of differentiated integration (Kelstrup et al., 2017:185-186; Regeringen, 2017).

Counter-terrorism in Denmark

The terror attacks in New York in 2001 gave rise to a re-evaluation of the Danish legislation regarding an effective effort against terrorism, which induced various legislative initiatives in an anti-terrorism package, which meant modification of among other the criminal law and weapon law. After the terror

attack in London in July 2005, the Danish Parliament created a working group across ministries to provide recommendations in order to improve the effort and preparedness against terrorism even further. This induced the second anti-terrorism packages, which enhanced the effort against terrorism through modifying among others the criminal law and the weapon law once again (Justitsministeriet, 2010:3).

With the first anti-terrorism package, among other things a special terrorism determination was added in the criminal law, and further, the package improved the police's investigation opportunities, for instance introducing that internet and phone companies had to register and save certain relevant information for one year, which could be helpful in police investigation. With the second anti-terrorism package a specific action plan in a case of terrorism were introduced, and contained further enhancement of the police's opportunities to prevent, investigate and combat terror attacks, for instance through information exchange between the PET and FE and others (Justitsministeriet).

CTA is dealing with analysis and evaluation of the terror threat against Denmark, which consists of workers from FE, PET, the Ministry of Foreign Affairs and the Danish Emergency Management Agency. The aim is to prevent and combat threats as early as possible by providing analysis and evaluations on the threats. Once a year, the CTA publishes an evaluation of the terror threat against Denmark, which in 2018 were evaluated to be serious. One of the significant factors are the ISIS, and is primarily because of militant Islamism by both women and men. CTA evaluates that a terror attack in Denmark will be pointed at civil targets, for instance events where lots of people are gathered, together with transport infrastructure and security authorities, as well as Jewish aims. Furthermore, threats from political extremist milieus are limited, but instead threats from people sympathizing with right-wing extremists is increased, and can be pointed at religious minorities, refugees, certain politicians, and more. Additionally, in the report from 2018, the CTA emphasizes that radicalization will remain significant for the terror threats, especially young and socially marginalized people and young refugees can be vulnerable towards radicalization (CTA, 2018:1-4).

The Danish Parliament has secured the Danish police with 1,9 billion Danish Kroner in the years of 2016 to 2019 to obtain the strongest protection against terrorism until now. Furthermore, PET and FE has got new resources to enhance the effort against terrorism, for instance through access to relevant information from flight companies about passengers, and furthermore the instrument of

collecting information of Danish extremists in foreign countries. The stance is furthermore, that Denmark will continue in the international coalition against ISIS, and contribute both civilian and military to fight the organisation (Udenrigsministeriet, 2016).

ANALYSIS

This chapter will contain the analysis of the single case of Denmark. Different point of views will be utilized in order to answer the research question through a profound and dynamic analysis. It will be divided in different sections containing different arguments, in addition a section of discussion.

General concerns regarding intergovernmental cooperation turning supranational

With the step of turning Europol supranational as of May 2017, it induces some concerns in Denmark, despite the agreement, that has been made. The government of Denmark expresses the following: *“In the near future the Europol-cooperation is expected to evolve in a way, that according to the Danish National Police will place Danish police in a substantial inferior position than law enforcement authorities in the countries, that are members of Europol”* (Regeringen, 2017). There has been put emphasis on, that if Denmark do not join the Europol totally and thereby gets access to the different instruments and databases, then the member state will be on the sideline, and will continue, when Europol evolves even more. According to this declaration of the Danish government, a case of horizontal internal differentiation is obviously demonstrated, since a difference between the member states are emphasized with Denmark on the outside. Denmark will be put on the sideline, will be different, and will not have the same influence as the others. It is a result of high interdependence and high politicization in the way, that Denmark are very much dependent of the cooperation and the instruments within Europol in order to combat difficult and cross-bordering delinquencies, which the other member states also are dependent on. This demonstrates the interdependence among member states. Rasmus Nordqvist support, that Denmark is very dependent on the other member states and the international cooperation (Rasmus Nordqvist, 2018), and also Holger K. Nielsen express the importance of close cooperation between national police authorities and the dependence on the system and instruments (Holger K. Nielsen, 2018). On the other side, the high degree of politicization possesses a role in the way, it turns supranational containing more and more instruments and legislation, making it way more comprehensive than before. These instruments are also considered as necessary for fast solution, indicating that the politicization induces issues regarding integration

on the area, since it turns out to be too comprehensive and too much influence from other parts that the national state. According to the theory, it induces a clash between the interdependence and politicization, turning the case into a horizontal internal differentiation in the form of an opt-out of the specific policy area.

Holger K. Nielsen also emphasizes, that it is a concern, *“that a development will happen with Europol, that we then can not be a part of”* (Holger K. Nielsen, 2018). Europol is evolving, and thereby also new instruments are developing, for instance a new instrument is to be able to search directly in the databases from e.g. Smartphones, when the policemen are out in the field. However, this is only accessible for member states who are completely member of Europol – unfortunately for Denmark, this has not been negotiated in regard to the member state’s agreement, so therefore Denmark is again put on the sideline. This has a negative effect on the Danish police, which is expressed by Jan E. Jørgensen: *“it puts Danish policemen in a clearly worse position than foreign policemen”* (Jan E. Jørgensen, 2018). They are supported by Rasmus Nordqvist, who states that, *“when new different tools and methods are created in the Europol-cooperation, then we are challenged in the way, that the Danish Police can not participate on equal terms”* (Rasmus Nordqvist, 2018). It also demonstrates the interdependence within the EU-system, since all the member states are so dependent on access to the important databases and instruments, that has evolved through the years. However, as Denmark perceives supranationalization, and thereby politicization as negative in this policy area, it functions as an obstacle towards further integration. Denmark has, as mentioned, only agreed on intergovernmental cooperation, so therefore the supranationalization hinders the access to important databases.

Rasmus Nordqvist is not doubting; he hopes, that the opt-out of JHA will be abolished, since there are some transnational issues, which needs to be dealt with in community (Interview med Rasmus Nordqvist, 2018). In the same line, Jan E. Jørgensen argues, that *“We need to be as close to the core of the cooperation as possible”*, since he considers the opt-out as aggravating, and that Denmark should be participating in decision-making, that affects the member state (Jan E. Jørgensen, 2018), and Holger K. Nielsen also believes, that *“we should have been completely participating”* (Holger K. Nielsen, 2018). Both Holger K. Nielsen, Jan E. Jørgensen and Rasmus Nordqvist have constructed an identity and an interest within the social construction of the EU, which are positive towards the cooperation. They agree on, that it would be most benefitting for Denmark to be participating in

decisions, that affect the state, and consequently they do not associate any negativity with international cooperation among the member states. Therefore, their interests can be interpreted as constructed positively in relation to the collective system, the EU is, based on an interest in participating on equal terms as the other member states. It further demonstrates the confidence, they have in the EU as a system, believing that it will improve the efficiency of solving certain issues in community. In connection with their positive approaches, it can be interpreted, as they perceive a European identity as part of the collective system of EU, since they are believing in unifying is the best solution.

