

Discrimination Towards Migrants in the European Union:

An examination and discussion of norms about migration and anti-discrimination in the EU and Denmark.

Master's thesis in European Studies

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Abstract

This thesis examines the norms in the existing European Union legislation and Danish legislation about migration and anti-discrimination. Migration in the European Union is not a new phenomenon. The topic of migration has become a contested subject among EU politicians and citizens alike. The so-called 'refugee crisis' of 2015 influenced a change in the political landscape of Europe, in that there has been an emergence of far-right political parties, a favouring of the national (for example, Brexit) and an increase in the anti-immigrant narrative. This change in the political landscape has resulted in an advance of structural discrimination towards migrants. The aim of the thesis is to analyse the relationship between EU legislation and the legislation of an EU member state (Denmark) focusing on norms about migration and anti-discrimination and whether the EU norms are translated, appropriated or contested in Denmark.

The theoretical framework of the thesis is based on Susanne Zwingel's work on norm translation, which understands norms as travelling from one context to another and that contexts (global, regional, national, and local) are interrelated. The theory has facilitated an understanding of how EU norms travel and how they are translated in Denmark. Concretely, the understandings of norm translation theory enabled the identification of norms in both EU and Danish legislation and it was used to assess whether the EU norms about migration and anti-discrimination are translated, appropriated or contested in Denmark.

To answer the problem formulation, a document analysis of existing legislation is used as the research method to analyse the norms about migration and anti-discrimination in both EU and Danish legislation. The document analysis combined with the understandings of norm translation enabled the analysis of the norms in the EU legislation and subsequently the Danish legislation. The results of the analysis demonstrate that EU norms about migration and anti-discrimination are translated in Denmark, in that it is evident that the norms travel between contexts and are negotiated and appropriated. This is interesting since it illustrates how Denmark adopts EU norms. In the analysis, it was evident that, in some cases, the understanding of EU norms was slightly different in Denmark, hence the translation and appropriation of norms. Contrariwise, there were no apparent contestation of EU norms in the Danish legislation. Ultimately, EU norms about migration and anti-discrimination are translated and appropriated in the Danish legislation.

Key words: MIGRATION; ANTI-DISCRIMINATION; NORMS; EUROPEAN UNION; DENMARK

Abbreviations

AMIF	Asylum Migration and Integration Fund
ERDF	European Regional Development Fund
ESF	European Social Fund
EU	European Union
Eurofound	European Foundation for the Improvement of Living and Working Conditions
NGOs	Non-governmental organisations
OECD	Organisation for Economic Co-operation and Development
TEC	The European Community
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights

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1. Introduction

The European Agenda on Migration was created in May 2015 with the intention of addressing the immediate challenges that the European Union was facing due to the so-called '*refugee crisis*'. The agenda also set out a set of tools to tackle the long-term management of migration. Indeed, in recent years, migration has become a largely contested topic among the EU member states and EU citizens alike. This is evident in the emergence of far-right political parties, a movement towards the national (for example Brexit), and a rise in an anti-immigrant narrative. The change in the political landscape of the EU has affected the arriving migrants, in that there has been an increase in structural discrimination.

An increase in the debate on migrants is apparent in the EU, and Denmark is no exception. Denmark distinguishes itself, in that since 2015, there has been an increase in the support of the immigrant critical political party Dansk Folkeparti [Danish People's Party], which has led to a series of restrictions concerning foreigners in Denmark. Moreover, Denmark reintroduced its temporary border control in May 2019, which is permitted through the Schengen Agreement when there is a serious threat to public order and internal security. In addition, Denmark has four opt-outs of the EU cooperation. Denmark therefore distinguishes itself by moving towards a stricter framework on migration. Denmark is thus an interesting country to study concerning migration and the EU collaboration.

The increase in structural discrimination of migrants was the pivotal motivation for this thesis. Through my internship at European Network Against Racism (ENAR) in Brussels, I gained an insight into the discrimination of migrants both at the EU level and the national level by engaging in research and advocacy work. The majority of the work that I did at ENAR involved advocacy work on migration in the EU institutions. This provided an understanding of the priorities of the EU and the structural problems at the national level. The work of ENAR on providing information to member states on the situation and discrimination of migrants is valuable and facilitates an insight into the experiences of migrants. Through the work of ENAR it is apparent that migrants face discrimination when arriving to some European countries. When studying structural discrimination, it is relevant to examine how rules and procedures either allow discrimination or ensures protection. Therefore, I wanted to create a framework for investigating the influence of the laws (legislation) about the discrimination of migrants and whether the legislation facilitated discrimination towards migrants. Norm translation theory studies the translation of norms from one context to another. One may appropriate or contest these norms. Norm translation has mostly been applied to gender and feminist studies.

However, I wanted to draw on the theory in the study of migrants. Hence, norm translation theory permitted the development of a framework for analysing norms about migration and anti-discrimination. Specifically, I wanted to investigate whether EU norms about migration and anti-discrimination are translated, appropriated or contested in Denmark. Moreover, I wanted to keep the focus on the institutional and structural level, therefore I limited the study to the norms in the existing legislation, both at the EU level and Danish national level. Therein, my problem formulation states:

Are EU norms about migration and anti-discrimination translated, appropriated or contested in Danish migration and anti-discrimination legislation from 2000-2019?

In order to answer my problem formulation, the following research questions will guide the analysis. Question 1 and 2 will provide the necessary information in order to answer question 3, and ultimately answer the problem formulation.

- 1) What norms about migration and anti-discrimination are codified in the EU?***
- 2) What norms about migration and anti-discrimination are codified in Denmark?***
- 3) Are norms about migration and anti-discrimination translated, appropriated or contested?***

Through comprehensive analysis and discussion, the project findings demonstrate that EU norms about migration and anti-discrimination are appropriated in Danish legislation, and therefore the norms are also translated. By analysing EU legislation and Danish legislation, it is evident that the international level and national level are interrelated and that, in accordance with norm translation theory, norms travel between contexts and are negotiated and appropriated. Ultimately, the analysis and discussion highlight the way in which norms travel and is translated between different contexts.

2. Methodology and research model

The methodology and research model section will present and particularise the method used to answer the problem formulation. The section will include an introduction to the research puzzle of the thesis; an account for the choice of country, i.e., why Denmark; an explanation of how the theory has been applied and utilised in the thesis and how the concept of intersectionality was applied; a clarification on the type of qualitative method that was implemented; the structure of the analysis; an elucidation of the terminology; and last but not least, a description of the limitations to the thesis.

2.1 Research puzzle

During the initial stages of this thesis, it was important to identify and construct a good rationale. In the process of finding a topic, the thesis turned to the work of Gustafsson & Hagström (2018) on *research puzzles*, i.e., how to construct political science research puzzles. Gustafsson & Hagström's primary argument concerns the notion that a well-constructed *research puzzle* is critical in the justification of conducting new research. Specifically, *research puzzles* help provide explanations for doing specific research but also *why* this research is necessary to conduct (Gustafsson & Hagström, 2018, p. 635). In addition, the concept of *research puzzles* facilitates the development of both the problem formulation, method and use of theory through a carefully constructed method of developing a *research puzzle*. Gustafsson & Hagström (2018) proposed a formula of what *research puzzles* look like, “‘*Why x despite of y?*’, or ‘*How did x become possible despite y?*’”. (p. 639). The puzzle is then, “...*when things do not fit together as anticipated, challenging existing knowledge.*” (p. 639). Using this formula, it was possible to create a *research puzzle* and rationale for this thesis. The following hypothetical conversation between a student (A: author of this paper) and a hypothetical supervisor (B) demonstrates the process utilised in this project in creating the *research puzzle*. The formula for the hypothetical conversation is derived from Gustafsson & Hagström (2018, pp. 643-645). The puzzle is not absolute, meaning it could be significantly expanded, however, this was the starting point.

A: *I want to do research on discrimination.*

B: *First, what kind of discrimination?*

A: *Institutional discrimination towards migrants in the EU.*

B: *Why do you find this ostensible discrimination interesting?*

A: *Discrimination towards migrants is increasingly significant in both EU and national politics. It is significant because since the so-called refugee crisis of 2015, the political landscape throughout Europe has changed. If discrimination occurs on the EU level it could have repercussions within national states. For instance, could, and if yes, how could EU legislation on migrants influence the Danish national legislation?*

B: *What does the existing literature say about migration and anti-discrimination?*

A: *Migration literature says that migration means changing peoples' place of residence for work, humanitarian reasons or family reunification. Anti-discrimination literature says that discrimination can be disadvantageous and differential treatment of people.*

B: *How can you contribute to this research?*

A: *Existing research has focused on policy analysis or discourse analysis of discrimination and human rights. There is an opportunity to take on an approach that combines analysing legislation and adopting a normative perspective with the aim of illuminating discrimination towards migrants.*

B: *How could research on a normative perspective of EU and Danish legislation help illuminate discrimination towards migrants?*

A: *We can assume that discrimination in the EU is not a new phenomenon due to the existence of legislation prohibiting discrimination on the grounds of several identities. If there is discrimination towards migrants, it should be detectable in the expected behaviour (norms) defined in said legislation.*

B: *You are making many assumptions. What exactly is discrimination and how do we identify it? Moreover, do we know that member states such as Denmark has intrinsically different norms about discrimination of migrants? And is there a relevance in treating migration and anti-discrimination separately?*

A: *After reading more, I now understand that the EU recognises migration and discrimination in a certain way and likewise with Denmark. I also understand that it is relevant to study the translation of EU norms about migration and anti-discrimination in Denmark. This is because I assume that since Denmark is part of the EU, the said norms have been adopted accordingly. It could be relevant to apply the theory of norm translation to a study of discrimination towards migrants. Therefore, I want to investigate whether this is true, specifically, I want to analyse if these norms have been translated, appropriated or contested.*

The hypothetical conversation above provided a way in which to develop the problem formulation of this thesis. I turned a hypothesis, that Denmark should adhere to EU norms, into a question asking whether EU norms are translated, appropriated or contested in Denmark.

2.2 Why Denmark?

Denmark is an intriguing country to analyse concerning EU cooperation for several reasons. First of all, Denmark is a special case in terms of being an EU member state because it has four “opt-outs”. These opt-outs include the Monetary Union (EMU), the Common Security and Defence Policy (CSDP), Justice and Home Affairs (JHA) and Citizenship of the EU (Folketinget, n.d., para. 2). These were agreed upon in 1993 following the Treaty of Maastricht,

which the Danish population initially rejected through a referendum in 1992 (Folketinget, n.d., para. 1). This means, that although Denmark is part of the European Union, there are areas of cooperation from which Denmark has chosen to withdraw.

In addition, Denmark is part of the Schengen Agreement, which entails free movement across internal EU borders. The Schengen Agreement has exceptions, for example temporary border control, which Denmark reintroduced in January 2016, with the explanation that Sweden closed its borders to immigrants and asylum seekers (UIM, 2016, Why has Denmark reintroduced temporary border control section). Due to “...*severe threat to public order and internal security...*” (EC, 2019, Current Temporarily Reintroduced Border Controls section), Denmark has continued the temporary border control. Notwithstanding the widespread criticism that the temporary border control has sparked, amongst the supporters of full open internal borders, and based on the argument that the threat was not imminent, these measures by Denmark suggest that there may be a degree of norm appropriation between the EU and Denmark. The existence of areas in which Denmark has opted out of EU cooperation, raises the question of whether there are other areas, or rather, types of cooperation/streamlining that Denmark may have excluded, vis-à-vis, it makes it appropriate to analyse if and how Denmark has chosen to adopt or reject norms created at the EU level through Danish legislation.

