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Selective Europeanization: A Path Dependency Perspective on Danish Minority Policy

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This article investigates the question: why has Danish minority policy shown such remarkable selectiveness with regard to Europeanization? This question is particularly pertinent given that Denmark is typically seen as an otherwise very efficient and keen complier, especially with EU norms and rules. The article examines the reasons for both resistance and selectiveness to Europeanization of the Danish minority policy through a “path dependency” perspective accentuating decision makers’ reluctance to deviate from existing institutional commitments, even in subsequently significantly altered political contexts at the European level. We further show how the “translation” of international norms to a domestic context has worked to reinforce the original institutional setup, dating back to the mid-1950s. The translation of European-level minority policy developed in the 1990s and 2000s works most notably through a selective and proactive interpretation of the existing Danish “one-minority policy” and interstate agreements between Denmark and Germany.

Keywords: Europeanization; Denmark; Germany; minority policy; path dependency; translation; interstate relations

This article draws on Europeanization literature in analysing the impact of European-level norms and rules on Danish minority policy from the early 1990s onwards. European-level norms and rules as developed by the European Union (EU) and the Council of Europe (CoE) have had many, differing effects on domestic minority regimes in Europe. At the centre of European-level promoted norms and rules is the idea of making states more proactive and inclusive of their national minority groups (Henrard, 2008). Such processes typically require that states implement measures and

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promote conditions for preserving minority identities, developing the cultural diversity of minorities with a historical presence, and making commitments to previously excluded groups (Ahmed, 2011; Shoraka, 2010).

Europeanization—in terms of domestic adaptation to European-level norms and rules pertaining to national minority rights—shows a paradoxical and ambiguous development in the Danish case. This is especially evident in relation to the ratification and implementation of CoE’s Framework Convention for the Protection of National Minorities (FCNM) (Council of Europe, 1995) and its European Charter for Regional or Minority Languages (ECRML) (Council of Europe, 1992). Following ratification, several states parties to the two CoE instruments introduced new measures within domestic national minority policies (Letschert, 2005; Hofmann, 2005), while various countries have also engaged in broader recognition of national minorities (Eide, 2008). Denmark, however, has demonstrated a careful and selective approach, characterized by narrow interpretations, careful application and reservations. The existing Danish “one-minority” approach, which protects the German minority in South Jutland exclusively, has been reconfirmed and modestly updated in accordance with norms and rules flowing from European-level obligations. Here, the one-minority approach refers to the exclusive recognition granted to the German minority in South Jutland as a national minority in Denmark. This policy dates back to the 1920s and the partition of the former duchy of Schleswig through two plebiscites in connection with the Versailles Peace Treaty. The outcomes of the plebiscites created a new border, a German minority in Denmark, a Danish minority in Germany, and led to the formation of minority policies in each country through interstate negotiations between Germany and Denmark. Denmark’s minority policy is thus constructed specifically for the German minority living in South Jutland, covering principles of free education, free use of German in public affairs, freedom to identify as German and free kin-state relations (Becker-Christensen, 1984). Such principles, steadily developed since the 1920s and institutionalized in 1955 with the Bonn-Copenhagen declarations, have been modestly adjusted to European norms and rules on minority rights, especially in the fields of language, cross-border interaction and media coverage. However, the resulting pressures of Europeanization have had only a modest effect on Danish minority policy. While selective European norms have been adopted, existing policy is still shaped by institutional arrangements originally designed through Danish and German interstate negotiations and applied only to the

German minority living in South Jutland. Despite the historical presence of other minority groups in Denmark, the FCNM and ECRML are only narrowly applied (Weller, 2008) and Denmark shies away from extending recognition to other national minorities in Denmark. For example, Denmark is one of the few countries in Europe, and the only Scandinavian country, not to recognize the Roma community as a national minority. Similarly, the historically present Faeroese and Greenlanders are also excluded from national minority protection under Danish minority policy, even when pressured by various CoE bodies and other international non-governmental organizations. The populations of the Faroe Islands and Greenland are subjects of special agreements in Denmark and inhabitants of the two islands have not expressed an explicit demand to be recognized as national minorities in Denmark. Yet, Europe continues to question the relevance of Denmark's narrow application of minority rights and pressures are increasing regarding Faeroese and Greenlanders living in mainland Denmark (Greenlandic Broadcasting Corporation, 2011c; FCNM, AC Opinion, DK, 2004: 6). There are significant portions of Faroe Islands and Greenland populations now living in mainland Denmark who are not covered by the bills or self-government arrangements drafted specifically for the populations living in Faroe Islands and Greenland.

The article considers these ambiguous developments in Denmark by reflecting on the unique historical experience and setting in which Denmark's minority policy has developed since the 1920s. The specific history between Germany and Denmark, the ending of the duchy of Schleswig and its partition, the interwar negotiations following the ending of the two world wars and the specific interstate negotiations are all central to an understanding of Danish minority policy. At the same time, these developments are also essential to explaining Denmark's selective process and response to Europeanization in the context of minority rights.

Against this backdrop, the article asks: why has Danish minority policy shown such extraordinary selectiveness and reservation with regard to Europeanization? This question is particularly pertinent given that Denmark is typically seen as an otherwise very efficient and keen complier, especially with EU policies (Falkner *et al.*, 2005).

The article is organized as follows. First we elaborate an institutional perspective on path dependency and the concept of "translation". This is followed by an empirical analysis investigating: the creation of institutional arrangements guiding the Danish minority policy (section two); the emergence of European-level minority

policy and the resulting pressure for Europeanization of Danish minority policy (section three); and the reaffirmed role of interstate relations and realization of the “one-minority policy” through domestic “translation” processes (section four). Conclusions are drawn in the final section.

