

Keeping in Control: The Modest Impact of EU on Danish Legislation

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Abstract

Membership of the EU and the scope of European integration are still contested issues in Danish politics. However, the impact of EU legislation on Danish legislation is modest and highly concentrated within the field generally related to the regulation of the internal market. Strong up-stream procedures at both the interdepartmental and the parliamentary level have been installed that effectively protect Danish policy makers against political surprises in EU legislative politics. Up-stream procedures are much stronger than the down-stream ones for overseeing the implementation of EU policies and they ensure a high degree of consensus on specific EU legislation, both among the political parties in Parliament and among affected interests. As a result the transposition of directives is mainly a ministerial responsibility, and within the well-established fields of cooperation, the decree is the preferred legal instrument.

The European Union is a sensitive issue among Danes to this day. A majority (63.3%) voted for Danish membership of the then European Communities in 1972. Before reaching this decision a divisive debate had gone on for years. The clear decision at the referendum did not stop the debate. Politically, this had two consequences. One was that a considerable minority remained who were either against membership or highly sceptical about membership and integration. This opposition not only threatened to split some of the parties. It also provided a platform for an anti-EU movement strong enough to elect its own representative to the European Parliament. The other consequence was that resistance against the EU was revived every time the form and scope of the EU was put on the European agenda. So, in 1992 a narrow majority (50.7 %) at another referendum voted no to the Maastricht treaty. This decision was revised the following year, but eight years later, in 2000, a majority (53.2%) of the Danes again voted no to Danish acceptance of the common currency.

During the same period the government negotiated a set of reservations concerning certain aspects of EU cooperation. Another stated implication is that since the Maastricht referendum, it remains accepted policy in Denmark that any change of importance in the framework of EU cooperation must be presented to voters in a referendum. This was for long the policy, even if the measure in question does not lead to additional transfer of sovereignty to the supranational institutions of the EU. But in the case of the Lisbon treaty the government and a majority in parliament has opted for ratification by parliament.

There is another side to Danish relations to Europe. When participating in and accepting the consequences of common EU policies, Denmark turns into a model member. It is among the few countries that transposes EU directives into national law without delay. It is also one that implements EU regulation in a way that rarely lands the Danish government before the European court of Justice. There is even evidence indicating that Danish authorities in general implement EU rules in a way that is loyal to the letter (Börzel, 2002; Saalfeld, 2005).

It is in this political context of paradox and contradiction that Danish adoption of and adaptation to EU regulation must be seen. This article analyses the extent to which Danish legislation has been reduced to simply mirroring decisions taken in the EU Council of Ministers, the European Parliament or by the EU Commission. In the political context of Danish EU participation this is interesting from two perspectives. The first concerns the creation of institutional provisions to facilitate handling of current EU-affairs such that political support and legitimacy is ensured, even though European integration has remained a divisive political issue. The second and more specific problem is at what stage such provisions were made. One possibility is to define it as an up-stream problem, that is, as a problem to be dealt with before and during negotiations at the EU level. The other option is to define it as a down-stream problem to be dealt with when new directives have come into force and are to be transposed into Danish law and implemented by national authorities. The questions are to what extent such procedures have been installed, and whether a strong up-stream procedure makes down-stream control redundant, and vice versa. If up-stream control is effective it ensures that parliament is involved at a stage where EU legislation is still in the making. Therefore it may be assumed to solve the problem. But if things happen during EU negotiations that were not covered by the up-stream authorisation, or because national authorities engage in policy drifting during the transposition stage, down-stream controls become important to ensure political support and legitimacy. Here up-stream control may not be effective. The problem becomes particularly acute if national legislation delegates the implementation of directives to the government. However, exclusive reliance on down-stream procedures frustrates parliamentary attempts at influencing EU policy at a stage where options are still open.

First, the present article presents the institutional framework within which Danish EU policy is made. This was from an early stage defined as an up-stream problem, and an elaborate set of institutional provisions have been set up at both the governmental and the parliamentary level. Second, it analyses the impact of EU legislation (directives) on Danish legislation, be it parliamentary or delegated. This part of the analysis focuses both on the over-all impact of the EU on national legislation and public policy as well as on variations between policy areas. One particular aspect of this problem concerns developments over time. The introductory article showed that there is a difference between legislation in the original and well-established policy areas, in which the EU has become engaged more recently. The question is to what extent a similar pattern can be discerned in Danish EU-related lawmaking. A central analytical issue is the balance between influences from the EU and the persistence of national priorities and norms. Third, the article looks

at the extent to which the Europeanisation of national public policy has weakened parliamentary control over legislation.

Preparing for political uncertainty

Danish government is highly pragmatic and decentralised. Problems are dealt with as and when they arise. Formal procedures are few and flexible, allowing for adaptation according to political contingencies. Most things are left to departmental ministers and their civil servants, allowing for a minimum of formal coordination. However, for two reasons EU-policy has been exception to this deeply entrenched pattern. First, the sensitivity of Denmark's relations to the EU meant that great care was taken already during the late 1950s and the early 1960s when the initial steps towards membership were taken. Second, a parliamentary situation where coalition and minority government is typical provides incentives for both the government in power and the parliamentary majority. The former felt strongly inclined to act carefully, given its lack of majority and the sensitive nature of EU relations. The mirror image of this situation was the opportunity afforded to the opposition to demonstrate its power to a government, unable to find the right tune in the potentially controversial issues of European integration.

Table 1 here

The result is an elaborate set of procedures. Their basic traits are set out in Table 1. These procedures, involving both government and Parliament, have gradually been developed and refined since the pre-entry period. They found their present shape during the first years of membership, and have remained remarkably stable. Fundamental change and reform has not been undertaken, nor been discussed or even thought of. There is in the political and administrative milieu a general feeling that the system provides political certainty for government and opposition in three important respects:

- Its procedures make it possible for Danish ministers and civil servants to negotiate in Brussels on a coordinated basis, allowing them to speak with one voice while balancing varying portfolio interests against each other and against the sensitive priorities in Danish EU policy.
- Its procedures provide minority governments with a clear idea of how far they can move in EU negotiations, while allowing parties outside government control over both the specifics of EU policy and the balance on the sensitive issues in Danish EU policy.

