



Better Regulation in Europe

**DENMARK**





# **Better Regulation in Europe: Denmark 2010**



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## *Foreword*

The OECD Review of Better Regulation in Denmark is one of a series of country reports launched by the OECD in partnership with the European Commission. The objective is to assess regulatory management capacities in the 15 original member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom). This includes reviewing trends in their development and identifying gaps in relation to good practice as defined by the OECD and the EU in their guidelines and policies for Better Regulation.

The project is also an opportunity to discuss the follow-up to the OECD's multidisciplinary reviews, for those countries which were part of this process, (Austria, Belgium, Luxembourg and Portugal were not covered by these previous reviews) and to find out what has happened in respect of the recommendations made at the time. The multidisciplinary review of Denmark was published in 2000 (OECD (2000), *OECD Reviews of Regulatory Reform: Regulatory reform in Denmark, Government Capacity to Assure High-Quality Regulation*, OECD, Paris).

Denmark was part of the first group to be reviewed – the other three were the Netherlands, Portugal and the United Kingdom. A second group of countries – Belgium, Finland, France, Germany, Spain and Sweden are expected to be published in the first half of 2010 and the remaining countries will follow in the second half of 2010. This report was discussed and approved for publication at a meeting of the OECD's Working Party on Regulatory Management and Reform on 11 May 2009.

The completed reviews will form the basis for a synthesis report, which will also take into account the experiences of other OECD countries. This will be an opportunity to put the results of the reviews in a broader international perspective, and to flesh out prospects for the next ten years of regulatory reform.



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*Abbreviations and Acronyms*

<b>CED</b>	Centre for Effektivisering of Digitalisering – Centre for Administrative Efficiency and e-Government
<b>DCCA</b>	Erhvervs-og Selskabsstyrelsen – Danish Commerce and Companies Agency
<b>ICT</b>	Information and Communication Technologies
<b>KAL</b>	Center for kvalitet, afbureaukratisering og ledelse – Centre for Quality, De-bureaucratisation and Leadership)
<b>KREVI</b>	Det Kommunale og Regionale Evalueringsinstitut – Danish Evaluation Institute for Local Governments
<b>LGDK</b>	Local Government Denmark
<b>NAOD</b>	Rigsrevisionen – National Audit Office of Denmark
<b>SCM</b>	Standard Cost Model
<b>STS</b>	Steering Group for Cross-National Initiatives
<b>VAKKS</b>	Vurdering of Administrative Konsekvenser for Kommunerne ved ny Statslig Regulering – Administrative Impact Assessment of State Regulations on Municipalities



*Country Profile – Denmark*

Source: CIA factbook <https://www.cia.gov/library/publications/the-world-factbook/geos/da.html>

## Country Profile – Denmark

<b>The land</b>		
Total Area (1000km <sup>2</sup> ):	43	
Agricultural (1000km <sup>2</sup> ):	26	
Major regions/cities (thousand inhabitants):	Copenhagen	1 168
	Ahrus	240
	Odense	159
	Alborg	101
<b>The people</b>		
Population (thousands):	5 511 (2009)	
Number of inhabitants per sq km:	128 (2009)	
Net increase (2006/2007):	0.4%	
Total labour force (thousands):	2 922	
Unemployment rate (% of civilian labour force):	6.0% (2009)	
<b>The economy</b>		
Gross domestic product in USD billion:	200.0	
Per capita (PPP in USD):	36 400	
Exports of goods and services (% of GDP):	54.9%	
Imports of goods and services (% of GDP):	52.6%	
Monetary unit:	Danish Krone	
<b>The government</b>		
System of executive power:	Parliamentary	
Type of legislature:	Unicameral	
Date of last general election:	13 November 2007	
Date of next general election:	13 November 2011 (at the latest)	
State structure:	Unitary	
Date of entry into the EU:	1973	
Composition of the main chamber (Number of seats):	Liberals	46
	Social Democrats	45
	Danish People's Party	25
	Socialist People's Party	23
	Conservatives	18
	Social Liberals	9
	New Alliance	5
	Unity List – Red-Green Alliance	4
	North Atlantic	4
<b>Total</b>	<b>179</b>	

Note: 2008 unless otherwise stated

Sources: OECD Economic Survey of Denmark 2009, OECD in Figures 2009, OECD Unemployment Outlook 2009, and OECD Government at a Glance 2009.

## Executive Summary

### Drivers of Better Regulation

Regulatory reform has been on the agenda of the Danish government for over two decades. Initial policies for regulatory quality and simplification were established in the early 1980s as part of a comprehensive deregulation programme to modernise the economy. They aimed at removing regulations harmful to the competitiveness of the business sector. Over the years the focus of policy moved from “deregulation” to “regulatory quality”.

Better Regulation policy today is part of Denmark’s set of forward-looking reforms to sustain the positive economic and social performance of recent years. The government’s current reform programme aims to address upcoming social and economic challenges, and puts fiscal sustainability as the overarching objective. Improving public services is another central element of the government’s strategy. The aim of the Quality Reform launched by the government in August 2007 is to create a more efficient administration and unlock resources which can be used to improve welfare services. The importance attached to Better Regulation reflects these aims, and Better Regulation is seen as a means of contributing not only to the competitiveness of the economy, but also to meeting social and quality of life goals.

### The public governance framework for Better Regulation

Denmark’s coalition-based political system is characterised by a search for consensus, acceptance of compromise, widespread participation in decision-making, and institutionalised power-sharing. The political culture also relies on informal approaches and structures, which is widely regarded as having allowed for flexibility and the adoption of pragmatic solutions. This has shaped Denmark’s approach to the development of institutional structures and processes for Better Regulation. A major institutional initiative relevant to the deployment of Better Regulation policies has been the reform of municipalities and region structures which came into force in January 2007, leading to substantially fewer municipalities and a redistribution of responsibilities across levels of government.

### Developments in Better Regulation

Since the end of the 1990s and the publication of the OECD’s multidisciplinary review in 2000, Better Regulation policy in Denmark has integrated efforts at improving the law-making process as well as the simplification of existing regulations, in particular through the reduction of administrative burdens. This shift has been maintained and reinforced by successive governments. Recent developments underline a commitment to the extension and deepening of processes for managing both the stock and the flow of regulations, across all the levels of government. There is a real interest in the promotion of Better Regulation, and high-level political support for its development at this stage. Specific recent initiatives include the De-bureaucratisation Programme for the local level, and a reinforcement of the

programmes to reduce administrative burdens for businesses, including new communication strategies.

