

MEMO

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SIGNIFICANT INCREASE IN ACTIVATIONS OF EU DEFENCE OPT-OUT

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RESUME Denmark's EU defence opt-out increasingly excludes Denmark from participating in the EU's defence and security cooperation. This is seen in a tally that Think Tank EUROPA conducted of all legal acts that have activated the opt-out since it was implemented in 1993. The defence opt-out has been activated a total of 189 times across 23 operations/missions and five integration-related initiatives. While the opt-out since its first activation in 1996 and ten years onward to 2005 was activated 34 times, it has been activated 125 times in the last 10 years. In other words, two-thirds of all activations in the 26 years since the opt-out was put into force has happened during the last 10 years. In 2014, the opt-out was activated 23 times, which is a record for the period.

Denmark participates in the EU's Common Security and Defence Policy (CSDP) but is cut off from a significant share of the cooperation as a result of the defence opt-out. The share of defence opt-out affected legal acts in the EU's Common Security and Defence Policy is rising. While the share during the 00s was around 10-15 pct., it has in during the later years been between 20-25 pct.

The EU's defence cooperation is intergovernmental, and the member states can at any point independently decide not to participate in a given EU mission or choose to veto new decisions. Denmark is the only EU country that has cut itself off from the opportunity to opt into participation – even if the missions or cooperation would be in the clear interest of Denmark. Several circumstances suggest that the trend will continue where Denmark is sidelined more and more in the EU's defence and security field.

MAIN CONCLUSIONS:

- Denmark has since 1993 activated the EU defence opt-out 189 times.
- 125 of the 189 activations took place during the last 10 years. This is equal to two-thirds of all activations of the defence opt-out.
- The tendency year-to-year is clear: The defence opt-out has been activated more and more. In 2014, the opt-out was activated 23 times, which is a record for the entire period.
- Denmark participates in the EU's Common Security and Defence Policy, but the share of defence opt-out affected legal acts under this is increasing. During 2014-2017, this was the case for between a fifth and a third of all legal acts in the field.
- The defence opt-out has been activated in connection with 23 operations/missions and five integration-related initiatives. There is a big difference between how many legal acts are related to individual operations/missions and initiatives.
- The prospective European Commission led by the former Germany defence minister Ursula von der Leyen has announced a massive focus on the defence policy.
- The EU's defence cooperation is expected to be integrated and strengthened more in the coming years due to strong interests in several member states.
- It is therefore likely that the trend will continue. Denmark will to a greater extent be excluded from participating in the EU's defence and security cooperation.
- Denmark is the only EU country that is cut off from the opportunity to opt into new defence policies and military missions in the EU – even if the cooperation or missions would be in the clear interest of Denmark.
- Denmark's automatic exclusion from the EU's enhanced defence cooperation, PESCO, in 2017 marked the first time in 14 years that the opt-out led to new consequences that were integration-related.

The Common Security and Defence Policy (CSDP) became a part of the EU with the Maastricht Treaty in 1992. After the Danish electorate voted against the treaty at the referendum in June 1992, Denmark agreed to opt-out on defence among other areas. As established by the Edinburgh Agreement of 1993, it reads in a protocol to the Treaty of the European Union that Denmark does not participate in “the elaboration and the implementation of decisions and actions of the Union which have defence implications”.¹ Denmark does participate in the EU’s Common Defence and Security Policy but remains outside the EU’s military missions and operations as well as the cooperation on the development and acquisition of military capacities in the EU.

Denmark has since the implementation of the defence opt-out in November 1993 up to and including September 2019 activated the opt-out 189 times. The first activation occurred in 1996 due to an evacuation of EU citizens. The latest activation took place on 25 September 2019 in connection to Operation Atalanta in Somalia. Last year, in 2018, the defence opt-out was activated nine times. This number is expected to grow this year, as there have already been nine activations in the year’s first nine months.