1. Resistance to Europeanization: path dependency and translation

Europeanization research often explains the impact of the EU—or in this article the broader “Europe”—on national policies by pointing to the importance of domestic institutional configurations (see the introduction to this special issue by Hoch Jovanovic). Typically, authors draw on the new-institutional literature, particularly a rational choice institutional and/or sociological institutional version thereof (Börzel and Risse, 2006). More recently a discursive institutional variant has also found its way into this type of research (Lynggaard, 2012; Exadaktylos and Radaelli, 2009). Rarer are historical institutional accounts of Europeanization that emphasize path dependency (see Bulmer, 2007; for notable exceptions see Bulmer and Burch, 2001, 2009; Knill, 2001). For the purpose of explaining resistance to Europeanization, however, a path dependency perspective does appear to be a very appropriate starting point. While path dependency is sometimes inadequately operationalized and applied, and used merely to suggest that “history matters”, it is useful to understand temporality in political processes (Kay, 2005).

Path dependency is typically associated with the historical institutional line of thinking whereby institutions are seen as ‘formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy’ (Hall and Taylor, 1996: 938). The institutional conventions observed from this perspective are, for instance, procedures of consultation with interested parties, practices of negotiation and bargaining, bureaucratic routines, prevailing norms and conventions guiding e.g. the formulation of policy programmes or the activities of agents within a particular policy field. Essentially, institutions are considered to constrain and structure political activity and policy outcomes. On the one hand, institutions shape political interaction, preferences and strategies and, on the other hand, they have a direct impact on policy outcomes (Thelen and Steinmo, 1992: 9).

The concept of path dependency refers to the significance of past institutional decisions for the structuring of political activity and future policy outcomes. Periods

of institutional establishment are highly important since the political context around these points in time is thought to have lasting effects on future developments. Prevailing power relations, norms and rules, preferred administrative and political practices among actors during times of institutional creation will become embedded in these institutions and set out a path for the future.

The rationalistic version of path dependency explains the continuation of a once-chosen path with reference to the resultant increasing returns. The idea is that ‘[i]n an increasing returns process, the probability of further steps along the same path increases with each move down that path. This is because the *relative* benefits of the current activity compared with other possible options increases over time’ (Pierson, 2000: 252). However, for our purposes, political actors are not *only* motivated by a calculation of the costs and benefits associated with a chosen path, but also by institutionalized ideas and norms. From this perspective ‘[i]nstitutional inertia may also result from the sedimentation of particular rules, norms, codes and meanings that over time are taken for granted by the social and political actors and, therefore, tend to regulate and frame their deliberation about policy choices’ (Torfing, 2009: 78). The argument is that, once institutionalized, ideas and norms will set the stage in a given policy field, determining for example which policy issues are relevant and which are not, which political actors are legitimate participants and which are not, and what procedures are appropriate for making policy decisions as opposed to which are not. Together this means that we need to ‘show that reproductive choices of [...] political actors are a result of the gradual sedimentation of rules, norms, values and ideas that makes it increasingly difficult to deviate from the established policy path’ (Torfing, 2009: 78).

While path dependence is a central feature of policy making, external events—such as Europeanization—may cause a departure from the status quo. As we shall see, the emergence of European-level minority policy does not go entirely unnoticed in Danish minority policy development. Yet, while pressure to Europeanize Danish minority policy builds up, European-level norms and rules are in fact used—proactively by domestic decision makers it seems—to reinforce existing institutional arrangements. Mörth (2003) argues that European-level norms and rules are typically “edited” domestically through processes of interpretation and translation among domestic decision makers. From a slightly different perspective, “translation” has been described as the ‘process whereby concepts and conceptions from different

social contexts come into contact with each other and trigger a shift in the existing order of interpretation and action in a particular context' (Kjær and Pedersen, 2001: 219; see further Lynggaard 2007, 2006: 65-67). For our purposes, we will understand translation as a process whereby European-level norms and rules come into contact with domestic norms and rules and are interpreted by domestic decision makers. The nature of domestic interpretation depends on the national institutional arrangements in place. In a highly path-dependent institutional context we expect that translation processes may in fact work to reinforce existing institutional arrangements.

Viewing Danish minority policy from the perspective of path dependency redirects our focus towards the period of institution building; in this case, the establishment of interstate arrangements between Denmark and Germany. There are several historical periods which are relevant to understanding the function of interstate relations in this case and how they have influenced the institutionalization of Danish minority policy. Although no mutual or binding agreements were established after the referenda in 1920 or during the interwar period, some of the basic guarantees were developed following redefinition of the border in 1920 (Becker-Christensen, 1984). During the ensuing interwar period, the German minority gained the right to enjoy full equality and freedom in Denmark (Becker-Christensen, 1984: 181), and the right to free language use in schools and churches (*ibid*: 184), including free use of own language in judicial and administrative matters in South Jutland (*ibid*: 225). The same principles were granted to the Danish minority living in South Schleswig. Most of these principles remained in place until 1945, before they were temporary curtailed in 1945 after the end of World War II following the accusation that members of the German minority had co-operated with the invading troops during the occupation of Denmark (Schultz Hansen and Skov Kristensen, 2005: 125). German minority institutions were briefly closed down and property confiscated (*ibid*: 128-136). However, the rights of the German minority were restored after the end of World War II, first through the Copenhagen protocol of 1949 (Kühl, 2005: 44-45) and later through the Bonn-Copenhagen Declarations in 1955, which reintroduced interstate relations into the regulation of national minorities and which is still in place today.

