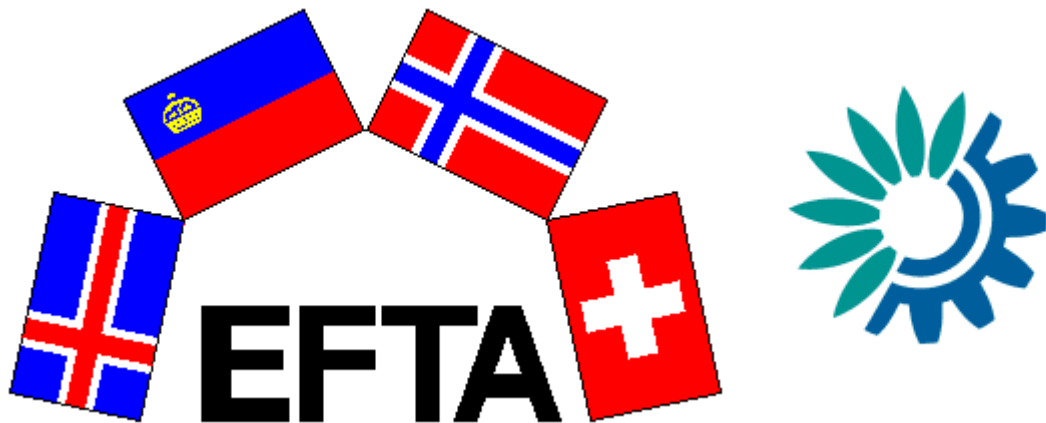


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The EEA Agreement or the EU?

A comparative study of democracy in the Norwegian membership of the EEA Agreement and the Danish membership of the EU.



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1. Abstract

In this thesis we seek to analyse the Danish and Norwegian association to the EU in a democratic perspective. Denmark is a member of the EU but has a special deal because of the Edinburgh Agreement and the opt-outs negotiated in the agreement. This could suggest that Denmark would have more sovereignty in some areas than other EU countries and therefore because the Danish parliament is a very strong democratic institution would have a better democratic situation than the rest of the EU countries. Norway is on the other hand not an EU member state but has signed the EEA Agreement that gives Norway the right to participate in for example the internal market but is then bound to implement the EU legislation concerning that area. On the other hand Norway also has some areas that are not part of the EEA Agreement. These are among others fishery and agriculture which are very important areas for the Norwegians at that could suggest that Norway has given up some influence and basically decreased democracy in some areas to be able to keep full control to the Norwegian citizens in other.

For the basis of the research we needed to find out if the EU in itself could actually be considered democratic. We therefore discussed the arguments by Giandominico Majone, Andrew Morawscik and Andreas Føllesdal and Simon Hix concerning the alleged democratic deficit. This discussion of arguments is also, together with Robert Dahls theory of Polyarchy, then operationalized to create the theoretic foundation for the analysis of the Danish and Norwegian situation. We present the institutional build-up of the EU and EFTA as well as the legislative process in both the EU and the EFTA EEA institutions to create a picture of how Denmark and Norway have influence in the processes. This together with a description of the Danish opt-outs created with the Edinburgh Agreement serves as the empiric basis for the analysis. Furthermore to support our claims in the Analysis we make use of interviews of Poul Skytte Christoffesen and Einar M. Bull.

In the analysis we find that neither the Danish nor the Norwegian situations have all of the seven institutions of Polyarchy in place. We find that in the Danish situation the opt-outs do diminish the Danish influence in some areas in a way that creates a democratic deficit for Denmark. In the Norwegian situation we find that the EEA Agreement does create a significant democratic deficit for the Norwegian citizens furthermore we find that the sovereignty kept in the areas deemed important for Norway does not seem to be enough to really compensate for the influence and democracy lost in the areas covered by the EEA Agreement.

All in all our research shows that both the Danish and Norwegian situation suffers from a democratic deficit. However the Norwegian situation is a lot direr from a democratic point of view.

2. Background

As a response to the 1957 creation of the European Economic Community (EEC), European Free Trade Association (EFTA) was founded in 1960 as free trade cooperation between Great Britain, Denmark, Sweden, Norway, Switzerland, Austria and Portugal. Norway held a referendum in 1972 which ended with a majority against joining the EEC and they therefore continued as a member of EFTA (Billing 2010). Denmark on the other hand chose after a referendum in 1972 to join the EU in 1973. In 1992 the Danish population voted no in a referendum to ratify the Maastricht treaty and because of that a national compromise was made and on that basis that the Edinburgh Agreement was made. The Edinburgh Agreement gave Denmark four exceptions from the Maastricht Treaty: citizenship, economic and monetary union, defence policy and justice and home affairs (Jørgensen, Det Europæiske Råd 2011). In 1994 the Norwegians again voted no to joining the EU. Norway, Lichtenstein, Iceland and the EU instead signed the EEA Agreement (Eriksen, Demokratiet som forsvant 2008).

3. Introduction

One of the more important arguments against Norwegian membership of the European Union (EU) has always been national sovereignty. After the referendum in 1994 where the Norwegians for the second time voted not to join the EU, Norway instead became part of the EEA Agreement. Some of those who were against joining the EU saw the EEA Agreement as a lesser evil (Eriksen, Demokratiet som forsvant 2008). But arguments has been made that, from a democratic point of view this, might not be completely true as argued by Erik O. Eriksen¹ in the article “Demokratiet som forsvant”(The democracy that disappeared) (Eriksen, Demokratiet som forsvant 2008). The EEA Agreement is to facilitate the implementation of EU legislation into the EFTA countries that have signed the agreement but the EFTA countries does not seem to have much influence at the making of that legislation. This is argued by Erik O. Eriksen in the working paper: “Democaracy Lost – The EEA Agreement and Norway’s Democratic Deficit”:

“...Norway has entered into a relationship that makes its subject to the will of an authority that it cannot control and an authority that is under no obligation to take Norway’s opinions into account. Not only do the EEA countries lack a seat at the table where decisions are made, it is also the EU that has the right of initiative and that interprets what is of relevance to the Agreement. Thus, we are dealing with an unbalanced agreement between very unequal parties.” (Eriksen, Democaracy Lost – The EEA Agreement and Norway’s Democratic Deficit 2008, 5, 6).

¹ Professor, dr. Philos, Director of ARENA – Centre for European Studies at University of Oslo

This argument is also to some extent shared by Ulf Sverdrup² and Dag Harald Claeser³. Who say that the reforms that have happened in the EU since 1994 has diminished Norway's influence in the EU and that Norway at the same time does not try to gain influence in the EU. They argue that the Norwegian experts consider their participation in the EU as a listening post rather than a place for influence (Claeser og Severdrup 2004).

Even if Norway might not have much influence on the legislative process in the EU, Norway has a reservation right from implementation of EU legislation. Arguments have been made though that this is not really an option because for example; it would affect not only the interests of Norway but also those of Iceland and Lichtenstein and it would also create an imbalance in the internal market which could lead to counter-reactions from the EU in shape of protective measures. This might also be the reason why the reservation right has not been used by any of the EFTA countries that has signed the EEA Agreement for the 15 years the EEA Agreement has been in force (Eriksen, Democracy Lost – The EEA Agreement and Norway's Democratic Deficit 2008, 7). This is even if there has been legislation like the Directive on Services in the Internal Market (Bolkenstein Directive) that two out of the three governing parties in Norway originally were against implementing fearing that it would result in social dumping (Dahllöf 2006). But even with the reservations in the Bolkenstein Directive was still passed by the Norwegian Parliament on the 23rd of April 2009.

Arguments have also been made that the EU itself is suffering from a democratic deficit, this is an argument made by among others Andreas Føllesdal⁴ and Simon Hix⁵ who base their argument on among other things the notion that the legislative process has become dominated by executive actors and that this has happened on the expense of the power of the national parliaments. They also argue that even though the European Parliament has become increasingly powerful since the mid-80s it is still too weak in comparison to the Council of the European Union it is worth noticing that they made that argument before the implementation of the Lisbon Treaty that gave the Parliament even more power in the decision making process) (Føllesdal and Hix 2005, 2-5, 24,25). There are although also scholars who think that the EU has no problem with a democratic deficit among them can be mentioned Andrew Moravcsik⁶ who argues that when international organisations are doing roughly as good as the generally legitimate national systems

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⁶ Professor of Politics and director of the European Union Program at Princeton University

they partly or fully replace then it is satisfactory and therefore Moravcsik does not mean that the EU is suffering from a democratic deficit (Moravcsik 2004, 2).

In many ways Denmark can be considered an average EU member state however the Edinburg Agreement from 1992 that defines the Danish opt-outs makes Denmark a special case. The Edinburg Agreement grants Denmark opt-outs in four different areas Citizenship, Economic and monetary Union, Defence policy and Justice and home affairs. These opt-outs exempts Denmark from some EU legislation however on the other hand they does also reduce the Danish influence both in areas covered by the opt-outs but also in general. According to Einar M. Bull the Danish influence in the EU is reduced because Denmark is not viewed as a full member because of the opt-outs (Bull 2012, 00:51:12).

Considering the arguments about lack of democracy or democratic deficit made both about the EEA Agreement, the EU as well as the Danish situation it is interesting to see whether it from a democratic point of view makes more sense to be part of the EU with some opt-outs as the Danish situation or staying outside of the EU as part of the EEA Agreement as the Norwegian situation. This thesis will therefore analyse the democratic situation for both Norway and Denmark and compare these to get an idea of whether the Danish or Norwegian relationship is the more sensible in a democratic view.

4. Methodology and structure

What attracted our attention to this project was vast amount of legislation that national parliaments have implement from the EU and the fact that some countries seemingly implement legislation without being part of the decision-making process. Among these countries are the countries that are part of the EEA agreement where we have chosen to focus on Norway. Norway has to implement all legislation concerning the internal market without having any influence EU-system and it therefore seems like there could be a democratic deficit in the EEA agreement. We will also compare the Norwegian situation with the Danish situation since Denmark is also a special case in the EU with the opt-outs negotiated in the Edinburg Agreement we are therefore interested in seeing how that affects the influence in decision making and thereby democracy. Having studied the two cases we will make a comparison and seek to conclude what situation is healthier from a democratic perspective.

To investigate this question we have formulated our problem formulation like this:

“Does the Norwegian membership of the EEA Agreement create a democratic deficit and how does this compare to the democratic situation for Denmark as a member of the EU?”

The reason for making the comparison with Denmark is a methodology way to give a clearer picture of the democratic “deficit” because Denmark as a member of the EU are faced with implementing much of the same legislation as Norway is but Denmark is represented in a whole different way in the legislative process in the EU. The reason for choosing Denmark is that Denmark and Norway are in many ways very similar, population size, political system cultural etc.

To investigate the problem formulation further hypothesis helps to structure the analysis as a guideline through the project. We have therefore devised three hypotheses that we seek to prove/disprove in order to help us answer our problem formulation. Our hypotheses are:

- The EU is to some extent suffering from a democratic deficit.
- The Danish opt-outs created a democratic deficit for Danish citizens.
- The EEA Agreement has created a democratic deficit in Norway.

The approach to make a comprehensive conclusion on the basis of the problem formulation it is necessary to have solid theoretical foundation. The theory will be used as point of orientation in the analysis of all three hypotheses and especially when digging in the empirical material. We have chosen to use Robert A. Dahl’s theory Polyarchy as it defines some minimum standards for what institutions should be in place for a democratic state. From this theory we will be able to say whether the Danish or Norwegian situation has the potential to be democratic as well as concluding which situation has more of the institutions in place and thereby which is more democratic. Together with the theory of polyarchy we will also be using the analyses of democracy in the EU by Giandomenico Majone , Moravcsik, and Føllesdal and Hix.

As basis for the analysis we first give a description of the different institutions that are part of the EU, EFTA and the EEA Agreement and of the legislation processes in these institutions in order to see how and where the Danish and Norwegian citizens have influence in the institutions and the legislation processes. Thereafter we use our operationalization of polyarchy and the scholarly democracy analyses and use this to analyse the institutions, the legislation processes and the Danish and Norwegian influence in these to further support our claims in the analysis we will use interviews of Poul Skytte Christoffersen⁷ and Einar M. Bull⁸. From this analysis we will be able to compare the Danish and Norwegian situations and see how they compare in a democratic perspective both to each other and to the EU in general.

⁷ Former Danish ambassador to the EU now Danish ambassador to Belgium

⁸ Norwegian ambassador to the European Union from 1996 to 2001 and to Italy from 2006.and from 2002 to 2006 the president of the European Free Trade Association Surveillance Authority.

5. EU Institutions

5.1 European Parliament

The European Parliament consists of 736 elected members from the member states. They are directly elected in each member state every fifth year. The number of representatives from each country depends of the size of the country and Denmark has at present 13 members (Jørgensen, Europa-Parlamentet 2011).

In the European Parliament the members are organized according to their affiliation in eight different groups, seven of these approximate political parties and the last is a group of independents (Jørgensen, Europa-Parlamentet 2011).

The European Parliament is part of the legislation process together with the Council of the European Union whenever the ordinary legislative procedure is used. Furthermore the European Parliament cooperates with the Council of the European Union on the EU budget before the start of each financial year and after the end of the financial year the European Parliament has to approve the European Commission's execution of the budget. Finally the European Parliament has to perform the democratic control of the European Commission (Jørgensen, Europa-Parlamentet 2011).

The work of the European Parliament are foremost situated in Brussels but approximately one week every month they meet for a plenary session in Strasbourg (Jørgensen, Europa-Parlamentet 2011).

5.2 European Council

The European Council consist of the heads of state or the heads of government among with the President of the European Council Herman van Rompuy) The High Representative for Foreign Affairs Lady Catherine Ashton and the President of the European Commission José Manuel Barroso. The European Council is meeting four times a year and it is the President of the European Council how plans and lead the meetings. Denmark is represented in the European Council by its Prime Minister Helle Thorning Schmidt (Jørgensen, Det Europæiske Råd 2011).

The job of the European Council is to establish the overall guidelines for the EU, to make decisions on the future of the EU, negotiate changes of the treaties and discuss larger problems in the EU. The product of the meetings are the conclusions these are political agreements that reached by consensus. These are almost always the basis for the implementation of these agreements in praxis by the Council of the European Union, the European Parliament and the Europe Commission (Jørgensen, Det Europæiske Råd 2011).

It is often so that if the departmental ministers have not been able to agree on the meetings in the Council of the European Union then the European Council plays an important role in the mediation in these cases (Jørgensen, Det Europæiske Råd 2011).

5.3 Council of the European Union

The Council of the European Union is together with the European Parliament the legislative institutions in the EU. The Council of the European Union represents the governments of the 27 member states of the EU and it is composed of the 27 national ministers from one from each member state. Which ministers depends of the topic of the discussion for example if discussing agricultural policy then the Council of the European Union is 27 national ministers whose portfolio includes this policy area, with the related European Commissioner present but not voting (Jørgensen, Ministerrådet 2010).

The Council of the European Union usually makes decisions by either unanimity or qualified majority but no matter the type of voting the treaty prescribes that it is normal for the Council of the European Union to be seeking consensus in all cases. Because some cases are decided by unanimity then in reality every country in the EU has a veto right in these cases (Jørgensen, Ministerrådet 2010).

On a meeting in June 2006 the European Council decided that the negotiations of the Council of the European Union should be public in cases where the consultation procedure is used. The meetings are made public live and as recordings on the homepage of the Council of the European Union (Jørgensen, Ministerrådet 2010).

5.4 European Commission

Just like the European Parliament and the European Council, the European Commission is based in Brussels. Each member state of the EU has representative in the European Commission that therefore consists of 27 commissioners each with responsibility for a particular area. But unlike the European Parliament the European Commission is not directly by the EU citizens, instead they are appointed by the each government in the EU. The last appointed commission was the second Barroso commission the 10th February 2010 where the Danish commissioner is Connie Hedegaard who has the position of commissioner for the Climate Action. Each new commission is appointed for a period of five years (Mårup, Europa-Kommissionen 2010).

The European Commission has the right of initiative and that means that the European Commission is in control of presenting legislation for the European Parliament and the Council of the European Union. Decisions are made on the basis of majority vote but the aim is to reach unity among the commissioners. As mentioned before the European Commission is appointed by the EU governments, but the European

Parliament has to approve the European Commission. The European Parliament cannot however say no to a certain commissioner, but has to approve the European Commission as a whole (Mårup, Europa-Kommissionen 2010).

5.5 European Central Bank

The European Central Bank (ECB) was founded with the creation of the Euro in 1998 and has its headquarter in Frankfurt. The Executive Board consists of six members with the former governor of the Bank of Italy Mario Draghi as president. The ECB is political independent from the EU and national governments. The overall purpose of the ECB is to keep the inflation low and to reach agreements about the interest rate, the 17 national bank directors from the Euro Zone and the Executive Board meets every second week. This is called The Governing Council and decisions are made on the basis of a majority vote. Besides The Governing Council there is The General Council that consist of the chairman the vice chairman of The Executive Board with the national bank directors from all the EU countries to process concerns about the Exchange Rate Mechanism ERM2 (Jørgensen, Den Europæiske Centralbank 2011).

5.6 Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) is the highest judicial power in the EU. It was founded in 1952 and is placed in Luxemburg. The purpose of the CJEU is to judge in cases concerning the EU legislation. What is special about the EU is that the EU institutions can issue regulation with direct impact on national stats and its citizens. The CJEU is there to make sure that all EU legislation gets interpreted and abided in the same way in all EU countries. The ECJ consist of 27 judges one from each member state, which is appointed by the local government by a period of six years. Even though the judges are locally appointed they have to be independent from national interest. Besides the 27 judges there are 8 advocate generals to draw up a verdict to the judges. The Judges doesn't have to listen to the advocate general but they often do (Mårup, EU-Domstolen 2010).

5.7 Legislative Procedures in the EU

The EU legislation procedure is complex with many different layers of procedures. The legislation process in the EU involves many actors. The previous mentioned institutions like the European Commission, The Council of the European Union and the European Parliament have huge assets in the legislation process. But there are more to it than just the mentioned institutions also lobbyist and interest groups are present in the process (Cini 2010, 210).