- Its procedures provide political parties in Parliament, and especially in the European Affairs Committee, with information on and opportunity to take up any EU-related issue with the government and also to delimit Danish policy on specific issues.

The coordination procedures have been tailored to mesh with institutional procedures and decision-making stages in the EU. First, the procedures vary from stage to stage during EU decision making. While there are strict procedural constraints during the preparatory and especially the decision-making stage, they are quite permissive at the implementation stage. Second, even if government coordination and parliamentary control seem finely attuned, the coordination system is the outcome of interdepartmental bargaining with no parliamentary involvement. Similarly, the parliamentary control procedures are the work of the European Affairs Committee. It has set out the formal procedures of parliamentary oversight in a series of protocols. Even if the government of the day has been heard on the provisions of these protocols, they remain the manifestations of parliamentary quest for oversight and control (Damgaard and Jensen, 2005).

The backbone of interdepartmental coordination is an elaborate committee network (Ministry of Foreign Affairs, 2005). It comprises some 33 special committees, each responsible for a predefined policy area where the EU has a minimum of activity (Ministry of Foreign Affairs, 2005). The special committees balance departmental autonomy against the Ministry of Foreign Affairs' overall responsibility for Danish European policy. Each committee is chaired by a civil servant from the most affected portfolio, but the Ministry of Foreign Affairs has a seat on all committees. They are activated already at the preparatory stage and are responsible for preparing the mandate on the basis of which Danish civil servants (from departmental ministries, the Ministry of Foreign Affairs and the permanent representation) negotiate during the stage where Council committees prepare the final proposals to be presented to the Council and the European Parliament. This mandate is ratified by the senior civil servants' committee charged with overseeing the whole system of coordination.

In 2006 a minor adjustment of the interdepartmental coordination procedure was introduced. The aim was to institutionalise a regulatory impact analysis for all Commission proposals. This is to parallel interdepartmental procedures for impact analysis of national legislation developed since the 1970s, and may eventually lead to parallel discussions of Commission proposals for new EU legislation in the government's economic policy committee (Ministry of Foreign Affairs, 2006).

When a proposal approaches the decision-making stage the minister in charge needs a mandate both from government and Parliament. The government mandate is prepared based on the work in the special committees and the senior civil servants' committee, and it is requested from the government committee on foreign policy. While the precursor of this committee¹ had weekly meetings with a heavy agenda, government authorisation nowadays is in most cases achieved through a written procedure. By contrast, the parliamentary mandate presupposes acceptance at a meeting of the European Affairs Committee. At this meeting, scheduled to take place when the Council is to reach a decision on a commission proposal, the minister in charge makes an oral presentation of his proposed policy stand to the committee. According to the principle of negative parliamentarism the minister has received a mandate unless members of the committee, who together represent a majority in Parliament, have indicated their opposition. As the mandate is not written down, its precise content depends on the minister's ability to read the political situation accurately.

A comparison of this core procedure with the procedures regulating the behaviour of government decision makers during the implementation stage makes it entirely clear that priority has been placed on up-stream coordination and control of Danish EU policy. Parliamentary involvement in the transposition of EU directives into Danish laws depends either on the government accomplishing this through the normal legislative procedure, or on standing committees reacting to government notifications of transpositions through delegated legislation. Similarly, implementation steps taken at the EU level involve national oversight through the comitology procedures. National civil servants, typically those who were also involved at both the preparatory and the decision-making stages, represent their departmental ministries here. However, they work on the policy basis established in the preparatory stage. Thus, it is only if the special committee in charge, the European Affairs Committee or the standing committee covering the portfolio in question takes up the issue based on the notification they have each received that active coordination and oversight is engaged at the implementation stage. The special committees have since 1993 formally involved interest organisations in their work, which constitutes an institutional fire alarm that may activate the European Affairs Committee or other standing committees in parliament (McCubbins, Noll and Weingast, 1987).

¹ Up to 1993 the official name was the Government Common Market Committee.

This institutional framework has been remarkably stable since it was formalised in the early 1970s. The changes made have been adaptive, involving no redesign of its basic architecture. It mirrors the fact that it rests on a political equilibrium and, in addition, has served well from the perspective of both Parliament and government. The adaptations made have primarily contributed to expanding the capacity of the system while avoiding to overload it. The decision in 1993 to formalise interest organisation representation on the special committees can be seen in this light. Their formal participation contributes to the legitimacy of EU policy, while at the same time building a fire alarm into the preparatory stage. Similarly, successive refinements of the procedures for informing the European Affairs Committee and other standing committees in Parliament have provided parliamentarians with information that enables them to hold ministers accountable on a selective basis. But the initiative is theirs. Ideally, this compensates for the late involvement of Parliament at the preparatory and decision-making stages as well as its formally marginal role at the implementation stage.

Estimating EU impact on national public policy

The overarching rationale behind European integration is regulatory. The idea is to reduce and eventually remove national borders in order to create a single regulatory space. Central to this rationale is the classic distinction between negative and positive integration (Scharpf, 1998; Héritier, 1999). The concern behind negative regulation is the removal of hindrances to the free movement of goods and services, labour and capital. Conversely, positive integration aims at formulating new common standards covering the member states, either replacing existing national regulation or pre-empting future national regulation. Negative integration is generally considered less ambitious and it is often associated with the creation of the customs union at the early stages in the history of the European Economic Community. In this perspective, positive integration is a much more demanding strategy. It is intimately connected with the development of an internal market. It is also related to initiatives to develop common approaches to, for example, the problems the European countries face within the environment and to cope with the social, and in recent years also the legal, and social challenges posed by immigration and international terror.