Common to the above developments is the fact that the protection of national minorities had an important impact on broader interstate relations, serving as an important parameter for good-neighbourly relations in Europe. In general, the treatment of national minorities has been decisive to many interstate relations and

foreign policy directions (see Hoch Jovanovic, 2014). Still, implementation of national minority protection through interstate practices does not constitute a formal approach to, or mechanism for, minority rights protection under international law (see Bolzano Recommendations, 2008; FCNM, 1995: Preamble; UN Declaration, 1992). For the purpose of this article, interstate relations in the context of national minority rights are understood as the creation of minority protection mechanisms through bilateral negotiations, pursuant to an interest to establish political or legal agreements which apply between the countries concerned. The countries involved are most commonly states in which national minorities reside (thus, the country of residence), and the kin-states of those minorities. Many national minorities in Europe have a link to a so-called “kin-state”, defined by Palermo as the ‘state whose majority population shares ethnic or cultural characteristics with the minority population of another state’ (2011: 5). In other words, a kin-state is the “mother country” of national minorities, sharing cultural and linguistic bonds.

We will first investigate the institutionalization of norms and rules among the actors involved at the time of institutional establishment in the field of Danish minority policy. The path dependency approach further suggests that a once-chosen path may be deviated from on rare occasions, particularly under severe external pressure for change. This leads us to focus on the pressure for Europeanization, most notably exerted through the creation of European-level minority policy as developed by the EU and the CoE. Finally, the perspective of path dependency on Danish minority policy will be applied to assess how translation processes have led to the selective adoption of European norms, while also working to reinforce the original institutional setup, even after more than two decades of pressure to Europeanize.

The article is based on a qualitative analysis of CoE’s monitoring reports reviewing Denmark’s implementation of the FCNM and the ECRML. The monitoring reports consist of Advisory Committee opinions and Committee of Minister resolutions in relation to implementation of the FCNM, while the ECRML monitoring reports consist of evaluation reports produced by the Committee of Experts and recommendations by the Committee of Ministers. Both monitoring processes have entered a fourth monitoring cycle, which began with Denmark’s submission of a fourth state report in early 2014 for each instrument. In order to analyse the Danish case and the different factors behind resistance and selectiveness to Europeanization, close attention is paid to four state reports submitted by Danish authorities to each

monitoring body between 1999 and 2014. Finally, we also draw on nine qualitative expert interviews conducted between 2011 and 2012 with stakeholders involved in work on the German minority in Denmark and representatives of the German minority. The interviews are relevant in assessing how Europeanization forces are experienced at the level of minority actors, helping to identify both the benefits and limits of Denmark's ratification of FCNM and ECRML and the reasons behind specific developments. The interview data also helps to illustrate the unique position of the German minority in Denmark as a national minority, providing evidence of minority members' own views as to why Denmark prefers existing frameworks over new norms and rules emerging through Europeanization. Besides interviews and official documents, secondary resources were also consulted.

2. The creation of institutions

This section begins by investigating the institutionalization of norms and rules among the actors involved at the time of institutional creation in the field of Danish minority policy. It shows how institutional arrangements guiding Danish minority policy took the form of a "one-minority policy" embedded in a bilateral system of agreements between Denmark and Germany.

2.1 *The institutionalization of interstate relations*

There are several minority policies in Europe which are the offspring of interstate relations, bilateral arrangements or negotiations of specific agreements concluded between states (e.g. Lantschner, 2004: 203-220). Denmark's minority policy dates back to the 1920s. Although the earliest minority regimes in Denmark and Germany were designed on the basis of domestic legislation, voluntary reciprocity has arguably been in place since the 1920s (Kühl, 2005: 39), with the expectation that each country would implement a minority regime regarding the respective national minority. However, it was not until 1955 that the policy was institutionalized through mutually adopted bilateral agreements negotiated, culminating in the Bonn–Copenhagen declarations. Although the bilateral negotiations concerned the protection of the German minority in South Jutland and the Danish minority in South Schleswig specifically, the preceding negotiations established an important principle of good-neighbourly relations. Through bilateral negotiations and under the supervision of the North Atlantic Treaty Organization (NATO), in tandem with West Germany's NATO

membership negotiations and coupled with the broader Cold War atmosphere in Europe, Germany and Denmark laid out the demands of each minority group in unilateral, but parallel, declarations (Witte, 2005: 234).

The resulting Bonn-Copenhagen declarations of 1955 were not bilateral treaties under international law, nor were they legally binding on the two parties. Instead, they were declarations of intent and principle, indicating in similar terms and in both languages how each side intended to treat the German and Danish minorities on their respective territories (Kühl and Weller, 2005: 15). There were no complex legal paragraphs in the declarations, but rather minimalist statements pointing, for example, to equal access to general civil liberties and the principle that members of each minority should not be hindered from writing and speaking their own language (*ibid*). It is on the basis of these declarations that the German minority enjoys its “Bill of Rights” in Denmark, and the two states commit to minority protection in accordance with the so-called “spirit of the declarations” (Kühl, 2005: 31). Given the vague wording within the declarations, their interpretation, sustainability and execution relies on political value and goodwill between Germany and Denmark (Rerup, 1995), thus signalling bilateral reciprocity. No other minority group in Denmark has benefitted from a bilateral agreement through interstate negotiations or has been officially recognized as a “national minority”.

Besides institutionalizing minority policy in Denmark, the bilateral agreement supported improved relations between Denmark and Germany. Following border disputes between 1920 and 1945, demands by each minority group to return to their original “homeland”, the two governments’ reluctance to acknowledge the respective minorities, and the general mistrust of the German minority after 1945 (Harek, 2005), the declarations became essential milestones for restructuring broader interstate relations. Settlement of the so-called “Schleswig-Holstein question” (Klatt, 2005) was made a precondition for West Germany’s NATO membership bid (Witte, 2005: 226). The international dimension was further determined by the interest in reducing possible kin-state interference or intervention within another state for the sake of protecting kin-minorities. Avoiding German intervention was the greatest concern of the international community, particularly Denmark. This fear was closely linked to the earlier Weimar Republic’s handling of German minorities living outside Germany, which had permeated German minority politics, as well as German foreign policy following the First World War (Brubaker, 1996: 117). A revision of the

borders that Germany lost in the First World War settlements was a central tenet of Weimar foreign policy, with special emphasis on those territories inhabited by Germans, which led to the emergence of a policy known as *Deutschtumpolitik* (*ibid*: 127). At the same time, Denmark's concern for the Danish minority in Germany motivated its desire to establish a contractual relationship with Germany. A settlement was therefore considered necessary as a way of retaining a peaceful border region—a historical geopolitical hotspot between the two countries.