After the ratification of the Lisbon Treaty in 2009, one million citizens of the European Union can propose a legislative proposal to the European Commission. It is called the European Citizens' initiative (ECI) and if

one million signatures from at least one quarter of European Union member states are gathered then they can present a proposal to the European Commission and they will have the opportunity to present the proposal at a public hearing in the European Parliament. However the citizens' initiative is an agenda-setting tool and therefore does not affect the Commission's right of initiative. But if the European Commission decides not act on the proposal then the Commission has to explain why. The ECI was launched the 1st of April 2012 (European Commission 2012).

Overall EU legislation is divided into "primary" and "secondary" legislation. The primary legislation consist of treaties that lay out the framework or ground rules of the EU and primary legislation is negotiated among the heads of states in unanimity in The European Council. The secondary legislation includes regulations, directives and decisions. The last three mentioned legislation forms will be described later (European Union u.d.).

The ordinary legislative procedure is by far the most important and covers approximately three-quarters of all policy areas in the EU. Among these policy areas are environment, consumer's rights, the common market, shipping and police and criminal law. The procedure is characterized by the Council of the European Union and the European Parliament has to agree. By a majority vote in the European Parliament and qualified majority vote in the Council of the European Union before a proposal can get through. There can be up to three phases in the ordinary legislative procedure. The European Commission has the right of initiative to propose new legislation, so the legislation procedure starts at the European Commission. But a proposal does not just come out of now where. The European Commission often uses expert groups including MEP's, member states and interest groups, to develop new ideas for legislature proposals (The European Parliament a). But before a draft proposal is made by the European Commission is ready, a consultation with the European Parliament, member states and interest groups takes place (Mårup, Den almindelige lovgivningsprocedure 2010) (Cini 2010, 214). In the first phase the European Parliament discusses the proposal from the European Commission and agrees on a statement. The statement is followed up by a vote on the proposal that has to be passed by a majority. If the European Parliament disagrees with the proposal the statement will include amendments to the proposal. When the European Parliament has finished, the Council of the European Union begins to consider the proposal. The proposal and the amendments from the European Parliament is passed by the Council of the European Union if a qualified majority of the member states agree, if not the Council of the European Union makes a so-called common position equivalent to the European Parliaments' statement. In reality the procedure is not that rigid. There are informal meetings going on between the Council of the European Union and the European

Parliament to find compromises during process. In 2008 it was actually possible for the two institutions reach an agreement in 80 percent of all proposals in the first phase of the legislation procedure (Mårup, Førstebehandling 2010). In case where they do not reach an agreement the Council of the European Union's common position will be sent to the European Parliament, and so the second phase can begin. In the second phase the European Parliament can approve the proposal from the Council of the European Union with a majority vote, but the European Parliament can however also reject the proposal with an absolute majority vote, meaning that a majority of all the members of the parliament vote against the proposal. If the European Parliament rejects the proposal, it is up to the Commission to present a new proposal, so the process can start over. The proposal from the Council of the European Union to the European Parliament can also be changed by the European Parliament but these changes can only be passed by an absolute majority vote. If this happens the Council of the European Union can approve the proposal with a qualified majority vote, but it requires unanimously in the Council of the European Union if the Commission choose to block the European Parliament's proposal. If the proposal gets through the Council of the European Union then the legislation procedure ends here. In 2008 16 percent of all legislation ended under the second phase of the procedure. In case that the Council of the European Union disagrees with the European Parliament, the proposal goes to the third phase called the conciliation procedure (Mårup, Andenbehandling 2010). The third phase differs from the two other phases by being a committee with members from the European Parliament, the Council of the European Union and the European Commission to make compromise. In the committee there is a representative from each member state and corresponding amount of members from the European Parliament and the European Commission with responsibility for the proposal. If the committee succeeds to reach a compromise the proposal passes with a majority vote in the European Parliament and a qualified majority vote in the Council of the European Union. The proposal gets automatically rejected if the committee cannot reach a compromise on time, but the committee can however choose to extend the deadline. In 2008 only 4 percent of the proposals were adopted in the conciliation procedure (Mårup, Forligsproceduren 2010).

As previously mentioned there are three kinds of legislation in the EU system: regulations, directives and decisions. Regulations are legally binding on the member states and a regulation must be implemented in its entirety, in all EU countries. It is important to mention that regulation must be implemented in the national parliaments. Directives differ from regulations by not being a legislatively binding act, but instead directives are goals that all member states must achieve. But how the individual member states do this is up to them to decide. Decisions are binding just like regulations but differ by only being binding to whom it concerns, and this could for example be an individual country or a company. A decision is directly applicable. There are of course consequences for member states or companies if they do not live up to the

legislation made by the European Union. The European Commission has the possibility to bring cases for the European Court of Justice, which is the highest authority when it comes to legislation from the European Union (European Union a) (Europa 2011a).

The Maastricht treaty introduced in 1993 a new principle to the EU legislation, subsidiarity. The principle of subsidiarity means that, when the European Commission makes a legislative proposal it has to take under consideration the community law principles, that a decisions has to take place as close to the citizens as possible at the lowest administratively and political level. This means that if not the EU has exclusive powers the EU can only act when it will be better to implement the legislation at the EU level for the common good. So before a proposal is made the European Commission has to be sure that the proposal is in accordance to the principle of solidarity (European Commission a). Another principle in the Maastricht Treaty is the principle of proportionality. Proportionality in the EU means that the EU cannot apply means that are more comprehensive than necessary to achieve EU's goals. This implies that EU legislation has to leave as much leeway as possible to the national implementation. In contradistinction to the principle of subsidiarity, the principle of proportionality also applies when the EU has exclusive powers. It is possible to test the two principles at the European Court of Justice, but in practice most control is handled by political supervision by the European Commission, the Council of the European Union and the European Parliament (European Commission b)

5.8 Lisbon Treaty

After a long process the 3rd of November 2009 all EU countries was ready to ratify the Lisbon treaty which was negotiated 2 years earlier. The new treaty had been under way for a long time and had a lot of problems through the process. In a referendum the citizens in both Holland and France voted no to the Treaty establishing a Constitution for Europe (TCE) in 2005 and sent the leaders of the EU countries in to a period of reflection (Jørgensen, Lissabontraktaten 2009).

Overall the Lisbon Treaty lines up a new framework for EU-institutions and decision-making, where the purpose is to give the EU a more democratic face to the European citizens and a structure better fitted for more countries joining the EU. Back in 2000 where the Nice-treaty was negotiated there were only 15 members of the EU and after the eastward enlargement with ten new member states to come the structures were just not fitting for so many member states. The content of the treaty is among other, to changes the voting system in the council. The treaty moves more policies under the quality majority so 55 percent of the member states and 65 percent of the EU-population have to stand behind a proposal before it can get through. To reflect more democracy and transparency the directly elected European Parliament got more power with the implementation of the treaty. The European Commission still have the right of

initiative. Another element in the treaty is the ECI where the EU-citizens can raise a proposal that has to be dealt with by the European Commission and the European Parliament. Finally the EU wanted a more common foreign and security policy to face the challenges of the 21st century. To face these challenges EU appointed a High representative for the common foreign and security policy to give EU one voice. At the same time more resources were given to build up diplomatic relationships to the rest of the world (Jørgensen, Lissabontraktaten 2009).

The Lisbon treaty introduces a permanent president of the European Council. The president is elected for a period of two and a half years by the heads of governments in the European Union. The president's job is to lead negotiations in the European Council. The first and the current president of the European Council is Herman Van Rompuy (European Commission b).

5.9 Is the EU a federation?

The theory of polyarchy is meant for analysing the democracy in nation states or federal states (as Dahl also considers the USA and Germany as polyarchies (Dahl 1989, 238-239)). This however does not mean that the theory cannot be used for analysing the EU. Arguments have been made that the EU apart from in two areas approximate a federation. In a Harvard Jean Monnet Working Paper Prof. Dr. Tanja A. Börzel and Prof. Dr. Thomas Risse describes how the EU shares most features of what literature defines as a federation:

- a) The EU is a system of governance which has at least two orders of government, each existing under its own right and exercises direct influence on the people.
- b) The European Treaties allocate jurisdiction and resources to these two main orders of government.
- c) There are provisions for 'shared government' in areas where the jurisdiction of the EU and the Member States overlap.
- d) Community law enjoys supremacy over national law, it is the law of the land (*Bundesrecht bricht Landesrecht*).
- e) European legislation is increasingly made by majority decision obliging individual Member States against their will.
- f) At the same time, the composition and procedures of the European institutions are based not solely on principles of majoritarian representation, but guarantee the representation of 'minority' views.
- g) The European Court of Justice serves as an umpire to adjudicate conflicts between the European institutions and the Member States.
- h) Finally, the EU has a directly elected parliament (since 1979). (Börzel og Risse 2000).

Bözel and Risse argues that the only two features that the EU lacks to truly become a federation is that the member states still have the ultimate power over changing or amending the treaties of the EU and that the EU lack a “tax and spend” capacity.

“..., the European Union today looks like a federal system, it works in a similar manner to a federal system, so why not call it an emerging federation?” (Börzel og Risse 2000).

Considering the similarities between the EU and a federation it is deemed alright to analyse the EU using polyarchy.

6. Theory

6.1 Polyarchy

Polyarchy is a term introduced by Robert A. Dahl emeritus professor at Yale University. Polyarchy is from Greek poly meaning many and arkhe meaning rule, polyarchy describes a form of government where power is vested in three or more persons. Dahl sets up comprehensive standards to the democratic process in a polyarchy (Møller and Skaaning 2010, 49, 50). These are originate from the two main characteristics of polyarchy first that citizenship is extended to a relative high proportion of adults and second that the citizens have the right to oppose and vote out the highest officials of the government. These two characteristics are further developed into seven institutions that are necessary for a government to be classified as a polyarchy, these are defined by Dahl in the book “Democracy and its Critics”:

1. Elected officials. Control over government decisions about policy is constitutionally vested in the elected officials.
2. Free and fair elections. Elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon.
3. Inclusive suffrage. Practically all adults have the right to vote in the election of officials.
4. Right to run for office. Practically all adults have the right to run for elective offices in the government, though age limits may be higher for holding office than suffrage.
5. Freedom of expression. Citizens have a right to express themselves without the danger of severe punishment on political matters broadly defines, including criticism of officials the government, the regime, the socioeconomic order, and the prevailing ideology.
6. Alternative information. Citizens have a right to seek out alternative sources of information. Moreover, alternative sources of information exist and are protected by laws.

7. Associational autonomy. To achieve their various rights, including those listed above, citizens also have a right to form relatively independent associations or organizations, including independent political parties and interest groups (Dahl 1989, 221).

Dahl argues that all these seven institutions are necessary for democracy on a large scale in a modern nation state he does however not say at that these seven institutions are sufficient and he maintains that further democratization is possible even if the seven institutions are in place (Dahl 1989, 222).

The seven institutions Dahl puts into a table to show how they correspond to the criteria in the democratic process:

The following institutions...	are necessary to satisfy the following criteria
1. Elected officials 2. Free and fair elections	I. Voting equality
1. Elected officials 3. Inclusive suffrage 4. Right to run for office 5. Freedom of expression 6. Alternative information 7. Associational autonomy	II. Effective participation
5. Freedom of expression 6. Alternative information 7. Associational autonomy	III. Enlightened understanding
1. Elected officials 2. Free and fair elections 3. Inclusive suffrage	IV. Control of the Agenda

4. Right to run for office 5. Freedom of expression 6. Alternative information 7. Associational autonomy	
3. Inclusive suffrage 4. Right to run for office 5. Freedom of expression 6. Alternative information 7. Associational autonomy	V. Inclusion

(Dahl 1989, 222).

Table 1 shows how Dahl consider the seven institutions to be an necessary part of any democratic government and underbuilds the argument that democracy cannot be achieved without the seven institutions.

6.2 Deficit discussion

The idea behind the notion of “democratic deficit” is that decisions in the EU are in some ways insufficiently representative of, or accountable to, the nations and people of Europe.

The democratic deficit discussion can generally be split into two perspectives the institutional perspective and the demos perspective.

The institutional perspective is based on the notion that the transfer of legislative powers from the national parliaments to the EU institutions has not been met with equal democratic accountability in the EU institutions as in the national parliaments. This argument has been specified on the role of different EU institutions; the European Parliament, the Council of the European Union, the Commission of the European Union and the Court of Justice of the European Union (Scharpf 1997).

The arguments concerning the European Parliament is based on the notion that the loss of control of the national parliaments weakens the link between the electorate and the elected legislators and must therefore be countered by increased power of the European Parliament. However it is recognized by critics

of a democratic deficit in the EU that at present time the European Parliament cannot completely compensate for that weakened link between the electorate and the elected legislators and that the EU legislation is still very much controlled by EU-level executives. To increase the power of the European Parliament to a level where it can compensate for the weakened link it has been proposed that the ordinary legislative procedure has to be extended to cover more policy areas or an increase in the involvement by the European Parliament in appointing the European Commission e.g. by allowing the European Parliament to choose the President of the European Commission from a shortlist put forward by the Council of the European Union (Scharpf 1997).

To compensate for the weakened link between the electorate and the elected legislators it has also been proposed that the EU should move towards a bicameral system comprised by both direct and popular representation through the European Parliament and indirect territorial representation through the Council of the European Union. The Council of the European Union is however also object to criticism because of its (rather than the European Parliament) final say in crucial legislative matters. The Council of the European Union is also criticized for its arcane and secretive body compared to other EU institutions even if all cases that are decided using the ordinary legislative process can be streamed through the website of the Council of the European Union (Scharpf 1997).

The European Commission has received much critique in connection to the democratic deficit debate being attacked for being an archetypical undemocratic institution undemocratic institution because it is a civil service composed of appointed members who poses substantive policy-making if not legislative powers. The problem is that the European Commission is an executive body that is hardly accountable to the European citizens and that is has been able to break free of the control of the control of the national governments and the parliaments and directly influence policy and integrative outcomes (Scharpf 1997).

Also the European Court of Justice has been attacked as being part of the democratic deficit. The argument made is that while the European Court of Justice has the obligation to interpret the Treaties it has been an instrument in pushing the boundaries of European Law and because of this it has been argued to have a teleological pro-integration bias (Scharpf 1997).

The demos argument in connection the democratic deficit discussion is that if the EU is to be democratic there must be a European demos and that at the present time there is not. Some argue that it is not even possible to have a European demos where other argue that it can be achieved but not until the EU citizens have the democratic self-consciousness of citizens, they are adherent to shared democratic values and they have the desire to shape the democratic future of the plurality of interrelated peoples (Chrysochoou 2000).

To further shed light on the democratic deficit discussion we will in the following chapters have a look at some of the different views. We have chosen to focus the discussion on works of Giandomenico Majone, Andrew Moravcsik and Andreas Føllesdal and Simon Hix as they present three very different views on the democratic deficit discussion.

6.2.1 Giandomenico Majone

Majone argues that the debate of democratic deficit has been based on the wrong premises. He sees the deficit as based on mainly four different standards:

- Standards based on the analogy with national institutions
- Majoritarian standards
- Standards derived from the democratic legitimacy of the Member States
- Social Standards

(Majone 1998, 5-6)

Majone disagrees with these standards and he describes the arguments from the first standard as either equate the institutions of the EU with national institutions or assume that the EU institutions will through time approximate these institution. This can for example lead to the claim that the European Parliament should have independent power of legislative initiative because national parliaments have that power (Majone 1998, 6-8).

According to Majone the most obvious objection to the first standard is that the special institutional architecture of the EU has been ratified by all of the national parliaments and that this differs very much from the institutional architecture of national institutions. He does not think that the EU has a legislature but instead it has a legislative process in which there are different political institutions are represented and have different parts to play. Similarly Majone does not believe that the EU has an executive power since the executive power in some cases are exercised by the Council of the European Union, some case of the European Commission and in many cases the Member States. Another difference between the national level and the EU level is the EU is a system of limited competences and that is also a reason for being sceptical about the first standard (Majone 1998, 6-8).

The second standard is based on the model for majoritarian democracy. According to this standard the only option for democracy is the European Parliament because it is the only institution where the members are directly elected by the citizens of the EU. Majone does however not believe that majoritarian democracy is an option for the EU because of the many differences between the people and Member States in the EU such as language, geography, economy ideology and not least the difference between small and large

Member States. Majone believes that many of the functions in the EU that are not based on the model of majoritarian democracy are administrating the many differences between the citizens of the different Member States. Furthermore he believes that if the EU was based exclusively on majoritarian democracy it would produce a deadlock and eventually break apart (Majone 1998, 10-11).

Majone describes the arguments based on the third standard as where the EU obtains its democratic legitimacy through the Member States which means that the most important function in the legislative process in the EU is the veto power of the Member States. Because of that the development that has happened since the Single European Act where more and more decisions have been based on majority is one of the largest problems for EU democratic legitimacy. Majone does however not agree with arguments based on this standard as he believes that even if the democratic nature of the Member States is sufficient to legitimize the intergovernmental part of the EU it will never be adequate for legitimizing the supranational component of the EU. This is according to Majone because one of the important tasks of the supranational parts of the EU has always been to protect the rights and interests of the EU citizens against the majoritarian decisions of the Member States (Majone 1998, 12-13).

The fourth standard presented by Majone is producing arguments about how democratic legitimacy can only be obtained through the protection of the rights of the individual but also the creation of new social rights. From this argument the EU is suffering from a democratic deficit because the EU has not been able to create more equality and social justice therefore the EU "lacking welfare" and because of the EU cannot enjoy the same democratic legitimacy as the Member States. Majone argues that this would not be possible for the EU to be social redistributive since he believes that it is very apparent in the treaties that the Member States does not wish to transfer that kind of power to the EU as well as there is an opposition in the public against this. Furthermore Majone claims that if the EU was actually social redistributive it would not create more democratic legitimacy on the contrary it would create less democratic legitimacy. This is according to Majone because this would increase the view of the EU as a centralistic bureaucratic community and therefore any attempt to legitimize through social redistribution is bound to fail (Majone 1998, 13-14).

The main reason why Majone does not agree with the standards for discussing EU and democracy is that he considers that the EU should be seen as a regulatory system. He believes that in reality the Member States delegates regulatory power to the EU in for example areas such as the common market, harmonizing of product standards, health and safety regulations and economic policy through the European Central Bank. The reason why the Member States carry out this delegation is to isolate some regulation from democratic pressure which can result in less than optimal decisions. This can for an example be if a decision is taken by

a government and then in the next election the balance of power shifts and the new government cancel the decision. Another example of this can be very short-sighted policies that have the opposite objective than what is rational in the long run. This could for example be lowering the interest rate for a short-sighted “boom” in the economy when it would be better to keep a rather high interest rate. If such decisions are taken by a regulatory system that does not need to think about re-election and therefore is not under the scrutiny of democratic pressure the chance of a more optimal decision is much greater (Føllesdal and Hix 2005, 7).

