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The diplomacy of opting out: The impact of opt-outs on member state behaviour

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Abstract

This work in progress paper is a first attempt at constructing a theoretical framework and an empirical focus for my PhD project. It deals with the following question: How should we assess the impact of EU opt-outs on member state behaviour? The literature on flexible integration and opt-outs is far more developed by legal scholars than by political scientists and there is no consensus on what the political effects of opt-outs really are. I argue that opt-outs are not merely legal exemptions, which exclude certain member states from participation in specific policy areas; opt-outs may also become political instruments, which affect the direction of the European integration process. Theoretically, the concepts of field and habitus of Pierre Bourdieu are used to interpret the results of a pilot study consisting of interviews with British and Danish officials. Three different diplomatic strategies related to opting out are identified and demonstrate that the practices related to opting out are conditioned not only by formal rules, but also by socially constructed meanings about possibilities, threats and solutions that are informally shared by the officials working within the system of the Council of Ministers.

Introduction

In order to make the Irish vote ‘Yes’ to the Nice Treaty in 2001, a pro-European campaign poster showed a young, half-dressed couple kissing intensively on a beach. The headline was ‘It’s better 2B inside’. The poster tried to present the European Union as a sexy project and attempted to convert the eurosceptic segment of the Irish population. Indeed, in the last decades, doubts over the benefits of EU membership have given rise to controversial national opt-outs from EU legislation, which indicate that selected ‘outsiderness’ may be preferred to being a full member of the Union. While the various motivations behind the opt-outs have been explored to some degree (e.g. Nehring 2001; Hansen 2002; McCarthy 2003; Marcussen and Zöllner 2001; Buller 2006), the consequences of opting out for member states’ diplomatic behaviour is still an understudied subject. Opt-outs are highly politicised (Burkitt and Mullen 2003; Pedersen 1996) and the consequences of opting out are surrounded by myths. In the last decades, politicians have exaggerated or downplayed the importance of opt-outs. Some British and Danish ministers argue that their country loses political influence when they ‘are sent outside the door’ because of their opt-outs (Blair; Gade 2004; Danish Government 2001¹), while other – usually eurosceptic – politicians claim that opt-outs safeguard national sovereignty and may serve as an example to other member states.² Opt-outs should be of interest not only to practitioners, but also to students of European integration because opt-outs are likely to be much more used as the Union continues to accept new members and introduce new policies (Friis and Murphy 2000). Given the enlargement of the EU and its increasing heterogeneity, it becomes more and more pertinent for a future Union to understand flexible integration and its implications. This paper looks specifically at the United Kingdom and Denmark, the two champions in the EU when it comes to opting out. I propose a theoretical framework that can be used to develop an understanding of the role of opt-outs to the diplomacy of member states. The main argument is that in order to grasp the multifaceted role of opt-outs it is necessary to look not only at the implications on formal and informal decision-making, but also at processes of non-decision-making and the perceptions of national interest, which regulate diplomatic relations within the EU. Theoretically, the paper builds an understanding of diplomatic practices, group pressures and identity constructions within the Council based on the Bourdieudian concepts of field and habitus. First, a review of the existing research is presented together with hypotheses derived from the literature. The main question is what opt-outs mean to diplomatic

¹ The Danish Parliament has agreed that the Government should seek as much influence in the development of the EU’s defence dimension as possible, despite the opt-out (XXXX).

² John Major’s speech in Leiden in 1994 reflects this idea as he argued for an extension of the opt-outs to other fields and organising an ad-hoc network of co-operation around the single market.

behaviour (I). Second, the pilot study consisting of interviews with British and Danish officials is introduced (II). Third, a theoretical framework based on the work of Pierre Bourdieu is used to interpret the results, which – with its constructivist touch – can help to identify the specific diplomatic practices in and around the Council of Ministers where the opt-outs are dealt with (III). On the background of this understanding, a typology of diplomatic strategies related to opting out is proposed and discussed (IV).

I. The puzzle of opting out

Opt-outs can be defined as exemptions from a treaty provision or a directive granted to a member state that does not wish to join the other member states in a particular area of community cooperation. An opt-out can be opposed to a temporary exception to, or exemption from, a regulation, directive or treaty provision, for example as part of a transitional arrangement when a new state joins the EU. A member state, which fails to meet the convergence criteria for EMU for instance, is given an automatic derogation from the single currency. Temporary exceptions also cover transition periods such as the ones in extending the Common Agricultural Policy (CAP) to Eastern Europe. In the past decade, many new forms of EU cooperation have been based on flexible arrangements – meaning, effectively, that countries can opt in or out. Prior to the Maastricht Treaty/Treaty on European Union (1992), which began the process of formalising flexibility, there has of course been intergovernmental cooperation between EU member states outside the framework of the EC/EU. Specific derogations at primary law level in favour of some member states are not a new phenomenon (at least six of the ten protocols annexed to the original Treaty of Rome (1957) dealt with derogations, as did many protocols annexed to the various Acts of Accession) (Hanf 2001: 7). These specific derogations have been regarded as the price to be paid in order to make the treaties acceptable to the reluctant member states. Therefore, opt-outs may be depicted as pragmatic escapes from deadlocks in the European polity (Héritier 1999: 72). However, this paper focuses particularly on the opt-outs, which are seen as the most problematic when it comes to the equality between the member states and the coherence of the EU. Consequently, the focus is on the British and Danish opt-outs, which exclude member states from participation in legislation in an important policy area.

The British and Danish opt-outs

The opt-outs with far-reaching consequences were mostly introduced with the Treaty of Maastricht and affect specially the UK and Denmark.³ This treaty made it clear for the first time that differentiation can – and must have – institutional consequences. This means that the UK and Denmark formally do not take part when the Council adopts measures in parts of the policy areas concerned with the economic and monetary union (UK and DK), justice and home affairs (UK and DK) and the common defence policy (DK), and that such measures are not binding on or applied in the respective countries. The British and Danish opt-outs also have a symbolic character signalling the possible permanent end to the idea an ever-closer Union with equal members with a common cause. Notably the European Commission has generally been a strong opponent of opt-outs, which compromise the perspective of a uniform integration.⁴ Of course, opt-outs vary in their effects; some have a very limited effect on a narrow policy area while several of the British and Danish have far-reaching consequences not only for the member state in question but also for the entire Union. Thus, there is a great difference between the Danish mainly symbolic opt-out from European citizenship and the British and Danish non-participation in the euro zone.

When the Maastricht Treaty was concluded, the UK was granted an opt-out clause, meaning that it would not be required to participate in the third stage of economic and monetary union (EMU).⁵ Furthermore, through a complex legal construction, the UK was granted an opt-out from the Social Protocol attached to the Maastricht Treaty thereby creating a double-track institutional process (Héritier 1999: 72).⁶ These opt-out clauses were one of the conditions to be met if the UK were to give its approval to the treaty as a whole. One year later, the UK obtained an opt-out from the 48 hours Working Time Directive during the process of adoption of the 1993 Directive.

In Denmark, the Maastricht Treaty was rejected in a referendum held in June 1992. Denmark subsequently obtained four opt-out clauses exempting it from several provisions of the treaty, including

³ Unlike UK and Denmark, Sweden does not have a formal opt-out from the third stage of the EMU, but the Swedish Parliament decided in 1997 that Sweden would not participate in the monetary union from its inception in 1999. The Swedish referendum on the euro in September 2003 confirmed this decision, and Sweden will thus remain outside the monetary union for the time being.