## **Main findings of this review**

Denmark's well-functioning economy has not reduced interest in promoting further reforms. Recent initiatives to further strengthen and develop the administrative simplification programme highlight a continued search for innovative solutions to regulatory management issues and improvement, which had been highlighted in the 2000 OECD report as a major strength. The Danish agenda for Better Regulation has also broadened to cover new aspects of regulatory quality such as risk based enforcement and is now directed towards all stakeholders, including local levels of government. Many of the elements for a complete and coherent strategy are now in place. There is an effective and well-managed co-ordination system for EU affairs. The maturity and scope of Better Regulation policies in Denmark now calls for a more systematic approach to their evaluation, both strategically and programme by programme.

While ministries have retained a significant autonomy in the implementation of the policies, co-ordination has been strengthened, through the government committee framework and through enhanced guidance to officials. The formulation of targets for some projects has increased accountability for reforms and sustained attention on the policies and their outcomes, both within and outside the administration. Leadership is however not clearly visible, and there is a need at this stage to devise a stronger strategic direction for the optimal future development of Better Regulation policies.

Developments in consultation practices are boosting transparency and the engagement of a wider range of stakeholders. This is reinforcing a tradition of deeply anchored consultation with key stakeholders, as well as extending the reach of consultation to a broader audience. Communication on new regulations is especially strong.

Requirements for *ex ante* impact assessment have been significantly reinforced since the 2000 OECD 2000 report. The development of new regulation is carried out within a well-organised framework. The Danish impact assessment system could benefit from a streamlined institutional monitoring framework, a more comprehensive interaction with public consultation, and further methodological developments.

The action plan to reduce administrative burdens on business is a substantial, well-run policy that has already delivered results. Denmark has successfully used the experience of its business administrative burden reduction programme to launch a new initiative aimed at reducing burdens on frontline public sector workers (the De-bureaucratisation Programme), which also engages the local level in Better Regulation.

### ***Strategy and policies for Better Regulation***

**Interest in Better Regulation has been sustained and developed over time.** Denmark's well functioning economy has not reduced interest in promoting further reforms, and many new initiatives have been taken in areas such as administrative simplification, consultation, the development of new regulations and multi-level governance. Denmark has maintained its capacity for innovation and continuous improvement, which had been highlighted in the 2000 OECD report as a major strength. Recent initiatives to further strengthen and develop the administrative simplification programme highlight a continued search for innovative solutions to regulatory management issues.



**The Danish agenda for Better Regulation has broadened to cover new aspects of regulatory quality and is now directed towards all stakeholders.** The competitiveness of the economy has remained a very important driver of Better Regulation policies, but other policy issues have gained prominence. The need to address the issues raised by an ageing population, growing labour shortages and expectations that high levels of social welfare can be sustained is reflected in the current agenda, which targets not just business but also frontline public sector workers as well as citizens.

**Better Regulation policies rest increasingly on well developed and consistent methods, as well as improved co-ordination.** This has been reflected in the development of the administrative reduction programme for businesses, and now with the De-bureaucratisation Programme, which tackles regulation inside government. The approach has been to set general objectives, define action plans with targets and timelines, and develop a co-ordinated approach to the plans. Ministries have retained a significant autonomy in the implementation of the policies, but co-ordination has been strengthened, including through enhanced guidance to officials. The formulation of targets for some projects has increased accountability for reforms and sustained attention on the policies and their outcomes, both within and outside the administration.

**Many of the elements for a complete and coherent strategy are now in place.** There have been significant improvements in the tools and processes for the development of new regulations. Transparency in public communication on regulations is high, and has improved as regards public consultation. There is a well developed project for reducing administrative burdens on business, and the newly established De-bureaucratisation Programme for frontline public sector workers looks promising. Important initiatives have been taken to improve multi-level regulatory governance, with the identification of shared priorities and targets for Better Regulation based on the annual financial agreement between central government and the municipalities, and with the introduction of a specific procedure for assessing the impact of new regulations on local government. The EU dimension is well handled and Denmark is active in seeking to ensure that Better Regulation policies are effective at the EU level.

**To secure an optimal performance, some aspects of Better Regulation policies could be further strengthened.** While significant progress has been made to develop the framework for *ex ante* impact assessment, there is still a large potential for improvement of the framework if Denmark wants impact assessment to have a sustained positive impact on the flow and quality of new regulations. Public consultation on the development of new regulations would benefit from a more consistent approach to ensure that the same standards are systematically applied, building on the growing transparency of the past few years. Policies to simplify the stock of existing regulation may need more systematic attention. Effective monitoring of the De-bureaucratisation Programme needs to be put in place.

**To sustain momentum, Denmark must now show clearly how Better Regulation policies combine and can be further developed into a strategy that supports long-term public policy goals.** Denmark's approach to Better Regulation is founded on a collection of policies, with a large scope but with no clear "big picture" bringing the different policies together and linking them to overarching policy goals or a vision for the future. The 2000 OECD review had already pointed out this lack of strategic overall approach. The Danish civil service has a positive attitude, but the OECD team picked up worries about the possible underperformance of Better Regulation processes compared with potential. Is the government underperforming, compared with what it could achieve? How can public sector workers be motivated to sustain and enhance their efforts? How can the business

community – which is also looking for reassurance and a vision – be persuaded to continue supporting Better Regulation efforts in a positive way?

**Public communication of Better Regulation strategy and policies needs to be boosted.** There is a need to package and communicate reform proposals to promote more enthusiastic support by stakeholders and ensure that the more controversial proposals are not rejected by the parliament simply due to a lack of understanding of government objectives. Beyond the communication that takes place on the administrative burden reduction programme for business, there does not appear to be any sustained or co-ordinated effort to promote or explain the government's work on Better Regulation. This creates a knowledge gap which can lead stakeholders to underestimate progress made and discourage support to reform. In this more mature phase of Better Regulation policy development, there is a need to move away from the separate presentation of policies and towards a more integrated approach, which will clarify for stakeholders the overall government objectives and Better Regulation's link with the achievement of economic and societal goals. The government's capacity to communicate on its agenda within the administration, to external stakeholders and to the parliament, would benefit from a clearly visible leadership for the overall Better Regulation agenda.