6.2.2 Andrew Moravcsik

Moravcsik does not believe that international organizations like the EU should be compared to ideal democratic systems instead he argues that these organisations should be judged by if they approximate democracy as it exist in the modern western civilizations with the limits that these systems have like; limited public information and interest, regulatory capture and limited consensus. If international organizations democratically approximate the generally democratic national systems that they fully or partly replace then that is satisfactory. On the basis of this argument Moravcsik does not believe that the EU suffers from a democratic deficit (Moravcsik 2004, 2).

Moravcsik defends the EU from the notion that it should be suffering from a democratic deficit by addressing four different critiques of democracy in the EU. These are; the libertarian, the pluralist, the social democratic and the deliberative democratic critique (Moravcsik 2004, 2).

The libertarian critique often defines the EU as an arbitrary super state governed by supranational technocrats or a despotic bureaucratic. However this is according to Moravcsik a myth since the EU does not tax, spend, implement or coerce and in many areas does not have a monopoly of public authority. Furthermore the EU constitutional order impose tight constraints on fiscal, administrative, legal and procedural constraint on EU policy making that are part of the treaty and legislative provisions, which have force of constitutional law. Also the EU implements few of its own regulations, which Moravcsik finds is the only option because of the extraordinarily small size of the Brussels bureaucracy that employs fewer people than a modest European city. Because of all these limits to the power of the EU Moravcsik believes that arbitrary decisions are impossible and that the EU legislation represents a broad consensus among different groups and different political levels (Moravcsik 2004, 14-17).

The pluralist critique is one described by e.g. Robert Dahl who argues that the EU can only be called democratic if political debate and competition is in place on the EU level. Dahl believes that the EU level should approximate the national level where political parties and persons compete for political jobs.

However Moravcsik does not believe that such a competition is possible on the EU level but he also argues that there is a tendency to overlook the mechanisms that is built into the constitutional order of the EU that insures democracy. According to Moravcsik these mechanisms are e.g. the democratic control from the national governments as well as the European Parliament. Furthermore he argues that the delegation of power in the EU to the Court of Justice of the European Union, the European Central Bank and other semi-autonomous authorities approximates the structure that can be found in many modern democracies (Moravcsik 2004, 17-18).

Fritz W. Scharpf is one of the most significant in the social democratic critique. He argues that policy made in the EU has a neoliberal bias mainly because of the constitutional structure of the EU and the rhetoric that surrounds it, which favours market liberalization over social protection. This according to Scharpf creates a “race to the bottom” for welfare spending even though most people in the EU favours maintaining the current level of welfare spending. Moravcsik does however not agree that this is actually happening, he points out that the welfare spending in the EU has remained relative stable on the other hand he also points out that the coming years strain on the welfare system will make it impossible to maintain the current level of welfare and even if there is a neoliberal bias in the EU (which Moravcsik doubts) then it is justified by the social welfare bias in the national states (Moravcsik 2004, 21-23).

According to Moravcsik the deliberative critique is based on the idea that the EU goad public passivity. This is e.g. because there has not been created proper transnational parties, identities or discourses and that a greater participation in the EU would create a deeper feeling of solidarity or at least a greater support for the EU. Moravcsik does however list three reasons why this would actually be the case. First he mentions that isolated institutions often have more public support than the legislative as an example Moravcsik mentions the European Court of Human Rights in Strasbourg. Secondly he argues that the policy areas that are part of the EU such as trade liberalization, monetary policy, the removal of tariff barriers, technical regulation in the environmental and other areas and foreign aid and general foreign policy coordination are not areas that are very high on the list of areas that the public are interested in. Thirdly Moravcsik does not believe that the EU can achieve greater participation in the future because in his opinion the only way to make that happen is if the EU will be turned into an engine for redistribution. This will according to Philippe Schmitter mean a greater interest in the EU from the public but according to Moravcsik this would result in conflict between the Member States and could eventually lead to a disintegration of the EU (Moravcsik 2004, 24-26).

From the notion that the EU should not be compared to some democracy ideal system but instead to what can be seen in modern democracies today Moravcsik believes that does not suffer from any kind of democratic deficit (Moravcsik 2004, 27).

6.2.3 Andreas Føllesdal and Simon Hix

Føllesdal and Hix continue the debate about the democratic deficit in the EU and they differ from Majone and Moravcsik in the fact that they believe that the EU is in fact suffering from a democratic deficit. Føllesdal and Hix put up five points that describes why they believe so.

First they argue that the European integration has meant an increase in the executive power and a decrease in the power of the national parliaments. The design of the EU means that the decisions made on an EU level are dominated by executive players such as the national ministers in the Council of the European Union and persons chosen by the national governments in the European Commission. Føllesdal and Hix does not in itself see this as being a problem, but they see it as a problem because these executives at the same time are outside the national parliaments control then it becomes a problem. This lack of control means that the national governments in reality can ignore their parliaments when making decisions in the EU (Føllesdal and Hix 2005, 4-5).

The second point of Føllesdal and Hix is that the European Parliament is too weak. Even though the Parliament has got increased power since the mid-1980s Føllesdal and Hix still believe that one can argue that the institution is too weak compared to the Council of the European Union. Despite the increased power that the European Parliament has got in the legislative process still most of the legislation in the EU is produced using the consultation procedure where the European Parliament only has limited power. The European Parliament can veto the President of the European Commission and the whole cabinet of commissioners thereby it is still the national governments that sets the agenda when it comes to the election of the European Commission which Føllesdal and Hix points out means that the European Commission is not elected by the European Parliament (Føllesdal and Hix 2005, 5).

The third point Føllesdal and Hix present is the lack of European Elections. European citizens elect their national governments who are represented in the Council of the European Union and who choose the commissioners. Also the European citizens elect the members of the European Parliament. Føllesdal and Hix do however not believe that these elections are about the EU and what the candidates and parties want to do on an EU level. The national elections are about national questions and the parties keep the European questions out of the debate. The elections for the European Parliament doesn't either treat EU questions and the parties and media treat these elections more like midterm elections. According to

Føllesdal and Hix this tendency has been present since the first election for the European Parliament in 1979. Føllesdal and Hix finds that the lack of European elections result in European Citizens only have indirect influence on the politics of the EU contrary to if there was in fact real European elections where the citizens would have direct influence (Føllesdal and Hix 2005, 5-6).

The fourth point is an argument about how the democratic deficit would not disappear if the European Parliament would become more powerful and “real” European elections were held. Føllesdal and Hix points out that the EU is “far” from the citizens the structure of the EU is simply too different from what the citizens are used to and therefore they do not understand the EU and because of that they can never identify with the EU or see it at a democratic authority. For example the European Commission is neither a bureaucracy nor a government and it is appointed peculiar process that is neither direct nor indirect. The Council of the European Union is part legislative and part executive power. When the Council of the European Union is legislative most of its decisions are made with transparency. Furthermore the Parliament can never become a deliberative assembly because of the multilingual debate in the committees and plenary meetings and also the political process is more technocratic than political (Føllesdal and Hix 2005, 6).

The fifth point described by Føllesdal and Hix is really the result of the four preceding points. They believe that the European integration has meant a political shift that has based on the four preceding points that the EU is making policy not supported by the majority of the European citizens or even a majority of the member states. The national governments have an option to make political decisions on an EU level that would not be possible on a national level because of national parliaments, courts or interest group. These decisions Føllesdal and Hix argue include a neo-liberal construction for the single market, a monetarist framework for the EMU, and massive subsidies to farmers through the Common Agricultural Policy. This shift usually happens to the right and is therefore often criticised by social democratic scholars (Føllesdal and Hix 2005, 6).

All in all Føllesdal and Hix disagree fundamentally with the conclusions of Majone and Moravcsik in the fact that they believe that there is a great problem with a democratic deficit in the EU. They do though believe that even without fundamental changes to the EU treaties it is possible to create democratic legitimacy in the EU. Among the changes that Føllesdal and Hix believe would help is greater transparency in the Council of the European Union and direct election of the President of the European Commission.

6.2.4 Discussion of Majone, Moravcsik and Føllesdal and Hix.

Before discussing the individual arguments of Majone, Moravcsik and Føllesdal and Hix it is worth looking at when they made these arguments. The article that has been the basis for the Majones arguments in this thesis is: "Europe's "Democratic Deficit": The Question of Standards" was printed in the European Law Journal in March 1998. The article that has been the article for the arguments of Moravcsik is: "Is there a "Democratic Deficit" in World Politics? A Framework for Analysis" which appeared in Government and Opposition in April 2004. The basis for the arguments of Føllesdal and Hix originates from the article "Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik" that was published in European Governance Papers in March 2005. This means that the arguments of Majone were made before the ratification of both the Nice Treaty and the Lisbon Treaty whereas the arguments of Moravcsik were and Føllesdal and Hix were made before the ratification of the Lisbon Treaty.

This means that the EU has changed a great deal since then. For example the Nice Treaty that was signed in 2001 and took effect in 2003 that among other things made the final preparations before the 2004 enlargement of 10 new members. The 1st of December 2009 the Lisbon Treaty came into force and represents the most important change to the EU since Majone wrote his article. The Lisbon Treaty changed both the structure and decision process of the EU. The idea of the Lisbon Treaty was to firstly make the EU more open and democratic by giving the European Parliament greater power, increase the power of the national parliaments in the legislation process as well as introduce the European Citizens' Initiative. Secondly make it easier for the EU to make decisions after the expansion of the EU. This was done by changing the decision procedures in such a way that more EU legislation is passed by majority opposed to unanimity. Thirdly to make more effective in tackling global challenges by among other things introducing the position High Representative of the Union for Foreign Affairs and Security Policy (Jørgensen, Lissabontraktaten 2009).

Considering Majones arguments in a contemporary situation it can be difficult to agree with his overall argument that the EU is only a regulating power where the Member States just delegate regulatory power to the EU and that the EU should therefore not be democratic, this is not least because of the extensive power the European Parliament has in the legislative process that will essentially lead to a politicization of regulatory policy-making which would undermine the whole idea of the Pareto-efficient outcomes that would be the idea of a regulatory system. Furthermore the Common Agricultural Policy and the European Social Fund can be seen as redistributive instruments, this means that the EU is much more than just a regulatory system. It can therefore be very difficult to see how Majones argumentation should be relevant in the lights of a contemporary EU.

The main argument of Moravcsik is that the EU should not be compared to the ideal democratic systems but instead whether it does approximate democracy in the form that it exist in modern democracies. Because of this argument Moravcsik does not mean that the EU is suffering from a democratic deficit since:

“Constitutional checks and balances, indirect democratic control via national governments and the increasing powers of the European Parliament are sufficient to assure that the EU policy-making is, in nearly all cases, clean, transparent, effective, and politically responsive to the demands of European citizens” (Moravcsik 2004, 14).

Following this argument the EU has only become more democratic since he made his argumentation. This is especially because of the increased power of the European Parliament but also to some extent because of the increased power of the national parliaments. Furthermore Moravcsik makes a point in saying that the EU is transparent. This transparency is also something that the Lisbon Treaty has sought to increase. Considering the responsiveness to the European citizens’ one might argue that the European Citizens’ Initiative might also have increased that. On the other hand it can be difficult to fully follow arguments such as that the policy areas of the EU should be of such a nature that it is of next to no interests from the public this is especially evident when looking at how the “free movement of persons” has “undermined” the tight Danish immigration policies or how presently the austerity measures dictated from the EU and IMF have rallied the Greek populations for protests and strikes.

The conclusion of Føllesdal and Hix is that the EU is suffering from a democratic deficit. But also the arguments of Føllesdal and Hix were made before the implementation of the Lisbon Treaty and therefore things have changed. Not least in connection with the argument related to the executive power argument. Because of the ratification of the Lisbon treaty the national parliaments and the European Parliament have, as mentioned before, become more powerful. Føllesdal and Hix also mention that because of the legislation process the European Parliament can to a large extent be ignored and is too weak this has to some extent changed with the Lisbon Treaty with because the ordinary legislative process has been extended to nearly all areas. The third point mentioned by Føllesdal and Hix about the European Elections might still be valid and maybe even more relevant with the turnout for the election of the European Parliament reached a new low in 2009 with only 43 percent down from 45.47 percent in 2004 and a which continues the trend of a lower turnout at every election since the first election in 1979 where the turnout was 61.99 percent (UK Political Info n.d.). Føllesdal and Hix also point out that the structure of the EU is too different for the citizens to ever understand and accept as a democratic authority, this might be correct but one could also argue that political systems change and that democracy as its seen in modern states today

was once strange to the citizens living in them but has grown to become the norm this could indicate that the longer the citizens of the EU live with the system the more they will get used to it. There is however no such indication that such a change has happened since Føllesdal and Hix made their argument, so the argument might still be valid. The argument used by both by Føllesdal and Hix and also Moravcsik is the neo-liberal bias argument their arguments reach exact opposite conclusions and it can be argued that without further empiric evidence it would be difficult to declare whether there actually is a neo-liberal bias. However an indication that there is not a neo-liberal bias in the EU could be the fact that support of the EU that has historically been situated on the right side of the political spectrum has presently moved more towards the left, this is especially evident in Denmark where the Social Democrats now has become maybe the most EU positive party and even the Socialist People's Party is EU positive. While at the same time the Conservative People's Party are spilt and moving towards a very EU critical point of view while their youth organization wants Denmark to resign their membership. Also in the youth organisation of Venstre are sceptical towards EU is growing and it does no longer support a Danish entry into the EU. One of the arguments given by the youth organisation of the Liberal Party of Denmark is the bailouts that have been given to Greece which cannot exactly be called neo-liberal (Rehling 2011).

To a large extent it seems that time has made the arguments of Majone are not relevant anymore as the EU has changed a lot since he made them. At the same time the EU has also in some areas changed in a way that he predicted it would not e.g. the introduction of majority decisions in the European Parliament and the use of some kind of social distribution. Many of the issues pointed out by Føllesdal and Hix seems to have improved upon with the Lisbon Treaty, the issue of the elections for the European Parliament is an important issue that the Member States and the EU need to address however this in itself does not necessarily make the EU undemocratic. The arguments of Moravcsik could maybe have been seen as a bit too optimistic at the time they were made but with the development of the EU since then especially with the Lisbon Treaty the democracy of the EU is coming very close to resembling the democracy that is found in modern democracies. All in all it can therefore be argued that although there are still some room for improvement in some areas of the EU, the EU cannot be seen as generally suffering from a democratic deficit. Furthermore it is also worth noticing that the European politicians are actively working towards improving democracy in the EU.

6.3 Operationalization of Theory.

To be able to analyse the democratic situations of Denmark and Norway it is necessary to define criteria on which the analysis will be based. On the basis of the discussion above some criteria are chosen that

reflect the general EU democratic deficit discussion as well as makes sense on a more specific level that are the situations of Denmark and Norway.

Dahl defines in the theory Polyarchy the minimum standards for democracy although these are important as a political system cannot be considered democratic without but as Dahl also mentions they are not a guarantee from democracy. However looking at the analysis of the democratic deficit in the EU by especially Føllesdal and Hix it is evident that many of the issues that with democracy in the EU that is presented or defended against can be derived directly from the seven institutions presented by Dahl. The first and second point of Føllesdal and Hix is based on the institution of “elected officials” as they are criticizing that the ones who make legislation in the EU are not elected officials but instead bureaucrats who are not in the same way accountable to the people. The third point of Føllesdal and Hix is based on the second institution “free and fair elections” as even though there is free and fair elections in the EU both for the national parliaments and the European Parliament these are criticized for not working the way they are intended. The fourth point is also related to the institutions although in another way as it is both a critique of the sui generis of the EU that makes it difficult or even impossible for the citizens to relate to the EU and see it as a democratic institutions which undermines the basis of every one of the institutions as a person who does not understand a system cannot be expected to participate in it. The fifth point of Føllesdal and Hix relates to the institutions in the way that it is a critique of what can happen if the institutions are not in place or if the institutions are compromised.

When analysing the situations of Denmark and Norway it is therefore important to make sure that seven institutions are in place but also make sure that these are working and if they are in any way compromised by other issues. An analysis must therefore not only focus on how the legislation process looks on paper but also look at the reality of how the system works. It is therefore relevant too look at how e.g. experts can influence the legislative process. In order to analyse whether the situations of Denmark and Norway live up to the practical framework for democracy as well as producing democratic sound legislation, it is therefore important to look at input legitimacy of the system being if there is a mechanism in place to link political decision with the citizens preferences. However input legitimacy is not enough output legitimacy is just as important being that the democratic procedure is able to produce outcomes that are achieving the goals that the citizens collectively care about.

7. EFTA and EEA

7.1 EFTA

As a response to the 1957 creation of the European Economic Community (EEC), European Free Trade Association (EFTA) was founded in 1960 as free trade cooperation between Great Britain, Denmark, Sweden, Switzerland, Austria and Portugal (Billing 2010). Throughout the 1960s Ireland, Norway, Denmark and Great Britain applied for membership of the EEC but the French president Charles de Gaulle blocked accession and therefore after de Gaulle had left office in 1969 they applied again. In 1970 Iceland became a member of EFTA. As Great Britain, Denmark and Ireland became members of the EEC in 1973 they also left EFTA. Norway had a referendum which ended with a majority against membership of EEC and they therefore continued as a member of EFTA. In 1991 Liechtenstein became a member of EFTA. Portugal left EFTA in 1986 for membership of EEC and Finland that had also become member of EFTA left for the EU in 1995 together with Austria and Sweden (Billing 2010).

Today there are four members of EFTA; Norway, Switzerland, Liechtenstein and Iceland. The EFTA headquarter is located in Geneva and has also got offices in Brussels and Luxembourg (Billing 2010).