Also the prime minister of Denmark, Lars Løkke Rasmussen, expresses a concern in regard to the Danish opt-out of JHA: *“The opt-out of JHA. The Danes voted no. The government respects of course. We got an agreement about Europol. But now we are leaving the others to decide the rules. Security (...) something, that we have an interest in being a part of. But in which we to a great extent must watch from the sideline because of the opt-out”* (Statsministeriet, 2018). An agreement with Europol in itself is better than being left outside, but according to him, it will induce a lost of influence in an important policy area like security. He emphasizes it as being an interest of the Danish people to be a part of this area. It is not only his interest, but he presents it more as a unified national interest, that should be reflected through the whole population, also underlined when he makes an effort throughout his speech to put emphasis on the word ‘we’ (ibid.). Here, Lars Løkke Rasmussen is appealing to the norms of the Danish people, since he believes, that it is the appropriate behaviour within the EU to completely be participating in combating security and criminal issues instead of pulling back. He is obvious constructing a positive approach towards further integration within the EU, and it can be interpreted as him trying to calm the population down, arguing that the politicization, this is the supranationalization, does not intervene with the Danish identity and a national state as a whole. He utilizes his position as an important actor, his possibility for agency, to appeal to the population with his authority and knowledge, that he possesses after a lot of years in politics. By doing this, trustworthiness is easier to achieve among the population, which is part of his discourse, since he argues, that it will be better for Denmark to revise the opt-out. Supported by Jan E. Jørgensen, his approach and expressions can be interpreted similarly as an appeal regarding the norms of appropriate behaviour, namely being completely participating is best for all parts. He believes, that the Danish population will realize, that the opt-out of JHA is essential to abolish: *“Why choose something bad, when one can have something, that is way better?”* (Jan E. Jørgensen, 2018).

This indicates, that he, just as Lars Løkke Rasmussen, believes, that it is the best for the state to be a completely member of the EU, and therefore abolish the opt-out of JHA. The two politicians are also from the same political party, the liberal Venstre, who believes in, that it is necessary to be present and participating, where the decisions are made, have power and influence on decisions, that concern the national state of Denmark, rather than leaving the decision-making to the other member states: *“It is self-torture, that we are not participating (...) it lacks sense”*, implying the loss of influence on decisions, that will have affect on the future of both Denmark and the EU as a community (ibid.). It is clear, that he also believes that being a fully member is the appropriate behaviour and decision, in order to have a good and fair position in the decision-making process, and not being left out.

Lars Løkke Rasmussen’s arguments also support the idea of the EU as a case of horizontal internal differentiation because he accentuates the dynamics of being inside and outside the decision-making: *“We are not only under pressure from the world around us. But also from the inside of a new dynamic within the EU. If we do not follow, then we will be losing influence. Maybe not sharply day by day. But over time it will be visible. The development is moving fast on areas, where we have opt-outs. In which we therefore do not participate completely”* (Statsministeriet, 2018). This signifies, that the Danish population choosing to stay out of certain policy areas, will entail obstacles in the future due to the EU developing rapidly. The fact that Denmark is differentiated in relation to the other member states, will make the state minor and less important, with less influence, that the member state could have, if being a fully participating member. In general, he is really focusing on the interdependence between the member states, and underscores that, there is a need for joint action in order to combat larger issues. It is an ‘we are all in this together’-approach, which demonstrates and appeal to the norms and values of the Danish people, that we should help each other, instead of being on the sideline, wanting to preserve sovereignty rather than acting towards transnational issues. In this regard, he is questioning the Danish desire of preserving sovereignty on own hands; *“are we in reality more sovereign, when were are open towards the world and actively searching for influence on the decision, that affects ourselves?”* (ibid.). This matches the theoretical idea of interdependence as the driver for integration, since he emphasizes the need for cooperation and a joint community. The member states are interdependent, especially when talking about border-crossing issues, that needs cooperation to be dealt with. Sovereignty is part of the politicization notion, since it also concerns giving up a certain degree of sovereignty, which is what he emphasizes here as an obstacle for the

Danes. This confirms the idea of high interdependence and high politicization clashing and turning into horizontal internal differentiation.

Contrary to the three politicians interviewed and the official speech from the prime minister, the interviewed politician Kenneth Kristensen Berth does not really emphasize any kind of concern like the others. He is not in doubt about the supranationalization of Europol in regards to Danish Police: *“It does not limit anything (...) it does not have any practical impact”* (Kenneth Kristensen Berth, 2018).

Transnational security issues

With Europol, and also Eurojust, it is easier for the member states to solve delinquencies, that goes across borders, with for instance criminal person, that are wanted in another state, it is then easier to search and catch the wanted. Especially with more serious crimes involving several member states, Europol functions as the link between with teams of investigation to enhance the effort. However, Denmark will be put on the sideline, and meet difficulties when the state encounter an issue with transnational security issues.

According to Rasmus Nordqvist, the EU is facing some challenges, among other things, transnational terrorism, where international cooperation is necessary to combat it. He enhances, that *“we have some common challenges, that are transnational delinquencies, where Europol of course is a completely decisive element in the cooperation, that we then have about fighting it, and there it will obviously challenge, when we are not a fully-fledged participant in Europol,”* and further, that there exists a *“more complex global situation with different concentrations of power, where we as separate countries do not have anything, but where we as community have a say”* (Rasmus Nordqvist, 2018). He emphasizes the interdependence between the member states, and demonstrates an approach of the need of community in serious security issues, like for instance terrorism. After the terror attacks in New York in 2001, the EU took several important steps to combat terrorism jointly, since it was realized, that the terrorist attacks across the world were increasing. It turned out to be a serious transnational security threat within the EU too, after the terrorist attacks in Madrid and London. This reflects the interdependence as a driver for integration, since it induced several initiatives in order to combat terrorism. In this regard, there is a need for common instruments, common definition, and just a common strategy to combat terrorism, which in the beginning of 00s increased rapidly due to

several serious attacks across Europe – and it has not stopped since then. Therefore, further and further integration on the security area is on the decision-making agenda, in order to combat the threat of terrorism for real. It demonstrates a serious interdependence between the member states, so that every member state eliminates the threats or at least decrease the risk of having terrorist attacks in the state.

