

# Organized Duplicity? When States Opt Out of the European Union

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## **Abstract**

This paper explores how sovereignty is played out in the European Union. It analyses the controversial UK and Danish opt-outs from the euro zone and common borders and justice and home affairs. While opt-outs are important symbols of national autonomy, this paper argues that opt-outs are in fact very ambiguous. I propose to conceptualise opt-outs through the prism of a 'two-dimensional sovereignty game' where the main players are the governments and diplomats, who mediate between the domestic and the European audience. To the domestic audience, opt-outs may help preserve the Westphalian figure of an autonomous state, but in Brussels, the protocols are translated into diplomatic routines and temporary measures to fit the post-Westphalian context where they are put into effect. This 'organised duplicity' is increasingly challenged as the two different representations of the opt-outs compete openly.

## 1. Introduction

As part of a grand plan to make the European Union more popular, Margot Wallström, Commissioner for Institutional Relations and Communication Strategy, has posted a short video on the website YouTube showing 18 couples having sex. The conspicuous video (which promotes EU support for European films) ends with the couples' orgasms and the double entendre 'Let's come together'. Untraditional methods to convert the reserved European publics into convinced Europeans are being invented as the EU faces various forms of contestations of its supremacy from the member states. In the last decades, doubts over the benefits of Union membership have given rise to controversial national opt-outs from EU and EC treaties, which indicate that selected 'outsiderness' may be preferred to being a full member of the Union. Opt-outs are interesting because they postulate that it is possible to (re-)constitute the boundary of the state in face of the European integration process. Opt-outs draw a line in the sand, as it were, and constitute an area where the state is to remain sovereign. To the degree that statehood is fundamentally changing because of regional integration, national opt-outs will be a good indicator of how far this process has gone.

This paper focuses specifically on the United Kingdom and Denmark, which are champions of opting out of the EU.<sup>1</sup> Ireland simply followed the UK when it opted out of Schengen in order to keep the Common Travel Area and Sweden only has an informal opt-out from the third stage of the European Monetary Union. However, the United Kingdom and Denmark seem to have more systematic and clear-cut strategy of opting out compared to the other member states. Existing research has largely interpreted the controversial British and Danish opt-outs as safeguards of national autonomy (Pilkington 1995: 109ff; Wallace 1997; Hedetoft 2000: 300; Padoa-Schioppa 2004: 86-87). However, this paper will question this understanding and point to the subtle diplomatic practices and discursive shifts, which make the opt-outs and hence sovereignty claims more

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<sup>1</sup> 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 dealt with derogations, as did many protocols annexed to the various Acts of Accession) (Hanf 2001: 7; see also Curtin 1993). These specific derogations have been regarded as the price to be paid in order to make the treaties acceptable; they have a limited effect and do not threaten the cohesion of the Union. By way of example, one could mention the Swedish and Finnish protocol on the Sami people's exclusive rights to reindeer husbandry.

ambiguous. Indeed, when exhausted heads of state and government accepted to grant UK and Denmark opt-outs, they were only opening what I call a 'two-dimensional sovereignty game'.

With the Maastricht Treaty (1992), the UK was accorded an opt-out clause, meaning that it would not be required to adopt the single currency.<sup>2</sup> Instead, it is for the British government to decide whether the country moves to the third stage of the EMU. Furthermore, the UK negotiated an opt-out from the so-called Social Chapter.<sup>3</sup> These opt-out clauses were one of the conditions to be met if the British government were to give its approval to the treaty as a whole.<sup>4</sup> The opt-outs were drafted to assure that the treaty was in line with a British conception of Europe, not challenging its constitutional institutions and conventions such as parliamentary sovereignty (Hansen and Scholl 2002: 4).

Denmark was also a reluctant negotiator in Maastricht, but having being granted a protocol on the EMU, the Danish government had accepted the treaty when it was unexpectedly rejected in a dramatic referendum held in June 1992. Following the referendum where a slim majority of the Danish population voted 'no', the Danish Parliament drafted a common negotiation position for the government. It focused on the most dominant issue in the Danish referendum debate – the transfer of national sovereignty to the EU (Hansen 2002: 73ff).<sup>5</sup> The European Council agreed the four key reserves with the Edinburgh Decision in 1993. Thus, Denmark (a) will not participate in the third stage of EMU without the consent of the Danish people in a new referendum; (b) will not accept any move to replace national citizenship with EU citizenship; (c) cannot participate in the development of a common European defence; and (d) cannot accept any form of 'supranationality' in the field of justice and home affairs under the so-called 'third pillar'. A few years later, both the

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<sup>2</sup> The 'Protocol on certain provisions relating to the UK of Great Britain and Northern Ireland', annexed to the Maastricht Treaty, spells out the details of the British opt-out.

<sup>3</sup> In 1997, the UK decided to participate in the Social Chapter and the provisions of the protocol were inserted into the Treaty of Amsterdam.

<sup>4</sup> Even then, parliamentary ratification was opposed by the opposition Labour and Liberal Democrat MPs and crucially by the 'Maastricht Rebels' within the governing Conservative Party. The government of John Major came close to losing the confidence of the House, before the Parliament eventually ratified the Treaty (Gifford 2006: 862).

<sup>5</sup> The document refers to itself as a national compromise, which can 'unite [*sic*] the population on Denmark's participation in the continued EC'. In the document, the 'no' is carefully interpreted as a rejection of 'United States of Europe', but not as a rejection of EC membership or European cooperation as such. With this interpretation, the agreement *invents* a united Danish people, which can then later be politically represented in the opt-outs and legitimize continued EU membership

(<http://www.euo.dk/dokumenter/traktat/eu/nationalkompromis/> Adopted by all parties in Parliament except from the Progress Party, 27 October 1992, author's translation).

United Kingdom and Denmark were granted additional opt-outs and opt-in possibilities from the Treaty of Amsterdam (1997). These new protocols were a reaction to the integration into EU law of the Schengen Agreement (abolishing controls and checks at national borders between EU member states) and the new Title IV dealing with 'visas, asylum, immigration and other policies related to free movement of persons'.

The paper is structured as follows. The first sections conceptualize sovereignty as a discursive claim to ultimate authority and develop the framework of a two-dimensional sovereignty game. The subsequent sections apply this framework in an analysis of how British and Danish governments and officials manage and justify the exemptions domestically and on the EU scene. The last part of the paper examines the clashes between the domestic and European practices and discourses surrounding the national opt-outs.

## **2. The two-dimensional sovereignty game**

This section develops the framework of a 'two-dimensional sovereignty game' as a conceptual basis for investigating how national opt-outs work. In furthering the idea of a 'sovereignty game', one should of course be careful how far the notion is pursued. 'Game' is a loaded word and may immediately lead some to think of Robert Putnam's two-level game metaphor (Putnam 1988) or other rational choice approaches in which sovereignty may be won by one, lost by another.<sup>6</sup> However, to be clear, the notion of sovereignty game as employed here is merely intended as a heuristic device rather than signifying any particular theoretical heritage.<sup>7</sup> The only insight that is taken from Putnam is his prominent idea that diplomacy always takes place at two different scenes at the same time, the international and the domestic. The idea of a game is useful in emphasizing and bringing analytical attention to three factors, which are central to the dynamic of opting out –

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<sup>6</sup> The concept of a two-level game was first framed by Robert Putnam in 1988 and has been further developed in Evans, Jacobson and Putnam (1993).