**Ex post evaluation of Better Regulation has gained significant ground over the past few years, and could be boosted further through a more systematic approach.** The maturity and scope of Better Regulation policies in Denmark now calls for a more systematic approach to their evaluation, both strategically and programme by programme. Some important evaluations have been carried out, not least the 2007 evaluation by the National Audit Office of Denmark (NAOD) on the impact of Better Regulation and simplification. Monitoring reports on the programme for the reduction of administrative burdens on business have helped to shape and develop the action plans. Evaluation, however, is not systematic across all the relevant programmes. Evaluation is important in order to develop and strengthen all Better Regulation tools and processes. What are the benefits of specific policies? How much do they cost? What is the opportunity cost? Against the background of sustained Better Regulation initiatives over more than two decades, an overall strategic evaluation may also be useful, not least to point directions for the future.

**Denmark is an OECD leader in e-Government development and implementation.** The 2005 OECD review of e-Government in Denmark showed it to be among the OECD front-runners in e-Government. E-Government is rightly considered to be a key support tool for Better Regulation. A full evaluation of e-Government is beyond the scope of this review. Interviews highlighted the progress made as well as some indications that the potential in support of Better Regulation could be further developed (for example some ministries appeared considerably more advanced than others).

### ***Institutional capacities for Better Regulation***

**Strong traditions of autonomous ministries have encouraged the development of a generally successful institutional framework adapted to these traditions.** A number of formal inter-ministerial committees have responsibility for monitoring and developing Better Regulation policies and are involved in vetting draft regulations. This formal co-ordination co-exists with informal co-ordination between officials in ministries. Officials – especially those who form the « inner circle » for Better Regulation development – work well with each other, as evidenced by steady progress to develop Better Regulation policies and learn from each other. For example the De-bureaucratisation Programme has drawn its inspiration from the more mature business burden reduction initiative. The establishment of

a Better Regulation unit in the Ministry of Finance, combined with the establishment of a unit for business burdens in the Danish Commerce and Companies Agency (DCCA) of the Ministry of Economic and Business Affairs, has reinforced the framework and its capacities to deliver an increasingly demanding agenda. The OECD team found considerable interest among government officials in the further development of Better Regulation.

**The current institutional structures fall short, however, of providing a fully effective strategic motor for the optimal future development of Better Regulation policies.** Although the Danish institutional set up is in many ways strong and effective, leadership is not clearly visible. Yet there is a need at this stage to devise a stronger strategic direction. The Coordination Committee is the hub of Better Regulation policy management. It carries significant responsibilities (approval of the Law Programme, approval of draft laws, approval of action plans for the business administrative simplification programmes, and reporting hub for both this programme and the De-bureaucratisation Programme). The Economic Committee is responsible for economic aspects (it must approve proposals affecting public spending or with a significant expected impact on business). The Steering Group for Cross-National Initiatives (STS) officials' committee is another key player, coordinating with local governments, including on e-Government. These committees are efficient in carrying out their allocated tasks. As the main hub, the Coordination Committee might be more visibly engaged in articulating and developing strategy for Better Regulation, based on its existing range of tasks.

**Management of the Better Regulation agenda raises day-to-day challenges of coordination, coherence and communication across government.** There are currently at least two poles of responsibility. The Ministry of Finance plays a key role across all the relevant committees. Its ministerial responsibilities cover many (not all) of the key policies for Better Regulation. The Ministry of Economic and Business Affairs, together with the Business Better Regulation unit of the DCCA, plays a crucial role in the development of Better Regulation in relation to businesses. This division of responsibilities may be a comfortable fit for Denmark's institutional traditions, but it reduces the visibility of Better Regulation policy.

**Ownership of Better Regulation is developing across ministries, and needs further reinforcement, in particular with regard to impact assessment.** As in most other OECD countries, ministries are responsible for implementing Better Regulation policies (such as administrative burden reduction), but are also accountable for results through regular reports to the Prime Minister. Individual ministries decide on how to take forward the action plans in their sector. This has helped to spread ownership and promoted culture change. This constitutes significant progress compared with the assessment of the 2000 OECD review, which called for increased accountability for reform results of individual ministries. Interviews indicated however that performance could be uneven across ministries, particularly for impact assessment.

**The role of the parliament in Better Regulation processes is also important.** As in other OECD countries, the role of legislature is a cornerstone of the development and enactment of legislation. Reflecting this, some other countries' executives are taking steps to strengthen their dialogue with the parliament. Processes such as *ex ante* impact assessment are especially relevant in order to secure the best possible outcome in terms of clear and effective legislation. Some Better Regulation programmes such as the administrative burden reduction increasingly engage the parliament. This makes it all the more important that Better Regulation proposals are presented in the wider context of what the government is seeking to achieve, so that the parliament has a fully informed perspective for its own debates.

### *Transparency through consultation and communication*

**Denmark has a tradition of deeply anchored consultation with key stakeholders as well as within government.** Consultation has evolved to combine formal and informal processes. The approach takes advantage of the small size of the country and small closely connected ministries. It relies on Denmark's political culture of a search for consensus among coalition parties, acceptance of the need to compromise, and trust between government and external stakeholders. Informality remains a key feature, but there are major elements of formal consultation as well. Apart from the institutionalised framework of collective bargaining in the field of labour regulations, the standard procedure for making regulations includes prior formal public hearings and public consultation before a draft law is tabled before the parliament. These procedures are described in the Ministry of Justice's Guidelines on Quality of Regulations and on an online law-making guide.

**Important developments in the approaches deployed for consultation are boosting transparency and the engagement of a wider range of stakeholders.** There has been a significant evolution since the 2000 OECD review, which cautioned against the insider/outsider problem. In recent years Danish ministries have opened up consultation with the development of new procedures to stimulate public debate and engage stakeholders. This has included public hearings and notice for comment on dedicated websites in preparation for larger reforms. Greater transparency has been supported by the establishment of the Consultation Portal in 2005, which has provided a large amount of information on consultation processes. More generally Danish ministries have leaned towards broader and earlier participation in consultation processes. For example, the development of the business administrative burden reduction programme has been supported by very open arrangements to gather views and information. The basic frame of reference is changing, from seeking to establish a consensus on the way forward within a somewhat closed circle, to an active search for views from as many relevant stakeholders as possible.

**Progress in ensuring transparency needs to be consolidated.** While significant progress has been made in recent years, some issues need further attention. Informal consultation procedures may still create some uncertainty as to whether all stakeholders have had a chance to be heard. They may also lead to different standards of transparency between ministries. Informal consultation traditions have the advantage of legitimising policies, but can restrict openness for some key areas such as labour regulations. Ministries have to provide information on consultation (including the comments received and how they were dealt with) when sending a draft bill to the parliament. However several interviewees mentioned the lack of direct feedback in some cases. Securing effective and consistent feedback is important if the interest of stakeholders is to be sustained for the next round of consultations, as a major input of time and effort is often needed to respond to consultation exercises.