Countering terrorism has definitely increased the interdependence, inducing all the instruments and definitions within the EU strategy. However, the supranationalization of Europol has a significance in this regard, because Denmark will have slower access, than the other member states – which Denmark just has to accept, since this kind of access is better than no access. According to Rasmus Nordqvist, it obviously complicates Denmark, when it is not totally participating in Europol, which is decisive in combating terrorism. He emphasizes, that the member states, and especially Denmark is dependent on the Europol-system, because *“we are facing some challenges, that do not have a passport, that slips across land borders. We need to respond to it, and we can only do that jointly”* (Rasmus Nordqvist, 2018). He is appealing to the norms, since he considers it as appropriate behaviour to deal with these transnational security issues in collaboration with the other member states, rather than standing alone with a serious issue like terrorism. Again, the appeal is constructed positively, since he considers the opt-out as irrational, and that it should be further discussed and according to him, hopefully abolished. Rasmus Nordqvist constructs a positive identity and interest in this regard, since he emphasizes an approach, enhancing the feeling of, if hands are joined, then the member states can bear more. This is referring to countering terrorism as transnational and difficult to prevent, implying that it is easier to pull it together, rather than standing on the side as a single country. Therefore, it has also induced more cooperation and more instruments on the policy area, which are helping to address the problem, hence the interdependence as a driver for integration. According to him, the need for more international cooperation in order to fight the crimes, entails the binding cooperation, inducing further integration through EU-laws and new instruments, and therefore a more binding cooperation between the member states. He believes, that *“more and more challenges are global, and therefore, they need to be solved through transnational cooperation”* (ibid.). This can be supported by the prime minister, who emphasizes, that there are certain challenges, that the EU is facing, among other things terrorism, and he further enhanced that it is *“obvious, that no member states can solve the challenges alone”* (Statsministeriet, 2015b), hence the interdependence within the EU regarding a serious policy area like JHA. Before the referendum in

2015, the government stated that “Denmark should continuously be participating in the European police-cooperation. It is important to all Danes safety and security (...) Denmark should remain part of the strong cooperation between the European prosecuting authorities in Eurojust (...)” (Statsministeriet, 2015a), implying the importance of the cooperation, enhancing that is decisive for the state.

Additionally, Holger K. Nielsen acknowledges terrorism as a problem across all European borders, that needs to be dealt with jointly rather than separately; *“It is a common European problem. Consequently, terrorism is border-crossing and demand, that if terrorism shall be combated, then it demands international cooperation (...) it requests further necessity of European collaboration”* (Holger K. Nielsen, 2018). As mentioned, Holger K. Nielsen emphasizes the existing rational arguments for abolishing the opt-out of JHA, since he believes, that the opt-out is not very rational, hence, convergence would be preferable regarding cooperating on security issues like terrorism. He unifies the member states, and appeals the norm of appropriate behaviour, since he emphasizes that terrorism is a common European problem, which demand international cooperation. It is the appropriate behaviour to participate completely in order to jointly stand together and fight terrorism and other organized transnational crimes. Additionally, he explains that there are differences in the national member states’ identity and culture, but it is still possible to cooperate on the basis of these without removing them (ibid.) This signifies, that Holger K. Nielsen also acknowledges the interdependence regarding this security issues, when identifying it as a transnational and common problem, that demands joint action.

The politicians construct the Danish identity and interests in a positive way in regards to the social structure of the EU, appealing to the norm that ‘we are stronger together’. It demonstrates a desire for joint solution and cooperation, instead of leaving all the member states to themselves when encountering serious security threats like terrorism. It enhances the idea of acting jointly instead of individually, implying a common European identity and interest in fighting terrorism. The identity and interest of solving the problem together and acting together, constructed by these politicians, can explain their positive discourse towards abolishing the opt-out. Regarding the need for international cooperation in an area like security, especially when talking about transnational security threats like terrorism, the discourses of Rasmus Nordqvist, Holger K. Nielsen and Jan E. Jørgensen, additionally, also the discourse of the speech by the prime minister, are with all things considered very positive

towards the cooperation, and enhances it as the best solution for Denmark as an international actor, who also are affected by the security threat. They are emphasizing joint action, and thereby abolishment of the opt-out, so the member states can combat together, which demonstrates a shared understanding of what is considered as appropriate behaviour.

On the contrary, Kenneth Kristensen Berth demonstrates another approach to what the other politicians consider as a transnational security issue. He is not really positive towards the EU strategy regarding countering terrorism: *“EU’s strategy regarding countering terrorism still is characterized by flat shoes from Elizabeth Arnold from the social-liberal in the 80s, that is, there is an approach that if you are just friendly to those, who arrive, then they will not become terrorists (...) sometimes it is like turning back time 30 years”* (Kenneth Kristensen Berth, 2018), which indicates that he has more confidence to the Danish government itself instead of cooperation on the area. This demonstrates the idea of politicization hindering further integration, since it is the international cooperative obligations that is scaring both him and the Danish people. *“It is a desire to preserve judicial and immigration political areas on our own hands (...) It would be totally subversive for the popular support to EU, consequently one can just as well put that project in the grave, people will absolutely not accept, that some bureaucrats are sitting in Bruxelles (...) simply it does not have any appetite among the population”* (ibid.). Again, the question of sovereignty matters, and he demonstrates that the trust lies with the national states rather than the EU. He states an opinion, that seems rather negative towards further EU integration, which is in accordance with his political party. *“One does not wish to have confidence in that EU can handle more jobs (...) EU has disregarded over and over, and one does not have any wish to hand over more sovereignty the EU (...) one feels best about leaving the decision-making to the politicians on Christiansborg”* (ibid.). According to him, this thing of keeping sovereignty and important policy areas on own hands, is deeply rooted in Danish identity. When some factors *“has a certain undercurrent in some countries, then it has something to do with things, that are deeply ingrained in the populations’ cultures and histories.”* (ibid.). He believes, that the appropriate behaviour is to uphold the Danish values, history and identity, and not let anything have influence on it, including that sovereignty should be reserved to the national states, indicating that his confidence belongs to the national state, rather than the EU. When some factor *“has a certain undercurrent in some countries, then it has something to do with things, that are deeply ingrained in the populations’ cultures and histories”* (ibid.).