The premise of the foundation of EFTA was free trade as a mean to achieve growth and prosperity amongst the EFTA member states as well as promoting closer economic cooperation between Western European countries. On top of this the EFTA countries also wanted to contribute to the expansion of trade globally (EFTA 2011d). On the basis of these goals EFTA is managed by different agreements:

7.2 The EFTA Convention

The EFTA Convention was signed in 1960 in Stockholm and concerns intra EFTA trade thus containing basic rules regarding free trade of goods and related disciplines. Because of the signing of other agreements such as the European Economic Area (EEA Agreement), the EU-Swiss Bilateral Agreements and the general heightened focus on external economic relations the EFTA Convention was in 2001 updated with the Vaduz Convention. The Vaduz Convention reinforces the ties between the EFTA countries as well as covering all aspects of modern trade. It provides a better common platform for developing EFTA trade relations with partners all over the world as well as strengthening the cohesion in economic relations between EFTA Member Countries. The Vaduz Convention means that the EFTA Countries now benefit from nearly the same privileged relationship among themselves as they do with the EU. The EFTA Convention is updated regularly by the EFTA Council to reflect the development of the EEA Agreement and the Swiss Bilateral Agreements (EFTA 2012a).

7.3 EFTA Institutions

7.3.1 EFTA Council

The EFTA Council is the highest governing body of EFTA. Usually Member States meet once a month at an ambassadorial level in Geneva and at a ministerial level usually in June and December. In the meetings the delegations negotiate and decide policy issues regarding EFTA. Even though each Member State has one vote decisions are usually reached through consensus (EFTA 2012d). Matters discussed in on the Council are especially relating to the development of EFTA relations with third countries and the management of free trade agreements. The Council keeps under general review of the EU third-country policy and administration and it has the mandate to consider policies to promote the objectives of EFTA and manage relations between EFTA Countries and the EFTA Convention (EFTA 2012d).

Under the EFTA Council are different committees that deal with special issues. Among these are: The Committee on Third Country Relations that oversees the function and development of cooperation and free trade agreements with third countries. The Committee on Customs and Origin Matters that oversees the cooperation in the customs field. The Committee on Technical Barriers to Trade that advises among other things on standardization policy, relations with European quality infrastructure organisations and international aspects of technical regulatory work. The Budget Committee that assists on matters relating to the EFTA budget. The Consultative Committee provides a forum for lobbyists from the industry and labour in the EFTA Countries to discuss among themselves or present their view to the EFTA Council. The Parliamentary Committee where members of parliament from the EFTA countries can discuss matters among themselves twice yearly they are joined by EFTA ministers (EFTA 2012d).

7.3.2 EFTA Surveillance Authority

The EFTA Surveillance Authority monitors the compliance with the EEA rules and obligations in Iceland, Lichtenstein and Norway so that they can participate in the Internal Market. The Authority is based in Brussels, has a staff of 61 official with 15 different nationalities and it operates independently of the EFTA states (EFTA Surveillance Authority u.d.).

The Authority is led by a collage of three people at the moment these are: Per Sanderud (President), Sabine Monauni-Tömördy and Sverrir Haukur Gunnlaugsson. They are appointed for a period of four years by the participating EFTA counties but they still undertake their functions independently and free of political direction. They meet once a week and all the decisions of the Authority are binding (EFTA Surveillance Authority u.d.).

Under the collage are four departments: the Internal Market Direction, the Competition and State Aid Directorate, the Legal and Executive Affairs Department and the Administration (EFTA Surveillance Authority u.d.).

In monitoring and enforcing the EEA Agreement the Authority has powers similar to those of the European Commission and there is close contact and cooperation between these two institutions as they oversee the application of the same laws in different parts of the EEA (EFTA Surveillance Authority u.d.).

7.3.4 EFTA Court

The EFTA Court consist of three Judges one nominated by each of the EFTA States that has signed the EEA Agreement. The judges are appointed by common accord of the governments for a period of six years. The judges themselves elect their president every three years. The EFTA Court also has a system of ad hoc judges for situations where a regular Judge cannot act in a particular case. Furthermore the EFTA Court has a Registrar who is responsible for the administration of the Court and for certain procedural and other issues. Last the Court has a staff of ten people who provide legal and administrative assistance for the Court. The decisions of the Court are taken by majority vote and the procedure followed by the Court is laid down in the Statute of the EFTA Court and in its Rules of Procedure (EFTA Court u.d.).

The EFTA Courts main competences are to deal with infringement actions brought against an EFTA state by the EFTA Surveillance Authority. These infringements can be in regard to application, implementation or interpretation of an EEA rule, for appeals concerning decisions taken by the EFTA Surveillance Authority, for the settlement of disputes between two or more EFTA States and for giving advice to the courts in EFTA States on the interpretation of EFTA rules. All proceedings of the Court is in English except in cases where advice is sought by a national court then it will be in both English and the national language of the requesting court. The jurisdiction of the EFTA Court over EFTA States that has signed the EEA Agreement corresponds to the jurisdiction of the Court of Justice of the European Communities over the EC States (EFTA Court u.d.).

7.3.5 EFTA Secretariat

The EFTA Secretariat has its headquarters in Geneva where it deals with the management and negotiation of free trade agreements with non-EU countries and provides support to the EFTA Council (EFTA u.d.).

In Brussels the EFTA Secretariat provides support for the management of the EEA Agreement and assists the Member States in the preparation of new legislation for integration into the EEA Agreement. The Secretariat also assists the Member States in the elaboration of input to EU decision making (EFTA u.d.).

The EFTA Secretariat does also implement the Vaduz Conventions stipulations on the intra-EFTA Free Trade Area (EFTA u.d.).

The EFTA Statistical Office in Luxembourg contributes to the development of a broad and integrated European Statistical System (EFTA u.d.).

The day-to-day running of the EFTA Secretariat is headed by the Secretary-General Kåre Bryn, who is assisted by two Deputy Secretaries-General; one is based in Geneva (Ivo Kaufmann) and the other in Brussels (Bergdís Ellertsdóttir). The three posts are share between the Member States. The EFTA Secretariat employs around 100 staff members, a third in Geneva and two thirds in Brussels and Luxembourg (EFTA u.d.).

7.3.6 The EEA Agreement

The EEA Agreement was signed in 1992 between the, at that time, six EFTA Countries; Austria, Finland, Island, Norway, Sweden, Switzerland and the EU and is concerned with EFTA-EU trade. With a referendum the same year the EEA was voted down in Switzerland and therefore the EEA did not come into force until 1994 and without Switzerland. Although already in 1995 Austria, Finland and Sweden joined the EU and thereby left the EFTA and EEA. The EEA Agreement brings the EEA Members and the members of the EU together in a single market also known as the Internal Market and the EEA Agreement also states that whenever a country becomes member of the EU it also has to become a member of the EEA (EFTA 2012b).

The EEA Agreement makes sure that EU legislation covering the four freedoms; the free movement of goods, services, persons and capital is implemented in the 27 EU member states as well as in the EEA EFTA Countries. It also covers areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture these areas are known as “flanking and horizontal” policies. Last but not least the EEA Agreement guaranties equal rights and obligations for citizens and economic operators in the EEA within the Internal Market (EFTA 2012b).

The EEA Agreement does however not cover Common Agricultural and Fisheries Policies (CAP and CFP), Customs Union, Common Trade Policy, Common Foreign and Security Policy (CFSP), Justice and Home Affairs (even though EFTA Countries are part of the Schengen area) or Monetary Union (EMU) (EFTA 2012b).

7.4 EEA Institutions

7.4.1 EEA Council

The EEA Council meets twice a year and provides political driving power for the development of the EEA Agreement and guidelines for the EEA Joint Committee. The EEA Council in composed of EU foreign

ministers from the past, present and future EU Council Presidencies, the European Commissioner for External Relations, the High Representative for the EU's Common Foreign and Security Policy and EEA EFTA foreign ministers. The presidency of the EEA Council alternates each term between the EU and the EEA EFTA side. As part of the overall assessment of the EEA Agreement the EEA Joint Committee prepares a progress report on its activities for each EEA Council meeting. The EEA Council also takes into consideration resolutions adopted by the EEA Joint Parliamentary Committee and the EEA Consultative Committee since its last meeting. In addition to the actual meeting normally a dialog takes place on a wide range of foreign political issues (EFTA 2012e).

7.4.2 EEA Joint Committee

The EEA Joint Committee meets once a month usually last Friday of each month and is made up of ambassadors of the EEA EFTA States and representatives from the European Commission and the EU Member States. The EEA Joint Committee is responsible for the day-to-day management of the EEA Agreement and provides a forum for exchanging views and making decisions to incorporate EU legislation into the EEA Agreement – these decisions are made by consensus. Four subcommittees assist the EEA Joint Committee and numerous experts and working groups report to these (EFTA 2012g).

7.4.3 EEA and Norway Grants

Since the EEA Agreement came into force in 1994, the EEA EFTA States have contributed to social and economic progress in the least developed of the EU and EEA. The contributions have been the Financial Mechanism (1994-1998), the Financial Instrument (1999-2003) and the EEA and Norway grants (2004-2009). In July 2010, Norway, Iceland and Liechtenstein signed a new agreement with the EU for a new period for the EEA and Norway Grants for the period 2009-2014.

The EEA and Norway Grants represent the contribution of Norway, Liechtenstein and Iceland to reducing disparities in Europe and to strengthen the bilateral relations with the 15 partner countries in Central and Southern Europe. Through the Grants, Liechtenstein, Iceland and Norway channel funding to social and economic development programmes and promote partnerships with organisations in the recipient countries (EFTA n.d.).

7.4.3.1 EEA Grants

The EEA Grants are jointly financed by Iceland, Liechtenstein and Norway. Each state contributes according to their economic wealth and size. Norway contributes around 95 percent of the total funding. The funding backs programs in areas such as:

- Environmental protection

- Climate change and renewable energies
- Civil society
- Health and children
- Cultural heritage
- Research and scholarships

Beneficiary states of the EEA Grants are:

- Bulgaria
- Czech Republic
- Cyprus
- Estonia
- Greece
- Hungary
- Latvia
- Lithuania
- Malta
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain

In the period from 2004 to 2009 grants were given to more than 800 projects, programmes and funds, of which around 200 included co-funding with the EEA Grants and Norway Grants. In this five year period 672 million euro in funding was made available. More than one fourth of the EEA Grants was awarded to projects in the fields of environmental protection and sustainable development (EFTA 2010).

7.4.3.2 Norway Grants

For the period 2009 to 2014 the Norway grants represents 800 million euros which are being allocated to the 12 newest EU and EEA member states. This means that Norway is providing funding for social and economic development projects in Central and Southern Europe through the Norway Grants as well as the EEA Grants.

The beneficiary countries of the Norway Grants are:

- Bulgaria
- Czech Republic
- Cyprus
- Estonia
- Hungary
- Latvia
- Lithuania
- Malta
- Poland
- Romania
- Slovakia
- Slovenia

The funding is allocated between the countries based on their population and GDP per capita (EFTA 2010b).

7.5 EEA Decision Making Process

In reality EEA decision making starts in the EU with the decision making process described in chapter 5.7 Legislative Procedures in the EU. In the pre-pipeline or preparatory stage the Commission of the European Union consults the EU Member States in expert committees when developing new legislation for the Internal Market. In these committees the EEA EFTA States take part as equal partners which in turn make the legislation incorporated in the EEA. This practice gives the EEA EFTA experts an opportunity to draft legislation. EEA EFTA experts take part in around 300 committees (EFTA 2012f) (Norway - Mission to the EU 2009)./

Doing the decision-making stage the EEA EFTA states have very little formal influence in the Council of the European Union and the European Parliament however they can give joint comments to the draft legislation (Norway - Mission to the EU 2009).

Whenever a legal act of the secondary legislation is amended or adopted in the EU a corresponding amendment needs to be made to the relevant annex of the EEA Agreement. Such an amendment is to be made by the EEA Joint Committee and has to resemble the adoption by the EU as closely as possible and has to permit simultaneous application in the EU and the EEA EFTA states. This means that the EU has to inform the other members of the EEA Joint Committee every time it adopts legislation that covers an area that is governed by the EEA Agreement. All EEA EFTA States have to be in agreement for the EEA Joint Committee to take a decision such an agreement is reached by consultation with in the Standing Committee (EFTA 2012f).

Once the legislation has been adopted the EFTA Secretariat that is responsible for that area prepares a standard sheet concerning the particular act. This sheet records all references and information about the act. EFTA experts in the capitals then answers a number of questions, such as whether the act is EEA-relevant, whether it will require technical adaptations for implementation and whether it is likely to have constitutional requirements. When the sheet is returned by the experts the legislation is put in the agenda of the responsible subcommittee to confirm that it is EEA relevant. When the relevance is confirmed the EFTA Secretariat drafts a Joint Committee Decision. The Joint Committee Decision is sent to the experts for approval and afterwards it comes under final legal scrutiny in the EFTA Secretariat before it is put on the agenda for the relevant subcommittee where it is approved and handed over to the Commission of the European Union (EFTA 2012f).

Usually the legislation is incorporated into the EEA without any substantial adaptations. However if the legislation contains problematic or politically sensitive aspects the Commission of the European Union and the EEA EFTA States will discuss possible adaptations for example transitions periods. If the adaptation is extensive it has to be approved by the Council of the European Union and thereafter agreed and formally decided by the EEA Joint Committee (Norway - Mission to the EU 2009).

Since the EEA EFTA States have not handed any legislative powers over to the EEA Joint Committee it has therefore been necessary to regulate situations where an EEA Joint Committee Decision can only be binding in one or the other EEA EFTA State after it has been approved by parliament or referendum because of the constitution of the state (EFTA 2012f).

In Norway decisions that have implications for more than a year will need parliamentary consent. In Liechtenstein decisions that need financial contribution or participation by Liechtenstein in an EU activity that amounts to more than CHF 50.000 in total or more than CHF 20.000 per year needs parliamentary consent. In Iceland the administration negotiates the total EEA budget which is presented to the parliament

for approval within the national budget once a year. Once the constitutional requirements have been completed the EEA EFTA State notifies the EFTA Secretariat that then forwards the information to the Commission of the European Union and other EEA EFTA States (EFTA 2012f).

After each meeting in the EEA Joint Committee the EFTA Secretariat updates a list showing the Joint Committee Decisions adopted. This list can be found at the EFTA website (EFTA 2012f).

7.5.1 Veto

Another way of having influence in what policies are implemented in Norway is through the option for the EEA EFTA countries to veto EU legislation (Eriksen, Demokratiet som forsvant 2008). However this is not only a veto for Norway since a veto it can happen in the EEA Joint Committee which means that if Norway chooses to use the veto it will also have consequences for the two other EEA EFTA countries Iceland and Lichtenstein (Sverdrup 2006). If the veto is used then this could create practical problems. There would no longer be common harmonious rules in all of the EEA area and that could lead to the EU considering it unfair to be bound by rules towards the EEA EFTA countries that these countries no longer practice themselves. To counter this imbalance the EU could then very well use their reservation right to initiate the protection mechanism (Sverdrup 2006).

The protection mechanism is to be seen as a mechanism that handles the practical problems that the imbalance between the EEA EFTA countries and that would be created by the use of a veto from the EEA EFTA countries. The protection mechanism can take different shapes for example that alternatives are added to the EEA Agreement or that parts of the agreement are suspended. This is however not the end but rather the beginning of negotiations to find a viable solution for the problem. According to the article 102 of the EEA Agreement the EEA Joint Committee has to strive to find a mutual acceptable solution but if that is not successful then EEA Joint Committee still has to examine other possibilities for the EEA Agreement to function satisfactory. If these negotiations are then also unfruitful after six months then the amendment to the annex is temporary suspended. Both the EU and EEA EFTA countries have to agree on this. In the meantime the EEA Joint Committee has to continue to find a mutual acceptable solution to end the suspension (Sverdrup 2006) (Agreement on the European Economic Area 2011).

Although there are judicial procedures it is still first and foremost a political process to decide what parts of the EEA Agreements and its annexes that potentially has to be suspended, what the compensating initiatives has to be or how to interpret the expression the “affected part of the annex” (Sverdrup 2006).

8. The Danish opt-outs

In 1992 the Danes voted no to the Maastricht Treaty in a referendum. Hence the Danish government negotiated the Edinburgh agreement in place, which - after voters agreed to it in 1993 - led to the Danish approval of the Maastricht treaty with four opt-outs. The Danish opt-outs are an agreement with the rest of European Union that there are areas of cooperation that Denmark does not participate in. The opt-outs include Defence policy, Union citizenship, Justice and home affairs and The Euro. In the following we will describe the Danish Opt-outs and what implications they have for Denmark (Folketingets EU-Oplysningen a).

8.1 The Edinburgh Agreement

The Edinburgh Agreement was signed in December 1992 after a Danish referendum rejected the Maastricht Treaty this was necessary because otherwise Denmark could not ratify the treaty and without all the members of the EU ratifying it the Maastricht Treaty could not come into effect. The Edinburgh Agreement gave Denmark four exceptions from the Maastricht Treaty: Union Citizenship, The Euro, Defence policy and Justice and home affairs (Mårup, Det retlige forbehold 2011). It is specified in the Edinburgh Agreement that Denmark at any time can choose to notify the other member states that it will not make use of one or more of the exceptions anymore, in that case Denmark will then fully implement all the relevant decisions in that area (Mårup, De fire forbehold 2011).

When there is political agreement on a treaty in the EU member states must ratify the treaty in order for this to take effect. In Denmark the Constitution § 20 requires that under certain circumstances, there should be held a referendum before Denmark could join a treaty if transferred of sovereignty. The Danish Ministry of Justice estimated that parts of the Maastricht Treaty would imply a further transfer of powers, which is conflict with the Constitution. In other words, there was a transfer of sovereignty. When Denmark is to cede sovereignty it requires either a majority of five out of six of the Members of Parliament or a majority in a referendum. In 1992 there was not a majority of five out of six of the MPs who would vote for Denmark to ratify the Maastricht Treaty. Therefore was a referendum on the issue. In the referendum on the 2nd of June 1992 a majority of Danes rejected the Maastricht Treaty. Subsequently, seven of the parties in the parliament agreed on the national compromise in October 1992. The seven parties behind the compromise were: the Social Democrats, the Socialist People's Party, the Danish Social Liberal Party, the Conservative People's Party, Venstre, the Centre Democrats and the Christian Democrats. The national compromise was an agreement between these seven parties that they were in favour of Denmark's adherence to the Maastricht Treaty, provided that Denmark could remain outside the EU cooperation in the four aforementioned areas. The national compromise formed the basis for the Danish government's discussions with the then eleven other EU countries (Jørgensen, De danske forbehold 2011).