⁴ Despite this principled opposition, the Commission has applied what Adrienne Héritier calls a ‘twin-track strategy’ where

⁵ The ‘Protocol on certain provisions relating to the UK of Great Britain and Northern Ireland’, annexed to the treaty, spells out the details of the British opt-out. The determining factor underpinning any UK decision on membership of the single currency is the national economic interest and an assessment of whether the economic case for joining is clear and unambiguous.

⁶ In 1991, the UK actually had already secured what Barnard has called the first significant national opt-out an opt-out from the Social Policy Agreement (which became the Social Protocol) (see Barnard 2000: 200). In 1997, the UK decided to participate in the Social Union, and the provisions of the Protocol were inserted into the Treaty of Amsterdam (Raepenbusch and Hanf 2001: 67).

transition to the third stage of EMU, common defence⁷, supranational judicial cooperation on asylum, immigration, the civil law cooperation and on parts of the visa cooperation and European citizenship.⁸ UK and Ireland obtained their right to remain outside a major component of the justice and home affairs agenda during the negotiations of the Amsterdam Treaty of 1997, when the Schengen Accord was incorporated into the EU structure by the Amsterdam Treaty. Yet, article 3 of the protocol offers UK and Ireland an opt-in possibility for the adoption and application of any measure proposed under this title at the latest three months after the proposal has been made.⁹ This opt-in possibility is substantially different from the other opt-outs as it introduces the possibility of an ad hoc participation. On the whole, the British and Danish opt-outs represent a dramatic break with the idea of a common political and legal European project, covering those policy-areas in the EU (EMU, justice and home affairs, defence), which are developing most dynamically. Being the first fields in which flexibility has been ‘constitutionalised’, these opt-outs have become a ‘[...] paradigm for differentiated integration’ (Raepenbusch and Hanf 2001: 65).

Theoretical approaches to opting out

Legal scholars dominate the literature concerned with flexibility and its effects and in general, they regard flexibility as a problem to the EU’s legal order (Shaw 2003). The main argument put forward by many of these scholars is that flexible integration and hence opt-outs challenge the fundamental principles of solidarity and equality that underpin EU law. When member states are granted the right to

⁷ The declaration simply states that Denmark will not participate in the preparation and implementation of actions with defence implications (Edinburgh Decision, Section C). The Danish opt-out has been interpreted as applicable when an EU decision is made with reference to art. J.4.2 (which deals with the possibility of the Union to request to the Western European Union (WEU) ‘to elaborate and implement decisions and actions of the Union which have defence implications’) whatever the substance of that particular area. This rather vague formulation compared to the more precise opt-outs from the EMU and justice and home affairs has been interpreted rather broadly, and the defence opt-out has grown in scope as the EU’s military dimension has developed rapidly especially since 1999 (Larsen 2000: 13-18; Larsen 1999: 10). The strengthening of EU co-operation on defence matters implies that Denmark does not participate in the defence operations of the EU. Furthermore, the EU’s close co-ordination of military and civil crisis management increases the tendency towards a fusion of hard and soft security. This implies that the opt-out on defence may also affect Danish participation in EU’s soft security tasks (Zilmer-Johns 2003).

⁸ The ‘Protocol on certain provisions relating to Denmark, annexed to the Treaty establishing the European Community’, provides Denmark with the guarantee that it will not automatically proceed to the third stage of EMU even if the criteria are fulfilled. In addition, the protocol underlines that European citizenship does not replace national citizenship; a clarification which was later inserted in the Amsterdam Treaty.

⁹ In practice, the UK has opted into all proposals concerning asylum and civil law and nearly all proposals concerning illegal migration. It has opted out of nearly all proposals concerning visas, borders and legal migration. Denmark does not have such an opt-in possibility. The Danish case is more complicated because Denmark is a member of Schengen. If the decisions of the Council concern a proposal or initiative to extend the Schengen rules, Denmark has six months to decide whether Denmark will implement this decision in its national legislation (and until now Denmark has always implemented the Schengen legislation). If Denmark does so, this decision will only create an obligation under international law between Denmark and the other member states⁹ (Hanf 2001: 18; Monar 2000).

opt out or to cooperate more closely, they may discriminate against citizens from other EU member states (Witte 2002). Another important legal contention is that opt-outs and flexible integration threaten the uniform application of EU law and thus the coherence of the Union's legal order (Curtin 1993). Furthermore, flexibility creates many legal problems as to when a specific rule applies to the member states or not (Usher 2002: 104-109) and the demarcation of the EU legal order vis-à-vis the national legal orders (Walker 1998). Linked to this is the fear that the legal transparency disappears with the increasing number of national opt-outs and derogations (Weatherill 2000: 7-86). Legal scholars also criticise flexible integration for deteriorating democracy and legitimacy both on the European and the national level (Weatherill 2000; Walker 1998; Curtin 1993; Hine 2001). As Neil Walker puts it, '[...] democracy may be relegated to a side-issue in a larger struggle between different institutional orders, and may even become its casualty' (Walker 1998: 381). Moreover, the pragmatic terminology of differentiation makes it even more difficult for the European citizens to identify with the Union as a constitutional structure with fundamental norms, values and principles (Walker 1998: 381-382).

Generally, students of European integration theory have refrained from studying flexible integration (Kölliker 2006: 59). Not even the state-oriented liberal intergovernmentalism has been very useful in explaining enhanced cooperation and opt-outs, as Andrew Moravcsik has also admitted (Moravcsik and Nicolaidis 1999). The few seminal works looking to combine a political science study of national opt-outs with an analysis of the implication for European integration have almost entirely focused on individual cases, not on the integration process as a whole. Marlene Wind's conceptualisation of the EU as a neo-medieval empire represents an interesting exception looking for the impact of opt-outs and other flexibility measures on the overall integration process (Wind 2003). Furthermore, Alkuin Kölliker has made an exceptional and systematic attempt to build a 'theory of flexible integration' as he calls it. In fact, the study is not concerned with flexible integration as such, but more precisely concentrates on why initially reluctant countries are likely to join certain types of flexible policies, but not others. In addition, it examines the conditions for the eventual re-establishment of long run unity despite what he terms short run differentiation such as opt-outs from the euro zone (Kölliker 2006: 40). Using public goods theory, Kölliker shows that the centripetal and centrifugal effects of flexible arrangement differ according to the specific policy area in question. Kölliker argues that issue areas involving excludable network goods (EMU, Schengen Information System and the Schengen/Dublin asylum rules) centripetal effects are strong (thus recreating unity in the EU). In other cases involving club goods (e.g. tax harmonisation) centrifugal effects are strong.