Like the other politicians utilize the social structure of the EU to create common solutions and identities based on positive attitudes, Kenneth Kristensen Berth is more dismissive towards further integration and cooperation on the policy area. Instead of promoting those kind of factors, he promotes the national state and its interests, and enhances the differences more than similarities. According to him, it is important to recognize the differences in history and values, since it has an important role when constructing the Danish identity, and therefore, the international and common identity should not take over. It has created the interest of preserving the sovereignty of Denmark, also within the EU. His perception of norms and appropriate behaviour can be illustrated with the importance of keeping the Danish identity as Danish and not European, meaning that he considers sovereignty as a norm rather than the willingness to help and cooperate in security matters. The identity and interest has been created through a negative discourse focusing on independence and self-determination, since Kenneth Kristensen Berth understand the Danish interest defined as a part of their nationality and identity, which reflects these important factors, demonstrating what he believes is the best for Denmark and it's opt-out of JHA. At the same time, he does not acknowledge the interdependence, like the other politicians do. This is also demonstrated through is focus on the national state as an independent actor, and the fact, that he does not believe, that we are so dependent on Europol and the instruments within it. On the other hand, politicization is obviously a factor, that makes him hesitate, since he is not really supporting the idea of further integration. He is also very determined and convinced about possibly abolishing the opt-out; he simply answered "*No, I do not think so*", when he was asked the question of whether or not he believes the opt-out will be voted for in a new referendum. In the same line, he believes, "*that the probability of EU as an entirety will disintegrate actually is bigger than the Danes would end up abolishing the opt-out of JHA*" (ibid.), hence he does not believe that convergence will be achieved in this area. It illustrates a self-confident, that he really deeply believes, that it will not happen, related to his belief of what is best for Denmark, hence the appropriate behaviour of keeping these issues on national state level. Furthermore, his approach confirms, that there is no shared understanding of appropriate behaviour within the EU among the Danish politicians in total.

The emphasis on terrorism as a transnational security issue among the EU member states can reflect the horizontal Europeanization, since all member states has the same goal, namely, to combat and decrease the amount of terrorist attacks across Europe. In the ESS from 2003, terrorism was identified as a key threat (European Union, 2003), and as Special Prosecutor, Kim Kristian Kristensen,

emphasizes, *“there is reasonably general consensus in Europe, which kind of delinquencies we first and foremost desire to combat. I think, that we have the same interest in fighting terrorism, like the other countries have”* (Kim Kristian Kristensen, 2018). Thus, his statement can be interpreted, as convergence exists in the approaches and goals among member states in the way, that the objects are the same, so in that way it would make sense to cooperate.

Practical obstacles

The politicians have provided the analysis with political perspectives on the obstacles regarding this subject, however, a more practical perspective will provide a more operative perspective based on the Police authorities. Special prosecutor, Kim Kristian Kristensen contributes with a practical perspective towards important cooperation, like Europol, turns supranational, and enhances the difficulties, the police men and the prosecuting authority can face because of this. Now, Denmark only has the position of an observer, for which reason it will not be as easy in obtain information as before, since there is no direct access to the databases. He presents the new instrument of direct search from smartphone out in the field, which Denmark will not be able to utilize. He emphasizes, that especially in a case related to a terrorist attack, then there is a need for rapidly to obtain information. *“That is of course a problem now given that, one is forced to utilize Danish liaison officers (...) “if one is out in the field and suddenly needs to gather some information, then you can easily imagine, that it can make the process very heavy in reality”* (Kim Kristian Kristensen, 2018).

Kim Kristian Kristensen explains, that practically speaking, the new indirect access to the databases has not had any specific consequences, adding that it is not something, that *“we have been affected by so far actually”*, however, he adds, that *“it is the general fear (...) that the indirect access can create some problems, and that is also very feasible”* (Kim Kristian Kristensen, 2018). He identifies Europol as a possible instrument kind of a ‘wrecking ball’², if the case has reached a deadlock. However, it will be complicated, since Denmark does not have the same access anymore. He defines it as *“a very heavy bureaucratic process to figure out”* (ibid.).

He also displays the concern of loss of influence due to the position of observer, and now without influence in the decision-making. *“We are a bit on the sideline, and observe what is happening (...)*

² Kim Kristian Kristensen utilizes the Danish word ‘murbrækker’ – which signifies, that an institution can provide new developments in a case, that has gotten stuck

one can fear, that we all the time will be on back edge, and then a new process has to be initiated, and then time will pass, where we are not on same level as the others (...) It is of course a concern, that we lag behind” (ibid.). His choice of words here would help him in utilizing his agency in a public discourse, since ‘lagging behind’ and ‘be on back edge’ is not quite positively loaded. He expresses his concern as being a member state on the sideline in a case of horizontal internal differentiation, where Denmark loses its influence in an area, which he considers as important. Furthermore, he enhances the interdependence, since Denmark is very much dependent on certain instruments, which now are made more difficult to attain. According to him, there are no huge difference in combating delinquencies among the member states, so convergence in this area is obviously preferable according to him, since it would make his and the policemen’s job easier, faster and more efficient. However, convergence has not been achieved, as the Danes voted ‘no’.

Despite of Kim Kristian Kristensen’s positive attitude towards the indirect access and fast access through search on smartphone, which Denmark unfortunately will not have access too, Kenneth Kristensen Berth is not as impressed. He considers it as not really utilized among the policemen, and therefore it will not signify anything in a practical world. He believes, that when there are no one enhancing problems about it, then there is no problem (Kenneth Kristensen Berth, 2018). As seen earlier in the analysis, Kenneth Kristensen Berth is more focused on the national state, and its own interest, rather than unifying with the EU. This also reflect, that he definitely does not have any concern of Denmark being outside of cooperation, which some of the other politicians considers as very important instruments for fighting e.g. transnational security issues like terrorism. He furthermore emphasizes, that Denmark is not the only member state with exceptions, which therefore does not concern him at all. His negative attitude towards giving up sovereignty and cooperating as a fully member of Europol, and the EU as an entirety, is also reflected in the party, he is representing, namely the Danish People’s Party, who do represent a critical opinion towards being a member of the EU (Dansk Folkeparti). Again, a negative approach towards EU is reflected through the discourse of Kenneth Kristensen Berth. It can be interpreted as opposition towards being a member, and that according to his perception, Denmark are not so affected by supranationalization of Europol, therefore not dependent on the instruments and definitions within it, signifying, that according to him, Denmark will be fine dealing with security threats, like terrorism, on their own.

