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The Politics of Opt-Out in the European Union: Voluntary or Involuntary Defection?

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Abstract: According to Putnam's Two-Level Games approach there are two kinds of defection from international negotiations: voluntary and involuntary. Once a state becomes a member in the unique institutional regime of the European Union (EU), is there defection from new integrationist treaties negotiated in Inter-Governmental Conferences? And if there is, is it voluntary or involuntary defection? First, the theoretical prospects will emerge from adjusting Putnam's Two-Level Games approach to the EU. Second, empirical examination of five opt-out case-studies will corroborate or refute those theoretical prospects and questions. Both lead to the conclusion that opt-outs are the only form of defection that exist in the EU today, and that most opt-outs examined are involuntary defections. Finally, the implications of such classification will be drawn.

This article extends and examines neglected concepts in Putnam's Two-Level Games approach: voluntary and involuntary defection. It concentrates on the second kind, and shows the other side of the coin Putnam presented – the side where domestic players force the leader to conform to their preferences. It also shows that the EU does not always strengthen the executive, as Moravcsik claimed (1994).

Mainly, this article conceptualizes opt-outs as the only form of treaty defection in the European Union (EU) that exists today.

Treaty opt-out (as the UK and Danish opt-out of the common currency) occurs when most of the Member States in the EU agree to advance the integration process, and therefore negotiate in an Intergovernmental Conferences (IGC) to change the common EU treaties, but encounter a refusal within a Member State to relinquish its sovereignty in a specific policy field. The political, institutional and legal solution is treaty opt-out: a protocol attached to the new treaty, giving an exemption from the common policy-field to that Member State at the end of the intergovernmental negotiations. The opt-out protocol enters into force together with the treaty, and is valid for an indeterminate period of time.

Opt-outs as the only form of defection in the EU

Defections from international negotiations can generate two outcomes: a failure of the negotiations altogether, or the conclusion of a new agreement, only without the defecting country. Neither of the above has occurred so far in the EU. Regarding the first option, despite the fact that *de jure* a leader can vote-down the new EU treaty negotiated in an IGC, or part of it, such a move is not only considered illegitimate, it is almost politically incomprehensible. Until today no IGC has failed, and has always ended with a new treaty. The second option has never taken place as well; no Member State has ever withdrawn from the EU. Hence, it seems that as a result of the membership in the EU, the only form of defection which exists so far, when the Heads of Government and State are concluding a new treaty in an IGC, is opt-out.

Treaty opt-out is a unique kind of defection from international negotiations. On the one hand, it is not a failure of the negotiations altogether that precludes the conclusion of a new treaty. On the contrary, most opt-outs were negotiated at an IGC summit when a new treaty among the Member States was finalized. Indeed, all opt-outs are given in order to allow for the ratification of the new treaty. On the other hand, opt-out is a failure to conclude a treaty between *all* the Member States on a specific integration policy. It means at least one EU Member State defects from a new common policy, is exempted from it, and is not obliged by the community decisions and legislation in this field for an indeterminate period of time.

The *negative side* of opt outs is obvious – breaking the unity of the integration process among the Member States and creating Europe *à la carte*, a menu of integration policies from which Member States can “pick and choose” in which policy

field to participate and of which to stay out. Such a polity tool stands in contrast to the most sacred principle of European integration process – the *Acquis Communautaire*, the entire body of EU law, which obliges all Member States and binds them together within the EU. Opt-outs fracture this unity, and decrease the level of integration from common to all Member States to common only to most of them; they rupture the “we-feeling” in the Union.

The *positive side* of opt-outs is stressed less: opt-outs enable the rest of the Member States to advance in the integration process. If opt-out would not have been given from a specific policy field, the leader of the Member State who requested it would have had the power to veto the policy. By vetoing it the integration process would not advance in this field. Therefore, opt-out is an undesirable polity tool in the negotiations on a new EU treaty, which does assist in advancing the integration process.

After explaining why treaty opt-outs are the only form of defection once a state has become a member in the EU, I move to examine whether treaty opt-outs are voluntary or involuntary defections. First, Putnam’s “Two-Level Games” approach will be presented, concentrating on defections. Second, his approach will be adjusted to the EU intergovernmental institutionalized regime. This adjustment would provide theoretical prospects regarding the question of whether treaty opt-outs are voluntary or involuntary defections. Third, I will examine five out of the seven existing treaty opt-outs, and will show that four of them are involuntary defections. Finally, in the conclusions I will answer the question of why it matters which kind of defection is opt-opt.