Despite the considerable political attention given to the phenomenon of opting out, only few scholars have embarked on an analysis of opt-outs from a political science approach, and the

relationship between foreign policy behaviour and opting out of EU policies has only been studied systematically in very few cases (Kelstrup 2006; Lindahl and Naurin 2003; special edition of *European Integration* vol. 27, no. 1). Both descriptive and analytical literature is scant and dispersed, and there is a need for thorough investigations (Lindahl and Naurin 2003; Miles 2005; Marcussen 2005; Kölliker 2002). From a political science perspective, some foreign policy analysts and EU researchers have inquired into the policy-process by which the member states have negotiated the provisions on flexibility and the possible negative effects of opt-outs on the manoeuvrability of member states with opt-outs (Petersen 1998; Larsen 2000; Tonra 2000; Wallace 2000; Stubb 2002). The general idea put forward in this literature is that member states such as the UK and Denmark are experiencing a real and tangible loss of influence because of their opt-outs. The opt-outs have an effect in the areas, which are covered directly by the opt-outs (the EMU, justice and home affairs and security and defence policies). Regarding the euro for example, it can be argued that the opt-outs produce a clear asymmetry between the euro zone and the non-participating member states (Miles 2005; Puetter 2004). According to Karsten Skjalm, '[t]he non-participating member states have no influence on the euro zone's monetary and exchange rate policy, but the euro members can through their qualified majority in the Council of Ministers forward recommendations to the non-participating member states' monetary and exchange rate' (Skjalm 2000: 23). Notwithstanding their valuable insights, such accounts of loss of influence due to opting out seem to neglect the intentions behind the opt-outs. Indeed, to avoid Europeanization was the driving motivation behind the opt-outs in the first place, and thus, opt-outs are self-imposed isolations from the European game. By focusing solely on loss of influence, they ignore the other side of power, which must logically be the ability to *avoid* being affected by the actions of others. Along these lines a few scholars have regarded opt-outs not as detrimental to member state influence, but have analysed them as pragmatic solutions to the various interests of the member states (Hanf 2001: 15; Geddes 2005). In their view, opting out may increase state autonomy, which has been regarded as the signature of the (ideal) sovereign state. An opt-out may guarantee '[...] immunity from disliked European legislation' as Helen Wallace puts it (Wallace 1997: 682). Andrew Geddes suggests (2005) this is actually the case for the UK with regard to its opt-out/in arrangement in asylum policy. The UK gets the 'best of two worlds' because it can participate in the policies it prefers and stay out, if cooperation becomes too demanding. Here focus is on state autonomy not on influence. However, the two concepts are linked as demonstrated in the classical distinction between positive and negative liberty (Berlin 1969). In the first case liberty seems to be a mere *absence* of something (i.e. of obstacles, barriers, constraints or interference from others), whereas in the second case it seems to require the

presence of something (i.e. of control, self-mastery, self-determination or self-realization). There is a lack of research in the relationship between autonomy and influence with regard to national opt-outs.

A new theoretical framework called constellation theory tries to conceptualise this relationship in the foreign policy of European states from a neo-classical realist perspective elaborating on the concept of an integration dilemma.¹⁰ I will show that although the theory represents a contribution to understanding the impact of opt-outs, its state-centrism and assumptions of rational behaviour cannot grasp the whole dynamic of the diplomacy of opting out. Mouritzen and Wivel maintain that every state faces an integration dilemma between autonomy and influence when participating in integrative arrangements. The ability of states to achieve their external goals depends on the exercise of both offensive power influence (offensive power) and autonomy (defensive power) (Mouritzen and Wivel 2005: 33). Influence is understood as Robert A. Dahl defined it, namely ‘*A* has power over *B* to the extent that he can get *B* to do something that *B* would not otherwise do’ while autonomy is defined as ‘the ability to *avoid* being affected by the actions of others’ (Mouritzen and Wivel 2005: 33). European states are above all influenced by their *constellation*, i.e. their past and, in particular, present geopolitical location. Europe is identified as a pole and its member states and neighbourhood as non-pole powers. The theory distinguishes between four types of states: outsiders, near-insiders, near-core-insiders and insiders. While core insiders are the non-pole states that are EU members *and* NATO members and have no opt-outs from one or both contexts, ‘[...] near-core-insiders are EU members, where one or more of these conditions are unfulfilled. For instance, they have stayed outside NATO (like Ireland) or negotiated specific opt-outs in the EU context (like Denmark)’ (Mouritzen and Wivel 2005: 30). For small states, the integration dilemma is greater than for big states, as bigger states such as the UK may successfully halt or even jeopardize the integration process if they perceive new policy initiatives as contradictory to their national interests. They can simply refuse to participate (Wivel 2005: 396). A small member state may choose to opt-out of the integration process, ‘[...] but only at a high risk of abandonment, because they have no decisive effect on the integration process or its chance of success’ (Wivel 2005: 396). Thus, near-core insiders such as Denmark have ‘[...] chosen lower influence-capability in order to safeguard higher autonomy, compared with the core insiders’.

Following constellation theory, the degree of autonomy due to opt-outs might be studied by looking at how often and in which policy area the member states ‘choose’ not to participate in new legislation with reference to their opt-outs. This autonomy is (ideally) directly observable; either the country participates in a given decision or it does not. When it does not participate, it is autonomous

¹⁰ The idea of an integration dilemma has first been developed by Petersen (1998). A broader understanding of the integration dilemma, which includes national identity and societal tensions has been developed by Kelstrup (2006).

and when it participates, it gains influence. An example of autonomy (and loss of influence) could be when Denmark does not vote in the EU's military committee and does not have to help finance or participate in the military operations because of its opt-out from the common defence policy.¹¹

The idea of an integration dilemma and a choice between autonomy and influence is convincing, but it may lead into methodological and theoretical traps. First, the above conceptualisation of an integration dilemma risks confounding formal participation and actual political influence.¹² However, participation in a decision only means that the member state enters a power game, not that it necessarily is able to influence others during the game. The same goes for autonomy; just because the UK and Denmark do not participate in the final stage of the EMU, does not mean that they are not affected by the policies decided by the euro zone. In fact, a problem shared by many of the existing accounts of the effects of opt-outs is that their definition of influence is rather vague. Second, in practice, member states with opt-outs may actually participate in the meetings and discussions on the area covered by the opt-out only without casting their formal vote. Thus, Gorm Rye Olsen has interestingly shown that in spite of the defence opt-out, Danish civil servants participate in the European policy-making processes even in meetings which deals with strictly defence matters (Olsen 2006: 20). If around 80 percent of decisions in the Council of Ministers are taken by consensus (see Heisenberg 2005: 65; Lewis 2003), this may further trouble the clear distinction between autonomy and influence as Danish and British officials participate in most meetings – including those where new legislation covered by opt-outs is discussed. Of course, even though the ministers generally endorse collective decisions by consensus and refrain from explicit vote and even if no opposition is directly voiced, this does not mean that there are no conflicts of interest in the Council (see Hayes-Renshaw et al. 2006). However, the consensus-oriented decision-making process in the Council contributes to the blurring of the integration dilemma between autonomy and influence if states may actually participate (and influence qua consensus-orientation?) policy decisions in an area where they are opting out.

That formal participation in legislative processes does not necessarily equal influence, was a central claim in the critique of Dahl voiced by Bacharach and Baratz in the 1960s and 1970s, and as a reaction they conceptualised what has now become known as the second dimension of power, which can be defined as follows

[P]ower is [...] exercised when A devotes his energies to creating or reinforcing social and political values and institutional practices that limit the scope of the political process to public consideration of only those issues, which are comparatively innocuous to A (Bacharach and Baratz 1962: 948).

¹¹ Udenrigsministeriets og Forsvarsministeriets redegørelse vedrørende valg af formand for EU's militærkomité, April 24, 2001, http://www.ft.dk/Samling/20001/udvbiilag/UPN/FTdel_bilag152.htm.