**Communication on regulations is a particularly strong element of the Danish regulatory system.** The communication of new regulations is well managed, making it possible to find out easily what regulations apply to specific activities. This is partly because of a simple underlying regulatory structure. Transparency of the regulatory system is also supported by strong ICT tools. This includes a comprehensive system for accessing laws and regulations on the Internet and well developed business and citizen portals for access to information and services. Denmark has developed a joint government/parliament database with a shared search facility, which is ahead of what is offered in most other countries.

### *The development of new regulations*

**The development of new regulations is carried out within a well organised and carefully orchestrated framework.** A key element of this framework is the annual Law Programme, which is a detailed list of all bills that the government plans to send to the parliament during the year. The Law Programme has the dual objective of acting as a steering instrument for the government's work, and of engaging the parliament early and closely in forward planning. It includes all draft bills to parliament, makes the schedule public and sets a timeframe for ministries. The information provided by ministries must identify expected secondary regulations which will be needed to implement the laws. The process is supported by two important ministerial committees (the Coordination Committee and the Economic Committee). Last but not least, the process for making new regulations benefits from clear and comprehensive procedural guidelines established by the Ministry of Justice for the development of regulations, and a specific website on the law-making process. All these documents are publicly available. However tools in place focus on the production of primary regulations, with less attention given to secondary regulations.

**Requirements for *ex ante* impact assessment, which go back to the early 1990s, have been significantly reinforced.** The 2000 OECD review drew attention to the need for improvement. Many of its recommendations have been acted on, including greater rigour and strengthened guidance, and a stronger commitment to tackling economic effects. Ministries evaluate the consequences of their bills at an early stage, when they make proposals for the Law Programme. They need to refine the evaluation in a second stage, before the bill can be tabled before the parliament. The initial impact assessment also serves to identify proposals which require a more thorough impact assessment regarding business administrative burdens (done by the DCCA) and local government (VAKKS procedure, established in 2006). In addition, any regulatory proposal (primary or secondary), which would lead to significant administrative burdens on business requires the approval of the Economic Committee. Reflecting the broader scope and detail of impact assessment processes, guidance material has been developed and brought together on the online law-making guide. This is an important step for helping ministries to digest and understand what they need to do, and when. It also contributes to a more unified approach. The OECD team was told that the expanded guidance and online availability have contributed to improving the development of regulations, and making impact assessment more consistent and thorough. Transparency at the end of the impact assessment process is strong. The full impact assessment is accessible both to the parliament and to the wider public, once a bill is tabled before the parliament.

**As in most other OECD countries, however, controlling the flow and complexity of new regulations remains a challenge.** There are concerns among external stakeholders and local governments that the flow of new regulations shows no sign of abating, and in particular, that new regulation produced by some ministries can be increasingly detailed and complex. Some inside central government also remarked on the growing number of new regulations. In the specific Danish context, there appears to be two sets of issues. There is a tension between pressures for higher levels of safety implying more regulations, and efforts to reduce regulatory burdens. There is also a tension between efforts to move towards more outcome-based regulations and the consequent need to provide documentation to government which is, in effect, another form of regulation.

**The complex and dispersed institutional framework for monitoring the application of impact assessments needs to be strengthened and streamlined, in order to promote quality control, and to embed the process as part of evidence-based decision making.** Although impact assessment procedures are well known throughout the administration,

evidence from interviews by the OECD team suggests that they may not be applied evenly across ministries, and are often applied too late in the decision making process. This finding is supported by the report of the NAOD, and undermines the likely usefulness of the process as an aid to evidence based decision-making. The OECD team heard that it was important not to create excessively bureaucratic processes for ministries to implement. However the current dispersed approach may in fact represent a sub optimal use of resources by the administration on impact assessment, which is also likely to yield sub optimal results for decision-making. Dispersed institutional responsibilities weaken overall management and monitoring, and slow the spread of further culture change among ministries.

**The Danish impact assessment system could benefit from a more comprehensive interaction with public consultation.** The current public consultation processes imply that ministries must consult on draft regulations. Many ministries publish the impact assessment done in the first stage of bill preparation when they post the draft for comment on the Consultation Portal. This is often done for laws, but not for secondary regulations. The specific assessments on business administrative burdens (done by DCCA) and local governments (VAKKS) also make an integral use of public consultation. These are positive developments, which need to be applied across the whole impact assessment process. In particular more attention could be given to using public consultation in the development of second stage impact assessments.

**The progress achieved in developing impact assessment could be further consolidated with action in other areas.** First, there is a need to consolidate and extend methodologies (including the necessary guidance and training for ministries) for quantification of costs and benefits, building on the significant elements which are already in place for some key parts of the processes. The 2000 OECD report emphasised the need to increase the rigour of analysis for important regulations. This has not yet been fully achieved. Second, the links between the different parts of impact assessment need to be clarified. For example the guidance material does not provide a clear view of the overall process and its different elements. Finally it is not clear to what extent the current system covers secondary regulations. It is important that *ex ante* impact assessment capture all significant regulations. At the same time the principle of proportionality should be observed (not all regulations will need the same in-depth treatment).

**Alternatives to regulation are among the tools of Better Regulation policy in Denmark, but it is unclear to what extent they have been used in practice in recent years.** The 2000 OECD report noted that Denmark has for some time deployed various alternatives policy instruments to “command and control” regulation. It has made significant efforts to integrate the consideration of alternatives to regulation into the rule making process, and provided officials with thorough guidance. It was beyond the scope of this report to assess how these efforts have translated in increased use of alternatives (including the option of not regulating).

### ***The management and rationalisation of existing regulations***

**Policies to simplify the stock of existing regulations need more systematic attention.** This issue was already picked up in the 2000 OECD report. Denmark has some initiatives in place to promote simplification of the regulatory stock. These include, in particular, *ex post* implementation reviews of specific regulations, as well as *ad hoc* codifications of amendments to specific laws. The approach, however, is not systematic.