2.3 Norm translation, appropriation and contestation theory

In order to answer research question 3, *Are norms about migration and anti-discrimination translated, appropriated or contested?* and ultimately answer the problem formulation, it is necessary to select a theory about norms, which can assist in analysing the data. Therefore, the theory of norm translation by Susanne Zwingel has been chosen, instead of other norm theories, which understands norms as being diffused, since norm translation takes as its starting point the assumption that norms travel between contexts and that norms are content-in-motion. The theory is primarily based on the work of Susanne Zwingel’s book *Translating International Women’s Rights. The CEDAW Convention in Context* from 2016, and the article *Women’s rights norms as content-in-motion and incomplete practice* from 2017. The theory was originally developed by Zwingel as a tool for study within the area of gender and feminist study, i.e., to study women’s rights norms. However, in this thesis the theory is applied to the study of migrant’s rights and anti-discrimination. The theory is used in order to create a theoretical framework for analysis, specifically how norms have been identified. The theory is used to organise the analysis through the notion that norms travel between the international level to the local level has made it relevant to divide the analysis between the EU level and the

Danish national level. Further, the theory is very relevant for the analysis of question 3 and the overall problem formulation of the thesis because it says something about the translation of norms between contexts, the importance of agencies and the actors involved, and it helps in the identification of discrepancies between norms at the EU level and Danish level. Norm appropriation and contestation provide an additional way of studying norm translation and the reception of international norms.

2.4 Intersectionality

In this thesis, the theory of intersectionality is used to further deliberate on the finding in the analysis. The theory is primarily used as a concept to further understand discrimination, as well as understanding the multiple ways that migrants may experience discrimination. An intersectional approach is applied to one section of analysis, namely how norms about migration and anti-discrimination in the EU are related to each other. The section draws upon Kimberlé Crenshaw's pivotal article from 1989 *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, wherein she highlighted the so-called 'basement analogy'. The scholarly work of Crenshaw focused on how Black women experienced multiple layers of discrimination. In this thesis, the 'basement analogy' will be applied to the situation of migrants, arguing that third-country national migrants may also be susceptible to multiple layers of discrimination. The concept has only briefly been introduced in the analysis and not utilised throughout the thesis, however, it will contribute with an additional layer of understanding of the discrimination of migrants.

2.5 Document Analysis as a Research Method

The research method of this thesis is qualitative, and it is based on document analysis. Conducting document analysis requires a systematic procedure, and "...document analysis requires that data be examined and interpreted in order to elicit meaning, gain understanding, and develop empirical knowledge." (Bowen, 2009, p. 27). Bowen (2009) explained that the analytical procedure involved "...finding, selecting (making sense of), and synthesising data contained in documents." (p.27). In addition, the data is then categorised into themes, "through content analysis" (p.27). Moreover, drawing upon Atkinson and Coffey (1997), Bowen (2009) defined documents, "... as 'social facts', which are produced, shared, and used in socially organised ways..." (p. 27).

In this thesis, the type of documents that is analysed include official legislative documents of the EU such as directives and shared agreements (ex. The European Agenda on

Migration). These documents have been found in official databases (ex. EUR-LEX) or on the websites of the institutions and they were codified by the EU member states. Specifically, the documents that are needed to analyse research question one include *Directive 2011/98/EU* (The Single Permit Directive establishing rights for third-country nationals) from 2011, *The European Agenda on Migration* (an example of soft law that addresses the immediate actions following the so-called refugee crisis) from 2015, and *The Charter of Fundamental Rights of the European Union* from 2000. I have chosen these documents because they act as sources of EU law. The Charter of Fundamental Rights of the EU has been chosen because the document constitutes the collective and agreed upon fundamental rights of the Union. There are several Directives on equality and rights of the Union, however they are all represented in the Charter.

The documents from the Danish legislation have been found on retsinformation.dk, which contains all the Danish laws (announcement of laws) and consist of Acts and Announcements. The primary documents that are used to answer research question two include *Udlændingeloven* [The Danish Aliens Consolidation Act] from 2019 and *Bekendtgørelse af lov om forbud mod forskelsbehandling på arbejdsmarkedet* [Announcement of the law on the prohibition of discrimination in the labour market] from 2017. In addition to the primary documents, supplementary laws are also included to broaden the analysis. These include *Bekendtgørelse af lov om integration af udlændinge i Danmark* [Announcement on the Act on the Integration of Foreigners in Denmark] from 2017, *Bekendtgørelse af lov om etnisk ligebehandling* [Announcement of the Act on Ethnic Equal Treatment] from 2012, and *Ligestillingsloven* [The Law on Equality between Women and Men] from 2013. Similar to the EU documents, I have chosen to analyse the above-mentioned documents because they constitute sources of Danish law and the content of the documents correspond to the problem formulation since the content is focused on the topics of migration and anti-discrimination. In line with Bowen's definition of document analysis, the content in the documents has been examined and interpreted, specifically through identifying norms and understandings of terms. In addition, the content of the documents was categorised into individual norms through examination of said content.

The above-mentioned documents are considered as valuable data for the analysis. I may also have included other sources of documents, for example media articles about migration, parliamentary debates about these issues, or interviews. However, this may have proven to be too much (different) data. When analysing norms in legislation and within the scope of the research problem i.e. how norms move between the EU level and Danish national level, the choice of data was considered to be appropriate.

2.6 Reliability and validity of data

The primary data of this thesis consist of official and codified legislative documents adopted and subsequently published by the European Union and the Danish government and ministries, respectively. Therefore, it can be argued that the data has a high level of reliability and validity. According to Kirk and Miller (1986), in quantitative observations, reliability “...is the extent to which a measurement procedure yields the same answer however and whenever it is carried out.” (p. 19) and validity “...is the extent to which it gives the correct answer.” (p.19). Kirk and Miller argued that the concepts of reliability and validity can indeed be applied to qualitative research as well (p.19). The reliability of the data used in this thesis is to a large degree convincing because they are sources of law that are published by and codified in the EU and by the Danish state, respectively. In addition, they maintain their legislative power and applicability and is not altered until a new version may be adopted. In addition, the validity of the data used is also considerable because it can be assumed that the content written in the legislative documents is correct. Since this thesis is based on interpretations of the data, to the extent that I have identified, drafted and interpreted norms, vis-à-vis, the project is within an interpretive paradigm, the data can still be considered valid because I have not altered the content of the documents.

2.7 Structure of analysis

To answer the research questions of *What norms about migration and anti-discrimination are codified in the EU? What norms about migration and anti-discrimination are codified in Denmark? And Are EU norms about migration and anti-discrimination translated, appropriated or contested in Denmark?* It is relevant to conduct three separate analyses, one focusing on norms in EU legislation, one focusing on norms in Danish legislation, and one bridging the two previous analyses by analysing whether and how these norms are translated. The structure of the analysis will be organised in a way that separates the analysis into, predominantly, an EU legislative analysis and subsequently a Danish legislative analysis. In addition, the analysis will be organised so that within the EU legislative analysis, sub questions divide the areas of migration and anti-discrimination to identify the norms within both areas; the analysis of the Danish legislation will be organised identically. Moreover, within both the EU and Danish section, norms will be identified and individually analysed. A summarising section will be added to each analysis at the EU and Danish level examining whether and how the identified norms about migration and anti-discrimination are related. The structure of the first two analyses will be important for the final section of the analysis, since this section needs

both the norms at the EU level and the norms at the Danish level in order to comprehensively analyse whether and how norms are translated. The primary data analysed consist of official legislative documents, although it might have been useful to bring in documents such as reports or publications by non-governmental organisations to further elaborate on the movement of norms.

The data that each research question needs was described in the section *Document Analysis as a Research Method*. Research question one will be analysed using document analysis and will use norm translation to identify norms about migration and anti-discrimination in the EU. In the section analysing the relation between norms about migration and anti-discrimination, an intersectional approach will be briefly applied. Research question two will be analysed using document analysis and norm translation to identify norms about migration and anti-discrimination in Denmark. Research question three will be analysed using norm translation, appropriation and contestation. The section will draw upon key elements and utilise them to assess whether EU norms about migration and anti-discrimination are translated, appropriated or contested. Norm translation theory is valuable in this question because it understands norms as travelling across contexts and that agencies creates connections between contexts. This is valuable because I want to assess whether norms are translated between the EU and Denmark.

2.8 Terminology

2.8.1 Migration

The purpose of the following section is to provide an understanding of the concept of migration, vis-à-vis, the aim is to clarify the terminology of migration in this thesis. Migration is understood as the movement of persons from one place of residence to another. The purpose of the change in residence may be due to employment, humanitarian reasons (including war, corruption or natural disasters), family reunification or study. As will be mentioned in the *Limitations* section, the understanding of migration in this thesis is limited to voluntary migration and therefore does not encompass refugees or other types of forced migration. Therein, a migrant may be a person who changes places of residence with the intention of work. This may also be referred to as legal migrants. This definition of migration is based on the work of Victor Piché (2013) who ingeniously collected the landmark contributions to migration theories and placed them into the historical contexts.

Migration theories span widely according to the historical and social contexts. Nevertheless, the definition of migration in this project complies with and limits itself to Alan Simmons' (1987) fundamental definition of migration, which is threefold. According to Simmons (1987), there are three dimensions, which make up the definition, namely, "... *a change in residence, a shift in employment and a shift in social relations.*" (as cited in Piché, 2013, p. 142). The first dimension is the most associated dimension of migration.

What makes people decide to leave their place of residence in the first place? Larry Sjaastad (1962) offered an explanation for this, namely, individual decision-making for migrants. Sjaastad's point of departure in his writings was to place migration in the United States in a framework wherein migration is considered to assist in resource allocation. In this regard, Sjaastad (1962) placed an emphasis on the human costs and returns to migration. Specifically, Sjaastad argued that there are private costs and benefits of migration and *that "The private costs can be broken down into money and non-money costs."* (p. 83). These costs entail the financial expenditure of movement and the psychological element to moving from one place to another, respectively (Sjaastad, 1962, p. 83). Moreover, another reason for people to leave their place of residence was introduced by Everett Lee in 1966, which is founded on the idea of migration networks. Lee argued that the factors leading to migration (either positive or negative) is not as important as the perception of those factors (as cited in Piché, 2013, p. 143). Moreover, Piché (2013) highlighted macro-structural approaches to migration, meaning patterns and systems are also considered when studying migration. Akin Mabogunje (1970) suggested that migration involved "...*a system of interdependent variables.*" (as cited in Piché, 2013, p. 145), variables, which place an emphasis on "...*social and family network and of monetary transfers in the migration process.*" (as cited in Piché, 2013, p. 145). In due course, the study of the causes and effects of migration is enormous and encompasses numerous definitions and approaches. With the ultimate aim of examining discrimination of migrants, having an understanding of the concept of migration is important in order to determine specifically which group of people I will be referring to throughout the thesis. To clarify, I will use these definitions of migration in the analysis of the norms about migration that I will identify in the data, both in the EU legislation and subsequently in the Danish legislation.

2.8.2 Anti-Discrimination

Following a clarification of the concept of migration and with the aim of clarifying the terminology in this project, it is relevant to include an explanation of the understanding of anti-discrimination utilised in this project. The definitions of migration were based in research;

however, the definition of anti-discrimination will be derived from a combination of international legal documents and research. This is because the research provides a fundamental definition of discrimination and the international legal documents provide a broad spectrum on the grounds of which discrimination may occur.

Kasper Lippert-Rasmussen (2013) provided a comprehensive and multifarious discussion on the definition of discrimination. The study takes as its starting point the generic definition of discrimination, as “*disadvantageous differential treatment.*” (p. 15). In this sense, discrimination involves a disadvantage in the way that a person is discriminated against. An aspect of discrimination by Lippert-Rasmussen is “*...a matter of how an agent treats some people compared to others.*” (p. 16). The treatment referred to here would then be disadvantageous. Concerning structural discrimination, Lippert-Rasmussen (2013) argued, “*...social structures cannot be separated from what individuals do. Rather, they are constituted by and sustained through certain regularities in individuals’ acts and states of mind.*” (p. 19). This means that in structural discrimination, there needs to be subjects of discrimination and agents that, through their actions for example by making laws, would discriminate. In this thesis, structural discrimination would entail that, for example, the legislation, used in the analysis, were made so that they were discriminatory, specifically because of the people who made the legislation.

Furthermore, concerning the grounds on which discrimination may occur, the 2009 UN Committee on Economic, Social and Cultural Rights defined the principle of non-discrimination:

...to guarantee that human rights are exercised without discrimination of any kind based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status such as disability, age, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation (as cited in WHO, n.d, non discrimination).