This understanding of political power developed by Bacharach and Baratz (1962) involves both the formal political arena and behind the scenes agenda-setting by elite groups who could be either politicians and/or others (such as bureaucrats, industrialists, campaign contributors, special interest groups and so on), often with a hidden agenda that most of the public may not be aware of. The central claim is that there are cases of nondecision-making understood as situations where ‘a person or group – consciously or unconsciously – limit the scope of initiation and ‘creates or reinforces barriers to the public airing of policy conflicts’ (Bacharach and Baratz 1962: 949). This indicates that we should also look for instances of non-decision making, where member states with opt-outs could be marginalised. An example of this could be that the UK and Denmark are not invited to participate in the informal networks where the euro zone members decide the economic policy (Janning 2005; Miles 2005). Methodologically, Bacharach and Baratz do not diverge much from Dahl in that they also focus on observable decisions to act – and not to act. Their approach does not cover situations where the perceptions of national interests and behaviour of officials are transformed. However, opt-outs may affect member state influence in a more general sense by contributing to an image of the UK and Denmark as member states, which do not participate whole-heartedly in the EU. Here influence is linked to the ability to be accepted as a ‘good and constructive European’ that is the ability to shape the perceptions of others and influence the norms that govern the European integration process (for a similar idea regarding NATO, see Risse-Kappen 1996: 397-398). Indeed, Kassim concludes the British preoccupation with sovereignty and its instrumental approach to European integration represents a crucial limit to the ability of the UK’s Permanent Representation in Brussels to influence policy (Kassim 2001: 70-71). Perceptions may affect member states’ ability to gain influence; not only formal decision-making fora, but also informal networks may be closed if you are a less attractive coalition partner as suggested by Olsen and Pilegaard (2005). They have argued that Denmark loses influence because of its defence opt-out. Building on the theory of small states in the EU and adaptation theory, they argue that the most important instrument for a small state such as Denmark is ‘coalition power’, which can be defined as ‘[...] the ability to form or operate as an influential party in winning coalitions’ (Olsen and Pilegaard 2005). Their hypothesis is that Denmark’s ability to be a coalition power decreases because of its opt-out.¹³ A similar hypothesis has been explored systematically by Lindahl and Naurin (2003) and interestingly they are not able to confirm the hypothesis. In their study, based on interviews with 131 officials from different member states, they show that even though Sweden does not

¹³ Unfortunately, it is not clear how exactly the hypothesis is tested, but the authors conclude that Denmark loses influence, which must somehow be linked to the idea of forming coalitions in the EU.

participate in the euro, it does not mean that the other member states are less willing to cooperate with Sweden. As a matter of fact, Sweden is a more attractive partner in coalitions than other member states. According to their analysis, there is no evidence among the professional negotiators that ‘outsiderness’ influences cooperation other than in questions, which have concrete and direct relations to the euro. Theoretically, Lindahl and Naurin test the so-called free-rider hypothesis i.e. the idea that decision-making in the EU is very norm sensitive and therefore member states, which do not participate in the euro, violate the established norms for how to behave and will have a bad reputation among the other member states. As a result, the norm-breaking state will be an outsider when it comes to the informal decision-making networks, which are so important to the work in the EU’s Council of Ministers. Though Lindahl and Naurin’s study does not support the free-rider hypothesis in the case of the EMU, it might be relevant in other policy areas. Thus, in order to capture the full extent of the impact of opt-outs it is necessary to move beyond the formal and informal decision-making processes and include the way opt-outs play into the perceptions of national interests. This means that we should be interested not only in the *causal* effects that *opt-outs* may have on member state diplomacy but also in the *constitutive* ones. This implies a move towards constructivist theory, which regards power as something which is intersubjectively established and re-established in an ideational environment (Leander 2005: 811). Ontologically, constructivism does not deny the existence of a phenomenal world, which is external to thought. But it takes as a point of departure that ‘what counts as a socially meaningful object or event is always the result of an interpretive construction of the world out there’ (Guzzini 2000: 159). This does not mean that member states or their officials should be seen as irrational, but only that their identity and preferences are not exogenously given or stable. Rather, the actors, their interests and preferences should be analyzed and explained as the products of social interaction. This entails that the European Union should be regarded as being structured by intersubjective cognitions and norms (Schimmelfennig 2001: 58).

In the EU, a large part of the political decision-making processes consists of creating and interpreting law (Alter et al. 2002). Thus, legal measures such as opt-outs matter not just as constraints on political action and actors but also because they shape the normative structure understood as the ‘structure of meaning-in-use’ that works as a reference frame for decision-makers (Wiener 2004). Opt-outs have to be interpreted and re-interpreted in order to be meaningful and to have an effect in social relationships. Opt-outs are not legally clear, which means that practice cannot always be expected to follow the rules, which will never be free of surplus or ambiguous meaning and the interpretation of rules can be contested (Clegg 1989). The formal opt-out protocols do not necessarily reveal the actual meaning or effect of an opt-out. This means that a simple question such as ‘Does the opt-out apply

here or does it not?’ is less simple than one would believe (Papagianni 2001: 123). There are potential and existing conflicts over how to interpret opt-outs. Consequently, asking what is the impact of opt-outs on member state diplomacy is asking how opt-outs are understood by the actors and how they behave according to these interpretations. The study must focus on the ‘[...] microprocesses about how precisely actors are exposed to, receive, process and the act upon the normative arguments that predominate in particular social environments, such as international institutions’ (Johnston 2001: 488). These micro-processes include the distribution of social rewards and punishments (Johnston 2001: 499). This constructivist point of departure is shared by Pierre Bourdieu who maintains that power should be understood as a phenomenon, which can only be grasped relationally. It is not a thing nor is it something that people ‘have’. They ‘possess’ power only in so far as they are relationally constituted as doing so (Clegg 1989: 207). Thus, the way the officials conceive of the opt-outs is important to our knowledge of the consequences of opting out and a detailed analysis of the interpretive practices and handling of the opt-outs is needed.

It is possible to develop a guiding hypothesis about the relationship between opting out and foreign policy behaviour from the existing literature. Guiding hypotheses are tools to generate questions and to search for patterns and may be discarded later in the research process if other interesting patterns of phenomena are found (Marshall and Rossmann 1989: 44). The main assumption, which can be derived from the literature, is that opt-outs somehow have an effect member states’ ability to gain influence in the EU. More specifically, constellation theory and the concept of integration dilemma predicts that member states with opt-outs have chosen a lower influence-capability in order to safeguard higher autonomy, compared with the core insiders. If this hypothesis were correct, it would be logical if the officials’ understanding of their own roles and practices reflected the integration dilemma so that they somehow evoked the trade-off between autonomy and influence. Consequently, this I will call the *integration dilemma hypothesis* (H1), which argues that officials experience a dilemma between autonomy and influence in their daily work with EU policies. Furthermore, from the perspective of constellation theory it would be logical if British officials were less concerned about having an opt-out than their Danish colleagues are, because the UK is so big that it can change the direction of the integration process by threatening to remain outside the EU legislation, whereas Denmark is too small.

A second hypothesis, which I will call *the free-rider hypothesis* (H2) inspired by Lindahl and Naurin (2003), focuses more on informal networks and predicts that opt-outs generally make member states less attractive coalition partners because of the norm sensitive cooperation in the Council.

H1: The integration dilemma hypothesis: Officials from member states with opt-outs have chosen a lower influence-capability in order to safeguard higher autonomy. Small member states face a greater integration dilemma than bigger states.

H2: The free rider hypothesis: Officials from member states with opt-outs are less attractive coalition partners because opt-outs represent a breach of the established norms in the Council of Ministers.

The objective of this paper is to analyse whether these hypotheses can be backed empirically by examining how officials themselves experience the opt-outs.