**The action plan to reduce administrative burdens on business is a substantial, well run policy that has already delivered results.** The Danish government is one of the front

runners in the area of administrative burden reduction for business. It has used the Standard Cost Model (SCM) to measure administrative burdens, and has committed to a reduction of 25% within a timeframe of eight years, between 2001 and 2010. A reduction of 15% was achieved by mid-2008. The reduction is net (it takes account of expected burdens from new regulations as well as existing regulations). The DCCA is well organised to carry forward the practical aspects (delivery of the business action plan, burden measurement supported by consultants, advising and chasing ministries). Setting an ambitious target and regular monitoring has helped create momentum and sustain pressure for progress. The project has had positive external effects and has been an efficient and necessary motor for developing Better Regulation policy in Denmark. It has demonstrated that significant change can be made both in regulation and in the interface between the civil service and businesses. It has promoted co-operation across the government, brought forward initiatives from within the administration, and stimulated knowledge-sharing between the Ministry of Economic and Business Affairs and line ministries. It has also paved the way for new Better Regulation policies such as the De-bureaucratisation Programme.

**Further progress in meeting the target does raise challenges which need to be addressed.** While an important reduction was achieved by mid-2008, the government now needs to deliver the remaining 10% reduction by 2010. Interviews revealed some doubts among stakeholders as to the capacity of the government to reach this target. Meeting the actual target may matter less than the process and specific outcomes. Nevertheless, making progress needs to take account of a number of factors. These include a negative perception by business of achievements so far (which may, at least in part, signal that substantive issues that matter to them are not yet effectively addressed, as well as a relative failure of communication on achievements); the fact that the process faces an ongoing flow of new regulations; and the need at this stage to tackle substantive changes to regulations as the “low hanging fruits” no longer exist. The government has recently developed two new projects (the “Burden Hunters” project to address irritants, and the “Ten Business Flows” project) to match its administrative burden reduction policy more closely to real business needs. Denmark has also developed new initiatives on communication since the OECD review took place, in particular with the release of the De-bureaucratisation Plan for Business Regulation, which explains how the government intends to meet the 25% reduction target.

**Denmark appears to have successfully used the experience of its business administrative burden reduction programme to launch a new initiative aimed at reducing burdens on frontline public sector workers (the De-bureaucratisation Programme).** A particularly positive feature of this programme is that it links central and local governments in a shared effort, in a way that is not found in many other OECD countries. It is also an important programme for sending a signal to public sector workers that their needs are being considered, and for encouraging new entrants into public sector work. Challenges are however considerable, not least because of the scope of the project. Municipalities, which are in charge of delivering public services, have their own organisation and processes. It can be difficult to isolate tasks related to the delivery of specific services, as these tasks are often part of the core tasks of civil servants. Effective monitoring is needed to secure progress and ensure that policy objectives are matched with practical outcomes. The action plans being developed are binding, but what this means in practice is not yet clear. There are currently no obvious burden reduction targets because a bottom-up approach, based on identifying needs in specific situations, is favoured. Beyond the need to report to the Co-ordination Committee on progress, there is a need to improve structures to secure effective monitoring and quality control.

### *Compliance, enforcement, appeals*

**A risk-based approach to enforcement has gathered momentum and needs further encouragement.** Denmark has made compliance and enforcement a greater priority over the past years and has been developing new approaches. Enforcement authorities have started to roll out a risk-based approach, and a number of inspection bodies now use risk analysis in enforcement. The small size of the country and the concentration of enforcement responsibilities within central government inspection agencies have facilitated the development of the new approach as inspection agencies have accumulated a thorough knowledge of companies. Experiences such as that of the Veterinary and Food Administration show that the involvement of front line enforcement workers can encourage acceptance of new approaches.

**The appeal system rests on administrative procedures and complaint boards within ministries, with the general courts as last resort, and this seems to work well.** The creation of boards is considered a generally effective tool for addressing and resolving complaints, and avoids overcrowding the courts. The boards are subject to control mechanisms and transparency rules. Their decisions can be appealed to courts. The parliamentary ombudsman also plays a significant role in the development of good administrative practices. The publication of its conclusions can give it significant power. These structures appear to avoid the complications of some other countries systems, which leave greater scope for judicial review and litigation. Denmark understandably wants to keep it that way. However the diversity of complaint boards and differences in their legal framework may make it difficult for citizens to get a clear view of the complaint system.

### *The interface between member states and the European Union*

**The government has an effective, well managed and highly institutionalised internal co-ordination system for EU affairs.** This not only minimises internal conflict, including with the parliament, but also ensures that Denmark always speaks with one voice in EU affairs. Internal and external unity is considered essential to maximise the influence of a small country. The government consults the parliament, which gives it a mandate for negotiation. Although it can be time-consuming, the scrutiny system ensures parliamentary control and involvement of stakeholders at an early stage of rule making, as well as coherence and a strong position for the ministry going to Brussels.

**Denmark has a very good performance as regards transposition but may need to pay closer attention to gold plating.** The procedure for discussing EU rules facilitates the transposition of the rules into the Danish system, as building a consensus at the negotiating stage – including the parliament – removes later obstacles to transposition. There is no clear evidence of gold plating in transposition, although there were several comments to the effect that Denmark wants to keep its high standards, and a significant share of administrative burdens on business stems from EU-origin regulations. A broader perspective is important on the issue of standards, given that the smooth functioning of the EU internal market is also important for the competitiveness of Danish companies in that market. Differences may however sometimes be justified to give effect to the subsidiarity principle. The issue of where administrative burdens originate is a complex one, and may reflect a restricted choice in the method of transposition. It may, however, also reflect an over-detailed implementation that could be avoided.

### *The interface between subnational and national levels of government*

**The De-bureaucratisation Programme engages the local level for the first time in a specific Better Regulation policy.** Alongside implementation of the VAKKS procedure to



assess the impact of new regulations on municipalities, the De-bureaucratisation Programme reinforces the process of developing multilevel governance. The means by which it was agreed is noteworthy. The annual framework agreement between the central government and the two sub national umbrella organisations for municipal and regional interests appears to be an effective instrument for taking both central-local and local Better Regulation initiatives forward. Municipalities are invited to participate actively in developing ideas for de-bureaucratisation (while central government will remain responsible for the delivery of the programme). There is also a commitment to the shared development of e-Government between local and central levels of government (through the STS Committee). The common citizen portal is an example of this. As in many other countries some municipalities will be better equipped than others for these tasks. A clear assessment at this stage is difficult because the major recent mergers and restructuring need time to settle.