Non-discrimination (or anti-discrimination) can thus be defined as the act of undermining international human rights and/or making distinctions based on the above-mentioned categories, including economic, social and cultural rights. Moreover, non-discrimination and equality are intertwined and closely related to each other since they are both embedded within the foundation of the Universal Declaration of Human Rights (UDHR), the universally recognised milestone document in international human rights. The UDHR was created in the United National General Assembly in Paris in 1948, following the end of World

War Two and determined the standard of fundamental human rights, “...to be universally protected.” (UN, n.d., UDHR). Article 1, paragraph 1 of the UDHR determines the freedom of all, “All human beings are born free and equal in dignity and rights.” (UN, 1948, art. 1). Concerning discrimination before the law, the UDHR further states that, “All are equal before the law and are entitled without any discrimination to equal protection of the law.” (UN, 1948, art. 7). The specific type of non-discrimination utilised in this project is towards migrants. In due course, the definition of the principle of non-discrimination in the section above thus provides the understanding of the term which is utilised in this project. The Charter of Fundamental Rights of the European Union from 2000 (did not come into effect until 2009 in the adoption of the Lisbon Treaty) include rights enshrined in the UDHR and was therefore not the point of departure in this section. In addition, since it can be argued that The Charter represents human rights norms and values in the EU, which are analysed in this project, it is important to acknowledge the internationally agreed upon human rights. This understanding of anti-discrimination will be utilised and referred to in the analysis when identifying norms about anti-discrimination in the EU and Danish legislation.

2.9 Limitations

By choosing Denmark as a case study, the thesis is limited because when studying the translation of norms from the EU level to national level, it might be advantageous to consider more than one EU member state. Denmark is part of Scandinavia, choosing a country from other regions of the EU to compare with might prove beneficial. Similarly, the thesis only focuses on the state level interpretation and translation of norms. This is limiting because non-governmental organisations (NGOs), for example, also influence the transfer and translation of norms. In addition, the thesis will not analyse any concrete consequences that this translation on norms has on the discrimination towards migrants in Denmark. This could potentially facilitate further research into norm translation in Denmark.

Utilising norm translation theory is a limitation, in that the thesis only selects one of the two directions of norm translation. The direction of norm translation, which will be used is towards global governance institutions (i.e. the EU), wherein there is international agenda setting. Another direction of norm translation is towards domestic contexts. Utilising the latter, could potentially facilitate the creation of an entirely new project, perhaps analysing NGOs or other agencies using international norms. In order to analyse norm contestation properly, it would have been valuable to analyse norm translation on the local level because it must be assumed that Denmark does not contest norms at the state level since Denmark is required to

follow the EU law. The contestation of norms may occur in Denmark, but not at the state level, which is the focus of this thesis. Furthermore, norm translation was also used to briefly discuss a few actors identified both on the EU level and Danish level using the understandings of the role of actors in norm translation. However, a deeper analysis was not conducted into the role of actors (excluding the state).

The data drawn upon in this thesis is derived from previous and already existing documents and publications. It might have been prosperous to conduct interviews with government officials or ministry employees to enquire about the content of the laws and legislations. However, the data that I have chosen is within the scope of this thesis and thereby contributed to the analysis by providing knowledge about the content, which allowed me to identify the relevant norms.

The thesis is limited to the years between 2000-2019. This is because the Charter of Fundamental Rights of the European Union was created in 2000 and because the political landscape has changed dramatically following the so-called refugee crisis in 2015. Choosing a larger time frame would prove too broad and require different data and analysis.

The terminology of the thesis is also limiting. The understanding of migration in this thesis is a limitation. This is because there are other ways of understanding migration. In this thesis, the focus is on third-country national workers who travel voluntarily for work and residence to a European country (Denmark). There are other ways in which to understand migration, including but not limited to, refugees, irregular/illegal migrants, and asylum seekers. In addition, I made original translation from Danish to English, specifically from the Danish legislations.

3. Theoretical framework

The following section will establish the theoretical framework utilised in this project. The thesis seeks to analyse the norms about migration and anti-discrimination in EU and Danish legislation. Therein, the purpose of this section is to provide a broader view on norms and how they ‘travel’ or ‘move’ between the international and national level. More specifically, the theoretical framework of this project will draw upon Susanne Zwingel’s pivotal work on the concept of norm translation. Regarding the logic of the project, the theory of norm translation has provided a point of departure in the creation and phrasing of the analytical research questions. Thus, the key notions of the theory, i.e. that norms are translated between entities, facilitated the structuring of the analysis.

3.1 Norm translation, Appropriation and Contestation

Norms are defined as “...*expectations of appropriate behaviour in a specific social situation.*” (Barnett, 2018, p. 209). In addition, Barnett (2018) argued that norms are fluent and continue to be fluent even when they are institutionalised, meaning when they are accepted (p. 210). Although the definition and understanding of norms is much more refined and complex, this is at the core of what norms entail. Indeed, norms are standards to which people, in specific social situations, are expected to behave. These norms can for example be drafted in legislation, which accordingly, assume the appropriate behaviour to specific social situations. Moreover, according to Khagram et al. (2002), the study of global norms accepts the definition as “*the shared expectations or standards of appropriate behaviour accepted by states and intergovernmental organizations, and/or nonstate actors of various kinds.*” (as cited in Martinsson, 2011, p. 2). Therein, global norms are created when various states and nonstate actors gather, for example by signing treaties, conventions, declarations etc., to create a set of standards or rules to which specific behaviour is allocated (Martinsson, 2011, p. 3). In relation to the topic of this project, one example of how global norms is created is the existence and creation of European Union migration and anti-discrimination legislation. Specifically, the member states of the EU have signed and agreed to a set of rules and thereby given their consent to these rules, vis-à-vis, expected social behaviour.

The norm diffusion literature has previously accepted a top-down projection, meaning that norms are projected from the global level to the domestic level, setting the standard of behaviour on the ground. Martinsson (2011) maintained that global norms were created with the aim of solving complex challenges on the ground level (p. 1). However, Martinsson (2011) questioned the success of global norms in diffusing to the local contexts and without leading to actual change (p.1). Moreover, Martinsson (2011) contended that global norms are created “...*in direct response to a crisis, or new measures are built on existing norms.*” (p.2). Martinsson (2011) further emphasised the importance of the role of actors in global norm diffusion including but exclusive to, “*International organizations, professional associations, and transnational advocacy coalitions...*” (p. 2). Concerning the notion that norms are created as a response to a crisis, it can be argued, specific to this project, that the European Agenda on Migration was created as a response to the so-called refugee crisis in 2015.

Susanne Zwingel argued that there are two major “*movements*” or “*waves*” of international norm diffusion literature (Zwingel, 2017, p. 675). The first *wave* focused on the notion that norms rise in intergovernmental settings and then move towards domestic contexts (Zwingel, 2017, p. 675). Zwingel’s views on norm diffusion challenged and identified several

shortcomings of existing literature on norm diffusion. One example is, “...it [diffusion literature] assumes a global norm to be fixed and unequivocal once it has been globally agreed upon, ready to be implemented domestically...” (p. 16). Zwingel (2016) argued that work has to be put into keeping the norms alive and that it would be naïve to believe that a norm would remain fixed (p. 16). The second wave focused on the multi-directionality of norm diffusion and domestic contexts, wherein, “...diverse actors engage with these norms by approving, transforming or rejecting ways...” (Zwingel, 2016, p. 5). Therein, the second wave, first, shifts the presupposed assumption that norms move from the international to the domestic and suggests different directions. Zwingel (2016) criticised the “global-to-national cause-effect logic” (p. 17) because it undermined the importance of domestic norm creation and appropriation (p.17). In addition to emphasise the multi-directionality of diffusion literature and the importance of domestic norm creation, Zwingel (2016) maintained the importance of actors and actor constellations, however, these were simplified, in that, instead of having a constellation of “norm-abiding states” versus “deviant states”, all states would contribute in the creation of international norms (p. 17). In addition to providing alternative ideas to norm creation and diffusion, Zwingel (2017) stressed the importance of acknowledging the agency of “...the assumed recipients’ of international norms and their strategies of norm translation, appropriation, and contestation.” (p. 675).

Through Zwingel’s cardinal work on international women’s norms in the book *Translating International Women’s Rights – The CEDAW Convention in Context* from 2016 and her subsequent academic article *Women’s rights norms as content-in-motion and incomplete practice* from 2017, Zwingel not only challenged the traditional diffusion literature but created an alternative; norm translation. The concept of norm translation can be described as situated within the second wave of norm diffusion literature, vis-à-vis, taking a step away from the “global-centrism” of diffusion literature and adopting a de-centred approach (Zwingel, 2016, p. 5). According to Zwingel (2016), norm translation assumed four major intentions in its creation, namely:

The concept is an attempt to take the multi-directionality of norm creation and repercussions seriously; it wants to overcome the global-centrism of some of the norm diffusion literature through a de-centering perspective, and it emphasizes the labor-intensity and long duration of normative social change (p.5).

The concept of norm translation thus takes its point of departure in the second wave of norm diffusion literature, emphasising the notion that “... that normative content is by

definition unsteady and that this unsteadiness has to be studied in movement between different contexts.” (Zwingel, 2016, p. 19). In other words, the concept is “*in-motion*” wherein norms travel between contexts and are constantly negotiated and appropriated (p. 19). Zwingel (2016) differentiated between the two “*movements*” or “*waves*”, by referring to them as “*global discourse translation*” and “*impact translation*”, respectively (p. 5). Another pivotal element of norm translation is the accentuation of the idea that in norm diffusion, there is nothing automatic about this process, this is because “*...norm translation pays close attention to concrete agency aiming at long-term changes...*” (p. 5), meaning the actors and actors constellation, as mentioned above, is crucial in norm appropriation and in the process of normative social change. Another dimension of norm translation, which is related to the assumed recipients of norms, is the notion of “*norm localisation*” by Acharya (2004), which studies the movements of norms between contexts, which considers the idea that, “*...norm localization as a dynamic process in which “the local” is not a passive recipient of norms crafted elsewhere but the crucial space where legitimate and sustainable norm realization can take place.*” (as cited in Zwingel, 2016, p. 21). Most importantly within localisation is the idea, “*...If successful, this process is incremental and contains adaptation (if unsuccessful, the norm will not gain resonance)*” (Zwingel, 2016, p. 21), thus placing an emphasis on the important role of actors in determining whether norms are translated, appropriated or contested.

Furthermore, Acharya highlighted the role of regionalism, specifically, “*how regional organisations modify and translate global or external norms.*” (as cited in Zimmermann et al, 2017, p. 694). The key word here is “*modify*”, which is related to norm appropriation presented later in this section. In other words, Zwingel (2017) presented two directions of norm translation, “*The first is towards and within global governance institutions...*” (p. 676). This direction involved “*international agenda setting as well as dynamics of continuous contestations of norms.*” (p. 676). In addition, the second direction is “*towards and within domestic contexts.*” (p. 676). Specifically, this means studying processes which, “*looks into agency that uses international gender norms to influence domestic regimes; it analyses both actor constellations and context characteristics as these shape strategies and outcomes of norm translation processes.*” (p. 676)

Norm translation studies the dynamics of global norm diffusion and challenges the previous norm diffusion literature. Specifically, it claims global norms to be multi-directional, *in-motion* (meaning one cannot assume a norm to remain accepted), or as Zwingel (2016) pinned it, “*they resemble a confusing conversation.*” (p. 16). In addition, norm translation

illuminates the importance of acknowledging domestic contexts as “*norm creators and contesters*” (Zwingel, 2016, p. 17).

Jenny Lorentzen (2017) argued that norm appropriation is one of the processes which suggest that domestic contexts influence the meaning of norms along with translation, localisation and contestation (p. 662). Lorentzen (2017) categorised norm appropriation as “*...a discursive mechanism through which norm content is negotiated and constituted.*” (p. 662). In addition to norms being negotiated and constituted, Lorentzen (2017) also noted, “*When norms travel across different contexts, appropriation can be described as a situation where the same concept is used, but its meaning is changed.*” (p. 662). Lorentzen (2017) further emphasised that norm appropriation dismisses the passiveness of local actors (recipients) and stressed the importance of the local context (p.663). Lorentzen (2017) also argued that norm appropriation “*involves processes of knowledge construction and struggles of hegemony*” (p.663).