The frequency of activations of the opt-out has since 1996 fluctuated year to year, but the trend is clear: The Danish EU defence opt-out excludes Denmark to an increasingly large extent from participating in EU missions and cooperation under the Common Security and Defence Policy.

Background

This memo scrutinises the number of times that Denmark’s EU defence opt-out has been activated since 1993. On the basis of a tally of basic legal acts in the database of EUR-Lex, it is noted when and in relation to what matter each activation occurred as well as the absolute and proportional extent of legal acts in the field.

There are several challenges connected to tallies of number of activations in EUR-Lex. This is, for example, due to the opt-out sometimes being mentioned in recommendation, which are not legal acts; that a single military operation typically stretches across multiple legal acts from its conception to questions regarding the appointment of an operation chief, extensions, etc., and that there are often several amending legal acts to one original basic legal act.

This tally is based on basic legal acts. It therefore does not include recommendations or amending legal acts. All basic legal acts for a mission/operation are included, considering they can provide a picture of the extent of such an effort. The detailed method of the tally of legal acts are described at the end of the memo.

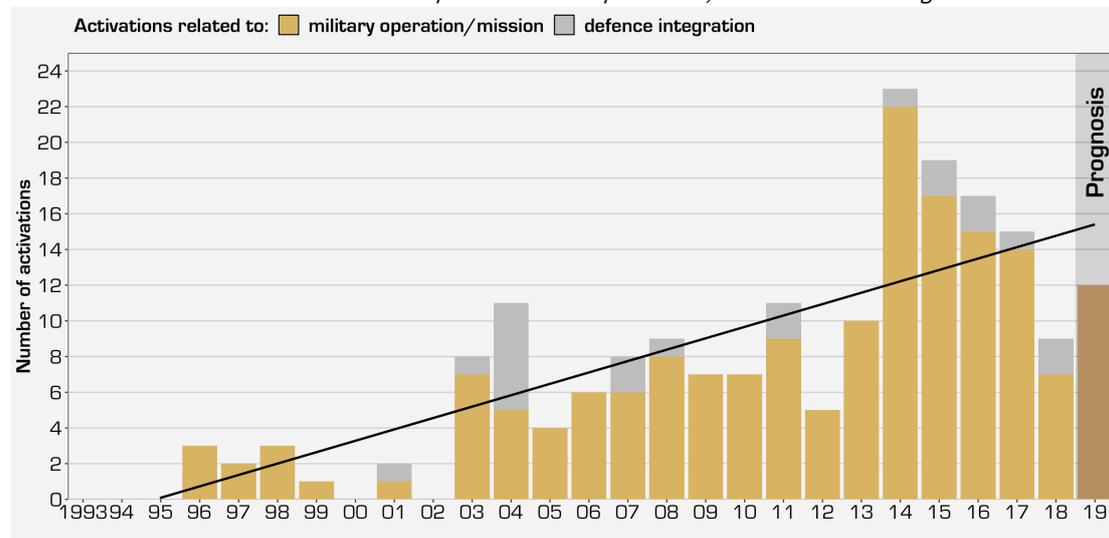
While there is thus a difference in how significant each activation is for Denmark, the most important aspect of this tally is its documentation of the defence opt-out’s extent and development over time. The development unambiguously shows a trend that the defence opt-out excludes Denmark from an increasingly large share of the EU’s Common Security and Defence Policy.

¹ https://eur-lex.europa.eu/eli/treaty/teu_2012/pro_22/oj

Figure 1 shows the historical development of activations since the opt-out was put into force in 1993.