<sup>7</sup> The metaphor of 'sovereignty games' is not original to this paper. In particular, it has been employed by Robert H. Jackson in *Quasi-States: Sovereignty, International Relations and the Third World* (1993), Georg Sørensen in his article 'Sovereignty: Change and Continuity in a Fundamental Institution' (1999) and Tanja E. Aalberts 'The Sovereignty Games States Play: (Quasi-)States in the International Order' (2004). While I am indebted to these authors at the nominal level, the idea of 'sovereignty games' as it is developed in the present paper does not build in any large part on the theorisations in these works.

*claims, players and audiences.* It is around these three factors and in particular the interplay between them, that the framework of a two-dimensional sovereignty game is anchored.

### *Sovereignty as a claim to ultimate authority*

Theoretically, this paper subscribes to the social constructivist argument that sovereignty is not an attribute of the state; it is a discourse, which promotes a certain political order as the authoritative and prescribes certain actions and rights as legitimate (Walker 2003; Biersteker and Weber 1996). By emphasising sovereignty as a claim, I do not purport to give any answers as to whether the UK or Denmark are more sovereign than other member states because of their exemptions. Rather than looking to measure sovereignty as something 'out there', the emphasis is placed on how it is used, or being played out, in legal and political practices. This conception of sovereignty implies an important difference between claim and control. The discourse of sovereignty can be an effective way to produce 'ordering power', but only if the relevant audience accepts this claim (Walker 2003: 6-7).<sup>8</sup> Following this line of thought, state sovereignty is produced through sovereignty practices, which confer sovereign status onto states. The practices may change over time, but there are certain things a state must do in order to be sovereign (Weber 1998: 92). To be a state you need to fabricate effective symbols of legitimacy and representations of sovereignty. In a Foucauldian perspective, i.e. a logic of representation, sovereign foundations are symbolic signs that make representational projects possible and allow sovereignty to refer to some original source of truth (Delcourt 2006: 49). The foundation of sovereignty changes over time and from place to place. Hence, for instance, 'the people' is a sign, which does not exist naturally, or objectively, it has to be produced as the foundation of sovereignty to be politically represented.

In contemporary integration processes such as the European, states have accepted dramatic limits on their internal powers in return for the development of an regional organisation, where they themselves gain influence on the internal affairs of other states (Werner and De Wilde 2001: 295). If what has been characterized as a Westphalian order is changing into a post-Westphalian order, a transitory period that Neil Walker terms 'late sovereignty' where conflicting claims to

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<sup>8</sup> This conjecture, however, does not mean that sovereignty all of a sudden has nothing to do with control, but rather, '[...] it is the discourse on sovereignty, as it takes place within different logical spaces and different historical episodes, that tells us what power *is*, within each, and how it should be interpreted, known and measured' (Bartelson 1995: 83).

authority from both non-state polities such as the EU and states are the dish of the day (Walker 2003: 19). In this context of this constitutional pluralism, the ‘speech act’ of sovereignty may have become more complex to perform (Walker 2003: 6; 19f).

### *The internal and the external audience*

The concept of sovereignty builds on a division between an internal and an external sphere (Walker 2003: 22; Werner and De Wilde 2001: 288). Internally sovereignty is usually taken to mean the ultimate or highest authority within a political order and often it indicates that a government is the ultimate or exclusive authority within specified borders. In turn, sovereignty implies a hierarchic relationship between the sovereign and the subordinates, whoever they may be (Lake 2003: 304ff). Popular sovereignty represents one vision of this relationship, where the social contract binds the political authority and holds it accountable to the people who are the original sovereign (Besson 2004: 11). Externally sovereignty usually implies that the authority of the state is recognized as such by other legally equal entities (Hobson and Sharman 2005: 65) and that they respect claims to freedom from external interference. This division constitutes two different audiences for sovereignty claims – the internal audience (to whom the claim is a claim to supreme or ultimate authority) and the external audience (to whom a claim to sovereignty is a claim to independence and freedom from external interference) (Werner and De Wilde 2001). The two dimensions fit like a glove, one may argue that a ‘sovereign state is all of a piece’ so that neither the internal nor the external half can exist without the other (James 1999: 464). However, in a ‘late sovereign’ context of European integration, the meaning of external sovereignty may change. The claim to independence and freedom may be reconfigured as a claim of the right to influence, a right to participation in or intervention into the affairs of others (see also Sørensen 1999: 602-603).<sup>9</sup> Meanwhile, the meaning of internal sovereignty may not necessarily change concurrently. Domestically, sovereignty may be about safeguarding a particular image of the autonomous ‘people’ as the foundation of sovereignty despite or even because of the changes in the way external sovereignty is played out. The main idea advanced here is that the two-dimensional sovereignty game is constituted by the potentially problematic relationship between the internal

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<sup>9</sup> The extent to which the meaning of sovereignty can change without becoming obsolete or something else will not be dealt with here, but has been discussed elsewhere (e.g. Walker 2003).

(domestic) and the external (European) audiences. In the case of a radical divergence between the expectations, norms and ideas of the two audiences and neither side may be able or willing to understand how sovereignty is conceived by the other.<sup>10</sup> The bigger the gap between the two audiences, the larger the challenge of mediation will be. To complicate things, the two audiences are not homogenous entities, but consist rather of different sub-audiences, such as the broader public, media and parliaments, which have conflicting interests and identities.<sup>11</sup> This diversity makes mediation more difficult, but it also opens up a strategic room for discursive manoeuvres.

### *The players*

Implicit in the notion of sovereignty game is the presupposition that someone is playing them. There are many possible players in this game. This paper takes governments and their diplomats to be the main players, because this particular group of people has been granted formal authority to represent and manage the state politically and legally when it engages with the European Union. In other words, this group enjoys a special status as mediator between the domestic and the international or European arena (see also Neumann 2007: 197). This analytical choice could be criticised for reifying a flawed picture of the state in a late sovereign era. Indeed, EU politics and domestic politics have become increasingly blurred so one may question whether it is still possible to talk of cooperation between independent states. For sure, the European Union is not an ordinary international setting, but a quasi-federal system, where supranational actors such as the European Commission and the European Parliament play an important role in changing the intergovernmental logic of cooperation (Forster 2000: 57). Furthermore, negotiations in the intergovernmental Council of Ministers are much more institutionalised (both formally and informally) than for instance negotiations in the United Nations and challenge traditional norms of diplomacy (Bátora 2005: 56). However, for the governments and their administrations as well as the public, the EU still represents a clearly different level of negotiation, demarcated from the domestic. British officials still have to go to Brussels for working group meetings and they do not come empty-handed (or –headed), but bring instructions from London about specific objectives

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<sup>10</sup> For an interesting development of the role of diplomatic mediators in a colonial context, see Bailey (1969).