The “Two-Level Games” approach

In 1988 Robert Putman wrote the “Two-Level Games” approach about international negotiations and the relations between the national and the international level. Those are the two levels of the negotiation “game.” Putnam offered several insights to the limits, and especially the opportunities, that international negotiations can offer to the chief negotiator, the leader of a state. She/he is the formal link between those two levels, since she is situated on both of the “game-boards.” Putnam showed that sometimes leaders led their governments to adopt a different policy than if there would not have been international negotiations. He showed that this policy was supported only by a minority in the government - though a strong one - headed by the leader (Putnam 1988: 428-30). Putnam concluded that the international level can strengthen the leader at the expense of other political players in

her state. He explained those surprising results by the game the leader was playing: to her national public she presented herself as fighting for the best agreement for her country, while in fact she was using the negotiation process on the international level to justify policies unpopular to the public or to the majority of her government. This was the “game” at home (Putnam 1988: 434).

Putnam claimed that the leader of a state is not just an “agent,” meaning she is not devoid of her own interests. She does not necessarily negotiate in the name of the “national interest,” nor on behalf of the political mandate of her electorate. The leader in the international negotiations might not even represent the majority in her government or party (Putnam 1988: 456). Putnam claimed that the leader has three other objectives: first, to enhance her standing in the state by increasing her political resources; second, to shift the balance of power in her state in favor of domestic policies that she prefers; and third, to pursue her own conception of the national interest in the international context (Putnam 1988: 457).

Despite her preferences, interests, and strategies, Putnam stressed that a leader will only agree at the international negotiation table to what she can ratify at home. She has to be careful not to promise to the other leaders more than she can deliver (Putnam 1988: 439). While Putnam concentrated on negotiations where the leaders have indeed done so, and concluded an agreement, my concern is when negotiations fail. Nevertheless, Putnam did mention the possibility of such failure – of defection from the negotiation table. He differentiated between two kinds – a *voluntary* one, on account of egoistic reasons of the leader, and an *involuntary* one, due to her recognition that she lacks the ability to ratify the agreement at home or due to a failed ratification process (Putnam 1988: 438).

According to Putnam, a leader will try to present her involuntary defection as involuntary in order to keep her international reputation as a credible negotiator (Putnam 1988: 439). Therefore, it may be hard to distinguish between voluntary and the first kind of involuntary defection. First, a leader can “bluff” at the negotiation table and present her voluntary defection as involuntary. On such occasion it may be hard (and/or politically useless) for other leaders to “call her bluff.” Second, even if the leader is not “bluffing” at the negotiation table, she may “bluff” coming out of the closed negotiation room. Such difficulty to distinguish between the two kinds of defection is caused by the secrecy in both levels of the game - in the domestic executive, where decisions about the national negotiation strategy and policy positions are made, and in the international negotiations, where the details of the treaty are concluded. The lack of transparency in both levels enables the leader to

pretend and “bluff” in the negotiations and/or about the real nature of the negotiations and whose fault was their failure.

While voluntary defection is always during the negotiation period, we should distinguish between two points in time when involuntary defection can occur. One is during the negotiations, and the other is after their conclusion, during the ratification phase. The first prevents the conclusion of an international agreement, and the second is a failure to ratify the international agreement after it was concluded, preventing it from coming into force. While the first involuntary defection stems from early recognition of the leader that she will not be able to ratify the agreement at home, or she is uncertain of her ability to do so, the last one stems from misinformation of the leader about her domestic constraints (see also Iida 1996: 284). Therefore, Putnam’s observation can be sharpened: due to the lack of transparency in both levels of the “game” it is hard to distinguish between voluntary and involuntary defection during the negotiations phase, since every defection after the conclusion of a treaty is by definition involuntary. Iida’s definition of involuntary defection is of no use here. Iida wrote that “defection (rejection of international agreements) is ‘involuntary’ to the extent that the behavior of the domestic actors who are involved in the ratification process is beyond the control of the government representatives responsible for signing international agreements” (Iida 1996: 283). This definition still leaves us with the problem to distinguish what is “beyond the control” of the domestic negotiators and what is not.