8.2 Defence policy

The Danish opt-out on defence policy means that Denmark cannot make military capabilities available for EU-led interventions in conflict areas. In 1992 Denmark decided not to participate in EU decisions and actions with defence implications and Denmark would not prevent the development of closer EU cooperation in defence matters. This development has not materialized. EU cooperation now covers civil and military crisis management, and building battle groups, which typically consists of approx. 1,500 people from EU countries and Norway, and are ready for rapid deployment in conflicts (Folketingets EU-Oplysningen b).

Denmark is precluded from military operations, but has participated in 12 civilian missions under the EU's leadership. The opt-out has been used 20 times and has, for example meant that Denmark could not participate in peace operations in Bosnia, EU initiatives that made it possible to hold elections in Congo in 2003, or the protection of refugees from the Darfur crisis, as EU battle groups assists in neighbouring Chad. The two cases in the Balkans, where Danish forces under NATO command had to be withdrawn, since the EU took over the mission, shows a situation where the development of ESDP as saying overtook the Danish defence opt-out. The consequence was that Denmark had to act against their own foreign policy priorities and drag forces home that was about to perform a priority for Denmark. A similar situation may as well arise in Kosovo if the EU takes over KFOR mission from NATO. In this case, the 330 Danish soldiers retrieved home (Manners, et al. 2008, 134).

The Lisbon Treaty does not change the Danish defence opt-out. However it enables the rapid development of the European defence dimension and put the Danish opt-out under pressure, for example by increasingly integrate civilian and military crisis management. Because Denmark will be excluded from participation in the civil parts operations if they cannot be clearly separated from the military parts (DIIS, 59). Denmark also refrain the chair during Danish presidency in the European Union.

A consequence of the Defence opt-out is that Denmark has a harder time establishing networks and working relationships with other EU member states and by advancing the Danish views. This weakness is further compounded by the fact that Denmark is actually missing a Defence EU presidency. As the presidency has a central function before, during and after the actual presidency for the formation of political relationships and networks, it means the defence opt-out that Denmark has difficulty to operate under the same conditions as the other EU member states. The problem is that although the defence opt-out of course is well known in Denmark and to some extent in the EU, this is not the case in either the UN or for that matter, in the United States of America. This has created uncertainty about Denmark's foreign

and security policy position in international forum, which are crucial for the performance of Danish foreign and security policy (Manners, et al. 2008, 137).

8.3 Citizenship

Denmark's opt-out of the EU citizenship was introduced to guarantee that citizenship should not develop into something in line with national citizenship or completely replace it. This was stated by European Union member states with the Edinburgh decision stated that citizenship does not replace national citizenship. It was also stressed that only a country's own laws, which determine whether a person can possess the nationality of that State. With the adoption of the Amsterdam Treaty in 1997 this understanding of citizenship was written directly into the EC Treaty as a general rule, so it now applies to all 27 member states. The treaty states that citizenship is a supplement to national citizenship and not in lieu of this. The Opt-out on citizenship in other words, no longer a Danish special, but has become part of the broader definition of citizenship, which is applicable in all Member States. The opt-out therefore has no practical significance (Manners, et al. 2008, 249) (Folketingets EU.Oplysningen c).

8.4 Justice and Home Affairs

The opt-out on Justice and home affairs means that Denmark will not participate when cooperation has a direct effect on citizens without first having to be adopted as law in the Danish parliament.

Cooperation on justice and home affairs is driven by both internal political developments and external pressure. Within the EU, implementation of the internal market and free movement of people resulted in an increasing need for cooperation in this area. On one hand, the abolition of national border controls within the Schengen area required a closer cooperation between national police, prosecutors and immigration authorities, as the asylum seekers, immigrants and criminals have gotten the same movement that is allotted to EU citizens.

The EU member states are faced with a number of challenges from outside the EU, which they find difficult to handle individually. This applies to the control of external borders, where the EU is experiencing an increasing migration pressures, including therefore have established a common border agency and other initiatives to combat illegal immigration. European governments have become increasingly preoccupied with combating international terrorism. This has resulted in the introduction of common rules for the punishment of terrorism and the exchange of suspects.

The combination of these internal and external pressures have meant that the European governments, despite the area's politically sensitive nature are increasingly using the EU when they will fight international

crime, illegal immigration and terrorism and create simpler procedures and rights of EU citizens, asylum seekers and legal immigrants (Manners, et al. 2008, 257).

Since Denmark in 1992 made the important decision to ratify the Maastricht treaty with the opt-outs specified in the Edinburgh agreement, the European judicial cooperation developed in a number of points. Recently the Lisbon Treaty has made an impact on the opt-out. The Danish government has negotiated with the other EU countries to accept that Denmark can change its opt-out to an optional model similar to what Great Britain and Ireland have in the legal area. This model would involve evaluating judicial cooperation on a case by case basis and will require a referendum in Denmark.

Denmark has the opportunity through parallel agreements to join the parts of the cooperation that Denmark, despite the opt-out still want to be covered by. Denmark has so far received three parallel agreements on four regulations, but in two other cases provisionally got a no from the other member states to parallel agreements.

The opt-out on Justice and home affairs includes establishing common rules on asylum, immigration and civil law. These are for example EU rules on divorce and child custody matters that cut across national boundaries. Denmark has applied the rule of the opt-out 189 times. Denmark's participation in judicial cooperation depends on what basis decisions are made on:

1. On an intergovernmental basis, Denmark participates fully. The decisions oblige the state, but will only have validity in Denmark, when parliament has adopted it as law.
2. At the supranational basis Denmark does not participate. Decisions here have direct effect in member states.

(Folketingets EU-Oplysningen d)

Over the last decade, the opt-out has become gradually activated as the policies have been transferred from the intergovernmental to the supranational cooperation. Today, Denmark is not participating in the adoption of, and is not immediately included to decisions on border control, immigration, asylum, civil law and police and criminal justice. In certain areas Denmark is still bound by or affected by EU rules. It applies the rules is of the extension of the original Schengen cooperation, which today covers the border, large portions of illegal immigration and some parts of the police.

The opt-out on Justice and home affairs means a loss of influence. Denmark does not have the opportunity to vote, and Danish views and interests are basically given less weight in the negotiations. This also applies to the places where Denmark still is affected by EU decisions. The opt-out does on the other hand give an

opportunity for Denmark in certain areas to pursue a policy that is different from the other EU countries. However, there is generally significant differences between EU law and Danish law, in areas currently covered by the opt-out. It is first and foremost in relation to legal immigration, including family reunification, and to a lesser extent asylum policy, there is a conflict between the Danish regulations and EU standards (Manners, et al. 2008, 334).

8.4 Economic and monetary Union

The Euro opt-out means that Denmark stands outside the cooperation of the common currency, but actually the Danish krone is pegged to the euro.

Denmark decided in 1992 not to participate in the economic and monetary union, which includes the euro. Denmark has therefore retained the monetary-policy powers. As a result, Denmark is not part of the European Central Bank, which sets monetary policy for the euro area. Denmark does not participate when the euro countries meet and discuss topics of common interest before meetings of the Council of the EU economy and finance ministers. The Euro group still wider political agenda and sphere of interest makes the group to the main forum for economic coordination in the EU today. Originally the goal was that the Euro group should be a forum for economic issues related to the euro could be discussed. In practice, the Euro group has evolved into a forum that discusses issues not directly related to the euro, but also important for countries outside the euro, such as structural reforms in labour market, energy policy, the international economic situation, financial markets and the market for services. The finance ministers of the Euro group often do not show up to the ECOFIN Council meetings or they come with a common position that it can be difficult for countries outside the euro area to influence (Manners, et al. 2008, 226).

According to the Danish decision in 1992, Denmark is however fully in the second stage of EMU and monetary cooperation under the Agreement on the Exchange Rate Mechanism II (ERM II). Participation in ERM II implies that the Danish Krone is closely tied to the euro exchange rate fluctuations.

Denmark has retained the Danish krone and the National Bank's powers, but remains outside the single currency and the bodies that make decisions on monetary policy. At the same time the participation in the ERM II agreement implies, that the Danish Krone is in practice closely linked to the euro. The fixed exchange rate policy was introduced in 1982, and Denmark has since successfully maintained the Danish Krone against the Deutschmark and now the euro. This apply outside the euro where the Danish monetary policy is dedicated to the fixed exchange rate policy and therefore shadow the monetary policy and cannot be used for stabilization, and it would then apply for the euro, which Denmark will participate in the common monetary policy. In Denmark there are broad political acceptances of the fixed exchange

mechanism policy among the parties in the Danish parliament (Manners, et al. 2008, 224-225) (Folketingets EU-Oplysningen e).

It is important to mention that it is increasingly the Euro group, which represents the EU in global economic forums. The Euro group participates e.g. in G7 meetings with, among others, the U.S. and Japan and leading discussions with China (Manners, et al. 2008, 226).

9. Danish influence on EU legislation

In the chapter 5.7 Legislative Procedures in the EU, we could see that it is the European Commission that has the right of initiative when it comes to propose legislation in the European Union. This chapter will focus on how Denmark influences the EU legislation process and the leeway for Danish influence. But first it is necessary to look into the Danish internal decision process and implementation stage.

Overall the Danish EU coordination follows two steps, the intra ministerial coordination and the parliamentary mandating procedure.

The intra ministerial coordination is coordination between relevant civil servants from different ministries supplement with any interest groups that creates a temporary recommendation to the Danish government on a certain policy area. Following this recommendation, the government determines its position to the forthcoming negotiations. But if you take a deeper look into this coordination. As we could see in chapter 5.7 Legislative Procedures in the EU it is the European Commission that has the right of initiative to new legislation, but member states can ask the European Commission to take action within a certain area. When the European Commission has proposed new legislation, it will be send to consultation in the member states. In Denmark there are 35 EU special committees at the time. When a proposal from the European Commission is send to consultation procedure, it will be considered by one of the special committees. The EU special committees contain representatives from ministries and government agencies that possess administrative powers in the area and are directly affected by the proposal. But also the most important representatives from the interest organizations take an active share. The Danish Ministry of Foreign Affairs has representatives in all of the 35 EU special committees, but it is the field of responsibility that determine which head of the department that is the chairman. The EU special committee is the first part of the intra ministerial coordination, and most of the Danish position to the European Commission's proposal is actually determined here. The EU special committees get involved on a very early stage of the EU legislation process. This happens to ensure that Denmark in a very early stage has a common stand, to argue from in working groups and committees in the EU system (Kallestrup, Danmarks suverænitet - og kunsten at begå sig politisk i EU 2006, 21,22).

Shortly before the European Commission's proposal gets handled by the Council of the European Union, the Danish EU Committee gets involved. The EU Committee is consisting of civil servants from specific ministries who are most affected by the EU cooperation. It is the EU Committee that stands the political and administrative coordination, before the Danish government's Foreign Affairs Committees determines its negotiations position, and it is the EU Committee that has the responsibility on the civil servant level. The EU Committee holds an important political role because the committee purpose is to maintain an overall Danish EU political line in the Danish attitude towards a proposal. The final political coordination in EU matters is in the government's Foreign Affairs Committee (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 23).

As previous mentioned, it is the government's Foreign Affairs Committee that determines the Danish European political attitudes. The committee establishes the general political guidelines regarding bigger cases or cross-disciplinary subjects. Normally, the Foreign Affairs Committee do not get involved until the decision making process, when a proposal is facing a decision in the European Council. The committee determines the government's negotiating position, which will be presented for the Parliaments European Affairs Committee. It is worth mentioning that matters concerning the European Council are the Prime Minister's Office's task (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 23).

As the above reading implies, there are many actors involved in the intra ministerial coordination, but now we will have a look at the second step in the Danish coordination of the EU-policy. The parliamentary mandating procedure is where the democratic control lies. Before a minister can travel to Brussels and negotiate on behalf of Denmark in the Council of the European Union, the minister has to get a mandate for the negotiating position from the parliaments European Affairs Committee. This committee consists of 17 members and 11 alternates and its task is to control the governments EU policy. The members in the committee reflect the representation in the Danish parliament. It must be understood in the sense that a minister must not have a majority vote against a negotiating position. The committee's control function exercised only in the coordination process prior to the adoption of EU legislation. This control mechanism can be characterized as a democratic bottom-up process. The democratic top-down process occurs first when a proposal is ready for voting in the parliament (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 25) (Rasmussen 2007).

Based on a study of the Parliaments European Affairs Committee in the early 90's, it was questioned that the committee was capable of controlling the governments EU policy. Some of the problems that were

pointed out were that the committee got involved very late in the political process and the members was under temporal and case-related pressure. In the light of these democratic control problems, the Parliaments Special committees got more involved in the. The 1st of January 2005 the Special Committees got the opportunity to get more involved in the mandating system, to make sure that the governments mandate were given on a political and professional basis as possible. The Special Committees gets involved at a very early stage and gets the entire essential memorandums from the government and has the possibility of calling a minister in consultation before meetings in the Council of the European Union (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 27).

Over the past 10 years a more and more significant parliamentary democratic control has taken place, more actors and official institutions is involved now than earlier in the coordination of the Danish EU policy.

9.1 The implementation

In the following we will take a look into the literature on the field of the EU's impact on the Danish legislation. The Danish researcher Morten Kallestrup has made an in-depth study on how EU regulatory policies influence Denmark and the Danish leeway in that process. Morten Kallestrup studied the Danish Sale of Goods Act, the Danish E-Commerce Act and the Danish Competition Act in order to see the EU's impact on Danish legislation and notice the Danish role in the implementation phase. We will start whit the Danish Sale of Goods Act.

9.1.1 Sale of Goods Act.

The Danish Sales and Gods Act from 2002 is an example of how an EU directive can get implemented in already existing Danish law. The directive provision on the consumer goods directive had to be implemented in several Danish laws at various time points. This is a scenario have been encountered in the implementation of EU directives.

The first initiatives towards the consumer goods directive started already back in the early 90's with a Green Paper from the European Commission. But the final edition of the directive was not nearly as ambitious as it was originally set for in the Green Paper from 1993. The negotiations during the time before the proposal was presented, was characterized by considerable disagreements both in the EU institutions and in the member states. The Danish position on the directive was that guaranties on goods should be harmonized but harmonization on every other area would be too technical because of the differences among the member states. Even though Denmark disagreed with the proposal from the European Commission, the proposal was voted through with a qualified majority vote in 1998. Denmark was thus forced to implement the proposal before 1st of January 2002 as the EU rules prescribe (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 46,47).

The new EU directive prescribed new great changes in the Danish Sale and Goods Act, as a result of this the Danish government established a small working group with four legal experts and a professor as a chairman. The working group's tasks were to consider changes to the Danish rules on consumer goods. The working group was meeting often between 1999-2001 to discuss legislation initiatives regarding the law of sales, and in the same period the working group was having meetings with relevant interest groups and authorities on the field. In 2001 came the working group's report on the implementation of the consumer goods directive and the report contained a number of recommendations on how to implement the directive in Danish legislation. In response to a hearing on the report was many business organizations here among others Confederation of Danish Industry and The Danish Chamber of Commerce were critical about the proposed changes in the Sales of Goods Act. The Danish Consumer Council on the other hand was more positive towards the proposal but wanted a more far-reaching reform that accommodates the consumer's rights. It was however possible for civil servants in the Ministry of Justice to make compromise with broad support from the Danish parliament (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 49).

A proposal to changes in the Sales of Goods Act was submitted by the social democratic government in the Danish parliament in October 2001. But the election for parliament in November the same year made that the proposal was submitted again by the new government so the proposal was adopted by the parliament in April 2002. The only big changes in the new proposal were that it was retroactive.

The EU directive made some historical comprehensive changes in the Sales of Goods Act, but nevertheless the changes were to be considered relatively confine and the effect were equivocal. Therefore both the retailers and the consumers find it hard to understand the new rules. Therefore, the rules were often not adhered properly. The appeal period was e.g. changed from one to two years (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 49). When looking at the Danish leeway in the implementation it is remarkable that the EU did not only play a functional role in a legal sense. The EU played a multidimensional role in the Danish legislation process and Danish politicians and civil servants used the EU as a tool to promote certain interests in the national political negotiations. Furthermore had the organization of the handling in the area of legislation more remarkable consequences (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 50).

The EU regulation was contributing to extend and bound the Danish reform process. Ministers and civil servants used the reference to the EU directive and future EU regulation as an argument for postponement of the Danish negotiations. They also used references to the EU regulation to substantive delineate which items that was on the agenda and was up for debate (Kallestrup, Danmarks suverænitet – og kunsten at

begå sig politisk i EU 2006, 51). Ministers and civil servants references to existing or future EU regulations had remarkable convincing and/or pacifying effect on other politicians, civil servants and organization's representative during the Danish negotiations. A revision of the Sales of Goods act had been on agenda already in the mid-1990s, but a revision of the law did not happen because the government was pending the EU directive. The same justification was made by the new Danish government in 2001 even though that there were majority in the Danish parliament for changes in the Sales of Goods Act (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 53).

The preparation of the Sales of Goods Act was characterized by a long preceding committee work. This committee work was managed by legal experts supplemented by a scanty involvement of the interest groups. As a result of this it was eventually very difficult for politicians, interest organizations and the common man to find arguments against the specialist's proposal. As a consequence of the completed legislations proposal by the specialist's, was there no leeway for further political negotiations. One can then argue that the Danish parliament could just vote against the proposal, but that was maybe not possible because of the deadline for the implementation on the 1st of January 2002 so the encouragement was maybe not that big to vote against. There was no doubt that the Sales of Goods Act got more complicated as a result of the EU directive, but it was not only the content of the directive that made it complicated. The organizing of the administration was also very complicated. The EU directive spread out over several ministries in the Danish administration and that did not exactly make the complexity of the legislative preparation less complicated (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 54,55).

The political process when looking at the implementation of the EU directive was clearly expert dominated. The conclusion on the process of the implementation of the EU directive is that some achieved more power and others handed over power. In terms of influence the losers in process were the committee members, ordinary member of the Danish parliament and interest organizations. The winners were the ministers and civil servants (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 55).

9.1.2 E-Commerce Act

The E-Commerce Act differs from the Sales of Goods Act by being an example of how EU regulation can result in new national legislation. The Danish E-Commerce Act was a directly result of the EU e-commerce directive. The legislation process was also an example of how skilful civil servants take advantage of a leeway in condition to binding EU legislation (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 56).