Even though the overall goal has also been to open European markets to competitors from other member countries, the general philosophy has been that this goal is to be achieved through regulation. The alternative idea, that the creation of a regulatory space where national borders have been dissolved might entail considerable deregulation, has evoked little sympathy in EU circles. The EU was built and continues to be built through regulation and rules. As discussed in the

introduction there are two basic types of EU regulation. One is based on regulations that are directly binding to any kind of legal subject in the member countries. The other type of legally binding act is directives. They are binding to national authorities, but must be transposed into national law through whatever legislative procedures apply in each member country.

The study rests only on data on the transposition of directives into national law. As set out in the introductory article, a full estimate of EU's influence on national public policy should also acknowledge the impact of regulations as well as the design and adaptation of national administrative regimes within which EU policy is implemented. This estimate of the impact of EU legislation on national public policy is based on Danish governmental notification of the EU commission that a Danish rule or set of rules transposes a specific directive. This implies an analytical focus on the rules in force at both the EU-level and the national level, rather than on legislative activity on either level. Consequently, the analysis neither delves into the possible impact of soft EU regulation nor the role played by European standard setting and self-regulatory measures.

The focus is maintained using a two step procedure. As a first step data was collected on EU directives in force as of mid-2003, including CELEX-notifications of national rules transposing them. The second step involved collection of information on Danish legislation in force in order to estimate the share of national rules in force that transpose EU directives into Danish law. This procedure allows a fairly precise impact estimate in quantitative terms. However, neither EU directives nor national rules were weighted for salience. Hence the methodology does not allow inferences as to the relative substantive importance (or un-importance) of EU legislation for Danish public policy. This problem is more generally discussed in the introductory article. Note here that a specific directive may be implemented through several national rules, but also that a particular national rule may incorporate demands contained in several directives, including amendments and revisions decided over time. A count of each specific change in Danish legislation would lead to an excessive estimate of the Europeanisation of Danish public policy. Yet, their exclusion implies that the estimate gives no information on the extent to which EU directives actually trigger law-making activity in parliament and government. But that is not the focus of this analysis. Finally, it is also important to note that the methodology registers the national commitment to meet the demands of EU legislation even in cases where Danish legislation already does so.

In a Danish context there are four procedures for the transposition of directives, but this study includes only formal lawmaking involving government and parliament and delegated lawmaking through ministerial decrees. Circulars that are only binding within government are used to a very limited extent in the EU context. As it proved very difficult to obtain a valid indication of the number of circulars in force, they were omitted from the analysis. Even if Denmark has won EU acceptance for the transposition of directives through agreements, typically between employers and unions, this procedure has only been used to a very limited extent.

A Modest, but Differentiated Impact

Table 2 presents the overall estimate of EU influence on Danish legislation in force. The general impact is limited to some 14 per cent, with an impact of 19.7 per cent for formal law and 13.2 per cent for the quantitatively much larger body of decrees in force. However, the variation is strong between ministerial portfolios.

Insert table 2 about here

An EU core of six departments ranks well above the average with impact ratios of some 20 per cent and more. This core includes the portfolios of economics and business, employment, environmental protection, food, research and technology as well as transport. Within this core, the Ministry of Food, Agriculture and Fisheries tops with an EU impact of 27.3 per cent. To this comes another group of portfolios with general impact ratios of 5-8 per cent. They include taxes, immigration, refugees and justice. The EU impact on the remaining half of ministerial portfolios is negligible or non-existing. One reason may be that legislation plays only a minor part for these departments (foreign affairs and finance), but in general, they are simply not affected by European integration.

In the general perspective of the introductory article on EU regulation, this is not surprising. But in a Danish political context there are three important implications. The first is that ever since discussions of EU entry began in the early 1960s it has been a recurrent concern that EU membership might undermine the Danish polity and in particular its welfare model. This has evidently not happened. EU regulation has maintained its focus on the customs union and the creation of the internal market. The removal of barriers to trade and other economic transactions, together with supranational regulation of negative externalities involved in this endeavour, remain the overarching priority of EU policy. The second is that even for policies within this well-defined field, most legislation remains purely national.

The third conclusion is even more intriguing in a Danish political perspective. The referendum in 1992, that ended with a no to the Maastricht treaty led to an agreement at the European summit in Edinburgh seven months later. At the domestic level, the Edinburgh agreement was preceded by the so called “national compromise”. It was negotiated in the fall 1992, and involved seven political parties representing both the old EU coalition and the Socialist People’s Party, which has been quite reluctant towards the EU. The compromise that won the acceptance of the EU partners at the summit set out four Danish reservations concerning the Maastricht treaty. One of these is especially important as it states that Denmark will not accept transfer of cooperation within domestic and legal affairs from the intergovernmental third pillar to the supranational first pillar of the EU (Petersen, 2004: 506-520). However, the table clearly shows how relatively important the impact of EU directives has become within the portfolios of justice as well as immigration and refugees, the areas primarily affected by this specific reservation to the treaty. But the transposition of directives within the field depends on Danish case by case acceptance.

The transposition of directives is channelled through both formal and delegated legislation. This reveals a much varying pattern. For some portfolios most formal legislation has been notified as transposing directives into national law, while in comparison, EU legislation has only had a relatively minor impact on their stock of decrees in force. The reason is to be found in the preferred legislative techniques. In some ministries they involve broad framework laws that delegate to the minister, assisted by his agencies, the authority to regulate specific issues by decree. As a consequence, these ministries rely on relatively few formal laws. At the same time these relatively few laws have spurred a large number of more specific decrees, of which only a minor share is affected by EU legislation.

For other portfolios the preferred legislative technique relies on rather specialised legislation that may or may not be affected by EU legislation; it is typically combined with equally specific delegation to the minister to issue decrees. The implication is a low impact ratio for formal legislation combined with a varying impact for delegated legislation.

Because of these conspicuous differences in legislative techniques, valid estimates of the EU impact on Danish public policy must be based on the general impact ratio in Table 2. This does not make irrelevant the information on the transposition procedure applied. It provides important information on how EU participation has influenced national legislative procedures, and thus on its wider implications for democratic and administrative decision-making. The article analyses this problem

as a question of the balance between up-stream and down-stream control provisions in Danish decision-making on EU affairs.