What causes such defections? Putnam used the term “win-set” to explain the success or failure of international negotiations. Win-set is all the possible agreements a leader is able to ratify at home. In order to conclude an international agreement an overlap of the domestic win-sets of the states participating in the negotiation is required. If there is no overlap, defections and/or failure of the negotiations is to be expected. According to Putnam the size of the win-set will determine if there would be an agreement or not. The size of the win-set is influenced by three components (Putnam 1988: 449-50, 457). First, the preferences of the political players at home, their power, and the possible coalitions. Second, the institutions at home: What are the formal and informal ratification procedures? For example, what is the needed majority to ratify the treaty - is it a simple majority, an absolute majority, or a qualified majority? What is the level of party discipline? What is the political culture in the country? Does the treaty need to be ratified by a referendum? Third, the preferences and strategies of the leading negotiator towards the national level. Those include linkage and side-payments that allow her to enlarge the domestic

win-set, and to advance policies that without the international level would not have been possible.

Voluntary defection means that the size of the win-set of the leader was smaller than the one of the other political players in her state and the other negotiating parties. Involuntary defection implies that there was no overlap of the domestic win-set - combining the three components mentioned above - did not overlap with the personal win-set (preference) of the national leader (which did overlap the win-sets of the other negotiating states), or that there was high uncertainty about the domestic win-set. It means that, despite the last component (the strategies of the leader to widen her win-set), the first two (the preferences of political actors and the institutional setting at home) kept the win-set smaller or too uncertain than necessary to conclude an agreement that could be ratified at home.

While a defection in Putnam's article means the failure of the negotiations and no agreement, in the EU a leader cannot defect altogether (or has not up until now) from the negotiations in IGCs. Such a move would mean either there is no agreement, or that the state can no longer be an EU member and will have to leave it. There is as yet no precedent for either of these scenarios. As stressed, the only form of defection, once a state becomes a member in the EU, is opt-out, and it is from a specific policy, not from the whole treaty. Thus, this article deals with a unique kind of defection. The opt-out protocol is included in the treaty so that the latter can be ratified. Hence, despite the defection, there is a ratification phase, which in the opting Member State includes the ratification of the opt-out protocol, of the defection. Some of the anomalies can be explained by the unique character of the EU.

Putnam's article dealt with negotiations in the anarchic international sphere, where usually there are no formal institutionalized rules to conduct the negotiations. Therefore, before the examination of opt-outs as voluntary or involuntary defection, Putnam's approach should be adjusted to the institutionalized intergovernmental framework of the EU.

Adjusting Putnam's approach from the anarchic international sphere to the EU institutionalized intergovernmental regime

First, the states negotiating are members in a supra-national regime, that is "resolved to continue the process of creating an ever closer union among the peoples of Europe" (Article A, Treaty of the European Union). This unique regime is very different from the anarchic international sphere. To begin with, its Member States re-

linquish significant parts of their sovereignty to it, accepting common policies and the authority of its supra-national institutions.

Second, whereas in the international anarchic level the negotiation rules are usually not formalized, IGCs are conducted according to Article N in the Treaty of the European Union (formerly article 236, Rome Treaty). The decision to convene an IGC is made in the European Council by the Heads of State and Government of the Member States. Other important decisions, like the one on the IGC agenda and its schedule, are also taken in this forum. While in the international sphere Putnam can assume that the leader has control both of the decision to negotiate and setting the agenda, in the EU the decision to convene an IGC can be made by simple majority of the Member States' leaders. Although usually this decision is made by consensus, no leader has absolute control over it. From the moment those decisions are made they generate a dynamic that will lead to the conclusion of an agreement.

Third, unlike international negotiations, which can be one-time occasions, the leaders of the Member States in the EU are meeting in the European Council at least twice a year, usually more. In addition, since 1985, IGCs have been convening every several years. Hence, it is certain that each leader will meet her counterparts every several months to discuss the future of the integration process. Putnam adopted the assumption that "the temptation to defect can be dramatically reduced among players who expect to meet again" (Putnam 1988: 438). Such expectation among the leaders is likely to generate an interest to protect their reputation and credibility. This, in turn, may limit the negotiation tactics they would be willing to use. In the EU the interest of the leaders to not (voluntarily) defect is expected to increase due to the certainty and proximity of meeting again, and the high interdependence between the Member States (Putnam 1988: 455). This supposition needs to be examined empirically.