2.2 The establishment of the “one-minority policy”

The Bonn-Copenhagen declarations are the key frame of reference for the development of Danish minority policy and constitute the main framework within which the notions of “national minority rights” and “national minority” are interpreted in Denmark. The unique status provided to the German minority stems from specific historical developments involving both Germany and Denmark.

Today, the German minority living in southern Denmark numbers approximately 15,000. It became a minority in Denmark in 1920 through two plebiscites which ended the former duchy of Schleswig, a region of the former Danish conglomerate state (Klatt, 2005: 142). The former duchy encompassed the northern part of Germany, known as South Schleswig, and the southern part of Denmark, known as South Jutland/North Schleswig, in which both Danish and German cultures coexisted side by side (Rerup, 1995: 262-263; Kühl and Weller, 2005: 16-17). The two populations did not always enjoy equal status, especially as the German population of South Jutland was the politically dominant group between 1864 and 1920, when South Jutland was under the control of Prussia and the German Kaiserreich (Becker-Christensen, 1984: 16). For example, German was the official language of higher education, administration and the courts (*ibid*: 25). As a new border was drawn after the two plebiscites of 1920, resulting from Denmark's claim to hold referenda in accordance with Versailles Peace Treaty (Becker-Christensen, 1990: 24), the composition and status of the German minority began to change. Initially a majority in large parts of South Jutland, the German population became a national minority in Denmark, giving rise to a Danish minority policy from this time onwards. Thus, the outcomes of the plebiscites not only fixed a new border between Germany and Denmark, but created two national minorities: a Danish minority in Germany and a German minority in the southern part of Denmark. In the northern

parts of the former duchy, which today is Danish South Jutland and home to the German minority, the outcomes were clearly pro-Denmark: 75% voted for reunification while 25% preferred to remain with Germany. The 25% were largely local pro-Germany majorities concentrated in the cities of Aabenraa, Tønder and Sønderborg (Kühl, 2005: 34-37), which remain the main cities inhabited by the German minority.

Although the immediate post-1920 period leading up to the end of the Second World War saw many demands for border revision from the German minority, inspired by a desire to be reunified with Germany (Christiansen and Teebeken, 2001: 16-17), the border has remained in place. In the aftermath of the Second World War, following invasion and military occupation of Denmark by German forces, the German minority declared full loyalty to Denmark. By admitting guilt in supporting the German troops and widespread enrolment in the German military, the German minority recognized the border in 1945, and abandoned earlier demands for border revision. With the loyalty declaration and acceptance of the border, the rights and guarantees of the German minority were restored through a declaration by the Danish prime minister within the so-called “Copenhagen Protocol” of 1949 (Kühl, 2005: 44-45). A parallel action was taken by Germany in the same year, which acknowledged the rights and guarantees accruing to the Danish minority in Germany through the so-called “Kiel-declaration” (*ibid*).

A final step towards the institutionalization and establishment of the one-minority policy occurred when Denmark raised the issue of Danish representation in South Schleswig. The Danish government demanded secure political representation of the Danish minority in the government of Schleswig Holstein (Kühl, 2005: 48), and tied this demand to Denmark’s ratification of West Germany’s NATO membership (Witte, 2005). It is against this backdrop that intensive interstate negotiations ensued under the supervision of NATO and the allied powers, eventually leading to the adoption of the Bonn-Copenhagen declarations by the respective governments in 1955. The declarations reconfirmed a bill of rights for each national minority, this time more formally, listing, *inter alia*, the right to run private schools, the right to political participation, the right to use one’s own language, the right to run minority associations, guarantees of self-identification, good kin-state relations, and the right to receive subsidies from the kin-state (Lubowitz, 2005: 270; see Bonn-Copenhagen declarations, 1955).

Based on the Bonn-Copenhagen declarations, Danish minority policy is shaped by an institutional setting in which two specific principles are salient, namely the one-minority principle, and a policy reflecting reciprocity or mutual commitments applicable to each state regarding the treatment of their respective kin-minorities. Even if the Bonn-Copenhagen declarations contained few details on minority rights *per se*, the negotiations surrounding the drafting processes have been central in building trust between Germany and Denmark, introducing non-legal declarations but with reciprocal and mutual value. As such, the so-called “politics of trust” have substituted the lack of concrete, legal minority rights within the Bonn-Copenhagen declarations.

In conclusion, the Bonn-Copenhagen declarations had a dual function: first, they impacted directly on the two minorities, paving the way for the introduction of the most central functions for each minority community, including minority schools, kindergartens, autonomous minority associations and cultural facilities (Kühl and Weller, 2005); second, they had an impact on broader interstate relations and the foreign policy traditions of the two countries, reducing fears over border revisions and irredentism that had plagued relations throughout the first half of the 20th century. The two functions were reinforced, affecting domestic execution and interpretation of existing policy, and influencing the way that Denmark embraces and interprets European-level minority policy norms and rules by limiting its readiness to move beyond existing policy conduct.