The Commission came to the conclusion that there was a need for common European regulation of e-commerce during the 1990s. It was an overall political goal to create a growth in e-commerce in realization of that e-commerce has growth potential, but also because common rules would strengthen the internal market for realization across borders. It only took three years from the e-commerce was broad on the agenda by the European Commission in 1997 to EU directive was voted through in 2000. This time period was relatively small comparing to other directives. This was possible because it was met with broad political support from the European Commission, the European Parliament and the European Council during the process. Despite the broad support there was still major disagreement over what the directive should regulate and there was uncertainty about the concepts in the legislation (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 57). The regulation was intended to cover all aspects of the commercial chain, from the manufacturer to the consumer and that didn't make the legislative puzzle less complicated. Another important area of conflict was the directives legislative field of application. The question was should the civil law be incorporate in the directive. The civil law regulates matters among citizens and the public law regulates arrangement of the public system in the society. This distinction between civil law and public law give rise to disagreements and problems of interpretation, because the EU law does not distinguish between areas of the law. But the common political interest in prioritization of the directive resulted in that the directive was adopted (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 57). In connection to the implementation in the member states, the directive revealed a number of problems. For example the goal about harmonizing the legislation through implementing the directive was just not realistic (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 59).

After passing the new directive on e-commerce the Ministry of Economy and Commerce and the Ministry of Justice decided it was most appropriate to implement the directive in a new law. The argument was that it would be too troublesome to implement the directive to already existing law. The biggest arguments in the Danish debate among politicians and interest organizations in the consultation phase were the sender country principle, just as in the international negotiations (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 59). The Ministry of Justice came to the conclusion that the sender country principle only comprised the public law and not the civil law. But the European Commission DG on the internal market had another view on that matter and thought that also the civil law was included in the directive. The difference between Danish law and EU law in the way of looking at the matter created disagreements. In December 2001 the European Commission contacted selected Danish interest organizations and explained to them that way the Danish government had interpreted the directive was wrong, and this would have negative consequences for Danish companies. This were highly unusual

because the EU treaty says that directive implementing is a national matter, and from a legal perspective the Commission only have the competence of reprimanding any errors in the national implementation. Despite the Commissions interference the Danish civil servants the interpretation of the directive was held firmly by the Danish civil servants. The two Ministries on the directive agreed on the interpretation and therefore send an invitation to the European Commission to set up a meeting on the matter (Kallestrup, Danmarks suverænitet - og kunsten at begå sig politisk i EU 2006, 60).

At the same time there was parallel reading of the proposal in the Danish parliament. Under the first reading of the proposal several politicians expressed that they found the proposal to be very complex, but remarkable all the parties except The Red-Green Alliance ended up voting for the proposal. All in all could the Danish implementation of the e-commerce directive be characterized by a conflict between civil servants in European Commission and the Danish Ministry of Justice. The Danish decision-making could however be described as unity among the Danish politicians. But this unity could be a sign of passivity because of the content and extend of legislative complexity of the directive. Simultaneously the directive had been through the special committee and the EU Committee, and at the same time the directive did not attract public or other political attention (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 51)

As previous mentioned the e-commerce directive resulted in new national legislation. The decision-making process before the e-commerce directive was a clear example of how it was possible to build up a national leeway when implementing the directive in national legislation. The legal experts took over the lead role in the legislative process. The start of the legislative process seemed as business as usual. There was collaboration between different authorities, interest organizations and politicians. But in the autumn of 2001 all focus was on the conflict between the European Commission and the Danish Ministry of Justice over how the sender country principle should be interpreted. As a result of that conflict, interest organizations were side-tracked and did therefore not have a say in the matter. The same was the case for the European Commission that totally disagreed with the interpretation of the directive, but the Danish Ministry of Justice did not move an inch closer to the European Commission's interpretation of the directive. The big winner in the overall process is clearly the civil servants in the Danish Ministry of Justice. They showed skills and defied the pressure from the European Commission, but another question is if there was real parliamentary control (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 63).

9.1.3 Competition Act

The Competition Act differs from the two previous discussed pieces of legislation in that there has been neither any implementation of EU directives in Danish law. Nor has there been any regulation from the EU that has required any substantial changes of the Danish Competition Act. Still since 1998 a pronounced EU harmonization of the Competition Act has taken place. The remarkable thing is that this has not been a requirement from the EU. The explanation can be found in that a majority in the Danish parliament had an interest and at the same time saw an opportunity in tightening the Competition Act. The reason for that can be seen in light of the high Danish consumer prices and an increased focus on the consumer prices the voters. In this context the EU completion laws principles contents had been a convincing argument for changes (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 64).

The EU competition rules derive from the time of the European Coal and Steel Community in 1962. For over 40 years there have not been any major changes in the rules, but through the 1990s the European Commission launched a number of initiatives with the aim of decentralizing the use of EU competition rules.

The European Commission has played a central role in the EU competition policy from 1962 and to this day.

(s.65). EU competition policy has had a significant impact on the EU member states national Competition Act here among the Danish Competition Act. But there have not been any legal or political pressure for EU harmonization on the Danish legislation. The EU harmonization has taken place on Danish initiative (S. 65). The Foundation for fundamental for a principle changes in the Danish Competition Act was placed in the mid-1990s. The principle change was about a farewell to a Competition Act based on regularly control, where everything is allowed until being eventually discovered. The new fundamental change was the prohibition principle that is; it is forbidden until being eventually allowed. With the new Danish Competition Act, which came into force in 1998, was the fundamental shift verified (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 65).

Interest organizations were actively involved in the legislative preparation in a committee and in 1995 they presented concrete changes to the existing law. But during the process there were big disagreements among the interest organizations. Even among the majority that was for the proposal were there concerns about the principle shift in the presented proposal. On the other hand the proposal were political unacceptable in the parliament. After the proposal went public the effort was concentrated on political negotiations. The discussions continued internal among the government parties for almost one and a half year, because of disagreements among the parties. It was only after The Centre Democrats chose to leave the government, that it was possible to reach a common proposal from the government. Here after the

negotiations continued among other parties of the government. A new proposal was voted through the parliament in May 1997 with only the Socialist People's Party and The Red-Green Alliance against the principle shift in the Danish Competition Act. The changes in the Danish Competition Act can be seen a break with the liberal attitude towards the Danish business community. The tighter regulation was clearly inspired by international competition principles (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 68).

In 1999 was there initiated legal work on the Competition Act in the Ministry of Commerce. In contrast to the legislative process in the mid-1990s was the interest organizations no invited to play active role in the process. Instead they participated as a part in hearings and individual meetings. That was partly contributing to the preparations and decision-making process; leading up to the changes of the Competition Act in 2000 was relatively fast accomplished. From the start of the preparations to the amendment it only took six months. Just like 1997 the business community had to accept new tightening rules. Among the discussed subjects was the merger control and the possibility of fines was on top the business communities wishes. But also the competition authority's institutional design was found to be a central in the negotiations, just as it was in the previous reform. A substantially status quo on this area was crucial for the right wing parties to support new legislation on the Competition Act. Hence there was broad support in the parliament, even though it was not support by the business community; the merger control was a reality. The Minister of Business and Industry Pia Gjellerup showed manoeuvrability to both sides in the parliament. By playing on the "necessity" of adjustment to the EU she could legitimize to the right side of the parliament that she did not necessarily have make a large majority of the parliament for new legislation as the tradition normally was on this policy area. Even though the Socialist People's Party was the initiator to new legislation the party paradoxically ended up by voting against the proposal. They thought that the proposal was not far-reaching enough. The changes in 2000 can all in all be characterized continuing tightening of the business regulation and EU conformity (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 69).

The debate about the need for sanctions and actions continued in 2001. The lighter and lower level of fines in Denmark attracted media interest. The media coverage of high prizes and a public publicity of fines to the companies SAS and Maersk on cartelization sparked political initiatives. Also right wing parties were ready to take actions. The at the time Minister of Business and Industry Ole Stavad from the Social Democrats draw up a proposal on changes the Competition Act, but it was never put forward because of the parliament election. The new minister Bendt Bendtsen from the Conservative People's Party proposed a revised version of the previous government's proposal. Remarkably the new government continued the

same tighter line against the business community, with e.g. higher fines (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 72).

In connection with the three reforms in 1997, 2000 and 2002 EU integration was used as an argument for implementation of changes. In the committee work and negotiations arguments often referred to the need for EU harmonization. The two set of competition rules was also a significant argument for possibility of a principle shift in the Danish Competition Act. The references to the need of EU harmonization were often used as an argument for different kinds of changes in the Competition Act. This happened even though that there were at no time any formal requirements from the EU, to member states to adapt their national Competitions Act's. There has not been legal pressure or needs for adaption of the Danish Competition Act. To a limited extend you could talk about informal recommendations when national and EU civil servants were discussing competition law (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 73).

In a Danish scrutiny of the conditions among the national and EU law on competition it was found that it was very rare that there was conflicts. At the same time it was not found a convincing that the Danish economy is very open should lead to a principle shift of the Danish Competition Act. As there has not been any legally need for adaption the reforms of the Competition Act in 1998 can be attributed to political considerations. The changes are there by a result of Danish initiatives. National politicians have significantly had their attention directed to high prize level in Denmark (Kallestrup, Danmarks suverænitet – og kunsten at begå sig politisk i EU 2006, 74).

References to the EU have been used to put changes of the Competition Act on the political agenda. And the EU has been used as common political content inspiration for solutions in a Danish context. E.g. OECD has identified EU regulation as a model in competition policy. All in all has references the EU to some extend been used to promote a political leeway in the national decision making process on competition policy. References to the need of EU adjustment have been used to promote implementation of tighter legislation of the Competition Act.

10. Norwegian influence on EU legislation

Since the 1970s “active European policy” has been a theme for Norwegian authorities. In everyday life “active European policy” has different meanings. Some use it as a label to describe opposition against adaption within the agreements others use it as a collective name for Norwegian policy towards all European organizations, states and affairs. The term can however also be understood as a political aim rather than an analytical category (Sejersted, et al. 2012, 164).

“Active European policy” can therefore be used to describe how Norwegian actors try to influence and participate in the decision making process of the EU. When Norway did not join the EU it gave away its most important tool for an “active European policy” since this was also a no to representation and voting rights. Thereby no matter how active Norway is in trying to influence EU policy it will always be a “third country” and its influence will therefore be limited. As a general influence is then unrealistic the focus of Norway must therefore be on single issues. It is also not very realistic to be agenda setting to launch new political ideas and initiatives towards the EU. This means that the focus of Norway is mostly responding to single issues or in other words a very “reactive European policy” (Sejersted, et al. 2012, 164).

10.1 Influence in the decision making process

As shown in chapter 7.5 EEA Decision Making Process Norway has little formal influence in the legislative process in the EU in fact Kirsti Methi⁹ said in 2002 that Norwegian political influence with the EEA Agreement as a tool is worth nothing. Still Norway has to implement more or less all legislative internal market acts and has been doing so with astoundingly efficiency – in 2004 Norway had implemented all 4500 internal market acts and was only beaten by Denmark on the European Commission’s scoreboard for implementing laws (Frisvold 2004) and according to the EFTA Surveillance Authority in 2011 Norway was the second most obedient country when it comes to implementing directives apart from Malta (Sandelson 2011).

The main problem for Norway is that it wants to influence a decision process that it is not a member of thereby Norway needs to influence from the outside. Through the EEA agreement and Schengen Norway has the right to participate in some of the decision making process in the EU however without voting rights. Apart from that influence “active European policy” for Norway is sought in more informal processes on many levels and with many different actors. There are two main factors that determine the influence of Norway in the decision making process whereas the first is what influence Norway is being dealt by the EU and the agreements. The second and just as important is the will and ability in Norway to influence. The will and ability has to be present in politicians, administration, Norwegian companies and many actors (Sejersted, et al. 2012, 164).

The Council of the European Union has defined Norway’s relationship to the EU as a privileged partnership and generally Norway is thought of as a competent partner not least because Norway in some areas has knowledge that is of special interest to the EU. The EU has also invited Norway to have an “active European policy” this is seen in 2010 when the Council of the European Union announced in one of the Council

⁹ Former leader of the Confederation of Norwegian Enterprise’s office in Brussels and now Secretary General in the European Movement in Norway

conclusions that “The Council encourages Norway to use existing structures that provide for EU-Norway dialogue, bilateral or otherwise, to raise and discuss possible differences related to trade issues in the spirit of the privileged partnership that exists between the EU and Norway” (Sejersted, et al. 2012, 164). However even though Norway is encouraged to participate there are still many barriers for third countries such as Norway when trying to influence the EU. These are firstly based on the fact that the EU has a legitimate wish to secure its own autonomy in its decisions. This wish originates in the fact that it already very difficult to get the 27 member states to agree and therefore the EU does not wish to have other states or non-state lobbyists making it even harder. Second does the EU not want to prioritize third countries interests before its own interest especially in situations with conflict of interest between the member states. And since the use of qualified majority decisions has increased in the EU system it is very difficult for the EU to give exceptions to third countries that is not given to member states. Thirdly Norway is in an on-going struggle with many other third countries, organizations, companies etc. for the attention of the EU (Sejersted, et al. 2012, 165).

10.1.1 Influence through the European Commission

In the European Commission the member states and other actors are often participating as experts. There are no overall strategic dialog between the European Commission and the Norwegian authorities however the EEA Agreement does establish some formal procedures for consultation and participation. These procedures are mainly connected to the EEA institutions and Norway’s access to participate by sending national experts to the European Commission (Sejersted, et al. 2012, 170).

10.1.1.1 Expert groups

The European Commission can consult expert groups during the preparation of new legislation however it does not have to. If the European Commission chooses to consult expert groups the EFTA EEA experts have to be part of it but if the European Commission chooses not to consult expert groups then there is no way for EFTA EEA experts to be involved. Being part of an expert group can be beneficial in at least two ways; first of all it can give the opportunity to clarify national positions towards at a very early stage in the legislation process. Second it can also be a great information channel for the Norwegian authorities. Today there are more than a 1000 expert groups under the European Commission where Norway has the option to participate in between 300 and 400. There is however no official list of how many Norway actually is involved in (Sejersted, et al. 2012, 171). In a survey done in 2006 15 percent of the civil servants in the Norwegian ministries, directorate etc. participated in the expert groups under the European Commission (Sejersted, et al. 2012, 173).

Erik O. Eriksen does not believe that Norway has much influence in the legislation that has to be implemented in Norway because of the EEA Agreement. He among other things mentions the claim that the Norwegian democratic deficit is compensated because of Norwegian experts' participation in the works of the Commission of the European Union. However even if Norway has influence in that way although the experts does not have access to all the committees or the most important committees this does not compensate as all the EU countries have way more influence according to Eriksen. Eriksen argues that while most of the EU countries have made foreign policy domestic policy and established procedures for how to handle the decision making process then Norway is left old-fashioned diplomacy and lobbyism. Furthermore the Lisbon Treaty has made it even more difficult to gain influence through bilateral diplomacy (Eriksen, *Demokratiet som forsvant* 2008).

It has also been argued that Norway does not have much influence through experts in Brussels however he claims that it would be possible for Norway to actually get more influence out of them than they do today this is down to the fact that they do not get clear instructions from the Norwegian government and thereby have no clear mandate when they go to Brussels furthermore there is not much feedback and it is only to a lesser extent considered back in Norway. Besides some have claimed that the Norwegian experts are less active in the committees, contribute with fewer papers and have less informal contact than similar experts from Denmark and Sweden. Moreover there seems to be a weak coordination from the Norwegian Foreign Ministry that results in a both weak and little strategically founded effort in the committees. All in all finds indications that Norway has very little influence through the committees but that it would be possible to gain more influence if there was a better coordination of the resources (Debesay 2002).

Apart from Norwegian experts work in the Commission of the European Union the Commission of the European Union can also informally gather viewpoints from Norway when preparing new legislation and the Commission of the European Union has to send copies of proposals for new legislation to the EFTA countries at the same time as they are send to the Council of the European Union (Debesay 2002, 25).

In chapter 7.5 EEA Decision Making Process it is also shown that there is a lot of communication between the EU and the EEA EFTA States in the EEA institutions and that the EEA EFTA States can in some cases can get adaptations or transition periods. However theses mechanics might not be as efficient in real life as they are on paper this was seen for example in the late 1990's when Norway was pushing for a transition period for the gas market directive where Norway first asked for a transition period of six years, then three and then one before adopting the directive immediately. At the same time Paal Frisvold¹⁰ argues that the

¹⁰ Leader of the European Movement in Norway.

EEA EFTA institutions like the EEA Council has become more or less neglected by the EU foreign ministers with few of them even bothering to show up for the six-monthly meetings and that in the ten-minute EEA Joint Committee meeting in Brussels hardly any discussions take place (Frisvold, Why Norway should trade EEA for EU 2004) (Debesay 2002, 24). A similar argument has also been made about the EEA Council where it in practise is random who is attending from the EU even though Norway normally is attending with a powerful delegation (Debesay 2002, 23).

Eriksen does also argue that the power balance between Norway and the EU is so screwed that it makes little space for real politics maneuverers for Norway. He defines Norway as utterly dependent on the EU as 80 percent of Norwegian exports and 70 percent of imports comes from EU countries. Even in energy Norway is no superpower, even if 80% of Norwegian gas exports are to the EU it is still only 20 percent of the total import of the EU countries. Furthermore Eriksen presents the view of Norway in other countries as an egocentric, filthy rich “outside country” a freeloader on the European integration project that has established the marked, security and stability that Norway now benefits from. In Eriksons opinion the Norwegian decision not to join the EU has presented the worst conceivable result: Supranational control with minimal influence (Eriksen, Demokratiet som forsvant 2008).

10.1.2 Council of the European Union

The Council of the European Union continues to play a very important role in the legislative process. Norway does not participate in the Council of the European Union with one exception in connection with Schengen. Norway does therefore not have any formal access to the decision making process in the Council of the European Union and this applies to all levels also minister and ambassador (COREPER) levels. Indirect influence on the Council of the European Union is however very difficult since the many different interests among the EU member states makes it very hard to argue why much attention should be given to third countries such as Norway. This does however not mean that Norway does not try. In Norway the country that at any time has the presidency of the Council of the European Union is seen as an especially important point of contact. Before the change of presidency the Norway holds meetings with the prime minister of foreign minister of the new presidency and during the presidency Norway usually upgrades it diplomatic mission in the country with an extra diplomat (Sejersted, et al. 2012, 178).