In addition, according to Lorentzen, in this context, norm appropriation is thus the idea that the meaning of norms is negotiated or interpreted by local reactions. Furthermore, “*Norm appropriation thereby entails a change in political intent, as well as a change in meaning.*” (p. 663). Therefore, norms developed in one context may change their meaning in another context. The crucial difference between norm translation and appropriation is, according to Lorentzen (2017) that, “*it involves a change in political intent*” (p. 663). An important aspect of norm appropriation is that “*actors use norm appropriation as a creative strategy of resistance against international rule*” (Zimmermann et al., 2017, p. 695). Norm appropriation can thus be understood as the process of taking norm content in a specific local place and with the use of local agencies, create/negotiate new meaning. Norm appropriation can thus be utilised in this thesis to analyse norms in the EU context and subsequently analyse the norms in the Danish context and derive whether there is a change in the meaning of norms.

Both norm translation and norm appropriation thus emphasise the importance of local contexts and agencies, the adaptability of norms and a top-down relation between the global and local level. Norm contestation, however, takes a different approach towards norms. Norm contestation was explained by Antje Wiener (2014) as social practices “*which discursively express disapproval of norms.*” (as cited in Zimmermann et al., 2017, p. 699). Lisbeth Zimmermann, Nicole Deitelhoff and Max Lesch (2017) highlighted the notion that in politics, fundamental disagreements exist, particularly in norms (p. 697). In addition, Zimmermann et al. (2017) stressed the element of instability and “*bottom-up contestation*” facilitating international norm change (p. 697). In norm contestation literature, Wiener argued that

contestation is not a destructive force, but rather, *“It is by challenging norms that actors begin to engage in discussion of the basic claims a norm makes to eventually embrace them as their own.”* (Zimmermann et al., 2017, p. 698). This notion from Wiener is based on the claim that *“The norm-user or the designated norm-follower is thus conceptualised as proactive rather than reactive.”* (Wiener, 2014, p. 3). Furthermore, Zimmermann et al., argued that discourses on norms include contestation on norm validity and applicatory contestation. Norm validity discourses *“tackle the question of which norms a group of actors wants to uphold independently of a specific context.”* (Zimmermann et al., 2017, p. 699). In addition, norm validity discourses *“...directly concerns the validity of a norm by questioning whether the normative claims involved are righteous.”* (Zimmermann et al., 2017, p. 699). On the other hand, applicatory contestation is mostly used in translation and appropriation research. There are two main aspects of applicatory contestation, which include questioning whether *“...(1) a given norm is appropriate for a given situation... (2) which actions the norm requires in the specific situation.”* (Zimmermann et al., 2017, p. 699).

The concepts of norm translation, appropriation and contestation were introduced with the intention of creating a theoretical framework for this thesis. By drawing upon these previously mentioned concepts, it is possible to create a better understanding of global norms and the processes of norm translation, appropriation and contestation, in this case, between the EU and Danish legislation. More specifically, the norms in question will be both European and Danish norms about migration and anti-discrimination. Within norm translation, the notion that the global, regional, national and local level and context are interrelated, and that translation of norms depend on agencies to create connection between these contexts, will be used in research question three of the analysis of whether EU norms about migration and anti-discrimination are translated. Concerning norm appropriation, the notion that the meaning of contexts changes when norms travel across these contexts, the role of agency and the idea of knowledge construction will be used in research question three to assess whether norms are appropriated in Denmark. In addition, the notion of norm contestation, namely, the discursive disapproval of norms or challenging norms will be used in research question three to analyse whether norms are contested in Denmark. Therefore, the theoretical framework will facilitate answering the problem formulation as well as providing explanations of how migration and anti-discrimination norms travel from one context to another, vis-à-vis, which direction the norms may be translated in, albeit related to the scope of this thesis. Furthermore, the theory will also continuously be used throughout the analysis to explain the movement of norms. The norms

on migration and anti-discrimination in this project are created from the specific content of the EU agreements and documents and the Danish legislation.

4. Analysis and discussion

4.1 Question 1: What norms about migration and anti-discrimination are codified in the EU?

4.1.1 What norms about migration exist in the EU?

Before analysing the norms about migration in the EU, it might be relevant to present the existing legislation. The legal basis for immigration and management of migration flows in the EU is stated in the Treaty on the Functioning of the European Union (TFEU), which amending the existing Treaty on the European Union (TEU) and the European Community (TEC) following the 2009 Lisbon Treaty. The legal basis is found in articles 79 and 80 of the TFEU, *“The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States...”* (EU, 2012, p. 77). The EU is per April 2019 developing a common migration policy (EC, 2019, Legal Migration and Integration section, para. 1). The migration policy aims to bring together the values of solidarity and responsibility, while taking advantage of the challenges that increased migration brings, as well as recognising the economic development that migration brings in the long run (EC, 2019, Legal Migration and Integration section, para. 1). However, the EU has previously cooperated on the topic of migration. The Directorate-General Migration and Home Affairs has a long portfolio of work on migration. The topics in which they work are two-fold, namely, first: *“legal and irregular migration, integration, readmission and return”* (EC, 2019, Policies section), and secondly, *“the fight against organised crime and terrorism, police cooperation and the management of the EU’s external border.”* (EC, 2019, Policies section). The first area of work being relevant in this thesis. In 2011, the so-called Single Permit Directive: Directive 2011/98/EU established the right of third-country nationals to a single application procedure to reside and work in the EU and established a common set of rights to third-country nationals. Furthermore, in 2015 the EU presented the European Agenda on Migration, which addressed the immediate action that the EU needed to take in response to the so-called refugee crisis. I have identified four norms in the EU legislation. The subsequent analysis will provide explanation for these norms:

- 1) *A migrant may be a third-country national who apply to reside in a Member State for the purpose of work*
- 2) *There should be effective integration policies*

- 3) *Legal migrants should be treated fairly.*
- 4) *Actors support integration of migrants*

4.1.1.1 A migrant may be a third-country national who apply to reside in a Member State for the purpose of work

The first norm in the EU legislation can be found in the way that the EU understands migration and what the EU considers a migrant to be. The way in which migration is understood is a norm due to the collective acceptance of this definition. The EU understands migration and the individual migrant in several different ways, or rather, the EU recognises several reasons for people to leave their place of residence. In the Single Permit Directive of 2011, the EC, in addition to prescribing a set of common rights for legal migrant, also laid out the classification of whom the Single Permit Directive applied to, vis-à-vis, the EC presented the understanding of legal migrants. The Directive applied to “*third-country nationals who apply to reside in a Member State for the purpose of work.*” (EC, 2015, Art. 3 para 1 (a)). Firstly, this means that a migrant can be understood as a person who is not an EU citizen, meaning the original place of residence may be any country not in the EU. Secondly, a migrant may be a person who has the intention of changing their place of residence with the specific purpose of working. By specifying the purpose of application, it can be derived that this clarification of a migrant excludes persons who change their place of residence for other reasons, for example refugees fleeing from war. However, the directive also encompass “*third-country nationals who have been admitted to a Member State for purposes other than work in accordance with Union of national law, who are allowed to work and who hold a residence permit...*” (EC, 2015, Art. 3 para 1 (b)). Meaning, a migrant can also be someone who did not necessarily arrive to the Union for the sole purpose of working but who holds a residence permit. In addition to specifying the understanding of a migrant, the EC also highlighted that third-country nationals should enjoy a common set of equal rights including equal treatment equal to those nationals residing in the Member State. These rights entail:

...a common set of rights to third-country workers legally residing in a Member State, irrespective of the purposes for which they were initially admitted to the territory of that Member State, based on equal treatment with nationals of that Member State (EC, 2015, Art. 1 para 1 (b)).

In this regard, it is specified that once a person has been admitted to an EU member state, regardless of purposes, then that person may enjoy a common set of rights equal to those nationals already residing there.

Furthermore, the 2015 European Agenda on Migration both expands and collects the EU norms on migration. The European Agenda on Migration from May 2015 is a Communication, which is an example of ‘soft-law’ in the EU. This means that soft-law includes, “*Those documents that are not formally or legally binding, but which may still produce political effects.*” (Cini & Borragán, 2016, p. 418). Nonetheless, the Communication was produced as a response to the so-called refugee crisis in 2015, which showed a large influx of refugees to the EU. The Communication sets out immediate actions to be taken to save lives but also sets out four long term ‘pillars’ to manage migration in the future. The Communication further described the understanding of what a migrant is; in addition to escaping war, political oppression and poverty and for working purposes, migrants also seek “*to find family reunification, entrepreneurship, knowledge and education.*” (EC, 2015, p. 2). The EC further highlighted the notion that stereotypes concerning certain types of migration flows, often leads to misunderstanding of the complexity of the phenomenon.

Thereby, the EU understands migrants in different ways. It seems to be, that the agenda towards those persons changing their place of residence for reasons such as war, poverty or political corruption (refugees or irregular migrants) is different as to that of people who move because of work (legal migrants). In the Single Permit Directive, legal migrants are granted a single permit and a set of common rights. Whereas, in the European Agenda on Migration Communication, both types of migrants are recognised and an agenda on both is laid out. Therein, the first norm, namely how migration is understood and what a migrant is in EU legislation, is that, it may be a person (third-country national worker) who travel voluntarily for work and residence to a European country (Denmark).

4.1.1.2 There should be effective integration policies

Moreover, another norm identified in the EU legislation on migration, is the idea that there should be effective integration policies. According to the EU, integration of migrants is a competence, which lies with the individual member state. The EU’s role is then to provide support to the actors involved (EC, 2015, p. 16). Nonetheless, integration of migrants is seen in the EU as a direct gateway to secure maximising the benefits to the economy, this is evident in Chapter III of the European Agenda on Migration Communication. Moreover, it was found that integrating migrants into their new communities is seen as a central value to the EU. Furthermore, in the Single Permit Directive, it is stated, “*...a more vigorous integration policy should aim to grant them rights and obligations comparable to those citizens of the Union.*” (EP & Council, 2011, para. 2 introduction). This clarification illuminates the crucial element of having an effective integration policy, namely, a set of common rights. The effective

integration policies should be applied to third-country national workers arriving in the EU. Therein, introducing effective integration policies is a norm in the EU legislation.

4.1.1.3 Legal migrants should be treated fairly

The third norm identified in the EU legislation on migration is the notion that legal migrants should be treated fairly. It can be argued that the notion of ‘*fairly*’ poses several questions as to what that entails. The wording of fairly, in this case, refers to the right to equal treatment as the already residing nationals in the arriving country. Chapter III art. 12 of the Single Permit Directive established these rights and laid out the specific areas in which equal treatment should occur. These rights are specifically targeted third-country workers. These rights:

(a) working conditions, including pay and dismissal as well as health and safety at the workplace; (b) freedom of association and affiliation and membership of an organisation representing workers or employers... (c) education and vocational training; (d) recognition of diplomas, certificates and other professional qualifications... (e) branches of social security... (f) tax benefits... (g) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing... (h) advice services... include (EP & Council, 2011, art. 12 para 1 (a)-(h)).

The extent to which these rights are sufficiently broad in scope or to which degree they are successful enough to offer protection and fair and equal treatment, paves the way of a different discussion, which is not considered in this analysis. Nonetheless, the mere existence of these rights in an EU legislative act, demonstrate the praxis that legal migrants should be given the same rights in terms of treatment. Furthermore, by presenting rights including having equal working conditions and access to services and goods while working, means that the EU underlines the need to provide working conditions, which offer protection while at the same time establish a place to work that seems attractive. By creating a seemingly attractive place to work for third-country workers, the EU emphasises its conviction that third-country nationals contribute to the economy and more importantly, the EU should “...serve as a safeguard to reduce unfair competition between a Member State’s own nationals and third-country nationals resulting from the possible exploitation of the latter.” (EP & Council, 2011, para. 19 introduction). Meaning, that legal migrants should be treated fairly as to avoid unfair competition.