The Danish EU machinery rests on two main pillars, the interdepartmental coordination system and the parliamentary oversight procedure. At the core of the former is the system of special committees where departmental ministries play a key role. The most affected department chairs the committee within an EU policy area and provides secretarial support. In practice it is at this low level that problems are sorted out and policy agreed upon. Hence, the departmental minister responsible for the field is the prime contact to the European Affairs Committee and to other standing committees in parliament. They for their part generally match ministerial portfolios within government, and any major change in portfolio allocation will normally lead to an adaptation of the parliamentary committee structure. As many directives have broad regulatory scope, their transposition often presupposes the issue of or change in several national rules. However, the ensuing coordination problem is minimised if directives within particular EU policy areas largely falls within one or a few portfolios. Then the problem is internalised in one or maybe a couple of departments. Table 3 gives an estimate of this fit for the most important EU policy areas.

Insert table 3 here

Table 3 confirms that directives within a given policy area cover regulation of such broad scope that for all the major policy areas several departments are involved in implementation. The number of departments involved in transposing directives ranges from 5 to 12. Still, just one or two departments were responsible for the transposition of directives in the overwhelming part of the cases. For taxes and for energy this share is 95 per cent, for agriculture and fisheries it is 92 per cent, and for services and the right of free establishment 90 per cent. What is more, in all these cases, just one department was solely responsible for transposing 80-95 per cent of the directives within the field. But there are EU policy areas where directives impinge on several national portfolios, as there are national portfolios that have implementation responsibilities within several EU policy areas. At the EU level industrial policy and the internal market are such fields. Directives aimed at furthering the free movement of labour are of equally broad scope. At the national level departments like economics and business as well as environment are similarly important actors across a wide range of EU policies. In contrast, the Department of Food, Agriculture and Fisheries

has a well-defined portfolio and only marginally involved in other policy fields, except the internal market.

Policy maturity and legislative procedure

At the EU level commission legislation that is delegated legislation plays an increasingly greater role over time. But this trend varies between policy areas, and it is particularly clear in the original fields of cooperation that constitute the core of the internal market. For fields of cooperation where the EU has engaged itself more recently, legislation through the Council and the European Parliament takes precedence. In the introductory article this was seen as a routinisation of EU policy making in well-established fields of cooperation. These are areas where the limits of the power vested in the Union are politically and legally well-defined. Therefore, it may also be fields where maintaining regulation is an administrative matter not involving sensitive political issues. Authority has therefore been delegated to the Commission to keep the regulation up-to-date through Commission directives and regulations.

Table 2 showed first, how transposition has normally been delegated to ministers. Second, it also showed that the balance between formal and delegated legislation varies considerably between ministerial portfolios. The first explanation was that the departmental ministries have different legislative practices. However, a complementary explanation may be that a routinisation parallel to the one observed at the EU level has occurred. At the EU level routinisation has come about through an increasing delegation of law-making authority to the Commission. This implies in practical terms that new EU legislation very much consists of Commission regulations rather than directives voted by the Council and the European Parliament, which is a politically far more demanding procedure. The increased use of regulations and in particular Commission regulations by itself decouples national transposition procedures. Still, directives are an important legislative instrument. Therefore the question is whether a similar routinisation is observed for transposition of directives.

Table 4 about here

Table 4 distinguishes between different stages in EU development. They range from the common market-period covering the time until the European Single Act was ratified and to the periods when the Maastricht, respectively the Amsterdam treaties, came into force. During this period European legislation has been accepted as an important source of public policy by the member states. One interpretation might be that EU legislation is now so deeply embedded in the making of public

policy that national lawmakers accept it *prima facie* without charging Parliament with a burdensome legislative procedure. However, during the same period the EU has developed its institutions, thus allowing majority decision-making and expanding the scope of integration. Another interpretation might therefore be that when decisions are made through a politically demanding procedure involving the Council and, since the Maastricht treaty also the European Parliament, national authorities will have recourse to a similarly demanding national procedure. However, in cases where the EU delegates the issue of directives to the Commission the political saliency is lower and delegation also occurs at the national level.

The latter interpretation gets considerable support for Denmark. The general trend is that there is no change in the recourse to formal law-making during the period. If anything, transposition of directives tends to increasingly involve Parliament. At the same time, it is clear that the more demanding the EU procedure, the more likely that Danish transposition involves Parliament. However, in the relatively few cases where the Commission is authorised to issue directives, these directives are transposed through delegated legislation. But this has been the case throughout Denmark's membership. So, the apparent routinisation of regulation within a maturing EU has led to the delegation of considerable law-making authority to the Commission. The effect at the Danish level is therefore indirect as directives to be transposed have been replaced by regulations issued by the Commission. However, the Council and the European Parliament have retained their law-making authority when EU has moved into new fields of regulation not covered by directives hitherto in force. In these fields the involvement of the Danish Parliament has not declined.

This is confirmed by a break-down of transposition figures by ministerial portfolios. Within the general pattern described above specific departmental practices prevail, which mirror, among other things, a variation in preferred legislative techniques and possibly also portfolio specific trends in EU regulation. For the Ministry of Food, Agriculture and Fisheries, the most affected portfolio, and for the Department of the Environment, transposition is increasingly delegated to the minister. Other portfolios have seen the opposite development and have moved toward markedly stronger parliamentary involvement. This is the case not only for portfolios that were at first just marginally affected by EU. It has also happened within portfolios that ever since 1973 have been strongly involved in EU related affairs as are the case for the departments of employment as well as those for economics and business (Christensen, 2005).

The general conclusion is that transposition of directives has been an executive responsibility from the very beginning. The variation between different portfolios mirrors a mixture of portfolio specific legislative techniques and changes taking place at the EU level. This complex pattern allows for a subtle use of legislative procedure at both the European and Danish levels. At the EU level, delegation of law-making authority to the Commission is used when adaptation of established policy to changing conditions is at issue. Still, legislation in fields not covered by existing EU law remains the responsibility of the Council and, since the Maastricht treaty, the European Parliament. Even though executive dominance is the normal procedure at the domestic level, Parliament is more likely to be involved in the transposition of directives that have gone through a demanding legislative procedure in EU. This procedure is also prevalent when the EU takes up new responsibilities within the well-established fields of economic and social regulation that together constitute the internal European market.