10.1.3 The European Parliament

The European Parliament keeps getting greater influence in the legislative process in the EU. The EEA Agreement does give the option for formal dialog between the EFTA-parliamentarians and the representatives for the European Parliament through the EEA-parliamentarian committee. This cooperation is however very limited and does mostly consist of information flowing from the European Parliament to

the EFTA-parliamentarians. Apart from this there have not been any formal procedures for contact from Norwegian authorities to the European Parliament (Sejersted, et al. 2012, 178).

As a consequence of the strengthened role of the European Parliament Norway has since the ratification of the Lisbon Treaty in 2009 to pay more attention to the European Parliaments work. The main focus for Norwegian attempts to influence the European Parliament is the working committees and the Norwegian EU-delegation plays an important role in this work. There are however many interest groups who fight over the attention of the parliamentarians and Norway has to compete with many actors who to a larger extent can be said to represent European interests.

10.1.4 Space for action in the implementation of EU legislation

When EU regulations are implemented in Norwegian legislation there is no room for political adjustment of the legislation. In EU countries regulations are not implemented at all on the national level as they take effect when passed in the EU. In the EEA Agreement that was not possible therefore these regulations must be implemented in Norwegian law. Therefore the EEA Agreement states that EU regulations have to be implemented word for word in Norwegian legislation and Norwegian legislators therefore cannot in any way change the rule or adjust them for a better fit to Norwegian law (Sejersted, et al. 2012, 123).

When implementing directives into Norwegian law, Norwegian legislators must be loyal to the intentions of the EEA Agreement and must be very clear so that it is easily understood. Apart from that it is up to the Norwegian legislators to choose the form and the means for the implementation. How much margin there is very different from one directive to another some directives are very detailed and concrete which gives little latitude. Other directives are vaguer and general in their formulation which gives more room for interpretation and some directives gives Norwegian legislators a choice between different solutions. When implementing directives with more margin to move in it can be very comfortable for the legislators to choose to interpret the directives in a way that insures that Norway will not risk criticism or lawsuits. This means that in some cases the Norwegian legislators actually reduce their own space for action more than the EEA Agreement requires. It is however difficult to measure how much the Norwegian legislators are actually using the margins they are given however there are cases that show that it is used however the size of the space for action is still decided by the EU (Sejersted, et al. 2012, 123).

10.1.5 Veto options

As mentioned in chapter 7.5.1 Veto another way of influence for Norway is the veto in the EEA Joint Committee. However this option has never been used and Erikson argues that it is difficult to see that Norway should ever dare to use it (Eriksen, Demokratiet som forsvant 2008). Furthermore according to Ulf Sverdrup suggests that a veto goes against the whole spirit of the EEA Agreement as it goes against the

intention of the EEA Agreement to create a dynamic and homogeneous set of rules for the whole area (Sverdrup 2006).

And even if the Norway actually chose to use the veto option Norway is still bound by the rest of the EEA Agreement including the four freedoms. This means that the Norwegian authorities would not be able to hinder sale of foreign products or services in Norway. Norway can however practice other rules that are not in conflict with the EEA Agreement however these cannot discriminate against foreign products (Europabevægelsen i Norge u.d.).

The use of the veto could also create great insecurity to all actors that trade between EFTA and the EU and could have great impact on Norwegian trade. This was for an example seen in 2003 when Lichtenstein used the veto against the expansion of the EEA Agreement. Soon after the veto Norwegian exporters expressed their concern about Norwegian trade. The crisis was however resolved within two months and therefore a crisis was avoided (Europabevægelsen i Norge u.d.).

As a main rule the EU has the right to introduce the same restrictions on Norway as Norway introduces on EU. This means that if Norway tries to shield the Norwegian market against foreign labour, goods or services then the EU or an EU country could do the same to Norway (Europabevægelsen i Norge u.d.).

This does however not mean that it has not been discussed to use the veto in Norway as an example in connection with the question about additives in baby food.

10.1.6 Overall influence in the EU

Since Norway signed the EEA agreement it has become harder and harder for Norway to influence the EU. The decision-making authority has moved and the competition for influence has become stronger. Historically speaking Norway has been a privileged third-country but this position has been harder to maintain as more and more third-countries has been demanding the same kind of influence. Power has been moved from the European Commission to other institutions where Norway has less influence. And the speed of the decision making process has been rising which means that it is more difficult for third-countries to influence the process (Sejersted, et al. 2012, 196).

Norway has built up a strong representation in Brussels and the EU-delegation is far the largest of any of the Norwegian foreign delegations. However this delegation is not so large when compared to other countries delegations. In later years the Norwegian influence has been improved and systemised with distinct working programs and clear priorities. However there are still room for improvement (Sejersted, et al. 2012, 196).

Norwegian influence is compared to the EU-states still very much based on the state. The influence sought through Norwegian interest organisation, companies etc. is relative low compared to the EU-states (Sejersted, et al. 2012, 196).

It can be very difficult to measure to what extent Norwegian activities does result in influencing legislation and there is sometimes a tendency among Norwegian politicians to over exaggerate their influence even if it can be up for discussion whether they actually had any influence or the result was just of EU-states wanting the same outcome. It is however no secret that it is very difficult to influence the EU from the outside (Sejersted, et al. 2012, 196).

11. Analysis

11.1 Analysis Denmark

As we have shown in chapter 6.2.4 Discussion of Majone, Moravcsik and Føllesdal and Hix. the EU can generally be considered democratic. However even though Denmark is part of the EU that does not necessarily mean that the situation of Denmark can be considered to be democratic. This is mainly because Denmark is not like any other EU member state, with the four opt-outs from the Edinburgh agreement Denmark has a very different deal in some areas.

In the operationalization of the theory we present Dahl seven institutions as well as an operationalization of the theoretic discussion between Majone, Morawcsik and Føllesdal and Hix and we will use this as the basis for our analysis of the Danish situation.

11.1.1 Elected officials

The first institution in polyarchy is elected officials. In order to conclude if this institution is in place we will analyse various subjects in the scope of Denmark and the EU in order to identify Danish influence through elected officials. Among the subjects that will be touched upon is the relationship between Denmark and the EU institutions e.g. the European Parliament, The European Commission and the Council of the European Union. Furthermore it is crucial to look at where Denmark differs from other EU member states with a special focus on Denmark's opt-outs. To show find out if Dahl's first institution is in place in the Danish situation we will use the chapters in the thesis on the European institutions, the legislative process, the Danish implementation process, the Danish opt-out and the interview with Poul Skytte Christoffersen. We will start by analysing the EU institutions.

11.1.1.1 Danish influence through EU institutions

In the analysis of the EU institutions we will start with Council of the European Union. As a member of the European Union, Denmark has a seat in Council of the European Union. There are 350 votes in Council of the European Union and Denmark has seven votes in all, which is used in cases of the qualified majority. There is no direct election to this institution, but member states are represented by ministers. In the Danish situation it is worth mentioning that a minister does not have to be Member of Parliament, but at the time of writing all Danish ministers are elected members of parliament. Before Danish ministers travel to meetings in the Council of the European Union they have to get political mandate from the Danish Parliament. The ministers get the mandate through the parliamentary mandating procedure in the Danish Parliament for parliamentary and democratic control. It is the parliament's European Affairs Committee that gives the mandate and the committee reflects the representation of the Danish parliament. On paper it looks like there is strong control mechanism, but we do find a few annotations. In Morten Kallstrups research we find that it seems like there is some degree of passivity from the European Affairs Committee because some cases are too complex to understand for ordinary members of the Danish parliament. And a question could be made if members of parliament should be involved on an earlier stage. The overall picture is there is a democratic control over the mandate that is given to the Danish ministers, but there is room for improvement.

As citizens of the European Union Danish citizens can elect officials to the European Parliament. After the ratification of the Lisbon Treaty Denmark has 13 members in the European Parliament. The amount of seats are given on the basis of size of the population, however the smaller countries like Denmark are given compensation for the small size of population. With a population around 5.5 million and 13 seats in parliament compared to e.g. Germany with a population around 82 million and 96 seats in the parliament, Denmark are very well represented in the European Parliament. But the Danish members of the European Parliament are not necessarily supporting the same political agenda as they are member of different political parties in the parliament from all over the political spectrum. This means that the Danish members of parliament are not necessarily working in the same direction as the interest of the government. An example of this could be seen during the Danish presidency on the discussion of the financial transaction tax on an EU level, where even Danish Social Democrats in the European Parliament were for the tax, while the Danish government was against. This example clearly illustrates that the Danish elected member of the European Parliament does not follow the Danish government's policy. But we do not see this as a problem because the Danish member of the European Parliament are elected by the Danish population.

Historically the European Parliament has gained more and more power and is now co-legislator with the Council of the European Union on almost every policy area. The power of the European Parliament, was achieved especially after the ratification of the Lisbon treaty, but does that mean a loss of influence for Denmark? During the interview with Poul Skytte Christoffersen he was asked a general question about the Danish influence he said this:

The process in the Council have very often gone in a Danish direction and you see the same relation to the Parliament. The Parliament will in most areas be on what we would call a Danish progressive line and be a partner in the question of pushing things in that direction we would like to see. A typical example is the Energy Services Directive where it will currently be the Parliament, we must get the support to raise the level of ambition into the direction we want to see [Translated by author] (Christoffersen 2012, 00:09:26).

If the analysis I argue is correct and one of the consequences of the Lisbon Treaty, is the Parliament has gained influence, then it has been positive in that direction [Translated by author] (Christoffersen 2012, 00:12:09).

In the interview he mentions that Denmark and the European Parliament have the same position approximately 90 percent of the time. So what maybe could seem like a loss of Danish interest is actually strengthening the Danish position in negotiations.

In the European Commission Denmark has the Commissioner for Climate Action Connie Hedegaard. Unlike the European Parliament the European Commissioners are appointed by the governments of the EU member states and are therefore not directly elected by the population in Denmark. And another important thing to mention is that the Commissioners are not allowed to serve national interests. All EU member states have a Commissioner, so her Denmark does not differ from the other member states.

11.1.1.2 The Danish opt-outs

As we have shown Denmark has a seat in the Council of the European Union, but it is not in all policy areas that Denmark has a saying. We will in the following have a look at how the opt-outs influence the Danish participation in the EU. In chapter 8. The Danish opt-outs we have described the situation of each Danish opt-out and therefore we have reached the conclusion that it will not be necessary to include the opt-out concerning Union Citizenship in the analysis, because this opt-out has no significant meaning anymore to either in Denmark or other EU member states.

11.1.1.2.1 The Defence Policy

As previous mentioned the Danish opt-out on defence policy means that Denmark cannot make military capabilities available for EU-led interventions in conflict areas. The opt-out has been used twenty times and

has had some serious consequences for Denmark and Danish foreign policy. In the interview with Poul Skytte Christoffersen about the Danish foreign policy his general thoughts is this;

Denmark has turned completely 180 degrees in our position to engage security political and militarily in the last 15 years we have been involved in international peace operations and even in Afghanistan and then again we have been more active, and it has therefore been done that we have not been seen at as someone that is freewheeling in these cases [Translated by author] (Christoffersen 2012, 00:20:28).

This very active Danish foreign and security policy collide with the Danish opt-out on defence. This could be seen during incident on the Balkans in the 1990's where Denmark had to withdraw soldiers from Bosnia because EU took over a NATO-led operation. Poul Skytte Christoffersen calls this incident absurd;

...it has had some absurd consequences when an operation in Bosnia was transferred from NATO to an EU operation so we had to pull out [Translated by author] (Christoffersen 2012, 00:22:10).

Other examples of collision between the Danish foreign and security policy and the opt-out can also be seen in the EU initiative that made election possible in Congo in 2003 and protection of refugees from the Darfur Crises. In more recent time there was an example in the Indian Ocean where Denmark is fighting against pirates.

We're not in the EU's operation in the Indian Ocean anti-piracy action. We are so lucky to NATO also has an operation, but it is basically really lucky because there has been a move towards that NATO under the Americans was not interested and would close their fleet operation and if it had happened we would have stood in the absurd situation that some of the things that really affects Danish interests also Danish shipping interests, we could not participate because of the opt-outs [Translated by author] (Christoffersen 2012, 00:22:31).

Poul Skytte Christoffersen describes this situation as absurd, because it is really an area that is important for the Danish interest. If NATO decides to let the EU lead the operation in the Indian Ocean then Denmark has to leave and let their EU colleagues take over. In case this scenario occur then the Danish opt-out on defence damage important Danish interest. A consequence of the opt-out is that Denmark cannot hold the defence EU presidency and that is a missed opportunity for Denmark to advanced Danish viewpoints and opt-out also brings uncertainty to the Danish foreign and security policy as the Danish opt-out is not known as well in the US as in the EU. The different examples of loss of influence and interest shows that the opt-out is problematic for Denmark and the active Danish foreign and security policy maybe face more

challenges in the future also because the Lisbon treaty opens for the possibility of combining civilian and military crisis management and in that type of operations Denmark cannot participate.

11.1.1.2.2 Economic and monetary Union

We have in chapter 8.4 Economic and monetary Union described the Danish opt-out on the cooperation on the common currency the Euro. So compared to the Euro members Denmark has retained its monetary policy powers by being outside the Euro, but in reality this power seems so be weak. Denmark is participating in the second stage of the EMU and in the monetary cooperation under the Agreement on the Exchange Rate Mechanism II (ERM II). The Danish Krone is closely tied to the euro exchange rate fluctuations and this means that Denmark is not really in control of their own monetary policy. One could see that in the situation where the European Central Bank changes the exchange rate, because a few hours later the Danish National Bank is doing the same thing to keep the exchange rate in proportion to the Euro. So what we can infer from this is a movement of power from the Danish National Bank to the European Central Bank in terms of monetary policy power. But it is not only the monetary policy that causes problems for Denmark concerning the opt-out, because Denmark also lacks a seat in the meetings powerful Euro group. Denmark has seat in the ECOFIN Council as an ordinary member of the European Union, but as we have seen in chapter 8.4 many decision has already been made before the meetings in the ECOFIN Council by the Euro Group. The Euro group meets before the ECOFIN meetings to find a common position that is often difficult for the other member states to influence. This example gets even more problematic in that the Euro group is not only talking about the monetary policy but has developed into a forum that discuss issues e.g. structural reforms of labour market, market for services, energy services. How much influence the Euro group has compared to the ECOFIN Council is difficult to measure, but it is problematic that Denmark does not seem to have influence over their monetary policy. It is further problematic that the Euro group are discussing subjects that are not related to the Euro and this implies that Denmark is not only loosing influence on the monetary policy but also policies that falls outside the opt-out, so there to some extend is a spill over effect to other policy areas.

1.1.1.2.3 Justice and Home Affairs

We have seen in chapter 8.4 Justice and Home Affairs an increasing cooperation in the EU on justice and home affairs in recent years. This has happened because of both internal and external pressure and at the same time more decisions has moved from the intergovernmental to the supranational level especially because of the Lisbon treaty. This has had the impact that Denmark increasingly cannot participate in the parts of the cooperation that is on the supranational level because of the opt-out on justice and home affairs. Denmark is also affected by the internal and external pressures and is therefore interested in cooperating on the area of justice and home affairs and Denmark is in some areas e.g. the Schengen

cooperation forced to implement legislation that Denmark has no influence on. Poul Skytte Christoffersen has the following comment to the Schengen cooperation;

“Then there is the part related to the Schengen cooperation where we are forced to follow the legal situation within the EU and if we do not we will be forced out of Schengen, so it's clear that we will follow it [Translated by author] (Christoffersen 2012, 00:29:52).”

This comment clearly shows that Denmark loses influence in the areas of the Schengen cooperation, because Denmark does not have a seat where the decisions are being made. To accommodate the policy Denmark has made several parallel agreements on areas where Denmark, despite the opt-out, want to be part of the cooperation and join to safeguard Danish interest. But this form of parallel agreement will maybe not be possible in the future. Poul Skytte Christoffersen expresses the following about the parallel agreements;

“There we tried although in the beginning to get so-called parallel agreements in the legal area and we got four as far as I recall. But to me it is passé, I do not think that we will have several parallel agreements and one of the reasons why I do not believe that we will have several parallel agreements is that it is extremely difficult legally and gives a very unclear picture [Translated by author] (Christoffersen 2012, 00:25:49).”

So if Poul Skytte Christoffersen is correct in his predictions then Denmark in the future can face problems when chasing Danish interest on the justice and home affairs. The Lisbon treaty opens for an opt-in model that means that Denmark can chose to jump in where Denmark wants to join the cooperation, but it requires a referendum in Denmark before it's ratified. Poul Skytte Christoffersen says the following about opt-in model and the use of parallel agreement;

“You can use directives and normal legal instruments where you jump in and you can be part of an international agreement, but the others will say that now that you have the option so if you want to ask for new parallel agreements, but why don't you use the option in which you now have in the protocol that is written and finished in the Lisbon Treaty but what you have not ratified. So there will be many lawyers in the system that says it is the way you make connections between Denmark and the EU and all the other strange exercises with parallel agreements and things like that it is passé [Translated by author].” (00:28:16)

This scenario could indicate that Denmark will not gain influence by the opt-in model that the Lisbon has given Denmark on the contrary it could have the complete opposite effect unless Denmark chooses ratify the opt-in model by a referendum.

The extended move of decision making to the supranational level where Denmark has no influence because of the opt-out is clear loose of influence on policies that is important to Denmark.

11.1.1.3 Summary

We have now analysed both EU institutions and the Danish opt-out in order to identify the Danish position in connection to Dahl's first institution on elected officials. Generally is the increased power to the European Parliament very positive in terms of the democratic situation in Denmark and Danish interests in the Council of the European Union. When looking at the Danish opt-out we see some problems, because Danish elected officials is having difficulties safeguarding Danish interest comparing to ordinary EU member states. On the question of how much the Danish opt-outs influence on the Danish position in the EU, Poul Skytte Christoffersen states;

“So less than one would expect if we look at our situation in general, I think you do not notice it so much in daily life outside of the opt-out areas than I really would have expected it [Translated by author] (Christoffersen 2012, 00:18:30).”