As a practitioner, who is dealing with the opt-out of JHA on an operative and practical level, Kim Kristian Kristensen was surprised of the result of the referendum in 2015: *“I was surprised, that it turned out as a ‘no’, because I thought, that there were so extra many benefits, that were outlined, but I must say, that to a degree it turned out as focusing on overall EU-politics (...) it came into being about the big question of surrender of sovereignty”* (Kim Kristian Kristensen, 2018). This can be interpreted, as Kim Kristian Kristensen believes, that it should a Danish interest to be a fully participating member of Europol, since it would help so much with different instruments, as he refers to as benefits. It would help the policemen, who then would be able to keep the direct search in the databases if standing in the field with a person, where there is a need for rapidly obtaining information about the person. The policemen would have been able to just use their smartphone, put it on top of a passport, and then the information would be visible on the smartphone fast, which was explained in details by Jan E. Jørgensen (Jan E. Jørgensen, 2018). It will reduce the effectivity of investigation in Denmark, where the other member states have the benefits of Europol. Talking about transnational security issues, this can affect the other member states as well, since Denmark will lack behind, and will not be able to provide information as fast as the other member states are able to do. It demonstrates the horizontal internal differentiation, induced by high interdependence regarding the instruments and databases, and the politicization in regard to the deeper integration as obstacle. The case of horizontal internal differentiation is definitely present with the Danish opt-out, with the state put on the sideline with the status of observer and without influence.

Kim Kristian Kristensen’s approach towards EU cooperation on the area of JHA, especially Europol and Eurojust, can be interpreted as an interest constructed positively towards the collective system, that the EU is in this regard. His opinions can be interpreted as having common definitions, instruments, forces, etc., are better and more efficient in order to respond to certain transnational security issues. He is specialized in organized crime under which terrorism belong to; organized crimes are often spread across borders, for which reason the opt-out of JHA will hinder solving these types of crimes quickly.

Besides Europol, also Eurojust will turn into a supranational cooperation element, for which reason Denmark has to negotiate a new and separate agreement from the Europol agreement. However, this agreement is not believed to be easy to achieve, according to the government: *“It will be difficult to achieve absolute Danish association to PNR and the new Eurojust”* (Regeringen, 2017), however,

the government work actively to obtain the closest association to Eurojust as possible. Again, Denmark will be put on the sideline, demonstrating the case of horizontal internal differentiation, where politicization and the supra nationalization complicate and hinder the will to further integrate, or more exactly, in the Danish case, revise the opt-out. Regarding the Joint Investigation Teams (JITs), which are established by Europol with a certain purpose (Europol, n.d.b.), “*Denmark is obliged and has the opportunity (...) to assist*” (Kim Kristian Kristensen, 2018), implying that are different rules of where Denmark is able to participate, so in this particular case, Denmark is not put on the sideline.

Furthermore, Denmark will not be affected by the directive on combating terrorism (EU) 2017/541 because of the opt-out of JHA. Denmark can make similar definitions, etc., that the directive features. However, there are one clause in the new directive, that will affect the Danish population, namely article 26³, that involves cooperation between the affected member states in case of terrorism with the purpose of ensure victims from another member state, than the one where it happens, to have access to information of rights, accessible helplines and compensation in the member state, where the terror were committed (Council of the EU & European Parliament, 2017; Justitsministeriet, 2018). This signifies, that Danes, who have been victims for terror attack in another member state, will not have access to the rights, etc., as other victims. The supranationalization of Eurojust, and Europol, involving the directive on combating terrorism, the PNR and others, it demonstrates that the politicization is obstructing the integration, since Denmark will not be able to be part of the cooperation. It clashes with the Danish interest, which has been shown in the referendum in 2015, and therefore the opt-out remains as a hindering factor.

In order to believe in abolishment of the opt-out, Kim Kristian Kristensen underlines, that he believes, that there will be a need for a concrete case, for instance a case concerning terrorism, “*where it is really brought to the head, and where we will face some big problems because of the opt-out of JHA (...) There is a need for some extraordinary situation, if one shall realize that perhaps it is not the*

³ “*Member States concerned should take appropriate action to facilitate cooperation with each other in order to ensure that victims of terrorism who are residents of a Member State other than that where the terrorist offence was committed, have effective access to such information. Moreover, the Member States should ensure that victims of terrorism have access to long-term support services in the Member State of their residence, even if the terrorist offence took place in another Member State*” (Council of the EU & European Parliament, 2017)

optimum solution we have” (Kim Kristian Kristensen, 2018). Consequently, this can be interpreted as he believes, that the majority of the population (hence, the 53,1 per cent who voted ‘no’ in 2015) perceives the Danish interest and identity as more individually capable in handling these kind of issues, and to open their eyes, there is need for an extreme case of a terrorist attack. For now, that part of the population can be understood as agreeing with Kenneth Kristensen Berth, that it is the appropriate behaviour to keep the policy area on own hands.

All things considered, Kim Kristian Kristensen is positive towards cooperation across borders, and appeals to norms by enhancing, that the way to solve certain security issues, which in some case are transnational, then there is a need for international cooperation. He has constructed an identity positive towards being a fully participating member of the EU, since he considers a jointly stronger as being separate member states. It demonstrates an approach with is highly positive, and as a practitioner, who knows the obstacles in the field of working with the delimitations, that the opt-out entails, one should take his experiences seriously. He symbolizes an actor of credibility in this regard, since he is one of the authorities, which are affected practically by the opt-out. Consequently, it can be interpreted, that if he went out publically with his presentation of how it affects the police- and prosecuting authorities, then he could utilize his agency as a tool in order to appeal for the norms of the Danes, that this hinders solving serious delinquencies, which probably would have an effect on the population and its opinion towards further integration in this area.

Politicization as an obstacle

The debate of sovereignty and surrender of this have been brought up in former sections of the analysis, reflecting different opinions and approaches towards it. Politicization is defined as a factor, that hinders integration, which is obviously part of the Danish opt-out; in this case, giving up sovereignty in the area of JHA seems to be a factor, that hinders the Danes to approve integration.

According to Jan E. Jørgensen, the word of sovereignty is something that makes the population hesitate, and especially when the topic about giving up sovereignty is raised. That is often, what is happening in EU-context with supranationalization of several important elements within the JHA collaboration. This can demonstrate the theoretical idea of differentiated integration, namely that politicization hinders further integration, so that the Danish population does not desire to hand over some sovereignty to a supranational institution like the EU, is hindering the revision of the opt-out.

Jan E. Jørgensen believes, that the population forgets, that EU actually is all about giving up a certain degree of sovereignty in order to have a trustful cooperation, because *“every community implies of course giving up sovereignty”* (Jan E. Jørgensen, 2018). He points out several international collaborations, for instance, FN and EU, but he also enhances that a family also is sovereignty surrender. It is all about cooperation with other people, then it implies, that one can have it one’s way all the time, because there is a need for democratic decisions to be made, and that is what the population has forgotten, when the question of sovereignty is raised for discussion (ibid.). This is supported by Rasmus Nordqvist, who emphasizes, that one of the unique factors making the EU a strong institution, which has been obtained through surrendering sovereignty, is the option of sanctions, which is only possible due to supranational cooperation (Rasmus Nordqvist, 2018). In addition, Holger K. Nielsen and Kenneth Kristensen Berth accentuate, that politicization and binding cooperation is the purpose of creating supranational institutions, like the EU, so therefore, according to them, this should not be hindering further integration in the case of Denmark, since it is the purpose of being a member of the EU: *“the purpose with supranational institutions, that is, that you shall obtain a deeper integration”* (Holger K. Nielsen), *“the EU is a political project (...) driven by political ideas”* (Kenneth Kristensen Berth, 2018).