The Danish debate over EU participation has deplored that the mundane issues of economic integration receive most attention. Often this is ascribed to the fact that Danish entry into the Common Market in 1973 was motivated by mercenary concerns over the export of bacon and butter, while the prospect of building a united Europe was consistently played down by Danish politicians. Former Prime Minister Poul Schlüter's remark that "the Union is stone-dead", made during the debate preceding the referendum on the Single European Act, is very telling about this political approach that generally plays down any principled debate over EU and European integration.

A principled debate over Denmark's relationship to the EU might be staged if it was an integral part of the EU procedure. This presumes that Parliament is co-responsible for transposition, which only happens in very few instances. It also presumes that the legislative procedure transcends the narrow focus on the directive in question. Table 5 shows that this only to a limited extent is the case, but it also indicates that the situation may have improved a little bit on this standard.

Insert table 5 about here

In the early stages of EU membership the transposition problem was limited because Danish legislation had either already been brought into line with EU law or there was no conflict between EU and Danish legislation and no specific steps had to be taken to meet European demands. Similarly, during the 1980s it was quite common for acts transposing directives to not refer explicitly to the directive in question. Under such circumstances it is no wonder that the

implications of European integration only rarely resulted in a more principled debate of its policy implications. If, as is increasingly happening, a specific act implements the directive, an occasion has been created for discussing the EU and its implications for public policy, but such a debate is deemed to be narrow. In a few, but since the ratification of the Maastricht Treaty increasing number of cases, implementation of directives have been coordinated with a general revision of Danish legislation with the area. This was the case for instance with important reforms of the markets for financial services and public service utilities, and even for the controversial legislation on foreigners. With this procedure government and Parliament may have set the stage for a discussion that combines relatively specific policy issues with a broader focus on the proper relationship between domestic and EU regulation within a particular policy area. At the same time, however, the requirement to meet EU regulatory demands may give the government an opportunity to link transposition to a broader issue on its agenda (Kallestrup, 2005).

Upstream oversight and consensus specificity

In spite of the sensitive nature of Denmark's relationship to a united Europe the incorporation of EU legislation into Danish public policy is a problem that is entirely free of conflict. As a general rule, transposition of directives into national law is delegated to departmental ministers. In the remaining cases the legislative procedure seems quite finely tuned so that Parliament is involved if the EU initiates legislation in a new field. This happens even if such expansions mostly remain within the scope of regulating the internal European market. In these cases where the politically more demanding procedure of Council and European Parliament decision-making is used, the Danish Parliament is much more likely to be involved in the legislation needed to provide for national implementation. But even here transposition is mostly an executive responsibility.

Under these circumstances, democratic oversight depends on the *ex ante* procedures installed to first, accommodate affected interests within the interdepartmental coordination system, second and more importantly, to allow for parliamentary authorisation of the government's policy position prior to the final round of negotiations in the Council. This procedure may be prone to conflict because of the existence of a strong opposition against membership as well as subsequent expansions of the scope and depth of European integration. This conflict could potentially have been brought into Parliament because parties opposing membership, or at least ones reluctant to accepting its full consequences, have had seats in Parliament since the 1960s when the debate began. Table 6 sheds partial light on this issue.

Table 6 about here

It may have been so in the past. Data on the position taken by the political parties when in the European Affairs Committee ministers have asked for a negotiation mandate have not been disclosed for the early period of membership. However, such data were made available by the committee for the period immediately before and after the 2001 general election. The table compares the positions taken by each of the parties under the mandating procedure as reflected in their voting at the third reading of bills in Parliament.

First, the pro-European coalition manifests itself on the committee. This majority comprises the Social Democrats, the Liberal Radicals, the Liberals and the Conservatives. In most cases (90-100 per cent) these parties support a minister asking for a mandate, even if the government-opposition game occasionally does play a role.² Second, the government-opposition game is much more important when Parliament is to vote on a government bill during its third reading. The consensual pattern is once again dominant, but opposition parties that also are part of the pro-European coalition are more inclined to vote against the government in such instance. It happens in 15-20 per cent of all cases. For the remaining parties, the left wing Socialist People's Party and the populist Danish People's Party have both been highly sceptical of the EU, but when it comes to mandating government policy on specific issues, they usually do not go against the policy authorisation asked for by the government. The propensity of the Socialist People's Party to accept the policy proposed by the government of the day is stronger on EU affairs than when the party is to vote on domestic legislation. Even the small party of Left Socialists, that has consistently critical of European integration in half the cases, joins the majority, thus tacitly supporting the minister asking for a mandate.

There are two complementary interpretations of this pattern. One is that the oversight procedures set up upon Danish entry into the EU and developed ever since are quite effective for sounding out support for a particular position to be taken by the government in the EU Council of Ministers. These procedures are smoothed by the prior preparation of the policy position in the interdepartmental coordination system where affected interest organisations are also involved. The other explanation is that actual EU policy concentrates on issues related to the creation of an internal market. Both the parliamentary oversight procedure and the evolving EU pattern are the outcomes of a long development that began with the creation of the Common Market and the

² The referendum on the European Single Act was an exception. Here the Social Democrats and the Radical Liberals opted for a no, an advice not followed by the electorate (Petersen, 2004: 392-393; Mortensen, 2005: 84-86).

gradual construction of a European regulatory space. Both developments are of a highly technical nature and hence rarely hit the media headlines. In this situation parties are well served by an oversight institution that combines up-stream and high capacity procedures with a set of down-stream procedures that can pick out new EU legislation for closer scrutiny on a selective basis. They rely on the fire alarms built into the coordination procedure. These alarms can be, but rarely are activated in cases where transposition has been delegated to the government.