In spite of the problems for the elected officials gaining influence on the policy areas covered by the opt-out it doesn't seem like it has a problematic spill-over effect to other parts of the EU cooperation. On the basis of the analysis of Dahl's first institution we find it fulfilled but with some remarks concerning the Danish opt-out.

11.1.2 Free and fair elections

Dahl's second institution is about the free and fair elections. It is well known that Denmark has free and fair election to both the Danish parliament and the European Parliament. At the last election to the Danish Parliament in 2011 the election turnout was 87.7 percent, and looking at the history the turnout has been very stable. At the last election to the European Parliament in 2009 the election turnout was 59.5 percent but looking at the election in 2004 the turnout was 45.7 percent, so it seems that the public participant is unstable. The average election turnout to the European Parliament in 2009 in Europe was 43.1 percent so the Danish participation is significantly higher than the EU average. In Dahl's first institution we showed that Denmark has proportionally more seats in the European Parliament compared to e.g. Germany and one could argue that it's really not fair because a German vote counts less than a Danish vote. But then it is important to see the EU system in a bigger picture as Poul Skytte Christoffersen states the following about the German situation:

“But then one of the things that from time to time is being brought up is that the parliament is not composed in proportion to the number of inhabitants. This is especially the Germans that are running this

case. It's true, but then there is a Chamber of the European Union (The Council of the European Union) who are not like the Senate of the United States that gives an equal number of votes for each state, but you have a weighted voting system, so the two taken together, I think gives proportionately as much influence to the Germans as a copy of the U.S. system would provide, because it would mean that Germany would have two votes in the Council [Translated by author] (Christoffersen 2012, 00:38:53).”

One of the critics that is worth mentioning is that it is not possible for Danish voters to vote on candidates from other EU member states, but this critic does not stand because you have the same situation when voting to the Danish parliament, where it is not possible to vote on all candidates. On the basis of the analysis we find that Denmark can fulfil the second institution even though election turnout to the European Parliament is not impressive.

11.1.3 Inclusive suffrage

The third institution is about inclusive suffrage. The rules are made this way every adult over 18 can vote to both the Danish Parliament and the European Parliament. The rules for eligibility to the European Parliament are the same as it is in each member states. Therefore we consider the third institution as fulfilled.

11.1.4 Right to run for office

The fourth institution is about right to run for office. If you can vote to the election then you can also run for the Danish parliament. You can either choose to stand for election through a party or as an individual. If a person chooses to stand for election as an individual you have to 150 signatures from the constituency you are standing for election. We hereby conclude that Denmark has fulfilled this institution.

11.1.5 Freedom of expression

The fifth institution is about Freedom of expression. Denmark is a very liberal country and it is possible to express what you think. According to the Danish constitution §77 every citizens has the right to express them self in both thought and speech, but under the responsibility of the courts. The line is when it comes to e.g. racism and blasphemy. In other EU member states there are other rules for expression e.g. in Germany Nazism is illegal and in Austria it is illegal to deny Holocaust. On a European level there are legislation on freedom of expression, but the Danish opt-out on justice and home affairs does that Denmark is not affected on supranational decisions from the EU. It's very normal in a modern democracy to limit the freedom of expression by making e.g. racism illegal and therefore we conclude that the fifth institution is fulfilled.

11.1.6 Alternative information

The sixth institution is about alternative information. Denmark is a small country but still have a wide variety of media including newspapers, TV stations, internet media and so forth. To keep a living political debate the Danish media are economically supported by the government and there is no distinction between which “colour” the media has. Danish Broadcasting Corporation is a public service organisation license-financed public institution that produces high quality programs on internet, radio and TV. This institution is competing with private companies like TV2 and others in bringing news and discussions about politics, society and EU. The EU tries to very open by translating a lot of the information policies conferences and so forth into Danish, and the European Commission has an office Denmark where to disseminate information about the European Commission’s work. The conclusion is that the Denmark fulfil this institution.

11.1.7 Associational autonomy

The seventh institution is about associational autonomy. Associational autonomy is a core value of the European Union and is now binding legally at the same way as treaties. The Charter of Fundamental Rights of the European Union Article 12 says the following:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

(The European Parliament c)

Denmark is famous for having a strong associational life and civil society and just like other modern democracies you have the freedom of association and assembly. We thereby also conclude that Denmark fulfil the seventh institution.

11.2 Analysis Norway

We have in chapter 6.2.4 Discussion of Majone, Moravcsik and Føllesdal and Hix. looked at the EU and argued that the EU can be seen as democratic. Much of Norwegian legislation is as shown in chapter 10. Norwegian influence on EU legislation EU legislation that has been implemented by the Norwegian parliament. However as Einar M. Bull says Norway is bound by 75 percent of the legislation that is passed in the EU but only 10 percent part of the process of forming the legislation (Bull, 2012, p. 01:02:53). This indicates that there are a discrepancy between the how much influence Norway has got in the EU system

and how much Norway is controlled by the EU. This can then have a negative effect on the democracy for the Norwegian people.

As we have analyzed the democracy in the Danish situation, based on our operationalization of Dahls theory of Polyarchy and the discussion between Majone, Morawscik and Føllesdal and Hix, so we will analyze the Norwegian situation.

11.2.1 Elected Officials

As we have seen in chapter 10. Norwegian influence on EU legislation the elected officials that make “government decisions” in the EU is not really controlled by the Norwegian people. It is argued that Norwegian authorities to some extent can influence these elected officials however mostly in the European Commission. In the European Parliament and in the Council of the European Union it is much more difficult. Norway does of course have their own parliament and the Norwegian parliament does have influence over Norwegian legislation both through the option to influence the work in the European Commission but also in the implementation phase after legislation has been passed in the EU and in the areas of legislation that is not covered by the EEA Agreement. Furthermore we have shown that the possibilities for Norway to have legislation amended to better suit Norwegian condition or get a transition period for implementing directives are the rather slim as seen with the gas market directive. In reality it seems like the power of the Norwegian parliament is very limited when it comes to the rather substantial amount of legislation that has to be implemented because of the EEA Agreement.

One of the ways for Norwegian officials to influence EU legislation often mentioned is through experts in the European Commission. However as shown in chapter 10. Norwegian influence on EU legislation the European Commission does not have to consult EFTA EEA experts and the Norwegian experts are not used in a very efficient way. This is also underlined by Einar M. Bull who has experienced that the ministers in Norway does not try to coordinate with these experts or even make it clear to them what the Norwegian position is in the cases where they are acting as experts. Furthermore the experts are not even aware that Norway is indeed working in Brussels to influence this legislation (Bull, 2012, p. 00:27:31). This shows that even though this is an area where Norway could limit the democratic deficit this is not used efficiently.

Norway does have officials that are at least appointed by elected officials in the EEA and EFTA institutions but those institutions are far from as important in the legislative process as the EU institutions. However these institutions are a lot less important in the legislative process than the EU institutions this is a claim supported by Poul Skytte Christoffersen who says that the EFTA institutions does not have any real influence in the areas where legislation is made and the meetings that takes place in the end of the

legislative process between the EU and the EEA EFTA countries are nothing but a “skin process” where only changes solving problems that are easy to solve are made, problems that requires changes in the core of the legislation are not being made on this stage (Christoffersen 2012, 00:32:02).

Arguments have often been given that Norway is still better off in the broad perspective because of the sovereignty Norway has kept in the areas that is outside the EEA Agreement. That there is a tradeoff between influence in some areas that are not so important for full control in some areas that are very important. However this argument does have its problems. Einar M. Bull says first of all that the fishery legislation in Norway would not look very different had Norway been an EU member state this is especially important in connection to the principle of Relative Stability in the principle of the Common Sea that would have meant that Norway would have kept their historical rights to their waters. On the other hand economically Norway is suffering economically because of the up to 13 percent duties put on Norwegian fish when exported to EU countries which means that Norway are sending fish to Denmark and other countries for processing resulting in lost jobs in Norway (Bull, 2012, p. 00:42:20). Secondly Einar M. Bull also comments on agricultural policy that might be the most important part of legislation that is outside the EEA Agreement. He argues that even though one of the reasons why Norway is outside kept agriculture outside the EEA Agreement Norwegian agriculture is still moving in the same direction as it would have done is Norway had to implement EU legislation in this area. One of the reasons why Norway did not wanted to stay outside of agriculture legislation was to protect the rural Norwegian farmers how are heavily subsidized in Norway. However according to Einar M. Bull the number of rural farmers in Norway is declining every day and even though Norway does not have to follow EU legislation in this area the GATT agreement still makes it impossible to keep the Norwegian system. Einar M. Bull argues that if Norway had got a longer transition period to adjust to EU agricultural policy then it would not have been a problem for Norway (Bull, 2012, p. 00:42:20). So in these two areas that are arguably the most important areas that are outside the EEA Agreement it does not seem like Norway has gained much in terms of democracy by keeping them outside. The situation for Norway would not have been much different in the long run for Norwegian fishermen and farmers if fishery and agriculture had been part of the EEA Agreement or if Norway had joined the EU however if Norway had joined the EU then Norway would have been part of the legislative process and would have been able to influence that in a way that would benefit the Norwegians. This is especially seen in the fact that the European Commission actually said that Norway could keep their subsidies to the milk farmers in Northern Norway had they joined the EU because of the special situation with distances etc. in Northern Norway (Bull, 2012, p. 00:42:20).

Another way for elected Norwegian officials to have influence that is often argued to compensate for the lack of influence is the veto right build into the EEA Agreement. However as shown in chapter 10.1.5 Veto options this veto right is bordering an illusion as it would be next to impossible for Norway to really use it. This is also the view of Einar M. Bull who argue that the veto right was merely a formal theoretic veto right that had to be part of the EEA Agreement otherwise it would not have been possible to get accept of the EEA Agreement in the Norwegian parliament or in the Norwegian population. Einar M. Bull also mentions that that Gro Harlem Bundtland at a very early time said that Norway has got a veto right that is never to be used (Bull, 2012, p. 00:36:31). According to Einar M. Bull it would have made sense if Norway had used the veto right in in the case of the breakup of the cartel in the North Sea where Norway expected to lose NOK 10 to 12 billion. But not even that could get Norway to invoke the veto right (Bull, 2012, p. 00:38:05).

11.2.2 Free and fair Elections

Since Norway is not part of the EU some of the important elections are not elections where the Norwegians can vote. This is especially true in the European Parliament where the citizens of the EU can vote directly for their representative. But also when it comes to institutions such as the European Commission and the Council of the European Union where the officials are elected indirectly, either chosen by the governments or are ministers in their governments the Norwegians are left out. Because even though the Norwegians can vote for their members of parliament these cannot appoint commissioners in the European Commission or represent the Norwegians in the Council of the European Union. The elections in Norway to the Norwegian national parliament the Norwegian Parliament is without a doubt free and fair and however since there are no elections to some very important institutions it is not even a question if they are free and fair they just does not exist.

11.2.3 Inclusive suffrage

The problems in this institutions is derives from the problems in the institution above. Norwegians have the right to vote in the election for the Norwegian parliament but they do not have any voting right when it comes to the European Parliament and their representatives in the Norwegian parliament do not have the right to participate or appoint officials in the Council of the European Union or the European Commission.

11.2.4 Right to run for office

This institution suffers in the same way as the two institutions above. At the same time as Norwegians cannot vote in elections for the European Parliament and their representatives cannot participate or appoint officials to the Council of the European Union or the European Commission no Norwegian citizens can be elected or appointed to any of these institutions. It is of cause possible for Norwegians to run for

office as member of the Norwegian parliament however as it has been argued before this is just one institution among others that has power over Norwegian legislation.

11.2.5 Freedom of expression

Citizens of Norway have the right to express themselves and criticize both their national government and the officials of any EU institution.

11.2.6 Alternative Information

Norwegian citizens have the right to seek out alternative information. However the EU does a lot of work to make all information in the EU available in all languages in the EU but since Norway is not part of the EU then this information is not translated into the two official written languages in Norway (Bokmål and Nynorsk). The EEA and EFTA institutions does translate information concerning the EEA Agreement into the EEA languages however because it is not the EU then this work is delayed compared to the EU languages.

11.2.7 Associational Autonomy

In Norway there are citizens have the right to organize in any way they wish. However these interest groups might have a harder time being heard than interest groups from EU countries. Furthermore an initiative like the European Citizens' Initiative is not open to Norwegian citizens meaning that they cannot start an initiative and their signatures does not count towards the one million signatures.

Overall it is easy to see that the Norwegian situation does not live up to the minimum standard for democracy set by Dahl. This is mainly down to the fact that Norway has given up sovereignty to the EU but not as EU member states got influence in the EU institutions instead.

12. Comparing Denmark and Norway

When comparing the situations of Norway and Denmark it is easy to see that there is a huge difference in how much of a democratic deficit there is in the two situations. Where Denmark only really differentiates itself from the "normal" EU countries because the four opt-outs then Norway is completely on the outside and most of the Norwegian influence must therefore often be sought through less formal lines. Dahl's seven institutions is a minimum that needs to be in place before a system can be democratic then there is no doubt that neither the Danish nor the Norwegian situation is democratic however it is obvious that the Norwegian situation is a lot further from the having all 7 institutions in place than Denmark.

12.1 Elected Officials

In the Danish situation the Danish citizens have the right to elect officials to both the Danish parliament and all the EU institutions although the Danish opt-outs does limit the influence of these officials power in some

situations where Denmark is still influenced by the decisions. The Norwegian citizens can only elect officials to the Norwegian parliament and none of the EU institutions. Arguments about that Norway can then compensate for the lack of influence through elected officials for example through experts has proven to be far from efficient enough to really compensate and in comparison to Denmark it is worth noticing that most of these alternative ways of influence are also open to Danish officials and that Danish officials often have an easier time utilizing these alternative ways.

12.2 Free and fair Elections

Free and fair elections are really much more relevant to talk about in the Danish situation as we have shown in chapter 10. Norwegian influence on EU legislation the Norwegian citizens does only have the option to participate in election for the Norwegian parliament which however can be considered both free and fair. Since Norwegian citizens cannot participate in elections for the European Parliament or have any influence on the officials in the other EU institutions they cannot be considered fair for Norwegian citizens. In the Danish situation on the other hand Danish citizens have the option participate in the election for the Danish parliament and the European Parliament and can influence who is the officials in the other institutions thorough the election to the Danish Parliament. Both the elections to the Danish parliament and to the European Parliament is considered free and fair and it is therefore obvious that this institution is in place in the Danish situation and not in the Norwegian.

12.3 Inclusive suffrage

This institution follows in the lines of the two institutions above. As the Norwegians does not have the right to participate in the elections it is not really a question whether or not more or less every adult citizen have the right to vote. Also in this institution we therefore see a great difference between the Norwegian and Danish situation as for both elections to the Danish parliament and the European Parliament it is next to all Danish citizens who have the right to vote.

12.4 Right to run for office

Also this institution is closely related to the institutions above. Just as well as Norwegians does not have the right to participate in elections then Norwegian citizens does not have the right to run for office in the European Parliament and the elected officials of the Norwegian parliament cannot appoint officials to the European Commission and the Norwegian government does not have officials participating in the Council of the European Union. In the Danish situation we again see the nearly opposite picture as the Danish citizens does have exactly the options that the Norwegian citizens do not.

12.5 Alternative Information

Generally the situation of Norway and Denmark is very alike in connection to this institution as alternative information is available for both Danish and Norwegian citizens on both a national and European level however with the small difference that the EU does not translate all information into the two Norwegian languages.

12.6 Associational Autonomy

Also in this institution the difference between the Norwegian and Danish situation are small both situations gives complete associational autonomy but a difference does arise when one looks at the European Citizens Initiative. Danish citizens can participate and influence EU legislation on equal terms as other citizens in the EU but the Norwegian citizens cannot and this is even though legislation that starts out as a European Citizens Initiative might influence Norwegian citizens through the EEA Agreement.

13. Conclusion

In the analyses of the Danish and Norwegian situation in using the operationalization of Polyarchy it is easy to see that in the view of Dahl neither of the situations can be considered democratic as not even the basic institutions for democracy is in place in any of the situations. However if we look a little closer at the two situations it is also clear that the Danish situation is very close to fulfilling the institutions. Since the EU as a whole can be considered a democratic system it is obvious that what is creating the democratic deficit in the Danish situation is the opt-outs created with the Edinburgh Agreement. And even though the opt-outs are limited to specific areas they do not only create a democratic deficit in these areas as we have shown especially the Economic and Monetary Union and Justice and Home Affairs opt-outs do have a spill over effect to other areas limiting Danish influence in these areas. This does however not change the fact that according to Polyarchy all the institutions must be in place in all areas for a system to be called democratic.

The Norwegian situation is as shown in the analysis also not democratic according to Polyarchy. Some of the seven institutions are in place but far from all of them. The general problem in the Norwegian situation is that the EU member states makes a lot of legislative decisions that has consequences in Norway to Norwegian citizens without the Norwegian citizens having any or very little influence on the decisions. Where the Danish opt-outs are limited to a few areas it is the opposite with the EEA Agreement. The EEA Agreement covers a very broad range of areas with only a few being left outside for more or less complete control of the Norwegian citizens. This means that there are many more areas that does not have one or more of the Polyarchy institutions in place and thereby has a democratic deficit.

All in all the problems with democracy in the Danish situation can be fixed by removing the Danish opt-outs because Denmark then will be a full EU member state and the Danish citizens could then enjoy the same amount of influence enjoyed by other EU citizens. At the same time this would not have major influence in Denmark since as we have shown the opt-out does not give Denmark much freedom even in the areas covered by the opt-out to do things very different from the rest of the EU. For Norwegian citizens an EU membership seems also to be the solution to the democratic problem. And in reality this it seems like this would also not change much in terms of what legislation would need to be implemented as many areas are today covered by the EEA Agreement and in the most important areas such as fishery and agriculture that is outside the EEA Agreement the policy would not change much in terms of fishery because of the EU fishery policies and in terms of agriculture commitments to the WTO does already require most of the changes to Norwegian agricultural policy that would be required of Norway if they joined the EU.

For both countries it could be argued that another way of removing the democratic deficit could be to leave the EU or EEA Agreement and stay completely outside the EU system. However this would be more or less impossible from an economic point of view since the EU probably would not give neither Denmark nor Norway very favourable trade terms if they refused to harmonize legislation with EU legislation.

It can then be argued that that from a democratic point of view in Europe as it is today the only option is to become a full EU member.

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