Fourth, Putnam assumed that the leaders might not have full information about the other negotiating states, and sometimes not even about their own state (Putnam 1988: 452). This assumption will be adopted, taking into account that the leadership's level of familiarity and knowledge about the other Member States is relatively high as a consequence of the frequent meetings between the leaders (as well of ministers, senior officials etc.), the membership in the Union, geographical and cultural proximity, all being democratic and therefore more transparent, etc. This generates better and deeper understanding among the Member States about the political attitudes, institutions, decision-making and ratification procedures, the political culture, and so on in the other Member States. As a result, the uncertainty in the EU is

reduced. Therefore, Putnam's assumption is more relevant when a leader does not have full information about her own state.

Fifth, according to Putnam, uncertainty about the opponent's win-set increases one's concern about the risk of involuntary defection, and impedes striking deals (Putnam 1988: 453). Despite the high tension about the specific terms which will be agreed upon in the IGC, there is a high level of certainty that a deal will be struck. Hence, again, Putnam's notion regarding uncertainty generating involuntary defection is more relevant in the EU when the leader is unaware of the small size of the win-set in her own state than in other Member States.

Sixth, the negotiations described by Putnam had few participating countries. One characteristic of the EU negotiations is the multiplicity of Member States. In Maastricht, for example, there were twelve Member States ("game-boards"). It may be assumed that in a unique integrationist regime such as the EU, where interdependence is so high, the more domestic game-boards there are, the less it is politically possible to take one or two very narrow and/or ideologically distanced win-sets into account (under the condition that there is no credible threat by the leader to veto the relevant policy).

From the above it seems that the possibility of defection changes significantly once a state becomes an EU member. An opt-out can be voluntary or involuntary. Taking into account the third, fourth, and fifth points, it is most likely to be involuntary. This supposition will be examined empirically in the next section, in which I will briefly examine five case-studies: Denmark's opt-outs from the third phase of the European Monetary Union (EMU) and defence; the two opt-outs the UK got from EMU and social policy (all four negotiated from the Maastricht treaty, concluded in 1991). The last case-study to be examined is Ireland's opt-out of the Schengen legislation, negotiated from the Amsterdam treaty in 1997.

Denmark

According to the Danish constitution (Article 20), a treaty delegating sovereignty to international bodies must be ratified by five-sixths of the Parliament Members, or by a simple majority and a referendum. This high ratification requirement and other institutional procedures set the consensual political culture in Denmark.

The Danish Prime Minister, Poul Schlüter, negotiated only one opt-out at the Maastricht summit – the opt-out from the common currency. The defence opt-out was negotiated by him at the Edinburgh summit one year later, in December 1992. It was negotiated since in June that year the Danish people said "no" in the refer-

endum to ratify the Maastricht Treaty. Hence, the period since that referendum, which led to the Edinburgh summit, can be regarded as a second consecutive “game” that ended when the second referendum in May 1993 resulted in a “yes.” This referendum ratified the Maastricht treaty, including the opt-out protocol introduced in Edinburgh.

The EMU opt-out

Despite an initial agreement in October 1990 between six out of eight parties in the Danish parliament, the leader of the Social-Democratic party – the biggest opposition party -- demanded in November 1991 that the center-right government not join the common currency (Pedersen 1996: 96). This demand came only one month before the expected IGC summit in Maastricht, which was due to end the negotiations. It took the minority government by surprise, and emptied its win-set. On December 5, a few days before the Maastricht summit, the Danish parliament received a resolution calling for the government not to join the third phase of EMU. The Danish Prime Minister, heading a minority government, had to follow this demand unwillingly (Laursen 1992: 76-77), in accordance with the *negative parliamentarism* convention.

Hence, the first two components of Putnam’s win-set – the preference of political players at home and the possible coalitions, together with the political culture and institutional ratification procedure of EU treaties, overcame the third – the leaders’ preferences and strategies. Despite the two-level game, Prime Minister Schlüter was unable to widen the domestic win-set. A political division with an opposition party caused the involuntary defection. While signing an opt-out protocol at Maastricht, Schlüter stressed his desire that Denmark participate fully in the EMU (Laursen 1992: 77).