Despite this pattern of political acceptance the history of Danish EU membership reveals its controversial and divisive character. A majority of the voters have twice voted against Denmark taking steps that might involve wider and deeper integration. There may be indications that the picture is changing, the Danes now being more willing to accept an EU that plays an active role on a broader policy palette (Goul Andersen, 2003). But up to now governments have been extremely prudent in their approach and they have not taken steps that might be seen as involving a revision of past EU policy with its reservations and cautious reassurance of the electorate that nothing dramatic is going to happen. A study of change and stability in the political attitudes among Danes has also analysed their attitude to the economic and monetary union and, more generally, to the EU in the period leading up to the EURO referendum in 2000. While it finds considerable consistency in individual attitudes, it also reveals sizable changes and fluctuations in the opinion at the aggregate level. The study concludes that voter attitudes vary with media attention and that increasing attention generally leads to more negative attitudes, “because news drawing attention nearly always have a negative character, while the attitudes with decreasing attention become more positive” (Togebly, 2004: 88-89).

Supranational lawmaking and parliamentary democracy

The existence of a democratic deficit within the EU is much debated. The claim is that the relative weakness of representative institutions in the EU will over time undermine representative democracy. It is further that with the transfer of greater powers to EU institutions parliamentary democracy is correspondingly weakened. The argument is that the EU has become an important cause of the hollowing out the nation state and its institutions (Rhodes, 1997; Smith, 2000). But both the democratic deficit thesis and the hollowed out state thesis are broad and bold propositions that cannot readily be tested empirically.

The analysis of the impact of EU legislation on Danish legislation and public policy still raises severe doubts as to the validity of these claims. Most importantly, EU legislation in the early 2000s

is far from replacing national legislation. Even in the most affected policy fields (agriculture and food, business and environmental regulation) only a minor part of national legislation in force to some extent incorporates demands defined in EU directives. For policies unrelated to the regulation and operation of the internal market, the impact remains quite limited and often marginal. This basic picture of the EU as a common regulatory space for market exchanges is hardly affected if the analysis considered the demand that member states have installed administrative regimes that enable them to implement EU policies through a tight network of regulations immediately binding for national administrative authorities as well as citizens and firms (Page, 1998). This form of EU regulation is particularly strong within economic integration (see Table 2 in the introductory article).

It is also possible to estimate the extent to which law-making authority has in fact been delegated from elected politicians to a non-majoritarian body in Denmark and the EU, respectively. Table 7 shows the delegated legislation ratios for domestic and EU legislation over 15 years from 1973 to 2002. For national legislation the ratio is defined as the number of decrees per law voted in Parliament; for EU legislation the ratio is defined as the number of directives and regulations issued by the Commission compared to the corresponding number of rules issued by the Council and, since the Maastricht treaty, to some extent the European Parliament.

Insert table 7 about here

The comparison presumes that the problems of democratic control and legitimisation are stronger if rule-making is delegated to a body whose members are not elected to office in a democratic election and hence not directly accountable to a representative parliamentary body. The argument behind the comparison is that the bonds of representation and accountability are strong at the national level because Parliament has the decisive say in the legislative procedure. At the European level these bonds are weaker because of the extended length of the chain of delegation when Danish ministers represent their country in the Council. However, the mandating procedure in which ministers must present and gain acceptance of their policy stand to some extent reinstalls parliamentary accountability in each instance where the government has to cast a vote in the Council on a bill proposed by the Commission. The effect is so much stronger because negotiations in the council are strongly consensual. As a result individual countries are rarely brought in a situation where it casts its vote against the majority. In this game its position is both strengthened through a clear parliamentary mandating procedure and its participation in coalition building with other countries

like e.g. Germany and the Netherlands. There is no such link to parliamentary accountability if the Council has delegated lawmaking authority to the Commission, although comitology procedures may allow for a proposed Commission rule to be referred back to the Council.³

With this caveat in mind, Table 7 shows that parliamentary accountability is considerably weaker for delegated lawmaking in a national setting than in the EU. Although the relative frequency of delegated lawmaking by the Commission has doubled over the past 20 years it still remains weak compared to legislative practice in Denmark. Here the ratio has been high throughout the period, with four times as many decrees issued in 2002 as new laws voted by Parliament. The ratios reported in Table 7 do not imply that there is no democratic problem because of the transfer of legislative powers to the supranational institutions of the EU. They indicate the simultaneous existence of a problem of parliamentary accountability for both domestic and EU legislation. More importantly, they also indicate that as for EU legislation, national policy-makers have installed procedures that to some extent allow them to handle it. In the Danish context, these procedures rely on the European Affairs Committee's capacity to effectively control the government. In an EU context they similarly rely on the comitology procedures that member governments have insisted on upholding despite resistance from the European Parliament.

Conclusions

Since the early 1970s the EU has developed as an important, but by no means dominant player in the shaping of Danish public policy. The EU is important as an embryonic regulatory polity. It in fact has no influence on the welfare policies that constantly get high political attention in Denmark. Even when it comes to regulatory policies, an important conclusion is that despite its importance as a source of policy, EU legislation has not replaced the need for national regulation not derived from EU directives. This is so for both economic and social regulation, even if Jacques Delors famously predicted that from the 1990s on, 80 per cent of all rules in force to be applied by national administrations within these fields would originate from European regulation.

The relatively limited impact of EU regulation on Danish legislation and public policy does not divest the issue of political relevance. Rather, the fiercely contested history of Danish EU membership implies that national participation in and contribution to European integration remains a sensitive issue. A series of referendums on changes in the EU treaties bears witness to the explosive character of the relationship. It is further emphasised by the existence of four reservations

³ This is the case for procedures within the regulatory committees and for the procedures that have been set up to allow the representatives of the member states to oversee the Commission's use of safeguard procedures (Hix, 2005: 52-58).

in relation to certain aspects of EU cooperation that, according to a political pledge by the parties behind the national compromise, can only be removed through a referendum. In this perspective the smooth and non-dramatic handling of EU legislation may seem paradoxical.