II. Methods and empirical record

In day-to-day work, the British and Danish opt-outs are mainly interpreted and reinterpreted by officials from the UK and Denmark, and only to a small extent by representatives from the other member states. Apart from British and Danish officials, only the Council Secretariat (especially the Legal Service), the Legal Service of the European Commission and the shifting Presidencies tend to work extensively with the opt-outs. The European Parliament is not involved in the interpretation or negotiation of the opt-outs although its latest call on the UK to drop its opt-out from the Working Time Directive could indicate that it may become a player in the future.¹⁴ Of course, the management of the opt-outs do not take place in a vacuum; parliament, public opinion and media coverage influence the interpretation of the opt-outs (cf. Kelstrup 2006: 385), but the number of actors involved directly with the diplomatic practice of opting out is limited. This has to do with the fact that the interpretation of the opt-outs – especially the opt-outs in the field of justice and home affairs – is often a technical affair and demands a high expertise in EU law. Apart from a few official reports to the Government or Parliament¹⁵, there is very little written material on the opt-outs in the archives of British and Danish ministries as the interpretation of the opt-outs is based on precedence and the majority of the internal discussions of how to deal with an opt-out are settled verbally. A good way to understand the diplomatic practices related to opt-outs is therefore by interviewing the persons implicated. Thus, a total of 20 interviews with officials from UK and Denmark were conducted in the period from December 2005 to August 2006. The interviewed were middle- and high-ranking officials from national ministries, the Danish Permanent Representation to the EU in Brussels and the Legal Service of the Council. 15 of the officials were Danes, four were British and the official from the Legal Service was

14 The European Parliament voted in May 2005 to scrap the right of workers to opt-out of the maximum 48-hour working week set by the Working Time Directive. The decision rejects the proposal put forward by the European Commission, which would have kept the right of opt-out while tightening the conditions for its application.

15 The Foreign and Commonwealth Office has written a number of reports on the issue of the British opt-outs, and the Danish Ministry of Foreign Affairs keeps a file on how often they activate the different opt-outs and occasionally they publish a report to the Danish Parliament.

from a third EU member state. As the selection is not meant to be representative but seeks an in depth exploration of the diplomacy of opting out, the interviews were oriented towards the practices and perceptions of the officials. The four interviews with British officials were made over the telephone while the rest were face-to-face and conducted at the respective offices. The informants were chosen based on how involved they were with the management of the opt-outs. This means that they should be working with the EMU, common defence or home and justice affairs. Four of the interviewed worked with the EMU and financial policy, four worked with justice and home affairs, and three worked with defence matters. The remaining nine were horizontally involved with the interpretation and management of the opt-outs. Information on the involvement was based on my former experience as an assistant in the Danish Ministry of Foreign Affairs as well as interviews with key officials, which led to other relevant decision-makers. A semi-structured interview-guide laid the basis for the interviews, which lasted 90 minutes on an average. All respondents had somehow to deal with the following questions, which were usually reframed to fit to the specific work situation and jargon: ‘What are the consequences of the opt-out on your day-to-day work?’, ‘How do other member states conceive of the opt-out?’, ‘Who are the most influential member states within the Council?’, ‘What are the advantages of opting out?’ A methodological problem regarding interviewing people who are implicated in the diplomacy of opting out is that they either may not tell the truth (understood as their own subjective understanding) or they may not be willing to share all their knowledge as the diplomatic environment generally values discretion and self-effacement very high (Neumann 2005: 90). However, the fact that the interviewed were guaranteed anonymity (and that they were only talking to a PhD student) created an atmosphere of openness and trust, which made the officials relatively outspoken. Furthermore, the ‘truth problem’ was reduced by crosschecking the interviews by asking several different officials to describe the same situation or negotiation process.

Results

The main argument put forward by the officials was that the opt-outs did in fact have an effect on member states’ behaviour– not only on the policy area where the opt-outs are activated – but also beyond. The officials underlined that both informal and formal decision-making were important with regard to influence in the EU. In some cases, opt-outs also had an effect on their self-understanding – restraining them from doing or saying certain things. A former high-ranking civil servant described how opt-outs might function as a ‘psychological prison’ to ministers and officials during Council meetings. Officials and ministers were simply afraid to make mistakes such as overstepping their powers during

the negotiations because of the complex legal nature of the opt-outs and the threat of having to face the Parliament back home. Both British and Danish officials underlined that opt-outs function as symbolic ‘protectors of national sovereignty’ and that there exists a close relationship between public opinion and the management of the opt-outs. As the opt-outs are politically sensitive, the bureaucratic scrutiny of proposed new EU legislation and its possible implications for British and Danish opt-outs is closely observed by the national Parliaments and media. The ‘wrong’ (too permissive) interpretation of the defence opt-out by a Danish Defence Chief resulted in a formal reprimand for ignoring the Government’s recommendations and overstepping his competences in the EU’s defence cooperation (Adler-Nissen 2006: 33).

Furthermore, the officials described an interesting phenomenon: extra activities carried out only to make up for what the officials perceived as lost influence due to the opt-outs. This could involve playing the ‘good pupil in class’, helping other member states with difficult issues, developing constructive suggestions for compromises etc. Significantly, none of the Danish officials mentioned that opt-outs increase national autonomy; they only described opt-outs as constraints on their ability to further Danish interests. The integration dilemma hypothesis, which stated that officials would somehow experience such a dilemma between autonomy and influence (and that both have a certain value) cannot be confirmed. Instead, the Danish officials may be characterized as schizophrenic; they have to defend an opt-out, which they perceive as damaging to their country’s ‘real’ interests.

Remarkably, and contrary to the Danish officials, the British officials did not mention that the British opt-outs resulted in a loss of influence. Instead they seemed to believe that the opt-outs not only secured autonomy, which they all mentioned, but also influence on future EU legislation. This perception seems to suggest that a country such as the UK may enjoy both (formal) autonomy and (informal) influence at the same time. This is in accordance with the integration dilemma sub-hypothesis derived from constellation theory, namely that a bigger state faces a less serious dilemma than a small state. Thus, a British official involved with the negotiations on the Social Protocol explained that apart from protecting the UK against unwanted interference from the EU, the opt-out from the Social Protocol made it possible for the UK to direct the EU on a more liberal course. This was simply because the other member states had to accept the UK’s market-oriented vision of Europe if they wanted the UK to lift the social opt-out, which was eventually done in 1997. According to one of the straightforward British officials I interviewed, ‘the UK was right and the rest of the EU was wrong’ concerning social policy. In contrast to the Danish schizophrenia, the British officials seem more confident that the opt-outs may be used positively to further national interests. However, pressure on the UK to remove the opt-outs (especially the Schengen opt-out) is considerable and

several officials mentioned that opting out had consequences for the general standing of the UK; opt-outs are simply not popular, as a high-level Council official explained.