<sup>11</sup> Even in non-democratic countries, the domestic speech-act of sovereignty needs an audience (Buzan *et al.* 1998: 25).

and national interests that they are expected to defend during the meetings. This is why ministers and diplomats are the key mediators in the two-dimensional sovereignty game.

### 3. Playing the game

This section applies the framework outlined above to the UK and Danish diplomacy of opting in and out. In both countries, the opt-outs have become nearly untouchable or sacred because they represent guarantees of continued autonomy and reaffirm the idea that the EU is only an interstate cooperation where sovereignty can easily be retracted. During the negotiations on the Constitutional Treaty for instance, the UK government continuously spoke of how the opt-outs would not be touched by what State Secretary Jack Straw called a 'simple tidying-up exercise' (Church and Phinnemore 2006: 8). The Danish Prime Minister Anders Fogh Rasmussen likewise promised that the opt-outs would be safeguarded and that the Danish people would remain in full control,

There will be no trickery. There will be no cherry picking. The opt-outs will stand clear and clean in the new treaty. And the Danish people shall decide on this treaty including the opt-outs [...]<sup>12</sup>

Sovereignty is conceived as a sort of fixed capital, given and known, and all it takes to re-establish it is to annul those decisions that have led to its careless dissipation (Rosanvallon 2000: 427-428; Morefield 2005). In the domestic debate, the opt-outs constitute bulwarks against European integration; underpinning a Westphalian image of the state with full political and legal authority over people, territory and money. In both the UK and Denmark, the governments' domestic discourse on the opt-outs produce a fiction of national unity, it fabricates a united domestic audience, despite clear political disagreements over the EU issue. In other words, the meaning of opt-outs should not only be mediated between the state and the EU, but equally between the different sub-audiences.

However, from the perspective of the EU, opt-outs represent a threat not only to the practical cooperation and the common legal order, but also the group identity among officials working in the Council of Ministers and the European Commission, the latter being officially

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<sup>12</sup> Speech by Prime Minister Anders Fogh Rasmussen at University of Copenhagen, "Visions for Denmark's active European policy". 23 September 2003, [http://europa.eu/constitution/futurum/documents/speech/sp230903\\_2\\_en.pdf](http://europa.eu/constitution/futurum/documents/speech/sp230903_2_en.pdf)

'guardian of the Treaties and defender of the general interest'.<sup>13</sup> The main interlocutors that British and Danish officials negotiate with when they handle the exemptions are the European Council secretariat (in particular the Legal Service), the European Commission and the Council Presidency. In their quest for European unity, differentiated integration is an unwanted obstacle (De Witte 2003: 236). Moreover, opt-outs threaten the self-understanding shared by the pro-European political and administrative national elites (be they Spanish, Danish or Maltese), that of constructing a workable and united Europe.<sup>14</sup> Hence, when managing the opt-outs on the European scene, British and Danish ministers and diplomats have to address a European audience, which not only has other interests, but also other identities than the domestic audience.<sup>15</sup>

To conform to the contradictory expectations and value systems of the internal and the external audiences, the players advance two different images of the state and its authority, playing a double game. On the domestic scene, the players (ministers and diplomats) try to uphold the representation of opt-outs as legal and political safeguards of an independent national democracy. On the European scene, they negotiate with the other member states and EU institutions in order to reduce the exclusionary effects of the opt-outs and gain influence on the European decision-making process despite the exemptions. From this perspective, the British and Danish experience of opting out gives flesh to Steven Krasner's proposition that state sovereignty is 'organised hypocrisy' (Krasner 1999).

On a day-to-day basis, the opt-outs are discretely managed by officials attempting to reduce the problems and enhance the possibilities they create for their governments on the European level.<sup>16</sup> The domestic image of opt-outs as safeguards of ultimate authority is muddled by governments and diplomats on the European scene to ensure that United Kingdom and Denmark act as credible partners and 'good Europeans'. They articulate exemptions as temporary measures that are not aimed at reducing the consistency of the EU *acquis* as a whole.<sup>17</sup> When managing the opt-outs the players make sure that the domestic and European discussions of opt-outs are disconnected. Otherwise, two different images of the opt-outs will compete openly. Only by

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<sup>13</sup> *The European Commission at work* <[http://ec.europa.eu/atwork/basicfacts/index\\_en.htm](http://ec.europa.eu/atwork/basicfacts/index_en.htm)>

<sup>14</sup> Interview, 28 February 2006, Danish Ministry of Foreign Affairs.

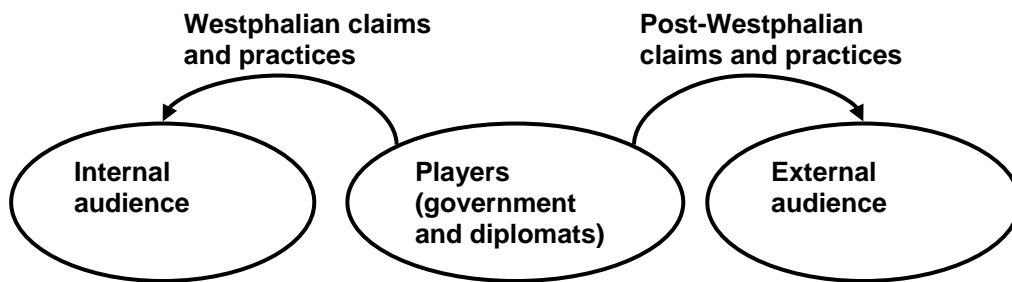
<sup>15</sup> Interviews, European Commission, December 2006; interviews, European Council Legal Service, May 2006.

<sup>16</sup> Interviews, 25 August 2006, Danish Ministry of Refugees, Immigrants and Integration Affairs; Interviews, 25 August 2006, UK Home Office.

<sup>17</sup> Interview, 28 February 2006, Danish Ministry of Foreign Affairs.

strategically separating the two different images of the state, the Westphalian and the post-Westphalian, as it were, can the players control the two-dimensional sovereignty game. The game is illustrated in Figure 1.

**Figure 1: The two-dimensional sovereignty game**



#### 4. Monetary sovereign?

This section examines the UK and Danish opt-outs from the third stage of the European Monetary Union. In a world of deregulated currency markets and global financial movements, 'constitutional' bodies of any kind, whether governments or central banks, have very limited influence. Nonetheless, widespread slogans such as 'keep the pound' or 'bevar kronen' show that in the United Kingdom and Denmark money is closely associated with sovereignty. The minting of coins and printing of paper money is (still) regarded as 'sovereignty-producing practices' (Doty 1996: 143).