**Local governments express concern over increased “documentation” requirements.** One of the challenges of Denmark’s current policies on Better Regulation is to combine the objective of less burdensome regulations within government and the objective of greater decentralisation in the implementation of regulations. The government aims to shift from detailed process-based regulations to performance-based regulations. Some interviewees expressed concerns that this approach may, perversely, give rise to increased requirements on municipalities to document their results. The risk would be to increase administrative burdens for local civil servants, and undermine the underlying “lighter touch” objective of the De-bureaucratisation Programme. Denmark intends to address this issue as part of its De-bureaucratisation Programme.

**There seems to be effective and regular co-operation between the central and local levels of governments.** *LGDK*, the association of municipalities, plays an important role in this co-operation, both through the negotiation of the annual framework agreement, which includes discussing priorities and targets for Better Regulation, and through regular informal consultations with ministries. Along with Danish Regions it is also part of the STS Committee, which plays a key role in the development of e-Government policy and strategy. The establishment of *KREVI* is an important further development in the co-operation between local governments and central government. *KREVI* was set up in 2005, as an independent local evaluation agency. It is charged with mapping local capacities and funding streams. It is also responsible for conducting the *VAKKS* assessments (*ex ante* evaluation of burdens from national regulation on municipalities). *KREVI* seems to have established itself in a short time as an effective independent body and partner for both central government and local governments, providing support to local governments and promoting coherence of regulations between central and local levels of government.

## Key recommendations

<b><i>Strategy and policies for Better Regulation</i></b>	
1.1	Give consideration to strengthening the institutional framework for impact assessment monitoring and quality control, further promoting quantification as well as qualitative analysis, and ensuring that public consultation is fully integrated into the process. (The recommendation is detailed in Chapter 4). Denmark should also consider whether further action is needed to strengthen public consultation practices, to ensure systematic simplification of the regulatory stock, and to establish effective monitoring of the De-bureaucratisation Programme (see Chapter 3 and Chapter 5).
1.2	Consider whether it would be helpful to develop a White Paper on Better Regulation to promote a clear purpose and vision. A White Paper could serve a number of purposes. First, it would trigger an evaluation of achievements so far, and the value of the different projects and processes that have been launched. Second, it would be an effective vehicle for wide ranging consultation with stakeholders (within and outside government) to gather views and ideas for the future, and validate current efforts. Third, it would put an integrated public face on Better Regulation, providing an opportunity to demonstrate joined up government and the respective responsibilities of different players.
1.3	Consider how to make communication an integral part of Better Regulation strategy and policies.
1.4	Ensure that, where this is not already done, adequate <i>ex post</i> evaluations of Better Regulation tools and processes are carried out. Consider whether this is an appropriate time to carry out an overall evaluation of Better Regulation, in order to help set directions for the future (for which this OECD report could be an initial contribution). The White Paper mentioned above could be a way to take this forward.

<b><i>Institutional capacities for Better Regulation</i></b>	
2.1	Consider whether the current framework in the government is adequate to the task of consolidating progress and developing future strategy. The role of the Co-ordination Committee could be further developed as a cross-ministry political driver for Better Regulation policy. Consider whether there is a need to review the relationships between the different committees in order to ensure that relevant policies are well articulated with each other.
2.2	Consider whether there is a need at this stage to strengthen and rationalise institutional support for Better Regulation at officials' level in order to enhance co-ordination, coherence and communication. One option might be to consider bringing together the two key ministries responsible for Better Regulation (the Ministry of Finance and the Ministry of Economic and Business Affairs together with the DCCA).

2.3	Consider how to consolidate further a durable ownership of Better Regulation across ministries. Ensure that there is effective communication on Better Regulation policies and results across the whole administration. Consideration should also be given to identifying and implementing specific processes to encourage further culture change. This could include integrating a Better Regulation dimension into performance evaluation for officials (an extension of the current system of Better Regulation bonuses for permanent secretaries for meeting the business burden reduction target); encouraging ministries to prioritise their work on Better Regulation (identifying key issues where progress is important for their policy goals); and not least, taking steps to reinforce monitoring and quality control of <i>ex ante</i> impact assessment (see Chapter 4).
2.4	Consider whether there is scope to strengthen the dialogue between the government and the parliament with respect to efficient development of legislation and the implementation of Better Regulation policies. This could draw inspiration from the existing well-functioning mechanisms to establish a consensus between the government and the parliament on negotiating positions for draft EU - origin regulations. The government may wish to emphasise that it wants to promote Better Regulation, not deregulation. The role of the National Audit Office, which reports to the parliament, is important and its reports on Better Regulation could be used to engage a stronger dialogue with the parliament on Better Regulation. Finally, the time may be ripe for another parliamentary conference of the kind organised by the Ministry of Finance three years ago.

### ***Transparency through public consultation and communication***

3.1	Consider whether guidance to ministries should be strengthened in order to secure greater consistency of approach, including the more systematic provision of feedback on the use made of important contributions.
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### ***The development of new regulations***

4.1	Consider carrying out an evaluation of the overall effectiveness of its current impact assessment processes, with particular attention to the more detailed issues set out below.
4.2	Consider the following actions to strengthen its institutional framework for impact assessment.
4.3	Consider how public consultation could be made an integral and systematic part of the process of impact assessment (and just not for some parts of it), with particular regard to timing, so that stakeholders' views can be taken into account as part of evaluating impacts.
4.4	Consider promoting the use of quantitative methods alongside qualitative methods, further improving guidance material on impact assessment, and establishing appropriate training in assessment techniques. The online <i>Lovprocessguide</i> could be further improved to give impact assessment higher visibility, outline the process in a comprehensive way, and provide methodological tools. Denmark should also consider whether the current impact assessment system adequately covers all significant regulations, including significant secondary regulations.

4.5	Consideration could be given to evaluating the actual uptake of alternatives and the use made of the current guidance, which dates back to 2001.
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### ***The management and rationalisation of existing regulations***

5.1	Consider the establishment of a more systematic codification policy over time, targeting selected areas that other Better Regulation policies such as the administrative burden reduction programmes have identified as problematic.
5.2	Ensure that the new projects are evaluated for their effectiveness, by seeking feedback from stakeholders on how they have affected the relevance and quality of ministry action plans for burden reduction. Consider whether any of the initiatives being taken by other countries to respond more closely to real business needs might provide useful insights for the development of the Danish approach.
5.3	Consider whether further action is needed to ensure that the parliament has a full understanding of the government's objectives
5.4	Clarify the targets and requirements on ministries and others involved in the programme. Establish a strong monitoring framework, based on what has been put in place for the programme to reduce administrative burdens on business. Provide support and guidance to municipalities for their role in the programme's implementation.