Figure 1. The defence opt-out is activated more and more

Activations of Denmark's EU defence opt-out across operations/missions and integration



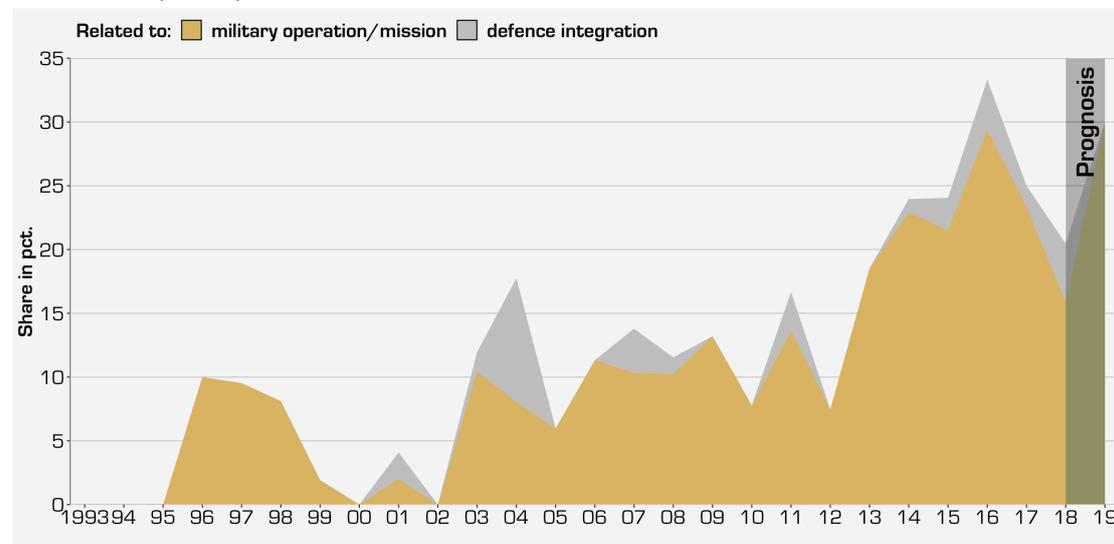
Note: The prognosis for 2019 is based on this year's level up to and including September. **Source:** Think Tank EUROPA based on basic legal acts from EUR-Lex.

Besides the growing trend in the number of activations of Denmark's EU defence opt-out, there is also ongoing development in opt-out affected legal acts as a share of total legal acts under the EU's Common Security and Defence Policy (CSDP), of which Denmark is a part. The trend shows that the defence cooperation, against which Denmark has an opt-out, constitutes an increasingly great share of the EU's CSDP. From 1993 up to and including September 2019, there were 1,400 basic legal acts under the CSDP. Denmark participated in 1,211 of those legal acts.

Denmark has been excluded from participating in around 14 pct. of the legal acts under the CSDP since 1993. And that share is steadily growing, as is evident in figure 2. The trend is very clear. From 2014-2017, the defence opt-out affected between a fifth and a third of all basic legal acts under the CSDP. The EU's defence cooperation is intergovernmental, and the member states can single-handedly decide not to participate in an EU mission/operation or a project under the enhanced defence cooperation PESCO. However, the EU defence opt-out prevents Denmark from the ability to choose to participate wherever and whenever in its interest. Denmark is the only EU member state that has inhibited itself from being able to opt into participation.

Figure 2. Opt-out affected legal acts make up a growing share

Share of the EU's Common Security and Defence Policy that Denmark is excluded from because of the defence opt-out, pct.



Note: The proportional extent is measured by the share of defence opt-out affected basic legal acts under the CSDP. The prognosis for 2019 is based on this year's level up to and including September.