The negative conception of the opt-outs may also explain a third and quite surprising result, namely that several, especially Danish, officials explained a practice, which can be conceptualised as self-censorship. To take an example, it was formally possible for the Danish Prime Minister Anders Fogh Rasmussen to veto the proposal to move articles from the so-called third pillar to become subject to the Community regime – the so-called first pillar at the European Council meeting on June 15-16, 2006. This can only be agreed on by unanimity, but Rasmussen did not veto the proposal despite the fact that it would activate the Danish opt-out and thereby possibly exclude Denmark from an important part of EU policy-making in addition to making life more complicated for Danish officials. The main agenda of the summit was the fight against terrorism and the security of European citizens and given the salience put on these issues, Danish officials did not see any room special treatment due to what they conceived of as a ‘domestic problem’. The high-profiled agenda may have led Rasmussen to refrain from using his veto – or maybe he made his non-decision because he faced the ‘psychological prison’ that ministers feel when they are faced with difficult decisions regarding the opt-outs? When I interviewed a central official in the Legal Service of the Council only one month before the meeting, he did not know what Denmark would do, but he did not consider a veto impossible. This example of a Danish non-decision (the decision not to veto the proposal) suggests that the interpretation of the room of manoeuvre of Denmark differs remarkably depending on whom you talk to – a Danish diplomat or a representative from the Council. This self-reflective diplomatic practice by near-core-insiders is due to either the belief that they are less attractive vis-à-vis other member states because of their opt-out *or* the fear of domestic retaliatory measures and therefore do not seek influence. This practice fits with neither the integration dilemma hypothesis nor the free-rider hypothesis. The first is too state-centric to include the personal and group dynamics and the latter does not operate with the factor of self-censorship. However, self-censorship should be part in an assessment of the impact of opt-outs on member state behaviour.

In sum, the interviews support the idea that a small member state faces a more serious integration dilemma than a bigger state. At least, Danish officials do not seem to be able to value autonomy and (informal) influence at the same time. This, however, does not mean that the British opt-outs do not have an impact British diplomatic behaviour. All officials stated that it is problematic to be a free-rider and thereby supported the free-rider hypothesis (H2). Somehow, a member state has to come up with something, which the member states can agree to, and somehow it has to participate in the game played in the Council, as a British official underlined. This indicates that generally

participation (and influence?) is weighted higher than autonomy, and only on special occasions is autonomy viewed as something valuable by the officials. This is perhaps not surprising given the diplomatic self-understanding, but it is interesting that the integration dilemma is not viewed by officials as a dilemma between two goods of equal value. The most interesting result, which also supports the idea that the Council is highly norm sensitive, is that both British and Danish officials engage in compensation strategies in order to 'play' a full member, and this paints a different picture of the consequences of opting out than constellation theory. Member state officials may formally accept that their country has chosen lower influence-capability in order to safeguard higher autonomy, but informally they seek influence on the areas where they have opt-outs (this compensation strategy may even enjoy tacit support from the Government and parts of Parliament as Kelstrup (2006) argues). According to the interviewed, the effect of the opt-outs differed very much from policy area to policy area. This variance needs to be explained and explored, and it may also indicate why the free-rider hypothesis was only confirmed in some cases and not in others.

III. A Bourdieudian interpretation of the diplomacy of opting out

Pierre Bourdieu's concepts were originally framed for what International Relations theorists would call 'the domestic level', but his theoretical concepts fit well with sociological inspired analyses of international relations (see Guzzini 2000; Leander 2005; Neumann 2003; Paulmann 2000). This section will try to show how Bourdieu's concepts may be used in a theoretical framework for analyzing the diplomacy of opting out. The analysis will focus on how opt-outs contribute to shaping the diplomatic field and the self-understanding of the state representatives (as part of their habitus), and in return how this field authorises certain voices rather than others. In many respects, the Bourdieudian approach corresponds with constructivist International Relations theory. It deals with the what Anna Leander calls '[...] intersubjectively shared understandings of the world, discourses, specific social practices which sediment as social 'structures' and systematically empower and dis-empower actors' (Leander 2005: 811).

The diplomatic field in the EU

The concept of a field, a social subsystem, is one of the most central concepts in the work of Bourdieu. A field can be defined as a patterned set of practices which suggests competent action in conformity with rules and roles. In this way, a field is a competitive structure where any agent in the field may be

assumed to seek maximum power and dominance within it. The aim is to rule the field, to become the instance, which has the power to confer or withdraw legitimacy from other participants in the game (Moi 1991: 1021). This social subsystem relies on a historically derived system of shared meanings which define agency and make action intelligible. The stratification of a field is based on capital and Bourdieu distinguishes between different economic, social and cultural capital. The efficacy of the capital depends on the contexts where it is used. Each field has a particular mix of relevant capital, and power cannot be imported easily into a new field. Having much economic capital does not (necessarily) help you being an esteemed artist (Guzzini 2000: 165). Within a society there are different fields, where different practices take place (the academic field, the artistic field and the political field etc.). According to Stefano Guzzini the most obvious field for International Relations is diplomacy (Guzzini 2000: 167). Diplomacy refers to a '[...] process of communications that is central to the working of the international system [...]' and 'focus on the resolution of conflict by negotiation and dialogue' (White 1997: 250). Here the field's habitus '[...] is rich in collective memory of the lessons of the past which provide the background abilities for understanding and acting in foreign affairs' (Guzzini 2000: 167). The stake that defines the field is called the *nomos* by Bourdieu, that is, a common system of socially constructed meanings about possibilities, threats and solutions that is shared by a given community of agents. Only a few social agents are allowed to step in to partake in the social construction of possibilities, threats and solutions in the European Union. According to Bourdieu, nothing is more demanded in the political game than a fundamental adherence to the game itself (Bourdieu 1992: 179-180). This is certainly also the case in the Council of Ministers, which is an exclusive institution with a limited number of participants. Negotiators have mostly accepted that the setting (the EU) is important in its own terms and not just as a vehicle for reaching specific agreements. The setting is an end in itself. Of course, this idea is not evenly accepted by all negotiators, notably British Conservative ministers assert that the setting is only a means for furthering British interests (Hayes-Renshaw and Wallace 1997). But the day-to-day work in the Council and particularly in COREPER and the Council working groups is characterised by what many scholars have identified a distinct 'Community method' of bargaining, where joint problem solving is a prominent feature (Beyers 2005: 933). According to Hayes-Renshaw and Wallace, the EU is distinctive compared to other international arenas because it is characterised more by order than by anarchy. By this they mean that '[...] relationships are structured, institutions rather well rooted, rules of procedure operate, judicial settlements of disputes is embedded, and many informal understandings support the arrangements' (Hayes-Renshaw and Wallace 1997: 264). This organizational structure makes the concepts of field and habitus very apt for studying interactions in the Council. Another feature of the Council is the principle of reciprocity in the agreements within

and between issue areas. This typically includes promises about the future notably money, not all promises are held but most are. This ties the negotiators' hands for the future. Another helping factor in creating confidence is that the Council (with the Commission) can allocate and reallocate financial resources among the member states. In doing so, the Council has given other actors in the political process incentives to support negotiated agreements. The different Council constellations are somewhat different from each other with regards to the rules of the game, which influence the way ministers and officials conceive of the game they play. These different Council constellations may be understood as sub-fields of the diplomatic field.¹⁶ Thus, one may think of the sub-field of justice and home affairs and the sub-field of common foreign and defence policy, each of which has slightly different rules of the game and thus opt-outs may have different consequences in different sub-fields.