##### *United Kingdom*

In a speech to the House of Commons in January 1991, the Chancellor of the Exchequer explained that safeguarding the 'sovereign right of Parliament' would be one of his four priorities in the forthcoming intergovernmental conference on EMU.<sup>18</sup> He was hinting to the established doctrine of national sovereignty in monetary affairs (see Gamble and Kelly 2003: 109). Indeed, the UK was granted a protocol on the single currency, which guarantees that it is for the UK government and

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<sup>18</sup> Hansard, 184/41, Cols. 470-9, January 24, 1991, quoted in *Manchester Guardian Weekly*, 7 July 1991, p. 6.

Parliament alone to initiate procedures for moving to the third stage of the EMU. Furthermore, the UK is not subject to the provisions on excessive deficits and it is not part of the European System of Central Banks (ESCB) and the European Central Bank (ECB). With the election of a pro-euro Labour in government from 1997, the firm UK position was forged into a 'prepare and decide' policy. This attempt to push the United Kingdom closer to joining the euro was welcomed by the European audience (Miles and Doherty 2005), but inside the UK it was a tricky move, because it questioned the domestic understanding of sovereignty over monetary affairs. To resolve this problem, the Labour government presented the choice to change from pound to euro as a purely economic decision with no political implications (Miles and Doherty 2005: 101; Hughes and Smith 1997). In October 1997, it announced five economic tests, which must be met before any decision to join can be made,

1. Sustainable convergence between United Kingdom and the economies in the euro area;
2. Whether there is sufficient flexibility to cope with economic change;
3. The effect on investment;
4. The impact on British financial services industry;
5. Whether it is good for growth and employment<sup>19</sup>

To label these checks 'economic' demands stretching the meaning of the word 'economy', but it is a necessary linguistic exercise because it allows for the view that British sovereign status is safeguarded despite flirting with the idea of replacing the pound with euro. In the two-dimensional sovereignty game, the tests serve a double purpose: to the European audience they demonstrate British commitment to joining the single currency (when it is in the UK's interests). To the domestic audience the tests contribute to the idea of a sovereign choice and underlines that in questions related to the euro the UK acts under instructions of no other nation or international actor. However, the 'tests' are so elastic that anyone could claim that they have not been met.<sup>20</sup> Not surprisingly, when the government completed its initial assessment of the tests on 9 June 2003, it concluded that at this time the euro did not pass.<sup>21</sup>

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<sup>19</sup> For an account of the five tests, see for instance Howarth (2007: 50).

<sup>20</sup> Interviews, HM Treasury, 17 April 2007.

<sup>21</sup> HM Treasury, *Seventh report on euro preparations* November 2003,

The attempt to present the euro as a question of economic calculations alone has not been effective. The domestic audience (in particular Parliament and media) has established a discursive consensus that the euro is the major political question related to the fate of the United Kingdom as a sovereign state (Risse 2003; Howarth 2007). To further assure the anxious public, both Labour and opposition have promised that a decision to recommend joining the euro zone should not only be put to a vote in Parliament, but also a referendum (Miles and Doherty 2005: 104). In this way, the attempts to convince the eurosceptic domestic audience to surrender the opt-out has contributed to a significant (if only partial) change in the political discourse and practices on monetary sovereignty in the UK, locating ultimate sovereign decisions (*qua* the referendum guarantee) with the British people rather than Parliament and government. This change illustrates that opting out is not a one shot affair, the players continuously adapt to the audiences, thereby revealing that the meaning of an opt-out is negotiable.

Meanwhile on the European scene, the UK has followed a strategy of 'economic and political hitchhiking' (Miles 2005: 16). This means that the British political and administrative elites have been an active in the EU monetary policy development despite the British opt-out (Miles and Doherty 2001: 201ff). The Treasury has established a Euro Preparations Unit to work out a National Changeover Plan to prepare the different parts of the UK economy to manage a changeover to the euro. The Euro Preparations Unit also publishes guides for business managers, develops frameworks to protect consumers in the event of a changeover and a hosts a website to inform the public.<sup>22</sup> While Treasury officials admit that this work is mostly about sending the right signals and building up credibility around the government's 'prepare and decide' policy, substantial institutional changes also occur.<sup>23</sup> In preparation for possible euro membership, the Bank of England has gained its formal independence from Parliament and the *Bank of England Act* (1998) has brought the UK more or less into line with the practice of those states, which were planning to join EMU at the outset (Schmidt 1999: 35).<sup>24</sup> While this does not question the independent status of the Bank of England vis-à-vis the ECB, it underlines that an exemption does not hinder states from

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<http://www.euro.gov.uk/publications/EPR7.pdf>

<sup>22</sup> HM Treasury, *Euro preparations. What you need to know*, London: HM Treasury.

<sup>23</sup> Interviews, HM Treasury, 17 April 2007.

<sup>24</sup> For a different view, see Dyson (2000: 899) who argues that the government borrowed from the US' and New Zealand' thinking rather the European Monetary Institute.

redefining existing political arrangements and trigger institutional change (cf. Kostakopoulou 2002: 146).

What monetary sovereignty means in the UK today is not clear. To the domestic audience, the decision over monetary sovereignty has been handed over from the government over Parliament to the people, but parallel to this development, the Bank of England has gained formal independence from the Parliament due to among other things the preparations to adopt the euro. Symbolically, the UK may be autonomous and independent, but in practice, it is closely integrated into the European monetary system.

### *Denmark*

The Danish EMU exemption formally locates the choice to join the euro zone with the Danish people because it guarantees the population a referendum.<sup>25</sup> At the end of the 1990s, a clear majority among Denmark's mainstream political parties favoured euro adoption and began to prepare the Danes for the single currency. During the campaign leading up to the referendum of 28 September 2000, the government followed the same rhetorical strategy as the UK government, articulating the 'yes' as sound business spirit and stressing the importance of 'a place at the table' at the Governing Council of the ECB (see Marcussen and Zølner 2001: 104ff). In May 2000, as opinion polls began to show falling support for the euro, Prime Minister Poul Nyrup Rasmussen desperately attempted to appease doubters by asserting that Denmark could join the euro zone and withdraw at a later date if it wanted, thus arguing that Danish sovereignty would be fundamentally untouched by the decision to surrender the opt-out, sovereignty could be taken back, so to speak.<sup>26</sup> This followed the domestic (Westphalian) logic behind the opt-outs. However, Nyrup Rasmussen's statement gave rise to confusion when it was contradicted by Commission President Romano Prodi who said that joining the EMU was 'by definition permanent'. Mr Prodi later suggested that from a political point of view Mr Rasmussen was correct, although there were no treaty provisions for joining and leaving the EMU (Miller 2000: 15). The government's appeasement strategy was a flop, 53,1 pct. of the Danish voters rejected the euro against 46,9 pct.

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<sup>25</sup> Art. 2 of the 'Protocol on certain provisions relating to Denmark, annexed to the Treaty establishing the European Community' (1992) provides that the opt-in may only be triggered by Denmark.