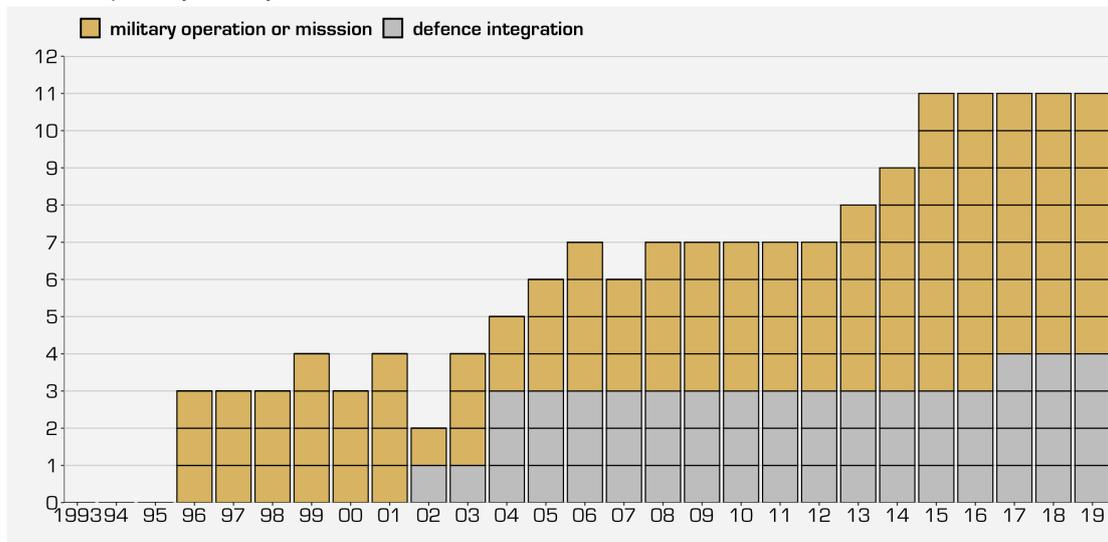
Source: Think Tank EUROPA based on basic legal acts from EUR-Lex.

Another way of illustrating the growing consequences of Denmark's EU defence opt-out is by showing the yearly tally of individual EU initiatives that Denmark is cut off from, where a single mission or a single integration-related initiative counts for a single activation – regardless of the number of supporting legal acts. According to the EUR-Lex database, there are 23 operations/missions and five integration-related initiatives on which the defence opt-out has applied. These policies are significantly different in their extent measured by affected legal acts. For instance, while the EUFOR Concordia mission in the Former Yugoslav Republic of Macedonia (FYROM) entailed four activations, the EU NAVFOR mission in Somalia involved 43 activations. See table 2 in the method section in the end.

In figure 3, each square represents a military mission/operation or an integration-related initiative in which the defence opt-out excludes Denmark from participating. A square is repeated for every year that the mission/operation or initiative is active and ongoing. For example, from 2004 onwards, one of the four grey squares represents the European Defence Agency (EDA), since the defence opt-out has precluded Denmark from obtaining membership of the EDA. As the integration-related initiatives are enduring, Denmark's automatic exclusion from PESCO in 2017 marked the first time since 2004 that the defence opt-out came to be integration-related.

Figure 3. Denmark is excluded more often

Ongoing operations/missions and integration-related initiatives that are affected by Denmark's EU defence opt-out year to year.



Note: Every square in this figure represents either an opt-out affected ongoing operation/mission or an opt-out affected integration-related initiative, e.g. PESCO or the EDA. Operations/missions and integration-related initiatives repeat every year they are ongoing. **Source:** Think Tank EUROPA based on basic legal acts from EUR-Lex.

Individual PESCO projects are not included in figure 3. Instead, the figure represents PESCO by a single grey square. However, in 2019, there were 34 ongoing PESCO projects, such as the European Medical Command, Military Mobility and the EUFOR Crisis Response Operation Core.² Denmark cannot participate in any of these 34 projects.

More consequences on new areas

The EU defence opt-out practically covers two affairs, the military missions and operations on the one hand, and the defence integration on the other. As is evident from the figures, the majority of Denmark historical opt-out activations has related to military missions. This was the case at the beginning of the 00s when NATO's operations in Macedonia and Bosnia and Herzegovina were handed over to the EU and thereby activated Denmark's defence opt-out. As a result of this, Danish soldiers had to return to Denmark.