Moreover, the norm of treating legal migrants fairly is also found in the European Agenda on Migration Communication from the EC. Quite explicitly, the EC states that,

“Migrants who have been legally admitted by Member States should not be faced with reluctance and obstruction – they should be given every assistance to integrate in their new communities.” (EC, 2015, p.7). It can be assumed that the reluctance and obstruction referred to by the EC is the reluctance and obstruction toward integrating migrant workers into the new communities. In this regard, it could be understood as not welcoming the migrant workers into the labour market by hindering equal treatment or allocating fewer rights. Furthermore, the EC states, *“This should be seen as central to the values Europeans should be proud of and should project to partners worldwide.”* (EC, 2015, p.7). The EC thus explicitly states that treating migrant workers without reluctance and obstruction, should be a central value to the EU. Thereby, it can be argued that in terms of migration in the EU legislation, treating migrant workers fairly is indeed a norm. This norm is closely related to anti-discrimination. It is analysed in relation to migration because it is an important part of the legislation concerning third-country national workers, specifically, who travel for work and residence in the EU.

4.1.1.4 Actors support the integration of migration

The last norm about migration, which has been identified in EU legislation, involves the expected roles and responsibilities of the actors involved in creating and enforcing norms. Zwingel (2016) placed an emphasis on the role of actors. Indeed, in terms of migration in the EU, there is placed certain expectations upon certain actors. Specifically, concerning enforcing the norm about integration, the Asylum Migration and Integration Fund (AMIF) provides the funding in support to *“...national governments, local authorities and civil society in the complex and long term process of fostering integration and mutual trust.”* (EC, 2015, p. 16). By providing funding and thereby paving the way for integration actions, AMIF encourages and facilitates the diffusion of norms towards migrants. In addition, the European Regional Development Fund (ERDF) in addition to the European Social Fund (ESF) also facilitates transferring norms about migration, in that, *“For the new programming period (2014-20), at least 2+% of ESF resources will contribute to social inclusion, which includes measures for the **integration of migrants**...”* (EC, 2015, p. 16). The ESF is therefore important in norm diffusion because it provides support and guidelines on integrating migrants. Meaning, favouring the integration of migrants was one of the norms identified in the above section of analysis.

With the aim of examining whether EU norms about migration and anti-discrimination are translated, appropriated or contested in Denmark, it was relevant to identify and analyse the norms about migration. The definitions of norms have been useful because it facilitated the analysis of the content of the legislation and subsequently recognise the expected behaviour

towards third-country national workers that the EU wants the member states to engage in. The norms identified on migration include (1) the understanding of migration, (2) legal migrants should be treated fairly, (3) there should be effective integration policies and (4) the roles and responsibilities of the actors involved. The first norm was important because it clarified the collective understanding of migration and the expected ways in which to define a migrant. The understandings of migrants laid out in the methodology section have been useful in the analysis. In accordance with Simmons' (1987) definition of migration, being a migrant involves a change in residence and a shift in employment, which corresponds to the first EU norm about migration. The second norm identified sets the expected behaviour of treating migrant workers equally in relation to the already residing nationals. The third norm also sets the standards and expectations of integrating third-country nationals and highlights the economic benefits thereof. In terms of the definitions of migration, this norm could be related to Simmons' idea of a shift in social relations. Having a set of equal rights for newcomers and having effective integration policies would mean that migrant workers would become part of the community and thus social relations may shift. Finally, the last norm put forward an example of the expected responsibilities and roles of the actors involved.

4.1.2 What norms about anti-discrimination exist in the EU?

The following section will analyse the norms about anti-discrimination in the EU legislation. Analysing the norms about discrimination in the EU is a monumental task because the scope of applying the provisions of what is written about discrimination in the EU treaties involves many different categories. As of 2019, it is accepted that:

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited (EC, n.d., Know Your Rights section).

These rights on non-discrimination were enshrined in the Charter of Fundamental Rights of the EU proclaimed in 2000 but did not come into direct effect until the Treaty of Lisbon in 2009, which comprehends common sets of fundamental rights developed within the EU through several Directives. These Directives each specified and extended the rights within the respective groups. The Charter holds a legally binding character, through Article 6(1) of the TEU, which means that despite not being directly merged in the Lisbon Treaty, it still holds the same legally binding power. (EP, 2018, Content section B). Therefore, in order to identify norms about discrimination, it is relevant to illuminate a number of these rights within the

Charter. The Charter contains chapters, which represent the universal values of the EU, including dignity (human dignity), freedom, equality and solidarity. As clarified in the methodology section, non-discrimination can be understood as the act of violating or undermining the above-mentioned categories susceptible to discrimination. It can be argued that the fundamental rights were made to avoid discrimination. Hence, it can be assumed that these are an important part of the norms in the EU about anti-discrimination. The following norms about anti-discrimination have been identified:

- 1) *Anti-discrimination is understood as the failure to uphold the respect for human dignity, freedom, equality and solidarity.*
- 2) *Human dignity should be respected*
- 3) *Freedom should be respected*
- 4) *Equality should be respected*
- 5) *Solidarity should be respected*
- 6) *Actors provide guidelines to member states on how to implement specific behaviour with regard to non-discrimination practices*

As seen above, the respect for human dignity, freedom, equality and solidarity are the core values of the EU. I have chosen to analyse them separately because some member states may live up to the norms of one of the human rights areas but not necessarily live up to the others. Hence, in order to provide a comprehensive analysis of whether EU norms about anti-discrimination are translated, appropriated or contested, it is relevant to map (within reasonable limitations) said norms.

4.1.2.1 Anti-discrimination is understood as the failure to uphold the respect for human dignity, freedom, equality and solidarity

Non-discrimination is established in Article 21 (1) of the Charter. It states:

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited (EU, 2000, p. 13).

Therein, any violation or undermining of any persons holding the identity of one or more of the above-mentioned categories, would be considered discrimination. Furthermore, Article 21 (2) states that any discrimination based on nationality is prohibited (EU, 2000, p. 13). Since the Charter encompasses the scope of application of the TEC and the TEU and since it holds the same legally binding character as the Treaty of Lisbon, it can be assumed that the

Charter represents the collective norms on fundamental rights including the principle of non-discrimination. Moreover, anti-discrimination is understood as the failure to uphold the respect for human dignity, freedom, equality and solidarity. The following sections of analysis will illuminate specific articles in the Charter, wherein, if violated, would be considered discrimination.

4.1.2.2 Human dignity should be respected

The second norm about anti-discrimination in EU legislation includes the notion that human dignity should be respected. Chapter 1 establishes the core value of the EU in regard to the individual. Through this chapter, the EU emphasises the value of the individual and the decency of which the individual is entitled to be in possession of, vis-à-vis, the right to life and the integrity of the person. Article 1 *Human dignity* states, “*Human dignity is inviolable. It must be respected and protected.*” (EU, 2000, p. 9). Therein, the EU puts forward the norm that human dignity should and must be protected and respected. It can be assumed, since it is not specified, that despite any other grounds of discrimination that one may be susceptible to (herein referring to the abovementioned aspects of discrimination), the dignity of that person must be respected. In addition, Article 2 *Right to life* states, “*Everyone has the right to life*” (p. 9). This means that no one must be condemned to the death penalty (Article 2 (2)) regardless of the person. In that respect, it is a core value in the EU legislation, that human dignity should be respected and that everyone has the right to life.

4.1.2.3 Freedom should be respected

Additionally, having established the core value that everyone has the right to human dignity, another set of rights, according to the EU, is that of various freedoms. There are several aspects to the right to freedom, however, the following freedoms are presented with non-discrimination in mind. Article 10 *Freedom of thought, conscience and religion* establishes, more specifically, “*...freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.*” (p. 10). This freedom entails that if thought, conscience or religion is hindered in any way, it would be discrimination and violation of that freedom. In addition, the freedom of religion has two components, namely, that one may freely choose to adopt a religion and secondly one may choose to join a religion in community with others. In terms of non-discrimination, it is stated in the Charter that any discrimination based on religion or belief should be prohibited. Furthermore, Article 11 *Freedom of expression and information* concerns the right to freedom of expression and therein to hold opinions. In terms of non-discrimination,

there should be no discrimination on the grounds of any opinion. Article 12 *Freedom of assembly and of association* establishes the freedom of political matters, which is also mentioned in the non-discrimination article of the EU. In due course, in the EU legislation on anti-discrimination, one of the norms include the freedom of thought, religion and expression.

4.1.2.4 Equality should be respected

Furthermore, another norm identified in the EU legislation on anti-discrimination is equality. There are several different aspects to the term equality, which will be presented below. In this relation, equality entails that there should not be made differentiations and that everyone should have the same terms. Equality is essential in determining non-discrimination because if people are not treated equally, one example could be before the law, then it is within the scope of non-discrimination. Article 20 states that “*Everyone is equal before the law.*” (EU, 2000, p. 13). Hence, if differentiations or any type of violations in the equal treatment before the law, it would be considered discrimination. Article 21 *Non-discrimination*, as mentioned above, is the key article concerning anti-discrimination. It establishes the understanding of anti-discrimination in the EU. Article 22 *Cultural, religious and linguistic diversity* is also important when identifying norms in the EU legislation, in that, the EU highlights the need to respect cultural, religious and linguistic diversity, meaning that any restrictions on or attempts to block diversity, it would be discrimination.

In addition, Article 23 *Equality between men and women* is also important. Discrimination on the basis of gender has been a major part of fighting against discrimination in the EU and the EU has created a strategy on gender equality. A major part of gender equality is equal pay for men and women. The *EU Action Plan 2017-2019: Tackling the gender pay gap* was made in order to combat the gender pay gap and requires the member states to implement the actions (EC, n.d., The gender pay gap Action Plan section). The Action Plan is an example of how the EU engages and it demonstrates the EU’s ambition of combatting discrimination based on gender. Furthermore, Article 25 *The rights of the elderly* and Article 26 *Integration of persons with disabilities* both also represent norms of anti-discrimination, since discrimination based on the grounds of age and disabilities should be prohibited. In the end, norms about anti-discrimination in the EU legislation indeed includes norms about equality because if people are not treated with equality is it represents discrimination.

4.1.2.5 Solidarity in the Union

According to the European Foundation for the Improvement of Living and Working Conditions (Eurofound), the principle of solidarity in the EU means, “...*sharing both the advantages, i.e.*

prosperity and the burdens equally and justly among members.” (Eurofound, 2011, para. 1). Another norm in the EU legislation about discrimination is that there should be solidarity in the Union and therein access to the advantages and burdens that it holds. Article 27 *Worker’s right to information and consultation within the undertaking* ensures that information is guaranteed and under the conditions of EU law. This means that national laws and practices should be aimed at providing proper information and consultation.

Article 31 *Fair and just working conditions* ensures that “*Every worker has the right to working conditions which respect his or her health, safety and dignity.*” (EU, 2000, p. 15). Therein, it must be ensured in national practices that the working conditions are up to par. Moreover, Article 34 *Social security and social assistance* states that citizens are entitled to, “*...social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment...*” (p. 16). This too must be ensured by national practices and national laws.

4.1.2.6 Actors provide guidelines to member states on how to implement specific behaviour with regard to non-discrimination practices

The main actors in EU norms about anti-discrimination include the European Parliament, the Council and the Commission. This is because the institutions have conjointly and solemnly proclaimed the Charter of Fundamental Rights. The Council has implemented several directives, with the proposals from the Commission and the opinion of the European Parliament, that address equality and anti-discrimination, among these are Council Directive 2000/43/EC (discrimination based on race and ethnic origin), Directive 2000/78/EC (discrimination at work based on religion, belief, disability, age or sexual orientation), Directive 2004/113/EC (equal treatment between men and women in the access to and supply of goods and services) and Directive 2006/54/EC (equal opportunities for men and women in employment). The institutions thus provide guidelines to member states on how to implement specific behaviour with regard to non-discrimination practices.