The defence opt-out

Also regarding the defence aspects of the Common Foreign and Security Policy agreed in Maastricht, the majority in the Danish parliament dictated the limits of the government’s negotiation stance. Already in May 1991, during the IGC negotiations, the left-wing opposition parties initiated a vote in parliament, receiving a resolution that defence policy should not be in the remit of the community, against the wishes expressed by the Foreign Minister (Laursen 1992: 72). Again, according to the political convention of *negative parliamentarism*, the Foreign Minister, Uffe Ellemann-Jensen, represented the majority in the parliament, and objected to the common defence policy during the negotiations (Larsen 2002: 105-6). But other

Member States took the initiative, proposed such policy, and brought to the isolation of Denmark's representatives in the EU negotiation level.

Eventually, three days before the Maastricht summit, the minority government got the informal agreement of the Social Democrats to join the EU defence policy (after the Danish demands to enhance NATO's stance were agreed upon by the other Member States), and the Prime Minister signed the treaty (Laursen 1992: 73-6). At this point, it seemed that the government had successfully enlarged its domestic win-set regarding the defence policy through the negotiation game within the EU intergovernmental level.

Here, the involuntary defection did not come because of a straight demand from partisan political players in the opposition. Such a demand came only after the people of Denmark (the "median-voter") said "no" in the referendum to ratify the treaty. But it is not so clear that the voters said "no" to the EU defence policy. According to polls, the high level of resistance was to foreign policy, but there was support for defence policy. The opposition parties were the ones who made the government opt-out of "elaboration and implementation of decisions and actions of the Union which have defence implications" (Edinburgh Protocol, Section C). Again, there is no doubt that the Prime Minister (like his government) had to involuntarily defect and to negotiate an opt-out protocol against his will.

The two Danish opt-outs of the Maastricht treaty clearly demonstrate the two points in time during which involuntary defection can take place. The EMU opt-out was achieved during the IGC negotiations, and the defence opt-out was achieved after the treaty ratification process failed.

The United Kingdom

In the UK, which has no formal constitution, EU treaties are ratified in a regular legislation process, requiring simple majority in the House of Commons. The British political system is characterized by a bi-partisan, adversarial, and party-government system. Hence, the opposition usually does not play an influential role, and it is the discipline within the governing party that matters. In that regard, it is important to note that John Major replaced Margaret Thatcher as the Prime Minister just one month before the IGC negotiations began, and that his influence over Thatcher's many remaining supporters in the party was weak.

The social policy opt-out

Following Putnam, the replacement of Euro-skeptic Thatcher with the more pro-European Major can be seen as an enlargement of the win-set of the UK (see f.n. 30), and Major could have used the majority left wing in his cabinet to push for Britain's inclusion in EU social policy. But, although Major was given such a mandate from his cabinet, he had other political calculations taking priority. General elections were due in only half a year, and Major needed to keep his party united. His main concern was the Secretary of State for employment, Michael Howard, who was a "Thatcherist Euro-skeptic" (follower of Thatcher's anti-European Community attitudes). Howard was prepared to resign if any changes were made to the social policy in the Community treaties (Forster 1999: 90).

If Howard had resigned from the cabinet, he would no longer have been bound by the doctrine of collective responsibility that binds all the ministers to vote according to the cabinet resolutions. It was expected that he would have become the leader of the many Conservative Thatcherist Euro-skeptic back-benchers, fracturing the unity of the party, and even might have posed a threat to the vulnerable leadership of Major. So the main concern of Major was domestic since the coming elections, combined with the preferences of at least one main political player, shrank his win-set. As Forster writes (Forster 1999: 91):

On the one hand, the majority in Cabinet approved a limited number of compromises on social policy and had granted him [Major] leeway to negotiate as he saw fit, mandating him to be tough on social policy but not to jeopardize the whole Treaty on this one issue. On the other hand, Major was sufficiently concerned about Michael Howard's position that he requested him to be ready during the summit for immediate consultation on the social policy dossier if this became necessary.

Indeed, because of Howard's advisement over the phone to give no ground, Major got an opt-out (Forster 1999: 92). In this case study, the preferences of a certain person in the cabinet and the size of a group within the governing party had the power to make Major defect despite the cabinet's mandate.

One may claim this opt-out was voluntary. Major acted in a rational egoist manner, preferring the unity of his party over the unity of the integration process. Still, it seems that if Major had acted according to his own preferences and those of the majority of his cabinet, he would have joined the common social policy.