² EEAS, Permanent Structured Cooperation (PESCO) factsheet, https://eeas.europa.eu/headquarters/headquarters-Homepage/34226/permanent-structured-cooperation-pesco-factsheet_en.

Denmark's defence opt-out is still mostly activated by military missions. For example, Denmark was last year precluded from participating in six ongoing missions. These included missions that were in Denmark's clear strategic and humanitarian interest to participate in, such as Operation Atalanta, an anti-pirate EU effort since 2008 off the coast of Somalia, Operation Althea, whose purpose since 2004 has been to bring peace and security to Bosnia and Herzegovina, and Operation Sophia, an effort against routes used by migrant smugglers in the Mediterranean Sea since 2015.

One of the first examples of the defence opt-outs integration-related consequences came in 2004 with the founding of the European Defence Agency (EDA). In the mid-2000s, the EU Satellite Centre, which incorporates satellite data into the EU's security decision making, was founded along with Athena, a mechanism that helps coordinate the common expenses of EU missions. But the most important integration-related consequence of Denmark's defence opt-out so far is presumably PESCO, the EU's Permanent Structured Cooperation on defence, which was introduced in 2017. With PESCO, the EDA's role grows alongside the possibility of a more consistent change in the way defence cooperation is organised in the EU. Denmark is the only EU member state, besides the United Kingdom and Malta, that is not a member of PESCO. The United Kingdom and Malta, however, continue to have the ability, contrary to Denmark, to opt into PESCO. The defence opt-out precludes Denmark this ability of self-determination.

PESCO and the development of the EU's Common Security and Defence Policy are among other things driven by recent years' changes to the global threat landscape. Cyberwarfare, migrant smuggling, terrorism, instability in the EU's immediate vicinity and uncontrolled migration are now bigger threats than they were years ago. Besides, there is a growing uncertainty from the EU's otherwise close ally of the United States as well as tense relations with Russia. This has led to a desire between EU member states to improve defence coordination and the capacity to maintain their own security.

The prospective European Commission lead by the former German defence minister Ursula von der Leyen has announced a massive focus on defence cooperation. Von der Leyen writes in her *Political Guidelines*: "We need further bold steps in the next five years towards a genuine European Defence Union".³ That will probably include the establishment of a Directorate-General for defence, a 22-fold increase

³ A Union that Strives for more, My Agenda for Europe, Ursula von der Leyen, https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf.

in funds to the area in the EU's coming seven-year framework budget and further integration of civil and military elements in what has been called a Security Union.

Together with deeper EU integration in defence, there is the prospect that it will become increasingly difficult to decouple the pure military initiatives, which activate the defence opt-out, from missions that have both a civilian and military purpose. This will further isolate Denmark, as it is excluded from participating in an even greater share of the EU's efforts. Overall, it seems that Denmark in the future will remain outside an increasingly significant share of the EU's Common Security and Defence Policy.

Method

Think Tank EUROPA has based on searches in the database EUR-Lex measured that the EU defence opt-out has been activated 189 times since 1993. The think tank's tally spans a period from 1 November 1993 up to and including 4 October 2019. The tally rests on the number of opt-out affected basic legal acts and hence does not include amending legal acts or recommendations. The tally includes all activations, even if they often refer to the same operations, missions and integration-related initiatives, which provides a picture of the development and extent of Denmark's EU defence opt-out.

Activations of the defence opt-out by basic legal acts have been identified by narrowing down the results to legal acts that either mention Denmark or cite the opt-out or other related opt-out affected institutions, such as PESCO or the EDA. After narrowing down, each legal act was checked individually and assigned a category (military operation/mission or defence integration). All results have been cross-referenced with the tally by the Danish Parliament's EU Information Centre and the Ministry of Defence.⁴ The tally by the EU Information Centre helped Think Tank EUROPA identify seven activations that were otherwise not noted in the EUR-Lex database.