<sup>26</sup> For a discussion of the irreversibility of joining the EMU's different stages, see Pani (1996).

voting 'yes'. Together with the booming Danish economy, the 2000 referendum put a lid on the domestic debate on the euro. Meanwhile, the Danish Central Bank follows the ECB's 'sound policy' strictly with the acceptance of great majority of the domestic audience (Marcussen 2005).<sup>27</sup> Indeed, the Danish *kroner* has been tied to the D-mark at a fixed rate since 1987. Denmark has remained well within the constraints implied by the Stability and Growth Pact and Danish officials from the Foreign Ministry and the Ministry of Finance attempt to play an active part in the ECOFIN Council and hope to compensate for their 'outsiderness' by being extra constructive (Marcussen 2005).

In summary, despite continued attempts by both British and Danish governments to 'de-sovereignise' the euro, and regardless of the increasing difficulties of imagining and practising monetary autonomy in a globalising world, both the UK and the Danish euro protocols represent symbolic contracts between government and people; the latter is promised an ultimate (and sovereign) decision qua the referendum guarantee. This makes it very difficult to get rid of the opt-outs, because one could argue that they represent what is left of monetary sovereignty today.

## **5. Protecting national orders and borders**

While the discussion on whether or not to join the euro has cooled off in both the UK and Denmark, the debate on the opt-outs related to justice and home affairs and Schengen has become heated during the last decade. In both countries, policies dealing with immigration, refugees and security have been buttressed by the terrorist attacks in New York, Madrid and London and in the European Union justice and home affairs is now the fastest growing policy area (Monar 2000: 2). UK and Danish ministers and officials are generally enthusiastic to cooperate with their European counterparts on these issues. However, the domestic audience is hostile to handing over questions of national security to supranational institutions. The players therefore engage in a double game.

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<sup>27</sup> The left wing and the anti-European groups have criticised this policy, not for undermining sovereignty, but rather for the economic logic behind it, see for instance this debate in the Danish parliament <[http://www.folketinget.dk/Samling/19991/salen\\_andet/19991201\\_26\\_1\\_\(NB\).htm](http://www.folketinget.dk/Samling/19991/salen_andet/19991201_26_1_(NB).htm)>

## *United Kingdom*

The negative British stance towards the Schengen border free zone has been relatively stable since the 1980s where Margaret Thatcher refused to remove the border controls towards other member states. A significant majority of the domestic audience, led by Conservatives and other eurosceptics, have 'securitized' the British Schengen protocol, to the extent that it seems to constitute a guarantee of the survival of British nation (Wiener 1999).<sup>28</sup> In this Westphalian view, sovereign borders are above all territorial. The British protocol on Schengen guarantees that the UK at any time may take part in some or all of the provisions of this *acquis* as the UK is allowed to decide independently when it wants to participate in Schengen measures once the other member states have agreed on a measure.

However, the 'un-European' exemption is presented differently to the European partners than to the domestic audience. In day-to-day politics, the watertight shutters between British and EU policy are difficult to sustain and not always regarded as useful by the players, who have an interest in participating in the development of border policies, not least because these policies affect greatly on the room of manoeuvre of the UK. Despite the Schengen protocol, the UK has adapted and contributed in quite significant ways to the development of the EU security paradigm. The main argument put forward to justify the protocols is that they are only 'temporary measures' due to particular practical (not political) problems linked to the UK's status as an island country, and British diplomats and ministers make sure to underline that the protocols should not block further integration.<sup>29</sup> To convince the European audience that the United Kingdom is constructive and deserves influence requires a lot of hard work on the part of the players. When the UK does not opt-in to a measure, it still tries to act as a constructive teammate as a British official from the Home Office explains,

We try to participate and influence the negotiations. So once we announce that we are not participating, we step back a little, but still we try to be part of the debate and try to get influence using our good arguments and allies.<sup>30</sup>

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<sup>28</sup> British parliamentary debates and media focus on the importance of national border controls because of the special geographical situation of the UK and the long history of protecting individual rights and freedoms in the United Kingdom (Wiener 1999).

<sup>29</sup> Interview, Home Office, 24 August 2006.

<sup>30</sup> Interview, 21 August 2006, British Home Office.

On 'visas, asylum, immigration and other policies related to the free movement of persons' (Title IV TEC) the United Kingdom has a very flexible protocol allowing it to opt-in on a case-by-case basis both before and after a measure has been adopted. Tony Blair claimed that the opt-in possibility means that '[...] unless we opt in we are not affected by it and this actually gives us is the best of both worlds.'<sup>31</sup> Hence, the act of opting in and out performatively enacts the sovereignty of the UK; it is because it is sovereign that it is able to perform the act of opting in and out, as it pleases. Existing research argues that the British use of the opt-in possibility related to Title IV is driven by the intent to shape EU policy in ways congenial to 'domestic interests' (Ladrech 2004: 57). However, it is necessary to nuance the concept of 'domestic interests'. The domestic audience is split on this issue. Conservative members of the House of Commons often criticise the executive decisions to opt into new measures, claiming that the opt-in decisions represent a one-way transfer of power on immigration policy away from Parliament to the supranational authorities in Brussels. Generally, the House of Lords is more positive towards harmonization of immigration policies (see also Givens and Luedkte 2004), and many of the opt-in/opt-out decisions have therefore not had the blessing of the House of Lords. Ignoring the loud protests of the House of Commons, the British government has chosen to opt into those areas that curtail the ability of migrants to enter the EU, but has opted out of protective measures such as the Directive of family reunification and the Directive on the rights of long-term residents (Geddes 2005). The same gaps between the (divided) domestic audience and government have appeared in relation to Schengen questions. The House of Lords criticises the government for being unable to provide evidence that British border control is the most effective way to control immigration and fight illegal immigration. Furthermore, it finds it 'politically unwise' for the UK to isolate itself from the continuing development of European Union-wide policies in such sensitive areas and argues that the UK has much to contribute with in respect of the preservation of civil liberties.<sup>32</sup> The players (government and officials) react to this criticism from all sides by discursively confusing the post-Westphalian ability to opt-in and the Westphalian right to independence. The following response from the Prime Minister to the criticism of his choice to opt into a measure illustrates how decisions to opt-in discursively blur the meaning of sovereignty,

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<sup>31</sup> *The Guardian*, 26 October, 2004, <http://www.guardian.co.uk/guardianpolitics/story/0,,1336027,00.html>

<sup>32</sup> House of Lords 7th Report: Schengen and the United Kingdom's Border Controls', 1998/99.