### ***Compliance, enforcement, appeals***

6.1	Communication on the new approach should not be neglected, in order to highlight the positive effects, and also provide reassurance, where needed, to sometimes risk averse citizens and parliament.
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### ***The interface between subnational and national levels of government***

8.1	It will be important to monitor capacity and competence issues at the local level.
8.2	Concerns raised with the OECD team about increased documentation requirements should be investigated with a sample of municipalities.
8.3	Ensure that the annual budget agreement continues to include Better Regulation discussion and priority setting, for so long as this is relevant.

## *Introduction: Conduct of the review*

### **Peer review and country contributions**

The review was conducted by a team consisting of members of the OECD Secretariat, and peer reviewers drawn from the administrations of other European countries with expertise in Better Regulation. The review team for Denmark was:

- Caroline Varley, Project Leader for the EU 15 reviews, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Sophie Bismut, Policy Analyst, EU 15 project, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Sjur Eigil Dahl, Senior Advisor, Regulatory Impact Unit (ORAKEL), Ministry of Trade and Industry, Norway.
- Panagiotis Karkatsoulis, Lawyer, Policy Adviser and Task Force Member to the Ministry of Public Administration and Decentralisation and other Greek Ministries.

The review team held discussions in Copenhagen with Danish officials and external stakeholders on 14 March 2008 and 26-30 May 2008. Major initiatives and developments between these missions and clearance of the report for publication in May 2009 are referenced, but have not been evaluated.

The team interviewed representatives of the following organisations:

- Confederation of Danish Industry
- Confederation of Professionals in Denmark
- Copenhagen Institute of Futures Studies
- Danish Commerce and Companies Agency (DCCA), Ministry of Economic and Business Affairs
- Danish Consumer Council
- Danish Evaluation Institute for Local Governments (KREVI)
- Danish Regions
- Danish Veterinary and Food Administration, Ministry of Agriculture, Fisheries and Food
- Deloitte
- Local Government Denmark (LGDK)
- Ministry of Economic and Business Affairs
- Ministry of Education
- Ministry of Environment
- Ministry of Finance
- Ministry of Foreign Affairs

- Ministry of Justice
- Ministry of Taxation
- Ministry of Welfare
- Prime Minister's Office
- *Rigsrevisionen* (National Audit Office)

Within the OECD Secretariat, the EU 15 project is led by Caroline Varley, supported by Sophie Bismut. Elsa Cruz de Cisneros and Shayne MacLachlan provided administrative and communications support, respectively, for the development and publication of the report.

## Structure of the report

The report is structured into eight chapters. The project baseline is set out at the start of each chapter. This is followed by an assessment and recommendations, and background material.

- *Strategy and policies for Better Regulation.* This chapter first considers the drivers of Better Regulation policies and the country's public governance framework seeks to provide a "helicopter view" of Better Regulation strategy and policies. It then considers overall communication to stakeholders on strategy and policies, as a means of encouraging their ongoing support. It reviews the mechanisms in place for the evaluation of strategy and policies aimed at testing their effectiveness. Finally, it (briefly) considers the role of e-Government in support of Better Regulation.
- *Institutional capacities for Better Regulation.* This chapter seeks to map and understand the different and often interlocking roles of the entities involved in regulatory management and the promotion and implementation of Better Regulation policies. It also examines training and capacity building within government.
- *Transparency through consultation and communication.* This chapter examines how the country secures transparency in the regulatory environment, both through public consultation in the process of rule-making and public communication on regulatory requirements.
- *The development of new regulations.* This chapter considers the processes, which may be interwoven, for the development of new regulations: procedures for the development of new regulations (forward planning; administrative procedures, legal quality); the *ex ante* impact assessment of new regulations; and the consideration of alternatives to regulation.
- *The management and rationalisation of existing regulations.* This chapter looks at regulatory policies focused on the management of the "stock" of regulations. These policies include initiatives to simplify the existing stock of regulations, and initiatives to reduce burdens which administrative requirements impose on businesses, citizens and the administration itself.
- *Compliance, enforcement, appeals.* This chapter considers the processes for ensuring compliance and enforcement of regulations, as well as administrative and

judicial review procedures available to citizens and businesses for raising issues related to the rules that bind them.

- *The interface between member states and the European Commission.* This chapter considers the processes that are in place to manage the negotiation of EU regulations, and their transposition into national regulations. It also briefly considers the interface of national Better Regulation policies with Better Regulation policies implemented at EU level.
- *The interface between sub national and national levels of government.* This chapter considers the rule-making and rule-enforcement activities of local / sub-federal levels of government, and their interplay with the national / federal level. It reviews the allocation of regulatory responsibilities at the different levels of government, the capacities of the local / sub-federal levels to produce quality regulation, and co-ordination mechanisms between the different levels.

## Methodology

The starting point for the reviews is a “project baseline” which draws on the initiatives for Better Regulation promoted by both the OECD and the European Commission over the last few years:

- The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance set out core principles of effective regulatory management which have been tested and debated in the OECD membership.
- The OECD’s multidisciplinary reviews over the last few years of regulatory reform in 11 of the 15 countries to be reviewed in this project included a comprehensive analysis of regulatory management in those countries, and recommendations.
- The OECD/SIGMA regulatory management reviews in the 12 “new” EU member states, carried out between 2005 and 2007.
- The 2005 renewed Lisbon Strategy adopted by the European Council which emphasises actions for growth and jobs, enhanced productivity and competitiveness, including measures to improve the regulatory environment for businesses. The Lisbon Agenda includes national reform programmes to be carried out by member states.
- The European Commission’s 2006 Better Regulation Strategy, and associated guidelines, which puts special emphasis on businesses and especially SMEs, drawing attention to the need for a reduction in administrative burdens.
- The European Commission’s follow up Action Programme for reducing administrative burdens, endorsed by the European Council in March 2007.
- The European Commission’s development of its own strategy and tools for Better Regulation, notably the establishment of an impact assessment process applied to the development of its own regulations.
- The OECD’s recent studies of specific aspects of regulatory management, notably on cutting red tape and e-Government, including country reviews on these issues.

The report, which was drafted by the OECD Secretariat, was the subject of comments and contributions from the peer reviewers as well as from colleagues within the OECD Secretariat. It was fact checked by Denmark.

The report is also based on material provided by Denmark in response to a questionnaire, including relevant documents, as well as relevant recent reports and reviews carried out by the OECD and other international organisations on linked issues such as e-Government and public governance.