3. Pressure for Europeanization: the emergence of European-level minority policies

This section focuses on the emergence of European-level minority policy and the resulting pressure towards Europeanization, exerted in particular through the EU and the CoE. Besides the protection of minorities through interstate treaties and bilateral negotiations, a parallel system of monitoring of domestic minority policies has been developed by European organizations, challenging both the execution and outlook of domestic rules and norms. The CoE, the EU and the Organization for Security and Co-operation in Europe (OSCE) have each added to the elaboration of international national minority norms and rules since the early 1990s. While the OSCE is mainly concerned with mitigation of conflicts involving minorities (Shoraka, 2010: 95)—with less focus on Western Europe and minority questions where no conflict is

present—the CoE and the EU have pushed for the development of standard-setting. This article therefore focuses specifically on their efforts in assessing Europeanization.

The CoE is often considered a forerunner in standard-setting on minority rights in Europe (Weller, 2008; Ahmed, 2011). This argument links to CoE's development of two legal instruments which set out norms and rules for the protection of national minorities and regional or minority languages: the European Charter for Regional and Minority Languages of 1992 and the Framework Convention for the Protection of National Minority of 1995. The FCNM, as the first ever legally binding multilateral instrument devoted to minority rights protection in Europe, sets out principles which signatory states must translate into domestic law (Malloy, 2013: 56). The principles range across, but are not limited to, anti-discrimination, education, access to and use of media, language use in private and public spheres, topographical names in minority languages, equality, and so on. The ECRML deals specifically with standard-setting for language policy in relation to minority language use in sectors like education, administration, judiciary, media and cultural affairs.

For states that ratify the two instruments, they agree to, and are bound by, periodic reporting of the measures taken to give effect to the principles set out in the two documents (Phillips, 2004; Oeter, 2004). States do so by producing reports on their activities, which in turn are examined by expert groups established specifically to review implementation of each instrument. In the case of the FCNM, state reports are reviewed by the Advisory Committee, while ECRML compliance is examined by the Committee of Experts. The final authority for each instrument is delegated to the Committee of Ministers, which issues specific resolutions based on monitoring by the two expert bodies and state reports. Those final resolutions constitute recommendations to each state party, specifying aspects of minority policy or legislation that need improvement in order to give effect to each instrument.

The EU committed to minority rights in the early 1990s, following the introduction of political conditions concerning minority rights protection in the 1993 Copenhagen accession criteria. The political condition requires '*respect for and protection of minority rights*' (emphasis added, European Council, 1993) including that accession countries ratify the FCNM and the European Convention on Human Rights (ECHR) in order to qualify for EU membership (Sasse, 2004). Besides using conditionality as a tool of Europeanization, which is mainly limited to EU accession

countries, racial and ethnic anti-discrimination measures are addressed in EU treaties, support is provided for participation in regional affairs and for the institutionalization of cross-border activities, and initiatives aimed at preserving cultural and linguistic diversity are promoted. All three perspectives are relevant for national minority groups in EU member states (see Hoch Jovanovic, 2013).

In 1997, Denmark ratified the FCNM, indicating that the convention applied specifically to the German national minority living inside the area of South Jutland and to no other minority group in Denmark (FCNM, DK, State Report, 1999). In 2000, Denmark also ratified the ECRML, applying the same interpretation as with the FCNM, thereby committing specifically to the protection of the German language as a national minority language in Denmark as spoken in South Jutland (ECRML, DK, State Report, 2002).

Recent European-level minority policy norms and rules go further than the Bonn-Copenhagen declarations, having more detailed regulations in many areas, notably:

- CoE-promoted norms and rules recommend more detailed adjustments in domestic policy and legislation (Herrard, 2008);
- States are invited to consider the concept of a national minority more broadly (see Heintze, 2005; Hoch Jovanovic, 2014);
- Choices made in relation to the CoE instruments should be justified transparently (see Hofmann, 2005);
- States are encouraged to become more proactive regarding the use of minority languages in education, media and public life (FCNM, Articles 12-14);
- States are encouraged to provide legal protection and financial assistance to minority communities (ECRML, Article 11; FCNM, Explanatory Report);
- Guarantees of a right to participation of national minorities in cultural, social and economic life, especially in relation to affairs that affect them (FCNM, Article 15).
- More details on educational rights of minorities (FCNM, Article 12-14);
- Requirements of a more active promotion of minority language use in the public sphere and media in the territory where minority languages are spoken (ECRML, Article 10).

- States are encouraged to accord the minority languages the status of local or national official language (Kühl and Weller, 2005: 332).

4. The reaffirmation of interstate relations and the “one-minority policy” through translation

The focus of this section is on how translation processes have led to selective adoption of European norms, but also worked to reinforce the original institutional setup, even after more than two decades of pressure towards Europeanization. While Danish minority policy has selectively adapted to European-level minority norms and rules, interpretations of the same by Danish decision makers has reproduced the Danish one-minority policy and reinforced existing interstate relations between Denmark and Germany.

4.1 *Careful adoption of European norms and rules*

Denmark’s interpretation of some of the above differences helps us understand its reluctance to Europeanize. Incorporating European-level norms and rules in Denmark meant the emergence of more concrete measures on minority rights (Jessen, interview). As noted, the detailed principles of the ECRML placed the language in a ‘new light’ as rights were confirmed at a new level (Johannsen, interview), while ‘demands for language use in public life and in the media helped to increase the visibility of the German culture in Denmark’ (Toft, interview). This is especially relevant as the original interstate agreements not only lacked legal formality but also because, as relations between Germany and Denmark improved, the Danish authorities gradually accorded less attention to the need to promote of the German language and culture in South Jutland. A common assumption is that members of the German minority are all bilingual and well integrated, and it is thus not necessary to support their linguistic preservation and visibility (Hansen and Matlok, 2004). In the state reports submitted to the ECRML, Danish authorities repeatedly argue that a proactive minority language policy has not been prioritized in Denmark because most members of the [German] minority community are fluent in Danish (ECRML, DK, State Report, 2003). In reports on the FCNM’s implementation, the Danish authorities mirror a similar attitude, claiming that because ‘Danish is spoken and understood by the overwhelming majority of members of the German minority’ (FCNM, DK, State