But it is our complete choice as to whether to opt in; we might as well say that about any measure in Europe [...] Obviously, once we opt in, that is presumably because we have decided that it is in our interests to do so. Only the Conservative party could say that a decision whether to opt in is somehow a negation of our sovereignty; surely, it is the expression of it<sup>33</sup>

This choice of words is revealing in two ways. First, sovereignty and integration have ceased to be oppositional terms in Blair's defence speak (cf. Weber 1995: 112); it is by opting in that the UK secures its post-Westphalian sovereignty and influence. Second, Blair claims to speak on behalf of a domestic audience, a 'we', but in practice, it is the British government, which autonomously selects when it wants to participate in a given measure under Title IV. 'The people' need not be the foundational figure of sovereignty, in the case of the UK, the exemptions drift between different foundations, 'government', 'parliament', 'people', 'nation' and an abstract 'we'. Blair discursively invokes the sovereign people of the United Kingdom to justify decisions to opt-in and out, but it is a black hole, an artificial referent, parliamentary and popular protests against specific opt-in and opt-out decisions have not had any considerable effect on the government's decisions. The Westphalian conception of sovereignty as independence and the post-Westphalian idea of sovereignty as right to participation are discursively muddled. Hence, while the decision to hand over monetary sovereignty has gradually moved out of the hands of government and Parliament to 'the people' *qua* the referendum guarantee, while in justice and home affairs, sovereignty resides strictly with the British government.

### *Denmark*

The Danish opt-out from Title IV on asylum, immigration and civil law is very different from that of the UK, because it does not provide Denmark with an opt-in possibility. One of the great paradoxes of the Danish protocol is the striking discrepancy between the original motivation behind the Danish reluctance towards Community competence within the area of asylum and immigration policy, and its current motivation to keep its opt-outs. In the beginning of the 1990s, Denmark, together with the Netherlands, was among the most liberal countries and feared that community competence within asylum and immigration policy would threaten the high level of protection given to asylum seekers in Denmark (Manners 2000: 98). But from the late 1990s, and in

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<sup>33</sup> Prime Minister Tony Blair, House of Commons Daily Debate, 8 Nov 2004, <<http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmhansrd/vo041108/debtext/41108-10.htm>>

particular with the election of the Fogh Rasmussen government in 2001, Danish asylum and refugee policy is stricter than that of the rest of the EU in relation to rules on family reunification and requirements of attachment to Denmark.<sup>34</sup> To the right-wing politicians currently in power and the parts of the Danish domestic audience supporting them, Danish rules on asylum and immigration constitute important barriers to the perceived inflow of immigrants, asylum seekers, criminals and terrorists. If the opt-outs are surrendered, these barriers will be removed as the influential Danish People's Party points out,

No supranational or international body should impose a particular refugee and immigration policy on Denmark. Who and how many we wish to let into our country are to be entirely the internal affairs of Denmark. The Danish People's Party will fight to ensure that refugee and immigration policy remains an area where Parliament is sovereign<sup>35</sup>

This quote illustrates a domestic debate where the opt-out reaffirms the boundary between inside and the outside of the state, and locating national sovereignty with Parliament. Adapting to (and perhaps contributing to) this conception, Prime Minister Fogh Rasmussen has stressed that,

A significant majority of the Danes wish to maintain the current Danish immigration policy. Therefore, they would also not support an abolition of the legal opt-out if there were a risk that it would undermine Danish immigration policy<sup>36</sup>

However, serving the symbolic purpose of legitimizing Danish EU membership to the domestic audience, the exemption from cooperation on immigration, asylum and civil law is presented quite differently outside of Denmark. On a day-to-day basis, the opt-out has very little to do with grandiose symbols of national autonomy and the claim to sovereignty looks less dramatic. A new EU proposal will simply state in the beginning,

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application<sup>37</sup>

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<sup>34</sup> The combined attachment of the spouses/partners to Denmark must be greater than their attachment to any other country. This so-called attachment requirement is only one of a series of requirements.

<sup>35</sup> Dansk Folkepartis valggrundlag til Europaparlamentet 2004, [http://www.danskfolkeparti.dk/sw/frontend/show.asp?parent=18717&menu\\_parent=22669&layout=0](http://www.danskfolkeparti.dk/sw/frontend/show.asp?parent=18717&menu_parent=22669&layout=0)

<sup>36</sup> Speech by Prime Minister Anders Fogh Rasmussen at University of Copenhagen, 'Visions for Denmark's active European policy', 23 September 2003, np.

<sup>37</sup> The British version will state (if it chooses to opt-in), 'In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified its wish to take part in the adoption and application of this Decision'. This quote is taken from Council Regulation (EC) No 1295/2003 of 15 July

This is the EU version of the sovereignty granted by the other member states to Denmark in justice and home affairs. However, just as the UK, Denmark is far from a reluctant player in this important policy-area despite its opt-out. Danish officials are extremely careful not to provoke the European audience and refer to the opt-outs as for instance ‘temporary measures’ or ‘minor technical problems’ to allow for a post-Westphalian engagement even in policies covered by the opt-outs. A Danish official expresses a strategic concern for ‘the European cause’ even in the areas covered by the protocol,

We follow the unwavering principle that we participate in entirely the same manner as we would have done if we did not have an opt-out. This may also contribute to strengthen the impression that we are serious and have an interest in the cause, which means that the other member states will not hold the opt-outs against us in the day-to-day management<sup>38</sup>

While the British opt-out from Title IV provides its government with a favourable *à la carte* menu with surprisingly few domestic and legal restrictions, the Danish opt-outs are constructed to tie the hands of the players. Because it does not have an opt-in possibility, the Danish government applies to the European Commission for intergovernmental parallel agreements associating Denmark with legislative measures under Title IV where the Danish opt-out applies (asylum, immigration and civil law). This strategy is unknown to most of the public and while it is a legally defensible practice, one could argue that it represents a political bypassing of the protocol. Concretely, Denmark adjusts its domestic legislation *qua* parallel agreements ‘[...] which are considered as being a vital interest to the country’ (Vedsted-Hansen 2004: 67). The Danish government decides which measures represent ‘a vital interest’. By practising its sovereign right to enter into parallel agreements with other entities, Denmark accepts to implement the same rules as the other member states, but because of its opt-out, it has formally rejected the opportunity to influence the design of the rules in the first place. So far, Denmark has applied for six parallel agreements, but the Commission has only granted four.<sup>39</sup> The position of the Commission is that the following conditions apply if Denmark is to have a parallel agreement,

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2003 relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games in Athens.

<sup>38</sup> Interview, 22 August 2006, Danish Ministry of Refugees, Immigrants and Integration Affairs

<sup>39</sup> The Commission refused to grant Denmark parallel agreements with respect to the Regulation on insolvency proceedings and the Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters (Bruxelles II).

1. Parallel agreements could only be of an exceptional and transitional nature,
2. Such an interim solution should also only be accepted if the participation of Denmark is fully in the interest of the Community and its citizens.
3. The solution on a longer term is that Denmark gives up its protocol on justice and home affairs.