The EMU Opt-Out

It is not clear what, exactly, were Major's preferences regarding the EMU. Before the beginning of the IGC, the government's position was against joining a common currency. This was the aim of the "hard ECU" plan that Major advanced as the Chancellor of the Exchequer under Thatcher. As her successor, Major had no other choice but to retain it, and he continued to advocate the plan for internal party cohesion purposes, even when he himself stopped believing in it (Forster 1999: 54).

When Major and his government realized that they would not be able to obstruct the EMU plan, their strategy shifted to introduce a general option clause to the treaty, allowing each Member State to choose whether and when to enter the common currency. Though this position ran into opposition from the rest of the Member States, it too had been kept until the end of the IGC for the sake of party cohesion. Behind the scenes, the British negotiators had been working on a unilateral opt-out protocol, though the details were left to be decided at Maastricht (Forster 1999: 60-66, 69-70).

It is unclear what Major's personal preferences regarding the EMU were; nevertheless it was clear that he could not bring his party to join the new common policy. "Circumstances in 1991 meant the British Prime Minister could not come back with a treaty that committed the UK to a single currency in advance, since such a treaty had almost no chance of being ratified" (Forster 1999: 71-2). In his speech to the House of Commons on November 20, presenting his negotiation stance and asking for the House's mandate, Major said: "that decision [to move to the third stage] can only be taken by this House...Nothing in the Treaty I sign now will bind us then." He ended his arguments on EMU, saying:

What we have in front of us is not as it has been described, an opt-out clause. It is a clause that we have secured enabling us to opt-in. *If* we wish, *when* we wish, and in the conditions that *we* judge to be right. I believe we should keep open that option and not foreclose it at this time (emphasis in origin, printed in Laursen & Vanhoonacker 1992: 422).

Indeed, the opt-out protocol reserved the right of the UK to join the common currency at a later date.

Unlike the three treaty opt-outs examined above, this opt-out seems to be voluntary. It seems Major did not even try to present it as involuntary in order to preserve his European reputation and credibility. He had a domestic image to keep up as Thatcher's successor, and needed to preserve his party unity before the elections. Also, if a Euro-skeptic leader in the EU is forced to negotiate on a new policy she

opposes, voluntary defection should not damage her reputation and credibility (though it is expected to take a toll on her relations with the other leaders of the Member States); moreover, it is expected to strengthen the leader domestically.

Ireland

The Schengen opt-out

The most involuntary opt-out is not of a leader forced to stay out of a European common policy because of other players' preferences at home, but of a whole country having to stay out of such a policy field since another country decided to stay out of it. Ireland opted-out of the Schengen legislation on Border Control (and asylum, refugees, and immigration common policies) because of the UK opt-out and Ireland's "common travel area" with the UK (Ryan 2001: 871). Had it not been for the UK opt-out, it is unlikely that Ireland would have opted-out. A declaration by Ireland revealed the involuntary character of the defection at the end of the opt-out protocol: "Ireland declares that it intends to exercise its right...to take part in the adoption of measures pursuant to [border policy]...to the maximum extent compatible with the maintenance of its common travel area with the United Kingdom" (my emphasis, declaration attached to the Amsterdam Treaty).

Putnam's approach to the anarchic international sphere did not refer to such a scenario. According to Iida, "a state may be coerced to deviate from an agreement by a third party. In such case, however, 'defection' would not be the right word to describe the situation" (Iida 1996: 362, f.n. 1). But no British coercion was traced here. It was simply the UK decision to opt-out that forced the Irish to defect against their will.

Intermediary conclusions: Is opt-out a voluntary or involuntary defection?

We face three different involuntary opt-out scenarios:

- opt-out stemming from opposition within the governing party, even if the opponents are in the minority, as the UK social-policy case showed;
- opt-out due to lack of support from opposition parties in the EMU Danish case, or empowered as a result of referendum as its defence opt-out demonstrated;
- opt-out of a Member State because of another Member State opt-out, as in Ireland's case, which is beyond Putnam's predictions.

Still, the results in the EU level are the same - opt-out and defection of the Member State from the common policy field. So one can ask, what is the significance of such a distinction between voluntary and involuntary defection in the EU?