Report, 2004: 6), supportive measures and translations into German of official documents have not been necessary. The Advisory Committee disagrees with Denmark on this point, being of the opinion that ‘the use of a minority language in public life, especially in dealings with the administrative authorities, is a key means of enabling persons belonging to a national minority to preserve their linguistic identity and of making those belonging to the majority population more aware of the identity of the minority’ (FCNM, DK, AC Opinion, 2011: 18). The second monitoring cycle also raised issues regarding measures taken to increase awareness and understanding of German as a regional and minority language in Denmark (CoM, DK, Recommendation, 2007). It is precisely due to such guarantees and principles that minority actors welcome instruments such as the ECRML and FCNM. As noted by the chairman of the main German association in Denmark, ‘one of our main ambitions is to be integrated, which we are nearly fully, but we do not want to be assimilated. That means that we continue to practise our culture and to have our schools and, for us as a minority, the main marker is the language’ (Jürgensen, interview). From this perspective, the more detailed schemes that emerged from the CoE are understood as offering the necessary means to strike a balance between integration and assimilation (Jessen, interview; Toft, interview).

A second issue, which arises from the FCNM, is the guarantee of political representation of the German minority. This was highlighted in relation to local government reforms in Denmark in 2007, and meant that the then 23 municipalities of South Jutland were to be merged into one large region, namely Region South Denmark. From a minority perspective, the reduction of municipalities posed a threat to their level of political representation in regional and municipal affairs, particularly through the loss of votes and subsequent influence (Hansen, interview). Therefore the German minority drew attention to obligations under Article 15 of the FCNM (Hansen and Matlok, 2004), which reads: ‘[T]he Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them’ (FCNM, Article 15). Members of the German minority used the article as a basis from which to negotiate a special arrangement with the Danish government in order to assure political representation at the municipal level. In a comment on implementation of the FCNM by the German minority, attention was drawn to the obligation of Denmark to treat the German minority according to the spirit of the

FCNM (Hansen and Matlok, 2004). Several of the actors interviewed believed that reference to commitments flowing from the FCNM was an important parameter in discussions and negotiations with the Danish government (Johanssen, interview). The “threat” of involving the CoE in case of violation of the right to representation of the German minority was described having had an ‘indirect impact on the Danish government when it was looking for a solution [to the issue of representation]’ (Hansen, interview). Accordingly, the Advisory Committee and the Committee of Experts issued several statements in support of the German minority’s concerns and the issue was raised in the monitoring reports. For instance, in its second resolution on the implementation of the FCNM in Denmark, the Committee of Ministers argued that Denmark needed to ensure ‘that the implementation of the administrative reform does not have any adverse impact on the effective participation of the German minority at the municipal levels or on the system of the German minority schools and day care facilities’ (CoM, Resolution, DK, 2005). Similarly, in its second Opinion on Denmark in 2005, the Advisory Committee treated the administrative reforms as an outstanding issue under its evaluation of Article 15 of the FCNM, arguing that appropriate solutions needed to be found in order to ensure effective participation (FCNM, DK, AC Opinion, 2005: 29).

In reference to the EU, minority members have highlighted that new platforms have been enabled to develop and institutionalize cross-border activities, corresponding to a right confirmed in Article 17 of the FCNM, namely the right to develop and sustain contacts with the kin-state (see Klatt, 2005). Through EU regional policy frameworks, members of the German minority also acquired new political roles in regional affairs, which provided the minority associations with an opportunity to frame minority claims in a new fashion (see Hoch Jovanovic, 2014). As indicated in an interview: ‘[A]s we started to draft a new regional strategy according to European principles, the use of the German minority was also a novelty in that strategy, we had never appeared as a minority in such strategies earlier’ (Jürgensen, interview). Thus, while the EU has provided new platforms for the development of regional activity, and has supported the definition of roles and identities among the minority, the CoE exercises pressure on state-level policy conduct.

4.2 The reproduction of the Danish one-minority policy through interpretation

Reproduction through interpretation is assessed below through an analysis of further state reports submitted by Denmark to the CoE assessing implementation of the FCNM and the ECRML. The monitoring process is important as it requires states to consider the notion of national minority more broadly, but also to justify choices openly. By focusing on the justifications provided by Denmark as interpretative acts, selectiveness and narrowness is traced back to its reluctance to veer away from existing arrangements.

Existing arrangements under the one-minority approach, which are guided by politics of trust between Germany and Denmark, continue to influence choices and interpretations of European-level norms and rules in Denmark, culminating in a careful manoeuvre of selective rule and norm adaptation. Given that neither the FCNM nor the ECRML define the concepts of “national minority” or “national minority language”, it is up to the state parties to determine the content of each notion (FCNM Explanatory Report: 13; ECRML Explanatory Report). Denmark understands this as a national duty to determine the personal scope of the FCNM through best practice (FCNM, DK, State Comment, 2005: 2), as in relation to the ECRML. Although the FCNM does not invite members to make any declarations upon ratification, Denmark usurped the convention procedure by making a unilateral declaration on its application (see Heintze, 2005). In ratifying the FCNM, Denmark interpreted the term “national minority” by referring to ‘minorities created by the upheavals of European history, territorial limitations and traditional geographical area’ (FCNM, DK, State Report, 1999: 11). It further highlighted that ‘Denmark’s declaration reflects the fact that the border between the Kingdom of Denmark and the Federal Republic of Germany actually does not delimit the areas inhabited by the two peoples’ (FCNM, DK, State Comment, 2001: 3). By interpreting the term “national minority” with reference to notions such as “territorial limitation”, “inhabited traditionally”, and “minorities created by the upheavals of European history”, Denmark declared its exclusive application to the German minority, thereby affecting the impact of Europeanization on domestic minority policy. Upon ratification of the ECRML in 2000, Denmark reinforced the same principle of interpretation for the FCNM, committing specifically to protection of the German language as a national minority language in Denmark (ECRML, DK, State Report, 2002).