The conditionality built into the parallel agreements function as a disciplining mechanism where Denmark promises one day to get rid of its 'un-European' exemptions. In order to be granted parallel agreements, Danish officials must behave as representatives from applicant countries who argue that their country is making progress, that it is Europeanising and moving closer to the European core (cf. Wæver 2000: 262-263).<sup>40</sup> By signing the parallel agreements, the players agree to the temporality of the exemptions and accept that Denmark eventually will have to give up authority on the areas where it has opted out. In this sense, the opt-out no longer guarantees autonomy, because it is transformed into a sort of delay-action device. However, during negotiations on parallel agreements, Danish ministers and officials simultaneously articulate two different understandings of the situation. To the domestic audience, the opt-outs guarantee Danish autonomy as long as the Danish citizens wish and a parallel agreement do not change this autonomy. To the European audience, the Danish political and administrative elites promise to work actively towards lifting the opt-outs 'in a few years' and continuously assert that they are just waiting for the right moment to call a referendum.<sup>41</sup> Furthermore, because the decision to apply for parallel agreements is taken by government not 'the sovereign people', the players must invent an alternative foundation for their decision to apply for parallel agreements. Lene Espersen, Danish Minister of Justice, recently argued to the Danish Parliament that the agreements were concluded to secure '[...] the common interest of the EU and Denmark'.<sup>42</sup> In Espersen's exposition, the

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<sup>40</sup> Interviews, February 28, 2006, Danish Ministry of Foreign Affairs. If Denmark is granted a parallel agreement, the government copies the EU measure in the form of Danish law which is then subsequently agreed on by Parliament. The domestic sub-audience understood here as the Parliament is given a clear veto possibility, but it has never been used as the majority of MPs has supported the parallel agreements – not least because they deliberately have avoided sensitive questions and only concerned technical low key issues.

<sup>41</sup> Interviews, February 28, 2006, Danish Ministry of Foreign Affairs.

<sup>42</sup> Talepunkt til brug for samråd i Folketingets Europaudvalg den 9. februar 2007 om samrådsspørgsmål A –

foundation of the sovereign choice to conclude parallel agreements is both domestic and European; it transgresses the boundary and nullifies the distinction between the domestic and the European sphere. In other words, while national protocols seem to draw a clear boundary between national and EU competencies, following a Westphalian logic, the boundary is in fact often crossed. This may contribute to widening the gap between domestic and international understandings and practices of sovereign statehood.

In summary, the players try to make sure that the domestic and European understandings of the opt-outs (and sovereignty) are kept separated. In this sense, the players resemble a married man or woman having an affair. The danger in living a double life, however, is well known. One can easily make the mistake to disclose the 'secret', or others who know of the 'secret' may disclose it to the 'wrong' audience. The two-dimensional sovereignty game easily gets out of control.

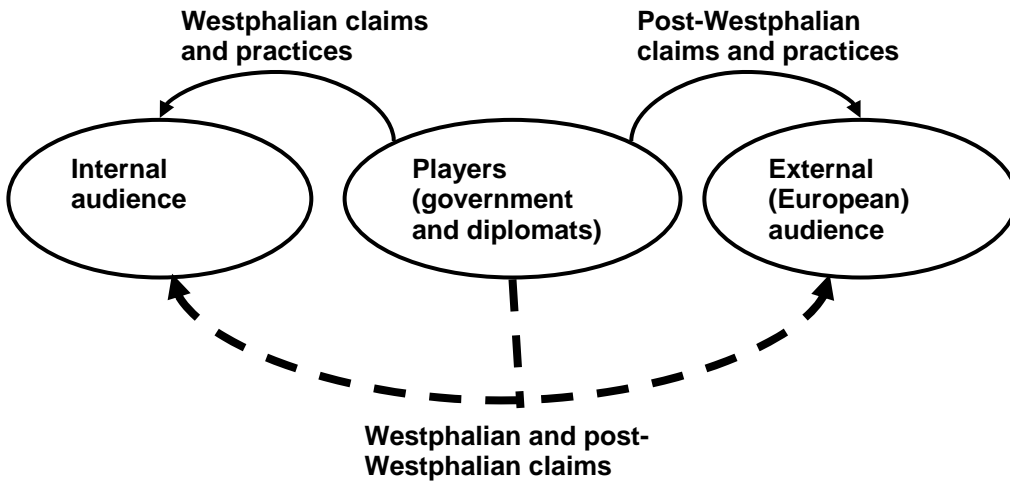
## **6. Loosing control of the game**

The players loose their grip on the two-dimensional sovereignty game when the domestic and European discourses on sovereignty and opt-outs openly clash. UK and Danish officials who are engaged in compensatory strategies, altering Westphalian claims to post-Westphalian claims to sovereignty, work hard to ensure that their government is never accused by the domestic audience of manipulating or deceiving while struggling not to be seen as disloyal by the European audience. This is not an easy task. Confrontations between the domestic and the European interpretations of the opt-outs have three different origins: the European audience, the domestic audience or the players. First, the European audience may decide that it cannot tolerate the opt-outs and the (more or less symbolic) resistance to Europeanization. Second, the domestic audience may learn to make its own connections to the European audience and 'discover' the players' double game. Third, the players themselves may decide to help the remove the shutter between the two audiences in order to prepare for a referendum. Figure 2 illustrates when the two different conceptions of the opt-outs clash.

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anmodning om redegørelse for EU's migrations- og indvandringspolitik, herunder Danmarks stilling på området set i lyset af det retlige forbehold,  
<<http://www.folketinget.dk/samling/20061/almDEL/UUI/Bilag/142/352213.HTM>>

**Figure 2: The two-dimensional sovereignty game**



*Challenges from the European audience*

The most apparent threat to the players’ control of the way the opt-outs is presented to the domestic audience is linked to the structural pressure that the UK and Denmark, as all other member states, face to adapt to European rules, norms and institutions – a pressure generally known as Europeanization. Because opt-outs do not stop the European integration process, their consequences are also growing in sometimes unpredictable ways. In 1993 for instance, the Danish opt-out from JHA was purely hypothetical and had no concrete implications for Danish participation, but the opt-out is today excluding Denmark from an increasing number of legal measures. The pressure from Europeanization shows its face even more directly to the domestic audience when a post-Westphalian ‘reality’ intervenes in the domestic debate. Then the players’ monopoly of communication breaks down. Increasingly, the EU challenges the very idea of opting out and the boundary between the domestic and the international sphere is disputed.<sup>43</sup> An example is the European Court of Justice’s recent ruling establishing that the European Community and not just the European Union has the power to require the member states to lay down criminal penalties for protecting the environment. This decision constituted a bombshell in the Danish EU debate, because despite the opt-out from supranational cooperation in criminal law, Denmark will be

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<sup>43</sup> When both the EU and the member states claim ultimate authority, there is a risk of ‘mutually assured destruction’ (Walker 2003: 29).

forced to apply to this.<sup>44</sup> Thus, the idea that the opt-outs protect Denmark's sovereignty was threatened. The eurosceptic June Movement argued furiously that the judgment constituted a 'breach of the Danish opt-out' and requested that the Danish government inform the EU that the ruling would not apply in Denmark.<sup>45</sup> Because the ability of the opt-out to protect Westphalian sovereignty was questioned, the EU spokesperson from the major government party, Charlotte Antonsen, had to be creative in her response. She argued that the original intention behind the opt-out from justice and home affairs was not to protect Denmark against a common environmental policy, which had in fact always been a Danish priority in the EU. Defending the ruling, Ms Antonsen stated, 'We have a clear interest that the other member states implement criminal penalties for harming the environment.'<sup>46</sup> Instead of referring to the original meaning of the opt-out, protecting Westphalian sovereignty, she referred to a Danish 'we' with a 'clear interest' in high environmental standards. Thus, she openly articulated the EU as a post-sovereign game where states intervene in each other's domestic affairs. However, Ms Antonsen cleverly avoided the question of whether the opt-out was actually breached or not, instead, progress in environmental policy was used as a sign that the ECJ ruling is not undermining Danish sovereignty and the opt-out. This constitutes an innovative form of sovereignty production.