Furthermore, according to norm translation, Zwingel (2016) argued that actors actively engage in international norms. An example of this is within EU legislation on non-discrimination concerning the freedom of religion of belief. The Council of the European Union published in June 2013 a document, the *EU Guidelines on the promotion and protection of freedom of religion or belief*. The document encompasses a set of guidelines and the purpose of the document was to help promote the Union’s value of protecting and promoting the freedom of religion or belief and help the member states to carry it out (The Council, 2013, Purpose and scope section 5-6). Through these guidelines, the EU urges states to, “*...provide*

adequate and effective guarantees of freedom of thought, conscience, religion or belief to all, which are applicable to their entire territory without exclusion or discrimination...” (The Council, 2013, Primary role of States section). The EU also urges states to adopt measures which will prevent violations of these freedoms. Furthermore, *“States should condemn acts of violence and bring perpetrators to justice.”* (The Council, 2013, Primary role of States section). Through the specifications of actions and expressing the role of member states, the EU sets the standard to which member state should adhere regarding protecting the freedom of religion, conscience or belief.

Ultimately, following an analysis of the norms about anti-discrimination in the EU it can be seen that violating the rights and core values of the EU could be considered discrimination. The norms identified in this analysis about anti-discrimination include (1) how is anti-discrimination understood in the EU legislation? (2) human dignity should be respected, (3) freedom should be respected, (4) equality should be respected, (5) solidarity should be respected, (6) who are the relevant actors and what are their responsibilities? The first norm was pivotal to define because it set the collective understanding of what non-discrimination entails and how it is understood in the EU. The second, third, fourth, and fifth norm all set the expected behaviour on respecting specific types of rights. The last norm was important because it analysed the role of the main actors.

4.1.3 Are, and if yes how are norms about migration and anti-discrimination in the EU related to each other?

The purpose of the following section is bridging the two previous sections on analysis, namely, to deliberate on whether and how the norms about migration and anti-discrimination in the EU are related to each other. The purpose of analysing both migration and anti-discrimination is due to the overall topic of the project, namely, the discrimination of migrants (third-country national workers). In order to thoroughly examine the norms about migration and anti-discrimination, it was necessary to separate the two topics. This is because in the EU legislation, there is no individual migration policy, which would solemnly address the discrimination of migrants. Therefore, it was necessary to analyse discrimination separately and then tie the two together.

Concerning the EU legislation on migration, the EU introduced the Directive 2011/98/EU, which firstly introduced a procedure on third-country workers residing in the EU and secondly, introduced a set of common rights of said workers. This group of people was then to be understood as legal migrant workers. In addition, the European Agenda on Migration of 2015 further specified the EU’s understanding of migrants. However, the Agenda also

comprehends migrants fleeing from instability and war. Nevertheless, the Directive 2011/98/EU was made as to ensure the strengthening of the EU goals of asylum, immigration and protecting the rights of third-country nationals. In addition, recognising the differences in rights in member states due to an absence of a common legislation, the EU wanted to ensure that the gap in differences in rights of third-country nationals would become narrower. Therein, it can be argued that, through these sets of common rights in the EU legislation on migration, the EU wanted to prevent discrimination against third-country workers.

In this relation, since the third-country workers are from outside of the EU, there may be other ways in which they can be discriminated upon. Therefore, it was important to analyse the EU legislation on anti-discrimination and what the norms are thereof. One way in which to understand this idea of discrimination, based on different characteristics, could be by adopting an intersectional perspective. If the third-country workers have received a work and residence permit they must be entitled to and covered by the same rights as the already residing EU citizens. More specifically, the third-country workers must not be discriminated on grounds of any of the categories mentioned in Article 21 *Non-discrimination* of the Charter of Fundamental Rights of the EU. As mentioned, since the third-country workers are from outside the EU and are therefore not part of the already residing citizens' background, they are cardinally susceptible to discrimination based on race, colour, ethnic origin, language, religion and nationality. There may be other categories which the persons may behold, however, the previous categories are likely to apply.

Accordingly, Kimberlé Crenshaw (1989) argued that Black women often experienced “*double-discrimination*”, which means “...*the combined effects of practices which discriminate on the basis of race, and on the basis of sex.*” (p. 149). Although Crenshaw's study primarily concerned the experiences of Black women it can be applied to the experiences of third-country migrant workers, which can be men or women. Crenshaw's ‘*basement analogy*’ illustrates the marginalisation experienced by Black women between gender/race hierarchies and anti-discrimination law (p. 151-152). Those people placed at the bottom would hold the most disadvantages burdened down by people within categories of “...*race, sex, class, sexual preferences, age and/or physical ability.*” (Crenshaw, 1989, p. 151). Consequently, the people at the bottom can only ‘*escape*’ if they somehow try to fit themselves into some of the groups that are permitted to leave the basement. Although this analogy is targeted towards Black women, it can be applied to the experiences of migrant workers coming to the EU. An example could be if, hypothetically, a person from one of the African countries came to the EU as a single permit residence and thus residing and working legally within one of the European

member states. If this person is a woman, then she would be susceptible to discrimination based on race, sex, colour, ethnic or social origin, language, religion and nationality. Therein, she would be on the bottom of Crenshaw's analogy and would thereby be vulnerable to institutional and direct discrimination. An intersectional approach can thus be useful in understanding the various ways in which legal migrants in the EU may experience discrimination. This brings back the relation between and relevance of norms in the EU about migration and anti-discrimination, in that, it is necessary to consider the different ways that migrants can be discriminated against.

The above-sections of analysis demonstrate a wide array of norms in the EU, both about migration and anti-discrimination. The purpose of analysing norms on the EU level was necessary in order to examine how and if norms are translated in Danish legislation. A number of norms have been identified and the roles of the actors involved have been analysed. Additionally, taking an intersectionality approach has helped understand how norms about migrants and anti-discrimination in the EU are related to each other. The following sections of analysis will examine the norms about migration and anti-discrimination in Denmark.

4.2 Question 2: What norms about migration and anti-discrimination are codified in Denmark?

4.2.1 What norms about migration exist in Danish legislation?

The following sections of analysis will analyse the norms about migration in Danish legislation. According to the National Integration Barometer, as per January 1st, 2019, there were 793.601 immigrants and their descendants residing in Denmark. In 2019, 6.1% of the Danish population were immigrants of non-Western origin. The rate of immigration in Denmark has increased steadily since 1980, from 1,0 pct. of the total population in 1980 to 8,7 pct. in 2019 (NIB, 2019, Befolkningsudvikling section). The Danish Aliens (Consolidation) Act [Udlændingeloven] was created on June 8th, 1983 and the key innovative element was an improved legal position for asylum seekers (AU, n.d., Kildeintroduktion section). Overall, the Danish law on Aliens was considered one of the most liberal, however, since 2002 it has been restricted to such an extent as it is now considered one of the most restrictive in the EU (AU, n.d., Kildeintroduktion section). For terminology clarification, the following analysis will use the word Alien to describe all foreigners residing in Denmark. This is because of a 2013 translation of the Danish law; however, the full translation is not used since the law has been amended since.

Denmark has committed itself on the following international conventions on immigration: Refugee Convention 1951, Protocol to the Refugee Convention 1967, Human Rights

Convention 1950, Convention on the Status of Stateless Persons 1954, Convention against Torture 1984, Schengen 1997, Dublin Convention 1997 and Dublin 2003 and 2013. The Danish immigration legislation (or commitment to international immigration conventions) do not distinguish between migrants and refugees, through the wording of ‘*Udlænding*’ [foreigner]. However, the Danish legislation on immigrants who arrive in Denmark is extensive. §9a of the Aliens Act (as of March 10th, 2019) states the law about employment for third-country nationals. The premise of Danish legislation, on for example migration, is that it has to adhere and subjugate to the European legislation. This means that Denmark has accepted the legislation that EU accepted, which means Denmark has to recognise the legislation in the same way, but it does not mean that it should be written using the exact same wording, but it must be adhered to. If Denmark does not adhere to the EU legislation, then Denmark would traverse human rights. The following norms have been identified about migration:

- 1) *Migration can be understood as a movement of people entering into Denmark for various reasons, including work, humanitarian reasons and family reunification*
- 2) *The integration efforts in Denmark should take its point of departure in the individual aliens’ own integration efforts.*
- 3) *It is prohibited to discriminate in the labour market*
- 4) *Actors help newcomers navigate rules and procedures in Denmark*

4.2.1.1 Migration can be understood as a movement of people entering into Denmark for various reasons, including work, humanitarian reasons and family reunification

The first norm in Danish legislation about migration is the way that Denmark understands migration. The primary legislation concerning immigration in Denmark is a collective legal document called the Aliens Act [Udlændingeloven] and is a 136-page document categorised into paragraphs and chapters. It contains, but is not restricted to, chapters on entry and stay, work, loss of residence permits, and work permits, and management of mass flows of refugees and migrants. Therefore, in the Danish legislation about immigrants, the rules about legal migrants are part of the main document. This is interesting because it shows something about how Denmark understands migration. The fact that the Danish immigration legislation does not have separate laws for, for instance, legal migrants, refugees or irregular migrants, shows that Denmark prefers to legislate in a way that handles all people who enters the country in the same collective law. Whereas, as seen above, the EU has made a Directive specifically concerning third-country nationals.

Like the European Agenda on Migration, the Danish Aliens Act contains measures on all the categories of immigrants. Even so, through the Aliens Act it can be derived that Denmark recognises different categories of people who enter into the country. Chapter 1 of the Aliens Act concerns itself with aliens' (foreigners) entry and stay in the country. Denmark recognises different types of aliens, namely (UIM, 2019): citizens of Finland, Iceland, Norway and Sweden (§1), aliens who holds a citizenship in a country in the EU or European Economic Area (§2), and aliens with a residence permit in the Schengen area (§2 b). Therein, an alien entering into Denmark can be understood as coming from a European country and holds a European citizenship.

Denmark also recognises people entering into the country for various reasons, namely (UIM, 2019): entering for the purpose of work (§9 a), entering for humanitarian reasons (§9 b), for family reunification (§9 c), aliens who previously held a Danish citizenship (§9 d) or aliens from the Kosovo province (§9 e). These aliens entering for the above purpose are eligible for residence permit. In addition, aliens who acts as a religious preachers, missionary or within a religious order society may apply for residence permits as well (§9 f, part 1-3). Migration is thus understood in Danish legislation, as a movement of people entering into Denmark for various reasons, including work, humanitarian reasons and family reunification.

4.2.1.2 The integration efforts in Denmark should take its point of departure in the individual aliens' own integration efforts.

This notion, that integration efforts should be placed in the hands of the individual alien entering into Denmark, is harmonious with the Danish welfare state and the fact that the citizens are protected in a market economy and with the extensive freedom to live their lives as they wish. Specifically, the notion that the state facilitates, through for instance laws and other legislation, the freedom and opportunity to pursue various goals, but with the expectations that the individual makes the effort to achieve these goals. This norm is apparent in the measures in the Danish integration law (Act) and is described in the Announcement on the Act on the Integration of Foreigners in Denmark (the applicable version is from October 11th, 2017).

The purpose of the law is to ensure the opportunity of newly arrived aliens to exhort their abilities and resources with the aim of becoming participating, self-employed and contributing citizens on equal terms as the other citizens, which is compatible to the foundational values and norms in the Danish community (UIM, 2017, §1, p. 1). The integration effort should take a point of departure in the responsibility of the individual, it should contribute so that the alien is ensured equal participation in the community's political, economic, professional, social, religious and cultural life, it should contribute so that the newly arrived

alien as quickly as possible becomes self-supporting through work and finally, the integration effort should ensure that the individual becomes familiar with the foundational values and norms in the Danish society (§1 (2) 1-4, p. 1).

4.2.1.3 It is prohibited to discriminate in the labour market

The third norm about migration in Denmark concerns the prohibition of discrimination in the labour market. This norm arises from the point of departure that legal migrants have obtained a working and residence permit. In other words, discrimination towards legal migrants in the labour market is prohibited in Denmark. This section is linked to the following section concerning anti-discrimination norms in Danish legislation, however, it is relevant to analyse the topic in relation to legal migrants because according to EU law, all must be ensured a set of common rights in the labour market. The Aliens Act does not explicitly state that a set of rights is given legal migrants coming to Denmark to work, however, one must assume that once a residence and work permit has been accepted, they are under protection of such rights.