The decision to only apply the ECRML and the FCNM to the German minority and the German language in Denmark became the central point of criticism among the CoE monitoring bodies. CoE's expert bodies repeatedly reiterated that the 'personal scope of application of the FCNM merits further consideration by the Government of Denmark with those concerned' or that the 'restrictive personal scope continues to be of concern' (CoM, DK, Resolution, 2001; 2005). Each expert body has levelled criticism in their monitoring by highlighting, for instance, that Denmark should reconsider its application and provide solid reasons for its narrow interpretation and application, particularly as it excludes other groups with longstanding ties in Denmark from enjoying protection under the FCNM (Heintze, 2005: 116). Denmark has therefore been asked to provide better grounds for excluding groups such as Roma, Greenlanders and the Faeroese and their languages from the scope of implementation of the FCNM and the ECRML. The Advisory Committee often points to developments in other Europe countries which have recognized the Roma as a national minority, not least in the rest of Scandinavia, and underlined that persons belonging to the Roma community in Denmark have indicated that they would like protection under the FCNM (FCNM; DK, AC Opinion, 2005: 12). As Weller points out, Denmark's reluctance to recognize the Roma and Sinti as a national minority has triggered a 'dispute involving the Council of Europe FCNM Advisory Committee and Denmark' (2008: 1). The Advisory Committee has further urged Denmark to extend its application to groups such as the Faeroese and Greenlanders, who also have a historical presence in Denmark (FCNM, DK, AC Opinion, 1999), and live in contexts which makes them eligible to qualify for national minority protection under the FCNM. The exclusion of the above groups from the status of "national minority" in Denmark has also been described as incompatible with the overarching purpose of the FCNM, and Denmark has been urged to re-examine its entire interpretation and application of the instrument (FCNM, DK, AC Opinion, 1999).

Similarly, the Committee of Experts monitoring the ECRML has reminded Denmark of its obligations towards regional and minority languages spoken in Denmark other than German, such as Romani and the languages of Greenland and the Faroe Islands (ECRML, DK, Committee Evaluation, 2003). Criticism has also flowed regularly from minority experts across Europe. For example, Denmark was criticized for interpreting the FCNM too narrowly (Eide, 2008: 9), which was described as a

‘strategic undertaking by which Denmark attempts to limit the potential beneficiaries of minority rights instruments’ (Phillips, 2004: 114). By restricting the application to the German minority, Denmark was criticized causing the instrument to have only a limited scope of application (Weller, 2008: 1), especially since there are other minority groups with a historical presence in Denmark that qualify for minority protection under the FCNM. The earlier Human Rights Commissioner for the Baltic Sea region, Ole Espersen, also expressed disappointment over Denmark’s minority politics, arguing that Denmark ‘sets a bad example for other states who might now also become inspired to exclude certain groups from qualifying for minority protection’ (Politiken, 2001). Amnesty International urged Denmark to make the Greenlanders a national minority under the FCNM, noting that Denmark cannot ‘neglect offering Greenlanders the same rights as to the German minority’ (Greenlandic Broadcasting Corporation, 2011a). Amnesty’s criticism emerged particularly in relation to the lack of certain minority rights for those Greenlanders and Faroese living in mainland Denmark, especially in relation to interpretation services and cultural support which they do not receive, in contrast to members of the German minority (Greenlandic Broadcasting Corporation, 2011b; 2011c). Politicians from Greenland and the Faroe Islands are also increasingly interested in addressing the issue of granting minority rights to those originally from the islands and that now live elsewhere in Denmark, and the fact that they should have the same rights as the German minority (Greenlandic Broadcasting Corporation, 2011b).

In response to the above criticism, Danish comments to the CoE insist on the following understanding of the concept national minority group: ‘the fact that the Convention is aimed at minorities created by the upheavals of European history must be taken into account when determining the notion of national minority in relation to the Framework Convention’ (FCNM, DK, State Comment, 2000: 2). It is also reiterated that ‘several of the provisions in the Convention contain territorial limitations, dealing with areas which are inhabited by persons belonging to national minorities, traditionally or in substantial numbers’ (*ibid*: 2-3). Denmark repeatedly argued that neither the FCNM, nor any other international instrument for that matter, has defined the term “national minority”, in effect leaving it up to the states to determine the content of the notion through practice (Heintze, 2005: 116-117). Regarding the remarks raised over other minorities in Denmark, such as the Roma or the populations of the Faroe Islands and Greenland, the FCNM is not understood to

apply to matters that ‘result from home rule arrangements or to groups that are not regarded as minorities in the Danish Realm’ (FCNM, DK, State Comment, 2000: 3). In all four state reports Denmark underlines that ‘not all ethnic, cultural, linguistic or religious differences are necessarily tantamount to the existence of a national minority’. The Danish government thus holds the view that immigrants and refugees cannot be considered to be covered by the notion of “national minority” (*ibid*: 3). To date, requests to consider whether Greenlanders and Faroese living in Denmark (and not on Greenland or the Faroe Islands) can be considered national minorities under the FCNM have not been addressed by Danish authorities.