EU is evolving, which signifies that new legislation will develop, further integration on policy areas will happen, inducing more supranational cooperation. This is what has happened with Europol, and will happen to Eurojust as well. Regarding security issues and the area of JHA, Rasmus Nordqvist believes, that the reason for supranationalization of Europol in the beginning is, that there are more and more challenges, that needs to be dealt with in a common approach through cooperation among different member states. However, Denmark stands outside, losing influence in this matter: *“More and more challenges are global, and therefore they need to be solved through a transnational cooperation, and that we have to pool our sovereignty, so we actually have some influence. That is exactly, what we do not have, when we are standing outside”* (Rasmus Nordqvist, 2018). He emphasizes the interdependence between everyone, and there is a serious need for cooperation on transnational security issues, like terrorism is. Therefore, instead of pulling back, like Denmark is doing through the ‘no’ towards revision of opt-out, then Denmark should be pooling the sovereignty to achieve influence. His interest of this can be interpreted as constructed positively towards the EU, since he believes, that together in the EU as an entirety, various security threats can be handled.

According to Kim Kristian Kristensen, *“the Danes do not mind an efficient police collaboration, an efficient collaboration between prosecuting authorities around Europe, that is not the problem, but it is as soon as it has a touch of some surrender of sovereignty, then many people bridle⁴”* (Kim Kristian Kristensen, 2018), supporting the fact, that sovereignty is key factor hindering cooperation on this area. Also history might possess a role as an obstacle regarding politicization, which Kenneth Kristensen Berth emphasizes through elaborating the differences between the member states: *“The countries are just different and it has a lot to do with their history and culture, their economy, there are so many thing, that come into play in how one sees the world, regards the world”* (Kenneth Kristensen Berth, 2018). In this case, it can be interpreted, that for instance the previous wars can have a significance, and therefore, there is no desire to give up sovereignty on security and defence policies, just in case, a third World War could happen. Of course, then the EU would stand together due to the binding supranational cooperation, however, according to him, it can be understood as not counting for a strong institution. For instance, regarding wars and history, he enhances Hungary and its history, who *“has been in constant war with the Ottoman Empire”*, and on contrary *“when Sweden is so open, as Sweden is, then it is because it is many hundred years ago, that Sweden has been in war (...) they have also been impartial in two World Wars”* (ibid.). It demonstrates, that he believes, that history counts as a key factor when talking about supranational cooperation in an area of security, and in addition also defence.

The identity and interest regarding politicization have been constructed and affected by the structures of the EU, regarding the furthering of the integration with the aim of standing stronger as a union, which is considered as appropriate behaviour, according to Rasmus Nordqvist, Holger K. Nielsen and Jan E. Jørgensen, in addition also Kim Kristian Kristensen. Their promotion of further integration being a positive thing and their position towards it, can be understood as a result of a strong European identity, when identifying themselves and the state as a part of the EU, and the understanding of norms and values related to the EU, advancing cooperation and common solutions. Kenneth Kristensen Berth, on the other side, demonstrates the negative approach, believing in the national state as strong on its own.

⁴ Kim Kristian Kristensen utilizes the Danish word “stejle”, which signifies a horse for instance on back leg. Figuratively, it can signify for instance that people are unpleasantly surprised or reacts with defiance, which is the case here.

Further integration on this area could be in relation to the notion of a European Security Union, an idea initiated by the President of the Commission Jean Claude Juncker, with the purpose *“to ensure an effective EU response to terrorism and security threats in the European Union”* (European Commission, 2017b). In this case, Denmark is participating in the debates and in the decision-making in the European Council when discussing the direction for the Security Union, however, Danish participation in it depends on whether the proposal is a part of Schengen, meaning, that Denmark can participate on an international basis, or if it is related to police- and judicial cooperation, where the opt-out will count and hinder participation. If the latter, then Denmark has to negotiate an opt-in system or a special agreement, like the one achieved with Europol (Europeaudvalget og Retsudvalget, 2016). Rasmus Nordqvist is sure, that the supranationalization of Europol is just the beginning; *“it will develop to become more and more supranational, because it is the way, the challenges can be solved (...) If we do not have a settlement with any of it, then it will definitely complicate our membership”*, stated with emphasis on, that it definitely will further develop (Rasmus Nordqvist, 2018). It also implies, the fact that politicization hinders the integration, since it is the supra nationalization of the cooperation, that obstructs the Danish participation. It also emphasizes politicization will stay present and function as an obstacle in the future, when as he believes, more legislation will be supranational.

Discussion

This section will be the discussion of the analysis, consisting of several subsections enhancing different perspectives in. It will primarily be based on the analysis above.

Possible reasons for opt-out and the consequences nowadays

Through the analysis, different opinions about the opt-out and its obstacle have been elaborated and interpreted. However, through the interviews, the interviewees do not separate the reasons for the opt-out from the obstacles. They are arguing in both parts, for which reason this section will discuss the reasons for the opt-out and the consequences based on the statements from the interviewees.

Jan E. Jørgensen brings up the Danish Constitution as a reason for more debate among the population, which has resulted in the opt-out, since the Danish Constitution puts more political questions out for public debate and referendums. This is not seen as much in the other member states, making it easier for politicians in the given member state to adopt EU-legislation, when it is not put out for public opinion. It makes Denmark stand out with the more democratic way of adopting legislation, however,

according to him, unfortunately, it is hindering further integration. He thinks, that the public debates on heavy politics and Danish referendums on the heavy politics are obstructing further integration: “...we get some debates, which many can have problem to cope with, and then it is easier to say no on the basis of some idea that we know what we have, but we do not know what we get, so it is safest to stick to the already existing, that we know, and then say no to the new” (Jan E. Jørgensen, 2018). The Danish Constitution is an important democratic element, which is a fundamental part of Danish history, and therefore Danish identity. He acknowledges the norms of appropriate behaviour, however, he also believes that the fact that the Constitution involves the population in the degree, it does, it hinders cooperating completely, because the population, according to him, considers the debates as too complex (ibid.).