Think Tank EUROPA's tally includes both decisions by the Council of the European Union and by the Political and Security Committee (PSC) because both of these bodies hold relevant authority over the EU's defence cooperation.⁵

See table 1 on the next page.

⁴ Hvor mange EU-initiativer er omfattet af forsvarsforbeholdet?, EU Information Centre, <https://www.eu.dk/da/spoergsmaal-og-svar-folder/hvor-ofte-har-danmark-aktiveret-forsvarsforbeholdet>.

⁵ The Political and Security Committee (PSC), The Council of the EU, <https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/political-security-committee/>.

Table 1: Activations per year (point used as the decimal separator)

Year	Category	Activations	Total CSDP basic legal acts	Total activation share (pct.)
1993		0	6	0
1994		0	19	0
1995		0	21	0
1996	military operation/mission	3	30	10
1997	military operation/mission	2	21	9.5
1998	military operation/mission	3	37	8.1
1999	military operation/mission	1	52	1.9
2000		0	40	0
2001	integration	1	49	4.1
	military operation/mission	1		
2002		0	49	0
2003	integration	1	67	11.9
	military operation/mission	7		
2004	integration	6	62	17.7
	military operation/mission	5		
2005	military operation/mission	4	67	6
2006	military operation/mission	6	53	11.3
2007	integration	2	58	13.8
	military operation/mission	6		
2008	integration	1	78	11.5
	military operation/mission	8		
2009	military operation/mission	7	53	13.2
2010	military operation/mission	7	90	7.8
2011	integration	2	66	16.7
	military operation/mission	9		
2012	military operation/mission	5	67	7.5
2013	military operation/mission	10	54	18.5
2014	integration	1	96	24
	military operation/mission	22		
2015	integration	2	79	24
	military operation/mission	17		
2016	integration	2	51	33.3
	military operation/mission	15		
2017	integration	1	60	25
	military operation/mission	14		
2018	integration	2	44	20.5
	military operation/mission	7		
2019	military operation/mission	9*	31*	29*

Note: *pr. 4 October. **Source:** Think Tank EUROPA based on basic legal acts from EUR-Lex.

Table 2: Activations per initiative

Military operation/mission	Number of basic legal acts/activations	Area	First activation
Evacuation of EU citizens	1		1996
Anti-personnel landmines	2		1996
Examination of conflict around the Great Lakes Region	1	Africa	1996
Conflict prevention in Africa	2	Africa	1997
Use of satellite centre for monitoring of the situation in Kosovo	1	Kosovo	1998
MAPE, re-establishment of a viable police force	2	Albania	1998
WEUDAM, mine clearance	1	Croatia	1998
EUFOR Concordia	4	FYROM	2003
Operation Artemis	3	D.R. Congo	2003
EUFOR ALTHEA	25	Bosnia and Herzegovina	2004
AMIS, supporting action to the African Union mission in the Darfur region	5	Sudan	2005
EUFOR RD Congo	5	D.R. Congo	2006
EUFOR Chad/RCA	4	Chad/Central African Republic	2007
EU NAVCO	1	Somalia	2008
EU NAVFOR Somalia	43	Somalia	2008
EUTM Somalia	10	Somalia	2010
EUFOR Libya	2	Libya	2011
EUTM Mali	18	Mali	2013
EUCAP Somalia	1	Somalia	2014
EUFOR RCA	11	Central African Republic	2014
EUMAM RCA	5	Central African Republic	2015
EUNAVFOR MED	11	Mediterranean Sea	2015
EUTM RCA	10	Central African Republic	2016
Integration			
Satellite Centre	2		2001
Status of forces agreement	1		2003
Athena, the mechanism to finance missions	6		2004
European Defence Agency (EDA)	9		2004
The enhanced cooperation, PESCO	3		2017

Source: Think Tank EUROPA based on basic legal acts from EUR-Lex and EEAS.