Yet the paradox disappears on closer scrutiny. First, the procedures for coordinating and overseeing Danish EU policy developed when Denmark entered the European Communities in 1973 contain important political safeguards to ensure that specific EU policies are acceptable both to a majority in Parliament and to affected interests. Second, these procedures operate in a way that actually keeps most EU issues off the public agenda. This is very different from the situation where voters are asked to vote on proposals to change this or that part of the EU treaties. Therefore, it is hardly surprising that in the former case, Danish policy relies on a broad parliamentary majority while at the referendums, Danish voters have come up with a couple of unpleasant surprises for the parties behind the pro-European coalition that brought Denmark into the EU and has supported both the Maastricht treaty and Denmark's passage into the third stage of economic and monetary union.

In a comparative perspective, the Danish procedures for parliamentary oversight of EU affairs are strong and historically well established (Raunio, 2005). Still, this analysis demonstrates the extent to which they rely almost solely on up-stream controls that are operative when ministers require a mandate to negotiate and vote in the Council. There are two critical links in this procedural setup. The first is that the European Affairs Committee only enters the procedure at a fairly late stage shortly before the Council is going to make a decision. Therefore, the effectiveness of the mandating procedure actually presupposes that the information given to the committee at an earlier point in the procedure, together with the work in the interdepartmental coordination system, would activate critical questions to be cleared in advance. Second, the conspicuous weakness of the down-stream procedures allowing for parliamentary scrutiny of transposition and implementation issues presupposes that the up-stream procedures have effectively identified and coped with problems of domestic concern in EU legislation.

It is striking to that not only the implementation of EU legislation, but also the current preparation of Danish EU policy is a predominantly executive and even administrative affair. This is most evident for transposition of rules which is in most cases conducted by ministerial decree. However, it is also evident that the interdepartmental coordination system is the only place in Danish government where EU policy is dealt with on a continuous basis, that is, from the stage where Commission starts thinking about a new or revised policy and to the stage where a new directive or

regulation has been enacted through the appropriate procedures. This is a fact even if Parliament's European Affairs Committee has a prominent role in overseeing government policy within the EU. The implication therefore is that the solution to the problems of democratic accountability rests on the assumption that every link in the parliamentary chain of delegation is intact and operates effectively.

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References

- Börzel, T. A. (2002). "Pace Setting, Foot Dragging, and Fence Sitting: Member State Responses to Europeanization." *Journal of Common Market Studies*, 40, 40: 193-214.
- Christensen, J. G. (2003). "Den fleksible og robuste forvaltning." In Martin Marcussen and Karsten Ronit (Eds.): *Internationaliseringen af den offentlige forvaltning i Danmark*. Aarhus: Aarhus Universitetsforlag.
- Christensen, J. G. (2005). "Elusive Europe: The Impact of EU-regulation on Danish Public Policy." Paper presented at conference on Progress and Problems in Building a European Legal Order: Europeanisation through the Transposition and Implementation of EU Directives. University of Luxembourg and Mannheimer Zentrum für Europäische Sozialforschung. June 24-25, 2005.
- Damgaard, E. and H. Jensen (2005). "Europeanisation of Executive-Legislative Relations: Nordic Perspectives." *The Journal of Legislative Studies*, 11, 394-411.
- Goul Andersen, J. (2003). "EU og modstanden i Danmark." In *Danmark 30 år i EU*. Copenhagen: Ministry of Foreign Affairs/Gyldendal.
- Héritier, A. (1999). *Policy-Making and Diversity in Europe*. Cambridge: Cambridge University Press.
- Hix, S. (2005). *The Political System of the European Union*. Houndsmills: Macmillan, 2nd ed.
- Kallestrup, M. (2005). *Europæisering af nationalstaten*. Copenhagen: Jurist- og Økonomforbundets forlag.
- McCubbins, M., R. Noll and B. Weingast (1987). "Administrative Procedures as Instruments of Political Control." *Journal of Law, Economics, and Organization*, 3, 243-277.
- Ministry of Foreign Affairs (2005). Danish special committees for EC matters. Update April 8, 2005.
- Ministry of Foreign Affairs (2006). *Retningslinier for den danske EU-beslutningsprocedure*. Copenhagen: Ministry of Foreign Affairs.
- Mortensen, H. (2005). *De fantastiske fire*. Copenhagen: Gyldendal.
- Page, E. (1998). "The Impact of European legislation on British Public Policy Making: A Research Note." *Public Administration*, 76, 803-809.
- Petersen, Nikolaj (2004). *Europæisk og globalt engagement. Dansk udenrigspolitik historie, Vol. 6*. Copenhagen: Danmarks Nationalleksikon.
- Raunio, T. (2005). "Holding Governments Accountable in European Affairs: Explaining Cross-National Variation." *The Journal of Legislative Studies*, 11, 319-342.
- Rhodes, R.A.W. (1997). *Understanding Governance*. Buckingham: Open University Press.

Saalfeld, T. (2005). "Deliberate Delegation or Abdication? Government Backbenchers, Ministers, and European Union Legislation." *The Journal of Legislative Studies*, 11, 343-371.

Scharpf, F.W. (1998). *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press.

Smith, M.J. (2000). "Prime Ministers, Ministers, and Civil Servants in the Core Executive." In R.A.W. Rhodes (Ed.): *Transforming British Government. Vol. 1*. Houndmills: Macmillan.

Togeby, L. (2004). *Man har et standpunkt... Om stabilitet og forandringer i befolkningens holdninger*. Aarhus: Aarhus Universitetsforlag.

Table 1. Coordination- and control-provisions in Danish EU policy

Domestic level	EU level		
	Preparatory stage	Decision-making stage	Implementation stage
Administration	Civil servants from departmental ministries, Ministry of Foreign Affairs, and Permanent Representation at EU Negotiating on mandate coordinated by special EU committees and ratified by EU civil servants' committee Special procedure for impact analysis installed 2006		Represented in comitology procedure and prepares bill or decree, depending on delegation clause in legislation in force
Government		Relevant minister asks for mandate from government committee on foreign policy, nowadays mostly after written procedure	Relevant minister presents bill to Parliament if needed
Parliament		Minister makes oral presentation of proposed mandate for final negotiation at council to parliament's European Affairs Committee. Mandate given if members who together do not represent parties with a majority in Parliament have not spoken against it Other standing committees routinely informed, but only involved on own initiative	1) If formal legislation, bill presented and negotiated according to normal legislative procedure 2) If decree, routine information of European Affairs Committee 3) If implementation steps at EU level, routine information of European Affairs and other standing committees 4) If 2) or 3) follow up on committee request

Source: Christensen, 2003.