Holger K. Nielsen believes, that factors like history, culture and identity had a significance regarding the Danish referendum in 2015, however, he underscores, that it was the no-parties utilizing those kind of factors to hinder the referendum to succeed with a yes. The utilization of these social factors “is *unfactual*” (Holger K. Nielsen, 2018). He further enhances, that the reason for the Danish ‘no’ in 2015 was partly due to mistrust towards the Danish Politicians and partly due to the European cooperation - like a concern of what could happen subsequent (ibid.). In relation to the complex debates, emphasized by Jan E. Jørgensen, it can be interpreted, that the procedure and heavy politics are too complex as well, that unfortunately accentuates mistrust both towards the EU and the Danish politicians. So even though, there is a very democratic element of the Constitution involving the population in all kind of political matters – also the heavy EU politics – it hinders the cooperation, according to Holger K. Nielsen, although he is positive towards revising the opt-out. He took part in formulating it in 1992, and there were some ambitions about a European FBI and criminal law system, which the Danes did not desire to be part of. Though, it did not end up like that, and therefore, his approach is appealing to the norms, that now it has not turned out like that, Denmark should be part of it, because there are “*very rational arguments for the cooperation, and therefore, one will realize, that it is not very rational to have*” (ibid.).

Also Rasmus Nordqvist blames the Danish politicians, and associates the reason for the ‘no’ in 2015 with “*unsuccessful communication and a bad agreement, that some of the parties had made together about how we should adopt the judicial cooperation in the EU*” (Rasmus Nordqvist, 2018). On the contrary, he does not believe that social factors like history and identity has a great role in the result

of the referendum, but all the responsibility is on the contracting parties debating on certain elements, which was considered as unsecure by the population, making what is really happening opaque for the people (ibid.). Consequently, mistrust to politicians, complex political systems and debates and miscommunication have had a role in this regard, which demonstrate a Danish identity of vigilance and considerate when talking about important and significant decisions, that has to be made, for instance the referendum in 2015. The Danes are not just going to jump in on cooperation, that might seem rational, but where some elements have been presented obscured.

While the majority of the politicians are rather positive towards the revision of the opt-out and in general the EU, Kenneth Kristensen Berth has another approach. He is more focused on the differences in the cultures and histories, which is not directly easy to unify: *“I think, that one must state, that there is a lot of different European countries with totally different starting points, driven by their history and other relationships”* (Kenneth Kristensen Berth, 2018). He points out, that there are some national states, who have a say when talking about international cooperation, and therefore, he believes that there is a long way to come before a wish of surrendering sovereignty for real to supranational European Police. It is rooted in the Danish identity and the perception of norms not to give up sovereignty on security matters. He believes, that there are so different approaches to different things regarding drive the Police, for instance level of penalties, that it will be difficult to obtain an agreed procedure, hence convergence (ibid.). He definitely demonstrates a negative approach towards the EU, and demonstrates mistrust towards the whole system and the EU politicians: *“One does not wish to have confidence in that EU can handle more jobs (...) EU has disregarded over and over, and one does not have any wish to hand over more sovereignty the EU (...) one feels best about leaving the decision-making to the politicians on Christiansborg”* (ibid.).

There exist some consequences of these issues, enhanced by the politicians. There is not agreed approach to how to deal with the EU and the politics herein, for which reason the debate gets complex, and some political areas might be unclear for the population where to stand towards it. As Rasmus Nordqvist accentuates, some part of the complex debates is unfortunate too opaque for the population, which makes them hesitate. The mistrust for some towards the Danish politicians, but also towards the EU-system have already emerged, since 1992 and again with the referendum in 2015. Some of the same factors might play a role in a new referendum, which might happen, since several of the politicians are very open towards revising the opt-out of JHA. Deeper factors like history and identity,

as Kenneth Kristensen Berth enhances, will still have a role in the debate, since it appeals to the identity of the Danish population to preserve their own identity and maintain sovereignty rather than giving up part of it.

How can the obstacles reflect broader issues within the EU?

The analysis demonstrates different approaches among the politicians and the special prosecutor, implying the different ideas of identity, interests and appropriate behaviour. It can be argued, that the social factors differ from person to person. However, when looking at a larger collective system, like the EU, one must say, that there must be distinct perceptions of different things, inducing negotiations on policy areas. Different perceptions were also illustrated through the interview-data, where some had positive attitudes towards EU cooperation turning supranational in the case of Europol, and others had negative attitude. Some has a shared understanding of the appropriate behaviour, that is considers as being complete member of the EU and that joint action is the solution, while others disagree.

The key factor, that they emphasize as obstructing the integration, is the surrender of sovereignty as a politicization element, that complicates the integration, as if the Danish population do not have the confidence in the EU and the member states. Regarding politicization as obstacle in the area of JHA, it is not present the same way in other member states, since Denmark has the unique opt-out, but one can argue, that Ireland and the UK has the same obstacles, since they chose to opt-out from the same policy area, though with another type of protocol. The sovereignty also matters in the other member states, because they choose to get exception rather than direct EU influence, which were emphasized by Kenneth Kristensen Berth. In this regard, one can argue, that the other member states, e.g. if some member state has an exception from an energy or environment policy, it is because they do not have the confidence in the EU legislation, or that they simply just do not agree in the EU legislation, like the case with Denmark and the policy area of JHA. This can also be related to the social factors, since it indicates, that to each member states, there are different certain vulnerable policy areas, which they choose to get exception from due to certain factors of history, culture and identity.

The analysis indicates, that the EU is a complex system with a lot of different member states, with different backgrounds of history, culture and identities, that has been unified in the cooperation. Therefore, there also exists a lot of different perceptions, that has to converge in order to approve the supranational cooperation. It has happened to a lot of policy areas, but as the Danish opt-out

demonstrates, the convergence has not quite happened here. It is also complex in the way, that some cooperation is intergovernmental, some is supranational. The EU system contains of complex decision-making process with different institutions with different purposes – it is difficult to keep track of the policy-making. Also, as mentioned in the analysis, some of the processes might be to opaque for the populations. There is a lot of different elements of legislation, that is connected cross borders, making everything within the EU system very complex, and indeed, very interdependent as well.

Regarding the interdependence between the member states, it is self-evident, that it is the case, since the EU has turned out to be supranational in so many areas, that it is now. The interdependence demonstrates the driving force for integration. The EU started out as something completely different than now, demonstrating that further and further integration has happened during the years – and it is based on the interdependence between the member states. If evolving one institution, like for instance Europol, the member states are committing themselves to cooperation, thereby giving up certain degree of sovereignty in order to make it succeed. It is the same with all the different databases and instruments within Europol, it has been created in order to make the cooperation easier, however, it would not have been able to create without consent from the member states.