### *Challenges from the domestic audience*

It may also be that the domestic audience wants to be 'fooled'. Important parts of the domestic audience, in particular parliamentarians and media, in both the UK and Denmark are aware of the challenges that the opt-outs pose on the European arena. This tacit consensus around the 'organised duplicity' appears to be more prevalent in Denmark than in the UK, the Danish Parliament has for instance urged the government to seek to participate and influence as much as possible on the areas where Denmark has opted out. Some MPs even seem to tacitly accept the compensating measures of the ministers and diplomats, thus the majority in the Danish Parliament

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<sup>44</sup> Judgment of 13 September 2005 of the Court of Justice in Case C-176/03 Commission of the European Communities v Council of the European Union.

<sup>45</sup> "EU-straffe er forfatning ad bagdøren", <[http://www.arbejderen.dk/index.aspx?F\\_ID=28969&TS\\_ID=2&S\\_ID=17&C\\_ID=35](http://www.arbejderen.dk/index.aspx?F_ID=28969&TS_ID=2&S_ID=17&C_ID=35)>

<sup>46</sup> "Domstol giver EU ret til at straffe", *Notat*, 30 September 2005.

accepted the following basis for the intergovernmental conference leading to the Constitutional Treaty,

Discussions on crisis management and the European defence dimension take place alongside the intergovernmental conference and follows its own track. It cannot be excluded that these discussions result in the ambition of adapting the treaty to reflect what is agreed upon. The government will follow the development on this area closely and will participate actively in all discussions to secure Danish interests and points of view in the ongoing work – fully respecting the Danish opt-out<sup>47</sup>

At first sight, this motion seems like a contradiction in terms, asking for Westphalian independence and post-Westphalian at the same time. Nevertheless, the motion is understandable if the majority of Parliament is pro-European and critical of the opt-outs. It may be more comfortable for the domestic audience not to address the ambiguity of opting out, because the bureaucratic reality of compensating practices and political adjustments only challenges the domestic 'truth' if is openly addressed. The same tacit support for the compensating measures can be found in parts of the domestic audience in the United Kingdom, particularly in the House of Lords, which is generally more pro-European than the Commons.<sup>48</sup> Parts of the domestic audience are simply more willing to accept the post-Westphalian discourse and practices at the European arena than others. From this perspective, the 'organised duplicity' has more to do with internally divided societies than tensions between the state and the European Union.

### *Challenges from the players*

As a last option, the players themselves may have an interest in losing control of the game, as it were, in order to question the established domestic truth that the opt-outs should remain in place to legitimise continued EU membership. When UK or Danish governments and officials are excluded from an increasing number of policy measures that they would like to participate in, when they loose on the European scene, they may be appealed to present the European understanding of the opt-outs in order to move the domestic discourse and prepare for a referendum. They may argue that national protocols violate the ethos of European integration and are detrimental to member state influence. However, this discursive move necessarily also brings a

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<sup>47</sup> Basis for negotiation, Intergovernmental Conference 2000, <<http://www.statsministeriet.dk/publikationer/regeringskonf2000/default.htm>>, authors translation.

<sup>48</sup> Interviews, EU Select Committee, House of Lords, 13 April 2007.

lot of uncertainty about motives and strategies into the domestic debate, as the Danish experience with the euro referendum suggests. It is risky because it implies questioning the very rationale behind opting out: protecting Westphalian sovereignty. Thus by introducing the European discourse into the domestic one question the very fundament on which continued EU membership is justified, is questioned. To make the argument that sovereignty is not threatened despite surrendering the opt-outs requires that the government presents a post-Westphalian claim about the nature of the European integration process, that 'we' are de facto dependent on each other, that 'we' loose influence when 'we' are not in the European core, that 'we' cannot stand alone. This means challenging the domestic meaning of sovereignty, redefining what a state can claim absolute authority over. Such attempts of discursive modifications will immediately be contested by the eurosceptic parts of the domestic audience. Therefore opt-outs are very difficult to get rid of, they have come to symbolically represent (what is left of) Westphalian sovereignty in the EU. In conclusion, while the opt-outs were originally justified as guarantees of a Westphalian concept of sovereignty faced with intensified European integration, the late sovereign era dilute them.

## **7. Conclusion**

Opt-outs from EU treaties are ambiguous attempts at safeguarding sovereignty. On the long journey from national referendums and ratifications to actual implementation, the opt-outs change meaning from a principled stance against more integration to a more flexible position, which allows ministers and diplomats to pick and choose from the buffet of new EU initiatives. Theoretically, this paper has argued that state sovereignty is mediated before two different audiences – the internal and the external. Domestically, national opt-outs are symbols of sovereign statehood, but they are diplomatically reduced on the European scene to trivial, temporary measures. UK and Danish governments have developed sophisticated means of 'circumventing' the opt-outs to reduce their exclusionary effects, so the figure of an autonomous state is preserved at home despite its entanglement in the European integration process.

Interestingly, it is not the same perception of sovereignty that is 'protected' by the opt-outs of the United Kingdom and Denmark. In the UK, the government invented the opt-outs and the symbolic and formal foundation of sovereign choices related to the EU is traditionally linked to Parliament and government, not the people. However, through the complex discursive battles, the

possible surrender of the opt-outs is rendered a sovereign choice for the British people. In Denmark the discursive change is almost the opposite, here the opt-outs came about because of a referendum and the opt-outs cannot be surrendered without hearing the people again. Meanwhile, the daily attempts to circumvent the opt-outs are justified with reference not to the people, but the government's understanding of 'national interests'.

In practice, opt-outs do not provide strong bulwarks against Europeanization, and directives and Court rulings obstruct the smooth translation of national sovereignty to the European scene, pushing governments to reconfigure the meaning of sovereignty. Statehood is not fundamentally threatened by European integration, but the way sovereignty is understood and exercised is undergoing transformations. Opt-outs accentuate the idea of a Westphalian conception of the state, but seem anachronistic in the late sovereign EU, which effectively has far-reaching effects on domestic affairs – with or without formal national opt-outs.

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