Even if voluntary defection may have only slight implications for the credibility of the leader, it still influences her future stand, status, and reputation among the rest of the EU leaders. In the EU negotiation level, where the same leader can expect to meet her EU counterparts soon, it matters if she is saying, "I cannot agree to that since I *cannot ratify it*," or if she is saying, "I will not agree to this," "this" being the whole process of supranational integration which is against her ideology, political interests, etc. While involuntary defection affects the reputation of the state as Euro-sceptic, at least it is considered more democratically legitimate than the egoistic personal reasons of the leader (especially since public opinion in many EU Member States after Maastricht thought the new treaty widened the democratic deficit in the EU).

This article showed that four out of five opt-outs examined are a clear case of involuntary defection. Usually, the leader wants to join the policy field as the lesser of two evils. If she cannot obstruct the common policy in the beginning of the negotiations, at least she will be able to influence it from within. This way she will retain her seat and voice at the European Council, where the leaders of all the Member States are deciding on the guidelines of the new EU policy, and the ministers in her government will remain in the Council of Ministers, keeping their voting power when concrete discussions and decisions are made on the matter. This is the common answer (Wester 1992: 201). It is usually other political actors in the state who do not allow the leader to do so. Hence, it is less likely that there will be a voluntary defection based on the egoistic reasons of a leader. I do not claim, however, that voluntary defections from new policies in the EU are out of the question; having leaders such as Margaret Thatcher in mind, this might even seem likely. The domestic reasons in the UK and Denmark for the remaining two Schengen opt-outs are yet to be thoroughly studied so as to complete the full picture. However, I do argue that voluntary defection is less likely to occur in the unique regime of the EU.

When an IGC is being held, attention should be paid to the relevant domestic players and institutions. While in Denmark the institutional component played a significant role, in the UK the preferences of the political players seem to have been more influential. Putnam wrote that "not all significant ratification practices are formalized...propensity for seeking the broadest possible domestic consensus before acting constricts the...win-set, as contrasted with majoritarian political cultures" (Putnam 1988: 449). Denmark represents the first case of seeking the broadest pos-

sible domestic consensus, whereas the UK's political culture is majoritarian. While in Denmark it was the opposition parties that brought both opt-outs, in the UK the opposition parties were almost irrelevant; it was the internal opposition within the governing party which shrunk the size of the domestic win-set.

Most opt-outs examined were involuntary. This situates the leader in an awkward position, having to negotiate and sign the terms of a protocol against her will. An interesting point is that Major could still return home from the Maastricht summit, announce to the House of Commons "Game, set, and match," and present his involuntary defection as a personal achievement. That is another aspect of the two-level game. Such pretension can occur as a result of the secrecy in which the negotiations take place, which creates asymmetry of information, and allows the leader coming home from the negotiation table to use it to her own benefit, presenting a different image of her state in the intergovernmental negotiation to the members of parliament and to the public. Some claim that Major's hard negotiation stance in Maastricht helped him win the 1992 elections. While the leader of the UK could play the two-level game and pretend his own involuntary defection was voluntary, so as to strengthen his domestic stance (at least in the short run), in the Danish case the leader was weakened by the involuntary defection.

Putnam showed how in a Two-Level Game the leader can strengthen herself by achieving policy change that would not have been possible without the international negotiations. The question of involuntary defection shows the other side of the negotiation coin, where the domestic "principals" (political players) force their "agent" (the leader) to conform to their demands. Continuing Putnam's work, Andrew Moravcsik (1994) claimed that negotiations in the EU strengthen the national executive branch, hence the leaders of the Member States. This article showed a different and additional view to that of Moravcsik. The British social policy case demonstrates that a minority in the cabinet can overpower the majority in it, headed by the Prime Minister. The Danish cases clearly show that there are circumstances under which the leader of a Member State weakens because of the negotiations in the EU level. A leader might have to defect from a policy field involuntarily, and will be disallowed from participating in future decision-making in this field against her will. Therefore, more research is needed on the question of under which circumstances the EU level strengthens the national leader, and under which it weakens her. Several additional questions are outside the scope of this article, for example: Does it matter which kind of defection it is for the terms under which the leader concludes the opt-out protocol? Does the distinction between voluntary and involuntary defection matter to the phase when the leader manages the opt-out? Will a

leader who was forced to defect attempt to manage the opt-out differently than a leader who willingly chose it? Is it significant for ending the opt-out?

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