The Danish announcement of the law on the prohibition of discrimination in the labour market (the applicable version is from the August 24th, 2017) is based on the Council Directive 2000/78/EC establishing equal treatment in employment and occupation. Chapter 1 of the prohibition of discrimination in the labour market is concerning the field of application of the law. The Danish Ministry of Employment clarified the meaning of discrimination, meaning discrimination is to be understood in this law as any direct or indirect discrimination on the grounds of race, skin colour, religion or belief, political view, sexual orientation, age, disability or national, social or ethnic origin (2017, p.1, §1). This will be further explored in the subsequent section of analysis. However, it is important to note the definition of discrimination in order to examine the announcement.

Chapter 2 of the announcement of the law prohibiting discrimination in the labour market explains the ways in which an employer must not discriminate. §2 states that an employer must not discriminate a wage earner or applicant during appointment, transfer or concerning wage or working conditions (p.2). Discrimination concerning pay occurs if there is a difference in wages for the same work or work with equal merit (p.2). Meaning, that a norm in Danish legislation on discrimination in the labour market is the notion that there should be equal pay for the same work done.

Another norm within the prohibition of discrimination at work is found in §2 a, which states that the employer should adopt the appropriate measures in terms of providing for the needs of a person with a disability in employment (p.2). Moreover, §3 determines that an employer must not discriminate employees in terms of access to vocational guidance, training,

vocational training and retraining (p.2). §4 states that during the appointment procedure of an employee, an employer must not request, collect or receive and utilise information about the employee regarding race, skin colour, religion or belief, political view, sexual orientation or national, social or ethnic origin (p. 2). This paragraph is particularly relevant for third-country nationals entering legally into the Danish labour market because they may hold one or more of the categories of identities mentioned as grounds of discrimination. Thus, this may help to protect third-country nationals and shows that it is an accepted practice to ensure that this type of discrimination does not occur in the labour market. Similarly, §5 further protects against, for instance, ethnic discrimination, in that, in advertising for a job, it must not be written that there is a preference for a person based on a specific race, skin colour, religion or belief, political view, sexual orientation or national, social or ethnic origin or a specific age or disability (p.2).

4.2.1.4 Actors help newcomers navigate rules and procedures in Denmark

In Denmark, EU law is above the Danish law in case of conflicts between the two. If Denmark receives a Directive from the EU, then the Danish Parliament must first pass a law, or the respective minister must issue an announcement of the law (Folketinget, 2019). Directives from the EU permits the individual member states to decide how to implement the Directive and how to achieve the objective. In the case of norms about migration in Danish legislation, the Ministry of Immigration and Integration issued the Aliens Act. The current and applicable version of the Aliens Act was thus issued by the Minister of Immigration and Integration. The Ministry of Immigration and Integration is thus pivotal in writing down the collective and expected behaviour in Denmark in terms of norms about migration in Danish legislation. The Immigration Office in Denmark is responsible for processing foreigners' right to visit, residence, asylum, family reunification and permanent residence in Denmark (UIM, 2016, US section).

Furthermore, on a regional level, the Immigration Office has in collaboration with The Danish Agency for International Recruitment and Integration (SIRI) created an online platform which is called "ny I danmark" [new in Denmark] and is a tool to help newcomers navigate rules and procedures in Denmark. The Immigration Office and SIRI travel around Denmark in an effort to brief local organisations about new legislation and in an effort to act as intermediaries in communicating the rules about immigration (Udlændingestyrelsen & SIRI, 2019, Formål section). The organisation is called Det Regionale Netværk [The Regional Network]. The targeted audience for the Regional Network includes community integration workers, jobcentre employees and staff at asylum centres. Zwingel (2016) put an emphasis on

the role of regional institutions, through the work of regional institutions, “...*often carries more legitimacy than the international level because regional organizations are perceived as more authentic to regional interests and traditions.*” (p. 20). Therefore, the Regional Network has an important role in communicating and clarifying the expected behaviour when it comes to immigration in Denmark, because it translates the norms set in the legislation and makes sure that it is understood and applied below the regional level.

The above sections of analysis of the Danish legislation on migration demonstrate that migration into Denmark occurs for various reasons. The norms about migration in the legislation include the idea that integration efforts include the individual’s responsibilities of proper integration. In addition, the Announcement on the Act on the Integration of Foreigners in Denmark puts forward the norms that newly arrived aliens should exert their abilities and should be given the equal terms as the citizens of Denmark. Moreover, the Announcement on the prohibition of discrimination in the labour market introduces the norm that there should be equal treatment at work.

4.2.2 What norms about anti-discrimination exist in Danish legislation?

The following sections of analysis will examine the norms about anti-discrimination in Danish legislation. This section is important when analysing if norms about anti-discrimination in the EU are translated, appropriated or contested in Danish legislation. It can be reasoned that equality and non-discrimination is important and highly valued in Denmark. One example is that there is almost always a Minister of Equality appointed in government coalitions (Ministry of Foreign Affairs, n.d., The cultural importance of equality section).

In addition, Denmark has a very low-income equality and ranks low on the OECD world list of poverty (Ministry of Foreign Affairs, n.d., The cultural importance of equality section). Gender equality is also important in Denmark with “...*about 40% of the representatives in Denmark’s parliament, the Folketing, are female...*” (Ministry of Foreign Affairs, n.d., Gender equality in Denmark section). In addition, the so-called *Law of Jante* means that one should not think that one is better than the others, wherein “*Danish schools avoid ranking students according to their achievements.*” (Ministry of Foreign Affairs, n.d., The cultural importance of equality section). This says something about how the culture views equality, specifically, that everyone should have the opportunity to succeed.

The Danish legislation on anti-discrimination includes Bekendtgørelse af lov om etnisk ligebehandling [Announcement of the Act on Ethnic Equal Treatment] 2012 with the aim of preventing discrimination and promoting equal treatment regardless of race and ethnic origin.

In addition, the abovementioned Announcement of the prohibition of discrimination in the labour market 2017 (adopted in 1996, wherein age and disability were added in 2004) also aims at preventing discrimination of employees. The following norms about anti-discrimination in Danish legislation have been identified:

- 1) *Discrimination is understood as any discrimination based on the grounds of race, skin colour, religion or belief, political view, sexual orientation, age, disability or national, social or ethnic origin*
- 2) *The legislation about discrimination in Denmark does not provide equal protection among the different types of discrimination*
- 3) *Actors promote equality*

4.2.2.1 Discrimination is understood as any discrimination based on the grounds of race, skin colour, religion or belief, political view, sexual orientation, age, disability or national, social or ethnic origin
 In the Announcement of the prohibition of discrimination in the labour market, discrimination is understood as any discrimination based on the grounds of race, skin colour, religion or belief, political view, sexual orientation, age, disability or national, social or ethnic origin (Beskæftigelsesministeriet, 2017, §1 p. 1). Both the Announcement of the prohibition of discrimination in the labour market and the Announcement on equal treatment distinguishes different ways in which this discrimination may materialise (UIM, 2012, §3 part 2-5): the first is direct discrimination, which occurs when a person is treated in an inferior way because of race or ethnic origin; the second is indirect discrimination when a neutral decision, condition or praxis puts a person in an inferior position based on race or ethnic origin; the third way is the notion that harassment is considered discrimination when it happens in relation to race or ethnic origin; the fourth way is that an instruction of discrimination based on race or ethnic origin is discrimination. In due course, if any of the above-mentioned ways of discrimination occurs it can be considered discrimination and thus demonstrates how anti-discrimination is understood in Danish legislation.

4.2.2.2 The legislation about discrimination in Denmark does not provide equal protection among the different types of discrimination

The second norm identified in the Danish legislation acknowledges that the legislation on discrimination does not provide equal protection among the different types of discrimination. The above-mentioned categories wherein discrimination may occur are only covered by prohibitions within the labour market, it is only discrimination based on gender and discrimination based on race and ethnicity that are covered by prohibitions which are applicable outside of the labour market (Institut for Menneskerettigheder, n.d., para. 2). The legislation

on equality between women and men is found in Ligestillingsloven [The law on equality between women and men] (the applicable version is from December 9th, 2013). §1 states, the purpose of the law is to promote equality between women and men, including equal integration, equal influence and equal opportunities in all of society's functions with idea that women and men are equal as the point of departure (Beskæftigelsesministeriet, 2013, §1).

Moreover, the purpose of the law is to combat direct and indirect discrimination based on the grounds of gender and to combat harassment and sexual harassment (Beskæftigelsesministeriet, 2013, §1). Hence, discrimination based on gender is highly regarded, which is evident in the fact that there is separate legislation protecting this type of discrimination. Additionally, discrimination based on race and ethnicity is also valued in Danish legislation, specifically, through the Announcement of the Act on ethnic equal treatment. The notion that some of the types of discrimination does not have separate legislation outside of the labour market can be considered a norm in Danish legislation. For instance, disability is only protected within the labour market. In 2009 Denmark ratified the UN Convention on the Rights of Persons with Disabilities (CRPD), which meant that Denmark must ensure that persons with disabilities can enjoy the rights set forward in the convention (Klausen, 2017, p. 401). However, the convention is not incorporated into Danish law (p.401). This means that discrimination based on disability is not protected outside of the labour market, meaning, for example, that a café owner can refuse access for a person with a disability exclusively based on that person's disability (Institut for Menneskerettigheder, n.d., para. 3).

4.2.2.3 Actors promote equality

With respect to the role and responsibilities of actors in norm translation, Zwingel (2017) noted the importance of the state as the first actor to establish transnational connections, “...it takes responsibility to implement treaty provisions under international law.” (p. 676). In Denmark, it is the current government parties (Regeringen), which proposes laws and then the *Folketing* adopts them. In the norms about anti-discrimination in Danish legislation it is noteworthy to mention the role of the ministers and the ministries. In terms of equality, each Minister is responsible for the work on equality within their field (Udenrigsministeriet, n.d., Lovgivning section). For example, the Minister for Employment is responsible for equality in the labour market.

In addition, Institut for Menneskerettigheder [Danish Institute for Human Rights] has an important role in promoting equality to all without discrimination. The Institute for Human Rights has been appointed the national equal treatment body, which is intended to promote equality based on grounds such as gender, disability, race and ethnic origin (n.d., Overvågning

og rådgivning section). This competence is given the Institute for Human Rights in §10 in the law of equal treatment based on ethnicity, it states, that in addition to promoting equality, it should also support victims for discrimination in processing their complaint cases, independently engage itself in investigations of discrimination, publish reports, and provide support in enquiries concerning discrimination (UIM, 2012, §10). The role of the Institution for Human Rights thus involves informing about the legislation and how the content should be understood. Furthermore, an interesting aspect to the objective of the institution, is that they recognise the intersectional notion that people may experience multiple discriminations, since discrimination in one area does not exclude discrimination in another. Thus, discrimination often include various reasons and should therefore be prevented and combatted at the same time (Institut for Menneskerettigheder, n.d., Et bredt syn på discrimination section).

In addition, any complaints about discrimination can be reported to Ligebehandlingsnævnet [The Equality Board], which handles complaints about discrimination within and outside the labour market (UIM, 2012, §10 part 2). Within the labour market, the Equality Board handles complaints based on the grounds of gender, race, skin colour, religion or belief, political view, sexual orientation, age, disability, national, social and ethnic origin (Ankestyrelsen, 2018, Inden for arbejdsmarkedet section). Outside of the labour market, the board handles cases based on gender, race, ethnic origin and disability (Ankestyrelsen, 2018, Uden for arbejdsmarkedet section).

Having analysed the norms in Denmark about both migration and anti-discrimination, it has been possible to identify several norms in Danish legislation. Concerning norms about migration in Danish legislation, the first norm identified involves the way that migration is understood. Migration in Denmark is understood as aliens coming into the country for various reasons. The second norm was the idea that integration efforts in Denmark is largely up to the individual to take on. It is explicitly stated in the legislation that it is an objective to give the opportunity to newly arrived to exhort their own abilities. The third norm involves the roles and responsibilities of the actors involved. Additionally, through the analysis of the norms about anti-discrimination in Danish legislation it was possible to map how anti-discrimination is understood in Denmark. The second norm includes the idea that the legislation does not provide equal protection among the different types of discrimination, because it is only discrimination based on gender and discrimination based on race and ethnic origin, which are protected outside of the legislation concerning equality in the labour market. The following section will discuss whether and how norms about migration and anti-discrimination in Denmark is related to each other.