Hence European-level minority policy norms and rules have not made any great marks on the Danish one-minority policy. Instead, Denmark makes a clear distinction between the formation and origin of different minority groups. The state reports refer to the Roma as ‘newly formed groups, with no historic, long or coherent ties with Denmark, but are either immigrants or refugees’ (FCNM, DK, State Comment, 2001: 8). Regarding the people of Greenland and the Faroe Islands, reports describe their situation as subject to other specific bills and home rule arrangements, which credit them with extensive self-rule (*ibid*), without touching upon the situation of those living in mainland Denmark. Gaining the status of a national minority is thus interpreted in light of historical ties, clear territorial links to Denmark and type of agreements credited to each group. The same criteria also serve to justify the exclusion of groups other than the German minority. The first state report submitted by Denmark to the ECRML contended that ‘speakers of the Romani language only arrived in Denmark in the late 1960s [...] and that Romani have thus no *historical* or *long-term* affiliation to Denmark’ (ECRML, DK, State Report, 2002: 5, emphasis added). Regarding the Faroe Islands and Greenland, Denmark again referred to the two Home Rule Acts of 1948 and 1978 respectively, arguing that ‘each island enjoys considerable autonomy in internal affairs, including specific language policies, applying to the language speakers of both islands’ (*ibid*: 4).

Denmark has not taken on board the above recommendations and criticism, but has instead stuck to its chosen path, interpreting the term “national minority” along existing parameters even when other countries have chosen a broader scope of recognition. As seen above, many monitoring reports by CoE and its expert bodies have repeatedly highlighted that the specific scope of application of the FCNM in

Denmark, limited to the German minority in South Jutland, has not been satisfactorily addressed by Danish authorities.

4.3 The reinforcement of interstate relations through European commitments

The criteria by which groups other than the German minority are excluded from qualifying for national minority protection show the continued effectiveness of interstate history, which has provided Danish minority policy with its main contours. Two essential components of that history, which continue to shape Denmark's minority policy, are bilateral agreements and the idea of reciprocity as a shared principle. Denmark's approach to national minority rights in the light of Europeanization lies in a preference for interstate relations, namely the wish for reciprocity with Germany, rather than the understanding of fundamental rights promoted by the FCNM and ECRML (and the EU). Although the idea of reciprocity was established at a time when the geopolitical context between Denmark and Germany differed from interstate relations today, it still informs policy choices and interpretations in Denmark. The principles by which the rights of the Danish minority are upheld thus produce contradictory effects. On the one hand, they are well suited to the context of the German minority and relations with Germany, but on the other hand the unique historical experience based on bilateralism and reciprocity has restrictive effects on the recognition of other minority groups that fall outside the framework of that particular experience. The selective Europeanization process and the translation of European-level norms and rules on minority rights are thus affected by Denmark's preference of existing principles. Both interpretations and policy choices are informed by expectations of upholding mutual commitments between Germany and Denmark, and not necessarily because new levels of protection, preservation or promotion are considered legitimate.

Although both CoE instruments were implemented by Germany and Denmark at a similar pace (the FCNM was signed in 1995, ratified in 1997 and the document entered into force in 1998 in both countries), Germany has extended its scope of application beyond the boundaries of the Bonn-Copenhagen declarations. Being more ethnically heterogeneous than Denmark, Germany took further historical experiences into consideration when ratifying the FCNM and the ECRML. Besides the Danish minority, Germany also recognizes the Sorbian people, the Frisians, and the Roma and Sinti (see FCNM, Germany, State Report, 2000). Thus, although European-level

norms and rules have been filtered through the notion of reciprocity, and the Bonn-Copenhagen declarations have been considered by each country when ratifying the European minority rights instruments, it is only in Denmark that the unique interstate history serves as the central blueprint for Europeanization of domestic minority policy.

From the perspective of minority actors, Europeanization has not replaced the main content of the Bonn-Copenhagen declarations nor the role of the most significant actors in Danish minority policy conduct. The most significant fields of minority life, such as schools or kindergartens, are upheld by the original bilateral agreements (C. Diedrichsen; Grella, interviews), and are still rooted in the desire to ‘maintain good neighbourly relations’ (H. Hansen, interview). The most important actors are still Denmark and Germany, including the government of Schleswig-Holstein (Hallmann, interview), which has not changed since the 1950s. Minority actors also attach significance to the history of the region and the gradual improvement in bilateral relations, which is summarized by a minority activist as follows: ‘We had a phase of working against each other, then we had a phase of working next to each other; then we had a phase of working with each other and then, through the respect for the uniqueness of each other, we have a phase of working for each other’ (Matlok, interview). Even if European-level norms and rules add certain guarantees related to political representation and language promotion, Danish minority policy reacts more strongly to what occurs in the domain of interstate relations and how rights are conferred upon the Danish minority in Germany, rather than at the European level.

Conclusion: careful, selective and “cosmetic” Europeanization

Assessing the Europeanization of Danish minority policy not only illustrates the difficulties affecting domestic minority policies through European-level norms and rules, but also the continued institutional impact of early negotiated interstate relations which shape the outlook and execution of many domestic minority regimes. Danish minority policy options continue to be framed by a historically created context. The case at hand shows the continued importance attached to interstate arrangements between Denmark and Germany and the Danish one-minority policy, dating as far back as the mid-1950s. This is consistent with the perspective of institutional path dependency, which emphasizes the continued effect of institutionalized norms and

rules on which policy actors and issues are included or excluded, and which types of decision-making procedures are considered appropriate or inappropriate in the production of policies. At the same time, we have also seen that Danish minority policy is not entirely untouched by more recently developed European-level norms and rules. This is explained through the process of translating international norms and rules. Different Danish governments and minority authorities have selectively adopted European norms and rules, particularly on matters relating to minority language, while resisting others, particularly by proactively promoting the Danish interpretation of what constitutes a national minority.

This article has shown that, while historical decisions continue to affect domestic policy conduct, they also influence national minority policies in the context of Europeanization. Future studies could be extended to include cases without kin-states in order to further test the influence of interstate relations on domestic policy development. Introducing the role of a kin-state into Europeanization research shows the continued role played by “external” intervening variables which could also be applied in assessing Europeanization in other policy areas such as migration, citizenship or asylum policies. Finally, the case at hand has shown that there is a need to consider Europeanization research beyond the narrow focus of the domestic impact of the EU, to include broader European norms and conventions.

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