Table 2. EU impact ratios for Danish legislation in force 2003

Ministerial portfolios	Laws		Decreets		Total	
	EU impact ratio	N=100 %	EU impact ratio	N=100 %	EU impact ratio	N=100 %
Employment	32,3	65	21,0	448	22,4	513
Finance	0	51	0	70	0	121
Defence	0	14	0	32	0	46
Food, agriculture and fisheries	13,4	67	28,1	1154	27,3	1221
Interior and health	3,7	106	6,2	745	5,9	851
Justice	12,3	162	6,2	971	7,1	1133
Ecclesiastical affairs	0	19	0	106	0	125
Culture	18,4	38	0,9	115	5,2	153
Environmental protection	54,5	44	16,8	597	19,3	641
Immigration and refugees	3,3	61	13,7	51	8,0	112
Research and technology	96,6	29	9,8	205	20,5	234
Taxes	21,8	151	5,9	304	11,2	455
Social	0	14	0	147	0	161
Prime Minister's Office	0	15	0	10	0	25
Transport	2,6	155	29,4	367	21,5	522
Foreign affairs	0,9	109	5,2	57	2,4	166
Education	0	57	0,2	860	0,2	917
Economics and business	59,9	187	16,2	1274	21,8	1461
Overall EU impact	19,7	1344	13,2	7513	14,2	8857

Sources: Danish rules in force: Retsinformation, November 2003. Rules transposing EU directives are counted on the basis of data retrieved from CELEX June 2003.

Table 3. The fit between EU regulation and Danish governmental organisation

EU policy area ¹	Percentage of directives within EU policy area transposed by two most important departmental ministries		Number of departments affected	Total number of directives in force (100 %)
	Most important department	2 nd most important department		
Agriculture and fisheries	Food: 89	Environment: 3	6	849
Free movement of labour	Employment: 49	Economics and Business: 36	12	454
Services and free right of establishment	Economics and business: 83	Justice: 7	11	560
Transport	Transport: 48	Economics and Business: 33	8	123
Taxes	Taxes: 95	Finance: 2	5	171
Energy	Economics and Business: 90	Environment: 5	5	57
Industrial policy and internal market	Food: 23	Economics and Business and Justice: 17 each	10	858
Environment, consumers' protection, and health	Environment: 69	Food: 11	9	344
Law relating to undertakings	Economics and Business: 40	Culture: 36	6	58

¹ Lists policy areas with more than 50 directives in force as of mid 2003. Source CELEX for EU-data, and Retsinformation, www.retsinfo.dk, for Danish Data.

Table 4. Transposition by formal law under different treaty regimes and EU decision making procedures. ¹

	Common market -1986	Single European Act 1987-1992	Maastricht Treaty 1993-98	Amsterdam Treaty 1999-2003
Council	76 (920)	30 (1599)	16 (269)	18 (17)
Council and European Parliament	-	-	37 (243)	50 (109)
Commission	3 (192)	7 (139)	5 (120)	0 (41)
Total	24 (1022)	28 (1738)	22 (632)	34 (167)

Sources: EU-data CELEX. Danish data Retsinformation.

¹ Percentage of transpositions by legislation voted in Parliament.

Table 5. Changes in transposition procedures since the 1970s.¹

Period	Specific act implements directive	Implementation part of general revision of national legislation	Implemented prior to EU directive	Specific national act does not refer to directive	N=100 %
1994-2003	74	13	3	10	258
1984-1993	48	4	9	39	162
1974-1983	29	4	50	17	52
-1973	14	0	69	17	29

¹ Transposition of directives by legislation voted in Parliament.

Source: www.retsinfo.dk

Table 6. Party acceptance (in per cent) of government propositions in the European affairs committee compared with party acceptance of government bills at the 3rd reading in Parliament

	Pre-election 2001 (1.1.-20.11.2001)		Post-election 2001 (21.11.2001-26.6.2002)		Parliamentary year 2002-2003	
	Policy propositions ¹	Bills ²	Policy propositions ¹	Bills ²	Policy propositions ¹	bills ²
Left Socialists	49.6	64.1	60.3	34.7	59.4	44.6
Danish People's Party	79.0	67.5	82.2	93.5	68.8	92.6
Socialist People's Party	90.5	87.2	84.9	51.2	86.7	55.9
Christian People's Party	96.2	83.8	-	80.0	-	83.7
Radical Liberals	100	100	97.3	68.8	96.1	79.2
Social Democrats	100	100	98.6	65.9	93.0	80.2
Conservative Peoples' Party	99.0	82.9	100	100	100	100
Liberals	99.0	84.6	100	100	100	100
Centre Democrats	-	88.0	-	-	-	-
N = 100 %	105	117	73	170	128	202

¹ Percentage of government requests for an authorization to negotiate from a specific policy position in the Council accepted by the each party on the committee on European affairs. Data kindly supplied by Claus Larsen-Jensen, president of the committee until 2005.

² Percentage of government bills voted for by the party at the 3rd reading in Parliament. Source: Folketinget: *Årbog og registre* and www.folketinget.dk.

Table 7. The delegated legislation ratio in Danish and EU legislation 1973-2002.¹

	Denmark	EU
1973	3.6 (615)	0.3 (64)
1988	5.2 (771)	0.5 (141)
2002	4.0 (1141)	0.6 (190)

¹ For Danish legislation the ratio is defined as the decree/law-ratio, for EU as the ratio between new directives and regulations issued by on the one hand the Commission and on the other hand the Council and European Parliament. Total N in brackets.

Sources: For EU Eur-lex, for Denmark Lovtidende.