4.2.3 Are, and if yes how are norms about migration and anti-discrimination in Denmark related to each other?

The norms about migration and anti-discrimination in Denmark is related to each other to the extent that it is relevant for examining the discrimination of migrants. There is not an independent law in Denmark that specifies the discrimination of migrants. Hence it was relevant to analyse both topics to gain a comprehensive overview. When conducting document analysis, it is possible to interpret the written text in a certain manner. Through the analysis it was evident that the Danish legislation on anti-discrimination fell short in providing individual legislation for all of the grounds on which discrimination may occur. To some extent it can be argued that somewhat neutral policies, such as legislation on equal treatment should ensure equal treatment and not put different groups of people in different positions. This is also applicable to the analysis on the norms about migration because there is no separate legislation ensuring the discrimination of legal migrants, in spite of some measures in the Aliens Act.

In summary, following an analysis of both the norms about migration and anti-discrimination in Danish legislation, it is apparent that Denmark has adopted a broad spectrum of measures concerning ensuring political and social rights to various groups. The final section of analysis will explore whether and to what extent the EU norms about migration and anti-discrimination are translated, appropriated or contested in Denmark.

4.3 Question 3: Are norms about migration and anti-discrimination translated, appropriated or contested?

By looking at the above-sections of analysis, it is evident that Denmark adopts many of the EU norms concerning both migration and anti-discrimination. Hence, through the analysis it can be argued that EU norms about migration and anti-discrimination are appropriated, and therefore also translated in Denmark. According to the theory of norm translation, the possible translation of norms depends on agencies actively creating connections between contexts. In this thesis, the potential norm translation was between the EU level and the state level. Therefore, the translation of the EU normative framework on migration and anti-discrimination depended on the Danish state. It can be argued that Denmark to a large degree created strong connections between the EU context and the Danish national level context through appropriation. Contrariwise, little evidence was found on the presence of norm contestation.

One explanation for the appropriation of norms can be found in the fact that Denmark is part of the EU, and has to incorporate EU law into national law, specifically when the EU issues a Directive, Denmark has to incorporate the content of that Directive into national law, however, Denmark does not have to have the exact same wording, but the meaning must not

change. To clarify, on the topic of both migration and anti-discrimination, the EU issued a Directive (legislative act) and let the member states devise their own laws on how to reach the goals set out in these Directives. Therefore, the ways of doing things (norms), are susceptible to interpretations by member states. According to Großklaus, norm appropriation involves the “*intentional reinterpretation of ideas across cultural, spatial and temporal contexts aimed at definitional power.*” (as cited in Zimmermann et al., 2017, p. 696). In the EU legislation on migration, one of the norms identified was *There should be effective integration policies*. When analysing the Danish legislation on migration, it was possible to excerpt the norm of *The integration efforts in Denmark should take its point of departure in the individual alien’s own integration efforts*. It can be argued that the norm in Denmark about integration is still within the normative framework of the EU since it addresses integration.

In the Danish legislation, it was evident that integration is necessary to help the newcomers make the most of their own abilities. However, appropriation of the norm is evident in the procedure of integration, in that the Danish state has institutionally created facilities for integration and chosen to focus on the individual efforts of newcomers. Denmark has institutionally created facilities in which newcomers may integrate through institutions that help newcomers and more importantly provide guidelines on what to do when arriving in Denmark. One example was found in the analysis, namely, the website nyidanmark.dk [new in Denmark]. [Nyidanmark.dk](http://nyidanmark.dk) is a collaboration between Udlændingestyrelsen and Styrelsen for International Rekruttering og Integration [Danish Immigration Services and the Agency for International Recruitment and Integration] and provide explanations of the rules and procedures for entrance and residence in Denmark. A crucial element of the website is that it provides tailored guidelines on rules and procedures depending on the purpose of stay. To name a few: short stay (VISA), stay as an EU citizen or Nordic citizen, family reunification, asylum, work, study, Au Pair, Ph.d., permanent residence, working holiday, internship, religious proclaimer, humanitarian stay, and more (Udlændingestyrelsen & SIRI, n.d., Til dig der vil ansøge på grund af section). It is relevant to mention the work of nyidanmark.dk because it provides an example of help that is available for newcomers. There may be several reasons for this norm appropriation. One explanation could be, as stated in the analysis, that the idea of freedom in Denmark to live their lives as they wish and that the Danish welfare system facilitates opportunity to pursue their dreams but with the expectation that the individual takes the responsibility to achieve this goal. Another explanation for this appropriation can be found in the notion that, “*appropriation means that actors are able to generate space for resistance against international rule but they do not.... transform it.*” (Zimmermann et al., 2017, p. 696).

By 'resistance' it is not meant that Denmark rejects the norm, rather, it means that Denmark to a large degree, through actors such as the state or nyidanmark.dk, is able to translate the norm in such a manner that 'fits' into the established national norms and is still within the scope of the EU framework.

Additionally, an interesting aspect of the norm appropriation from the EU level to the Danish state level is the notion of norm appropriation that Pereira (2008) argued, "'competing claims to knowledge by actors located in hierarchies of power' and it is an ongoing 'discursive struggle to present a given point of view as the definitive statement on the subject'" (as cited in Lorentzen, 2017, p. 663). When analysing the norm of how a migrant is understood in the EU, it was relatively simple because it was stated directly in the EU legislation, namely, *A migrant may be a third-country national who apply to reside in a Member State for the purpose of work*. This definition of a migrant in the EU is limited within the scope of this thesis, meaning a migrant in the EU may have a different meaning if one was analysing the EU's understanding of for example refugees or irregular migrants. Nonetheless, in the Danish legislation it was not explicitly stated what a legal migrant is. However, the norm of how Denmark understands migration is *Migration can be understood as a movement of people entering into Denmark for various reasons, including work, humanitarian reasons and family reunification*. The Danish state has, in a way, institutionalised this understanding of migration, in that migration can be understood as either purpose of work (legal migrant), humanitarian reasons (refugees), or family reunification (second and third generation immigrants).

An example of how there may be a 'discursive struggle' lay in the Danish word *Udlændinge*. The literal translation is 'foreigner'. However, the law and rules about migrants and refugees are also included in the *Udlændingelov* [Aliens Act]. Therein, all newcomers to Denmark is referred to as 'Udlændinge', which does not provide a clear understanding of which group of people one is referring to. If the law on state level provides a specific definition of a migrant, it provides a space for actors to make claims on knowledge, or in other words, it creates a space for actors to provide their understandings of what a migrant is.

The EU norm that *Legal migrants should be treated fairly* has also been translated in Danish legislation in the norm *It is prohibited to discriminate in the labour market*. It has been translated because the meaning and the conditions of 'fair treatment' in the EU legislation and the 'prohibition of discrimination' in Danish legislation is very similar. In the EU legislation, it was found that legal migrants should be treated fairly, meaning a set of common rights should be given legal migrants. In Danish legislation, legal migrants have the rights set forward in the law on prohibition of discrimination in the labour market. It can be assumed that once the

newcomers to Denmark is considered ‘*legal migrants*’ then they are entitled to the same protection in the labour market as Danish citizens.

Furthermore, when analysing the norms in the EU and the norms in Denmark about anti-discrimination, it can be argued that Denmark uses norm appropriation in the legislation. In relation to how the EU understands anti-discrimination and how Denmark understands anti-discrimination is to a large extent the same. In the Danish legislation about non-discrimination in the labour market, the grounds on which discrimination may occur is identical to those of the EU. However, it is indeed interesting that the legislation does not provide equal protection for the different grounds of discrimination. Specifically, that it is only gender equality and race and ethnic origin that has its own set of rights outside of the law on prohibition of discrimination in the labour market. The reason for this may be that most of the discrimination that happens, takes place at work, which is also where people spend most of their time.

On the other hand, it could also be an intentional reinterpretation of ideas across contexts. When looking at the dates of, for example the Aliens’ Act that has experienced many restrictions through the years, it is evident that these restrictions are results of a general public resentment towards foreigners. For example, from 2000 and onwards, Dansk Folkeparti [The Danish People’s Party] with parliamentary support, pushed for and ensured significant restrictions to the Aliens Act (AU, n.d., senere ændringer section). It could therefore be intentional interpretations of ideas because of a general resentment at the state level towards all foreigners or *Udlændinge*.

Regarding norm contestation, in line with Antje Wiener, then it is the overall idea of “*social practices ‘which discursively express disapproval of norms.’*” (as cited in Zimmermann et al., 2017, p. 699). The above-sections of analyses shows that norms are appropriated, and translated, and that the norms do not show direct disapproval through the discourse. Even though a discourse analysis was not applied in the analysis, the identification of norms in the legislation meant an analysis of the content. There is a focus on different types of discourses when analysing norm contestation. The first is norm validity discourses, wherein “*the validity of a norm by questioning whether the normative claims involved are righteous...*” (Zimmermann et al., 2017, p. 699). There was no evidence in the Danish legislation that questioned the validity of the EU norms. On the other hand, the second is applicatory contestation, which “*deal with the question whether (1) a given norm is appropriate for a given situation... (2) which actions the norm requires in the specific situation.*” (Zimmermann et al., 2017, p. 699). It can be argued that Denmark, to a large extent accepted that the EU norms on migration and anti-discrimination was appropriate for the given situation, through the

appropriation of the norms. Drawing upon the example of how Denmark chose to translate the norms about anti-discrimination, it can be argued that Denmark did negotiate, which actions the norms required and adjusted accordingly. In due course, EU norms about migration and anti-discrimination are appropriated, and therefore also translated in Danish legislation.

5. Conclusion

This thesis focuses on the norms about migration and anti-discrimination in the existing EU legislation and Danish legislation on the topics, respectively. I wanted to investigate the translation of norms from one context to another, *vis-à-vis*, I wanted to examine whether EU norms about migration and anti-discrimination are translated, appropriated or contested in Denmark. In order to answer the problem of this thesis, the analytical framework included three separate analyses: the first analysis examined the EU norms about migration and anti-discrimination; the second analysis examined the norms about migration and anti-discrimination in Denmark; and the third analysis drew upon the findings in the previous analyses in order to assess a possible translation of norms from the EU level to the Danish national level, and ultimately permitted answering the problem formulation of the thesis.

By analysing both EU legislation and Danish legislation on migration and anti-discrimination, combined with definitions and concepts from the theory of norm translation, it can be concluded that EU norms, to a large extent, are translated in Denmark. This is interesting because it is the key to studying how Denmark adopts norms from the EU level. It is important because Denmark is part of the European collaboration, one may assume the position that Denmark should adopt the norms. In due course, norms about migration and anti-discrimination are appropriated in Denmark. This is relevant to acknowledge, because it provides an understanding of the willingness of Denmark to adopt international norms into Danish norms, in this case, norms about migration and anti-discrimination. To demonstrate, it was found in the analysis that the Danish norms to a large extent corresponded to the EU norms, which are found in the EU legislation about migration and discrimination. However, the understanding and wording of the EU norms in some cases, proved to assume a slightly different construction, *vis-à-vis*, norm appropriation took place. Hence, through the appropriation of norms, it is evident that the international level (EU) and the national level (Denmark) are interrelated, in that connections are made between the two contexts, wherein norms travel. This is interesting because, through appropriation, the Danish state is then able to generate an altered meaning of a norm without transforming it. On the other hand, little evidence was found that there is norm contestation in the Danish legislation on migration and

anti-discrimination. This is interesting because, first, Denmark is obligated to reach the goals set out by the EU, and secondly because even though there may not be obvious contestation of norms, it does not mean that there may be contestation in local contexts. In the study of norm diffusion, examining how the EU norms are translated and appropriated in Denmark provides an understanding of how an EU member state implements international law.

Suggestions for further research include a deeper insight into any consequences that the translation of EU norms may arise for third-country national workers residing or working in an EU country (Denmark). It could have been beneficial to assess any repercussions, either in terms of access to the workplace or structural discrimination, as it would have deepened the understanding of the direct discrimination faced by third-country national workers in the EU.

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