The diplomatic habitus

An analysis inspired by Bourdieu relies on the study of field-specific sets of dispositions, which are called the *habitus*. The habitus can be defined as a product of history, which in itself produces history. It guarantees the active presence of past experiences through providing schemes of perception, thought and action, which tend to reproduce practices in conformity with the field throughout time. The habitus functions like the materialization of collective memory and is a disposition to act, perceive and think in a particular way. The logic of the field also implies that the dispositions are perceived as the result of a particular history; they are, as the collective memory that appears as the natural way of doing, perceiving and thinking things. Thus, for example, it is very difficult for new diplomats to come from the outside and operate effectively in a small and intimate grouping such as the COREPER. As Kassim and Peters explain, '[i]ts intricate codes must be learnt, credibility needs to be built, and an understanding of how the other members of the club operate must be developed' (Kassim and Peters 2001: 207). Dispositions lead to the smooth reproduction of exactly those assumptions that define the autonomy of the field. In order to achieve legitimacy, the agents in the field have recourse to many and varied strategies, however they are rarely if ever perceived as strategies by the agents themselves. Instead, it is the field, which generates its own habitus, which is an unarticulated *sens pratique*, which means both meaning and sense of action. This conceptualisation is a sociological translation of the socialization processes that take place not on the individual level but on the group level where the agent's identity is related to groups. To Bourdieu, specific actions entails the bringing together of the habitus of the different actors involved and a specific strategic field situation. Habitus is the key factor

16 For the use of the term of sub-field see Bourdieu and Vacquant (1992).

in delineating the collective of diplomats from other human collectives, and diplomats from the UK and Denmark may be very far apart from (other) bureaucrats, politicians etc. because they are placed in different settings such as the Permanent Representations in Brussels (see also Neumann 2003: 364). There are different views of the degree to which national officials are Europeanized when they engage in Council meetings and working groups (Beyers and Trondal 2004; Trondal 2004) but generally, studies seem to support that national representatives overtake supranational allegiances and that participation in Council working parties may lead to an adherence to participation in itself; officials may develop 'dual loyalties' (Trondal 2004: 22; see also Kassim and Peters 2001: 298). This transformation of roles may explain the 'psychological prison' and practices of self-censorship as Danish officials are socialized into the idea that they should be loyal to the club and acknowledge the *nomos* of the field, i.e. the specific definition of the 'European community'. With a Europeanized habitus, they may start to view opt-outs as setbacks to the European integration process rather than as guardians of national autonomy.

Political capital

Bourdieu argues that capital structures a field and that capital can be understood as the resources that can count as a valid currency for exchange. In the political field, there is a particular form of social capital, which Bourdieu calls political capital. It is defined as the political power enjoyed by politicians and leaders, a power that is derived from the trust expressed in a form of credit that a group of followers places in them. Then, it follows that whenever this trust increases or decreases, the political capital of a politician changes accordingly:

This supremely free-flowing capital can be conserved only at the cost of unceasing work, which is necessary both to accumulate credit and to avoid discredit: hence, all the precautions, the silences and the disguises, imposed on public personalities, who are forever forced to stand, before the tribunal of public opinion. (Bourdieu 1992: 193)

Capital is founded on belief and recognition of the person and it is the product of subjective acts of recognition. Hence in the diplomatic field while each member state may bring its own set of practices to the field and may possess an equal amount of capital, in this basic sense, how much capital each member state possesses is decided as what counts as political capital in the field. Concerning the study of opt-outs and the diplomatic field, a high-ranking official used the metaphor of credit in a bank to describe how diplomatic negotiations are made in the Council of Ministers. This metaphor illustrates how suitable the idea of political capital is in the diplomatic field. All actors and in this case all member states have an account in the 'bank', and the more you insert the more you can withdraw when you are

in a situation of great pressure. I propose that the capital used in these transactions is goodwill. The accommodation of a major national request, which is difficult for others to accept, needs more goodwill than a more trivial demand. When Denmark was able to get a protocol with an opt-in possibility on justice and home affairs similar to that of the UK and Ireland during the IGC on the Constitutional Treaty in 2004, it was only by using all its goodwill, and declining all other national requests (Friis and Biering 2005). Because the bargaining game never stops, the collective memory is important, and member states are aware of the credit balance in all accounts. In such diplomatic relations, goodwill is the dominant political capital and may replace the need for financial capital or control of other capital assets.¹⁷ It might be possible to identify ‘threat’ as another capital in the diplomatic field. This would be in accordance with game theoretical approaches to the EU, where the ability to make credible threats is seen as a central to the relative power of the actors (see Farrell and Héritier 2003: 582). According to the some of the informants, the UK makes use of threats in its diplomacy of opting out in order to change the policies of the EU, though threats do not seem to be as prevalent as goodwill. The next section will develop a typology of strategies related to opting out.

IV. The diplomatic strategies related to opting out

This section develops the idea that officials engage in different types of practices because of their country’s opt-outs. The different strategies employed by the British and Danish officials can be understood systematically as practices in the sense of Bourdieu. Practice can be defined as ‘[...] those embodied activities that are ‘learned’ and carried out by individuals in a social space’ (Chopra 2003: 425). Practices are the result of the orientations given by the habitus and the structure of the field as a system of authorizations and punishments. One way of analyzing practice would be by looking at the decisions and non-decisions, such as the practice of remaining silent when ministers meet to discuss political issues, which are (partly) covered by the opt-outs. This practice can be interpreted as an anticipated reaction to an imputed sanction, for instance that other member states would rebuke Denmark for having transgressed its competences. However, an intersubjective Bourdieudian would furthermore conceive of the silence of a Danish minister in a non-individualist way. It is because of the habitus of the minister and the other actors in the diplomatic field that they behave competently according to the rules of the field, thus, their very being (competent) diplomats results in such a silence (see Guzzini 2000: 167).

¹⁷ See also Heisenberg (2005) and Bailer (2004) for a discussion of the limits of economic factors in determining bargaining success in the EU.

The interviews point at three different impacts of opt-outs on member states practices, which are summed up in table 1. One diplomatic practice is related to a perceived loss of influence due to the opt-outs, the other is related to a willingness to ‘teach Europe a lesson’ and the third is related to a will to stick to the rules and fit in. The first type of practice I propose to call *compensation strategies*, which I define as actions with the aim of minimizing the perceived negative consequences of an opt-out (e.g. loss of influence). These compensation strategies are interesting from the perspective of the integration dilemma hypothesis (H1), which predicted that near-core-insiders ‘[...] have been willing to refrain from some of their insider influence-capability in order to bolster their autonomy in one or more respects’ (Mouritzen and Wivel 2005: XX). The interviews reveal that this willingness is ambiguous among the officials involved with the diplomacy of opting out. Although the officials respect the formal opt-out, they try to compensate informally for some of the loss of influence caused by the opt-out. Constellation theory has not predicted this behaviour because of its rather strict division between autonomy and influence and its state-centric view of foreign policy, which cannot operate with several competing ‘national interests’ at the same time. The idea of a ‘dual loyalties’ and a Europeanized political elite is not possible within this framework. Instead, compensation practices are consistent with the idea that officials are socialized and develop a specific diplomatic habitus in the Council, which values participation and joint problem solving higher than autonomy. One of the often mentioned strategies was to behave as the ‘good pupil’ in Europe by being extra prepared, using more time on gathering information and helping those member states which have domestic difficulties with a proposed piece of legislation. This good pupil strategy reflects that goodwill is the capital of the diplomatic field in the EU. Here member states strive to get influence *despite* the opt-out through saving up goodwill. Another compensation strategy is to engage in confidential negotiations with a limited number of actors (usually not other member states but the Council secretariat) in order to get a better legislative deal *despite* the opt-out. The main arguments voiced during such negotiations are that Europe ‘needs to function’ and that all have to be ‘on board’ as a Council official explained.