Furthermore, the high interdependence between the member states can illustrate a soft form of horizontal Europeanization, in the way, that the member states agree on many things, implying, that on several policy areas, the convergence has been obtained as a result of Europeanization. This signifies, that e.g. in a policy area, a lot of member states have approved supranational cooperation, and a common appropriate behaviour has evolved, since they have found a common compromise on the certain legislation. Additionally, it unifies the identities and generates the multiple identities, since the different national identities now participates in a community.

A high degree of interdependence and high degree of politicization entails differentiated integration, which can be in different styles, as elaborated in theory. The EU has turned out to be a horizontal internal differentiation, because the member states are not equally participating in the same policy areas. Denmark has the opt-out from JHA and others have other exceptions. It demonstrates an EU in several speeds and in several compartments, where everyone does not need to be participating in all policy areas, and the case of horizontal internal differentiation is confirmed to be the case.

Misfit?

The opt-out in itself can be argued as a misfit, since it demonstrates, that the pressure of adaptation is high, which induces the misfit. The two parts just does not agree on the legislation on the area of JHA, for which reason, Denmark chose the opt. Thus, this demonstrates the vertical Europeanization, which is not present, since the EU did not have any influence on Denmark, hence the top-down perspective. This is also disproved by some of the interviewed politicians, for instance, Kenneth Kristensen Berth, who states that *“well, we can set us free from, that they rub off (...) we have the possibility to say no, and that we would not have, if it was like that we participated in the judicial cooperation completely (...) it is really us selves ourselves, who decide when all comes to all, and that is not something, that is imposed on us”* (Kenneth Kristensen Berth, 2018), hence, the EU does not have any direct influence on Danish politics in this matter. Furthermore, Denmark does not possess any influential role regarding the EU policy-making in the area. Neither top-down nor bottom-up is occurring in this case.

Regarding misfit in the case of horizontal Europeanization, one can argue, that a misfit can be present in the case of the Danish opt-out of JHA, since Denmark does not agree with the other member states, who have chosen to fully cooperate in the policy area. However, it is not possible to enhance certain factors mismatching, since no other member state has been examined in this thesis.

CONCLUSION

The purpose of this thesis was to answer the following research question: *“How does differentiated integration entail obstacles in the policy area of JHA in the case of Denmark?”* The following chapter will present the final conclusions of this thesis, answering the research question introduced in the analysis. Furthermore, the chapter will feature theoretical conclusions and further research proposals.

Final analytical conclusion

Throughout the analysis, different point of views and approaches have been introduced and interpreted, and it obviously demonstrates, that within the state of Denmark, there are a lot of different opinions; Some actors with positive attitudes towards supranational cooperation, and others with a more negative attitude. Both sides are emphasizing the politicization as an obstacle to further integration on the area, thus the factor making the population hesitate.

The key factor within politicization to be identified as obstructing the further integration is the question of surrender sovereignty. The fact that the cooperation is turned from intergovernmental to supranational makes the Danish population hesitate on whether or not to approve the change and thereby cooperate as fully participating member state. The question generally speaking really relies on the surrender of sovereignty, because it seems like the Danes desire to keep the policy-making on own hands in this certain area. The degree of politicization is high due to the EU as such a complex system of legislation, institutions and members, who all are different, and now needs to find a common approach towards a lot of different policy areas.

Interdependence as a driver for integration can be identified in the transnational security threat of terrorism which is floating across borders without passports. In order to prevent and respond to terror attacks, it is believed, that the best solution is to do in jointly, which is supported by some of the politicians. Therefore, during the years, several initiatives have been adopted. There is a need for a strong Europol and the instruments within it in order to combat the terrorism, since there is a need for international cooperation in order to reduce the amount of terror attacks across Europe. However, now it has turned supranational, Denmark meets several obstacles. For instance, the direct search through smartphones is not part of the new agreement, PNR is neither. Eurojust will also turn supranational, so cooperation among national prosecuting authorities will be difficult too. A European

Security Union is also very much on the political agenda in the EU, which probably also will induce obstacles for Denmark due to the opt-out.

The high degree of interdependence is present, since the member states are very much dependent on each other and the system in order for Europol, etc., to work efficiently. Denmark is also even more interdependent, since the state has been lucky to achieve the special agreement, and therefore, needs to be satisfied with what the state has achieved. The high degree of politicization is also present, since the cooperation is evolving and becoming more and more supranational with more and more complex instruments and legislative, which demands a certain degree of surrender of sovereignty in order to be part of it. This clashes and turns into defining the EU as a horizontal internal differentiation, since the member states are participating in different terms of time and space, and according to the theory, it will probably stay this way, and prospectively maybe become even more differentiated in the future.

Even though, the EU can be defined as a horizontal internal differentiation, the interdependence between the member states also indicates, that there has happen a soft form of horizontal Europeanization, since all these different national states have agreed on so many policy area, integrated further and further and now has become this complex system of legislation and institutions, namely the EU. Shared understandings of appropriate behaviour and shared interests and identities have evolved in different areas, however, in this policy area of JHA, Denmark are not participating in the common approach, which is reflected through the choice of opting-out.

As a short and clear conclusion of the research question, it can be concluded, that the EU as a system of horizontal internal differentiation entails obstacles in form of Denmark being put on the sideline in several initiatives within the policy area of JHA. These obstacles have been generated by the high degree of interdependence to the international cooperation, consisting of different instruments and legislation, and the high degree of politicization illustrating the deeper and deeper integration, and thereby large amount of surrender of sovereignty among the member states, which clearly, not all member states approve. The choice of delegating authority to a supranational organization like the EU and thereby the loss of the national sovereignty results in politicization of the EU, which have been obstructed by the Danish opt-out of JHA.

Theoretical conclusions

Part of the Theoretical Framework has proven to be less useful in the analysis than predicted. The social constructivist elements have functioned more as tools for identifying the different approaches by the different actors, e.g. among several member states, rather than explaining much about the obstacles. It would have worked better, if the research question also were investigating the different approaches to the Danish opt-out of JHA. The phenomenon of horizontal Europeanization consisting of the misfit and convergence notions would have been more applicable if the thesis were constructed as a study containing multiple cases, hence examining more member states than just one, in order to illustrate whether or not a misfit or convergence were present, and thereby provide a profound analysis of whether horizontal Europeanization existed in the case. The theory of differentiated integration, involving politicization and interdependence proved to be the best usable theoretical elements of this thesis, providing the best results.

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APPENDIXES

- Appendix 1: Interview guides
- Appendix 2: Transcription of interview with Holger K. Nielsen
- Appendix 3: Transcription of interview with Jan E. Jørgensen
- Appendix 4: Transcription of interview with Kenneth Kristensen Berth
- Appendix 5: Transcription of interview with Kim Kristian Kristensen
- Appendix 6: Transcription of interview with Rasmus Nordqvist