While compensation strategies are related to a perceived loss of influence, the second practice related to opting out stems from an almost opposite perception of the opt-outs. In these cases, opt-outs result in *missionary strategies*, which I define as actions that use opt-outs as instruments in maximizing influence on the way the EU develops. Missionary strategies are as far as the pilot study shows related to the British officials’ approach to the EU. Here, officials perceive of opt-outs as a way to show the rest of the EU that the UK has a reason for opting out. Missionary strategies may take the form of political statements and examples, pressure on insiders to change their policy (e.g. opt-outs from the Social Protocol) and threats of going alone. Missionary strategies are only partly consistent

with the hypothesis derived from constellation theory, which expected that a bigger state such as the UK could better ‘afford’ an opt-out. However, neither constellation theory nor the norm-oriented free-rider hypothesis envisaged that opt-outs might be used as instruments in order to gain influence on the general development of the EU. If the missionary strategies have been successful on previous occasions, one could speculate that opt-outs may have contributed to the way the EU in the recent decades has turned away from the orthodox ‘community method’ where ‘[...] the EU aspires to an invariable and (except from specific transitional periods) simultaneous integration of its member states’ (Gstöhl 2000: 42). This would be an interesting situation where the ‘negative’ opt-outting approach of some member states, actually contributes significantly to the norms and principles of the European integration process, such as the British quest for a more market-oriented EU.

A third strategy related to opting out is that of *self-censorship*, which I define as deliberative abstention from seeking influence in order to avoid domestic or international criticism of not conforming to the opt-outs. Self-censorship is interesting as it was predicted by neither constellation theory nor the free-rider hypothesis. Sometimes self-censorship reflects the strict domestic control with how the ministers and diplomats manage the opt-outs and whether they interpret it correctly. Out of fear of a domestic political scandal, officials may choose to be overcautious in their interpretation of proposed legislation especially when dealing with sensitive policy areas such as foreign and security policy. It is not easy to provide evidence for the practice of self-censorship as it is essentially a non-action, but a Council diplomat argued that such self-discipline is widespread. In other situations, self-censorship is not caused by domestic constraints, but by the intersubjectively constructed norms in the Council. A narrow definition of the *nomos* – the European community – may explain why officials representing member states with opt-outs may believe that they are less attractive as negotiation partners than they possibly are in the views of other member states. Danish officials are sometimes successful in hiding the fact that their country is opting out. An official explained almost proudly, ‘Sometimes the other countries even seem to forget that we have an opt-out. And we have to remind them of that’. This ability to hide the opt-outs from the other member states suggests that Danish officials make an effort out of not attracting attention in order to safeguard the general standing of Denmark. Along these lines, Ole Wæver has argued that member state influence in the EU is not only a question of capabilities but also of *perceptions* of capabilities:

French and German debates on Europe operate on the premise that their choices as to the construction of European integration have serious impact, whereas a smaller country such as Denmark does not see its actions and constructions as capable of having the same kind of impact on the overall 'Europe' (Wæver 2002: 39).

In this view, opt-outs are not only formal rules with a more or less defined scope of application. They become part of the national self-understanding – having an opt-out contributes to the idea that the member state is small or does not have any influence (DK) or that it is special and needs special treatment (UK). And it may become a self-fulfilling prophecy. In this respect, identity and foreign policy are mutually constitutive. Opt-outs are both contributing to a particular foreign policy identity as well as being a (partly) result of a particular identity. In the table below, the three diplomatic strategies related to opting out are summed up.

Table 1: Diplomatic strategies related to opting out			
	Self-censorship	Compensation strategies	Missionary strategies
Motivation	Perceived danger of a) domestic scandal or b) bad reputation among other member states.	Perceived loss of influence due to an opt-out	Perceived problem with the political strategy of the EU in an area covered by an opt-out
Strategy	Stay silent, be more careful with the legal interpretation, hide opt-outs	Play the ‘good pupil’, help other member states, secret negotiations	‘Teach Europe a lesson’ through examples and threats

Conclusion

This paper aimed first of all to create a theoretical framework for understanding the complex processes through which opt-outs affect member states behaviour. As stated above, little research has been done into how this might be systematised and understood. While legal studies mainly deal with understanding the consequences of opt-outs on the EU as such, only a small number of foreign policy scholars have begun studying how opt-outs impact the influence and autonomy of a given member state. According to the neo-classical realist conception of an integration dilemma, a near core-insider (e.g. a member state with opt-outs) has accepted to live with less influence and more autonomy. Following the conception of an integration dilemma states must choose between participation and autonomy. This might be correct from a formally oriented state-centric perspective, which constellation theory promotes, but this paper suggests that if the black box of the state is opened and we focus on the diplomatic practices, this acceptance is less certain. Officials from the United Kingdom and Denmark are not only ‘sceptical outsiders’ provoking groups of able and willing states to create a

‘Europe in several speeds’, they may contribute to policy-making even in areas where they have an active opt-out. Thus, they may even create political alternatives, which are recognized with interest by other member states and candidate countries and with great concern by EU institutions (Esposito 1999: 100-105). The paper underlines the necessity of looking not only at the formal consequences of opting out e.g. non-participation in given legislation, but also on the informal diplomatic behaviour associated with the opt-out. Bourdieu’s concepts of field and habitus helped to understand diplomatic behaviour as conditioned by the self-understanding of the member state as well as the specific norm sensitive culture in the diplomatic field, which weighs participation and outsidership low compared to influence.

Three different strategies related to the diplomacy of opting out were identified through interviews with British and Danish officials: *compensations strategies*, *missionary strategies* and *self-censorship*. In some situations, opt-outs lead to *compensation strategies*, where the officials try to compensate for the perceived isolation due to opt-outs. They try to gain influence on an issue area that their country has formally opted out from or in other words, they try to conduct an active foreign policy while having their hands bound legally. In other cases, officials use their opt-out in *missionary strategies* in order to move other member states closer to their preferred position on a specific issue area. If such strategies are widespread and successful, one may consider that the EU is formed partly in reaction to member states that are not willing to go as far as others. Such strategies make opt-outs look differently – not as legal exemptions, which isolate member states in day-to-day politics, but as political instruments, which influence the dynamics of European integration. These strategies modify the centre-periphery picture of the EU considerably as opting out cannot be seen merely as (a self-imposed) marginalisation. However, the third strategy of *self-censorship* underlines that opt-outs can also hinder the diplomatic quest for influence as most of the existing literature would argue. Opt-outs may lead to self-censorship of two reasons. First, because of the way officials *interpret* their own capabilities vis-à-vis the other member states during the on-going negotiations in the Council system. Second, *self-censorship* may be domestically conditioned by massive domestic attention and control with diplomatic practices of opting out. In such cases, the formal opt-outs are echoed in an ‘informal’ opt-out conditioned by the norms in the Council or the domestic political arena. In some cases, a relatively large room of manoeuvre was identified, which suggests that a change in the diplomatic habitus, a transformed logic of the field or a new national agenda may lead to a different diplomatic strategy resulting in more influence despite the formal opt-out. In other words, if for instance, the British officials become less confident that the opt-outs are defensible, they may stop the missionary strategies.

Much research is still needed to understand how the different strategies are determined and how widespread and successful they are. For instance, how well do the compensation strategies actually

work? This entails interviewing officials from member states without opt-outs as well as more interviews with representatives from the Council and the Commission. Furthermore, we still lack knowledge of the different rules of the game in the different sub-fields (e.g. justice and home affairs and defence), which may have an important effect on the consequences of the different opt-outs to member state diplomacy. These variances between policy-areas should be understood in order to explore the possibility of constructing a general theory of the consequences of opting out.

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