### **Regulation: What the term means for this project**

The term “regulation” in this project is generally used to cover any instrument by which governments set requirements on citizens and enterprises. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. The term is not to be confused with EU regulations. These are one of three types of EC binding legal instrument under the Treaties (the other two being directives and decisions).



## Chapter 1

### Strategy and policies for Better Regulation

Regulatory policy may be defined broadly as an explicit, dynamic, and consistent “whole-of-government” policy to pursue high-quality regulation. A key part of the OECD’s 2005 Guiding Principles for Regulatory Quality and Performance is that countries adopt broad programmes of regulatory reform that establish principles of “good regulation”, as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity.

Effective communication to stakeholders is of growing importance to secure ongoing support for regulatory quality work. A key issue relates to stakeholders’ perceptions of regulatory achievements (business, for example, may continue to complain about regulatory issues that are better managed than previously).

Governments are accountable for the often significant resources as well as political capital invested in regulatory management systems. There is a growing interest in the systematic evaluation of regulatory management performance – “measuring the gap” between regulatory policies as set out in principle and their efficiency and effectiveness in practice. How do specific institutions, tools and processes perform? What contributes to their effective design? The systematic application of *ex post* evaluation and measurement techniques can provide part of the answer and help to strengthen the framework.

E-Government is an important support tool for Better Regulation. It permeates virtually all aspects of regulatory policy from consultation and communication to stakeholders, to the effective development of strategies addressing administrative burdens, and not least as a means of disseminating Better Regulation policies, best practices, and guidance across government, including local levels. Whilst a full evaluation of this aspect is beyond the scope of this exercise and would be inappropriate, the report makes a few comments that may prove helpful for a more in-depth analysis.

#### Assessment and recommendations

##### *Development of Better Regulation strategy and policies*

*Interest in Better Regulation has been sustained and developed over time.* There is a real interest in the promotion of Better Regulation, which appears to be relatively high on the government priority list, strongly supported by the Prime Minister and other influential ministers. Denmark’s well-functioning economy has not reduced interest in promoting further

reforms, and many new initiatives have been taken in areas such as administrative simplification, consultation, the development of new regulations and multi-level governance. Denmark has maintained its capacity for innovation and continuous improvement, which had been highlighted in the 2000 OECD report as a major strength (Box 1.1). Recent initiatives to further strengthen and develop the administrative simplification programme highlight a continued search for innovative solutions to regulatory management issues.

### **Box 1.1. Comments from the 2000 OECD report: Strategies and policies for Better Regulation**

Almost a decade after the 1980s deregulation programme was abandoned, regulatory reform was effectively relaunched in Denmark in 1993. In seven years, much has been achieved and today Denmark is among the leading OECD countries in important areas of reform. Innovative approaches have been adopted and new tools developed to achieve reform goals. The Danish approach has demonstrated the complementarity of broad policy frameworks with decentralised initiatives at the ministerial level. The current Danish focus in policy debates on future challenges – ageing, the information society, the need to boost productivity in non-traded sectors of the economy – provides a context for motivating regulatory reforms within a structure of legitimacy and social dialogue. This can work well in sustaining progress on regulatory quality. The small size and traditions of informality and consensus in Denmark reduce the need for the formal and legalistic disciplines and institutions needed in many other OECD countries to improve incentives for high-quality regulation. These traditions also, if the risks of policy rigidity can be managed, potentially improve Danish capacities for nimbleness in response to changing conditions.

A strength of Denmark's current reform programme is that it is firmly based on a balanced concept of regulatory quality encompassing both good regulation and deregulation where justified. This principled approach can incorporate a wide range of reform topics within a consistent framework and be effectively marketed to a broad reform constituency. Danish regulatory reforms are also closely linked to a broad array of efforts to improve the efficiency and effectiveness of the public sector. This can boost the value of the whole reform programme. Regulatory reforms that reduce state intervention and increase the role of the market sometimes seem, however, to be less desirable in Denmark than those reforms that maintain the role of the state, but increase its efficiency. This is probably linked to the high-degree of trust in the institutions of the Danish State as well as to the extensive social partnership arrangements, and explains why the Danish programme emphasises administrative burden reductions more than competition principles. (...)

The annual report on regulatory costs aside, the Danish reform programme has proceeded on a largely *ad hoc* basis, by accumulating specific initiatives with little strategic planning uniting them. It must be emphasised that the programme has continued to expand since its inception in 1993 with new initiatives added in a range of areas that continue to be developed. This “continuous improvement” approach is strength of the Danish approach to reform. Nonetheless, lack of a strategic framework means that initiatives are not as effective as they could be. Significant areas for reform are remaining unaddressed, while resources are employed in other, possibly less fruitful, areas.

*Source:* OECD (2000), *Regulatory Reform in Denmark: Government Capacity to Assure High-Quality Regulation*, OECD, Paris, [www.oecd.org/dataoecd/31/55/2510615.pdf](http://www.oecd.org/dataoecd/31/55/2510615.pdf)

*The Danish agenda for Better Regulation has broadened to cover new aspects of regulatory quality and is now directed towards all stakeholders.* The competitiveness of the economy has remained a very important driver of Better Regulation policies, but other policy issues have gained prominence. The need to address the issues raised by an ageing

population, growing labour shortages and expectations that high levels of social welfare can be sustained is reflected in the current agenda, which targets not just business but also frontline public sector workers as well as citizens.

*Better Regulation policies rest increasingly on well-developed and consistent methods, as well as improved co-ordination.* This has been reflected in the development of the administrative reduction programme for businesses, and now with the De-bureaucratisation project, which tackles regulation inside government. The approach has been to set general objectives, define action plans with targets and timelines, and develop a co-ordinated approach to the plans. Ministries have retained a significant autonomy in the implementation of the policies, but co-ordination has been strengthened, including through enhanced guidance to officials. The formulation of targets for some projects has increased accountability for reforms and sustained attention on the policies and their outcomes, both within and outside the administration.

*Many of the elements for a complete and coherent strategy are now in place.* There have been significant improvements in the tools and processes for the development of new regulations. Transparency in public communication on regulations is high, and has improved as regards public consultation. There is a well-developed project for reducing administrative burdens on business, and the newly established De-bureaucratisation programme for frontline public sector workers looks promising. Important initiatives have been taken to improve multi-level regulatory governance, with the identification of shared priorities and targets for Better Regulation based on the annual financial agreement between central government and the municipalities, and with the introduction of a specific procedure for assessing the impact of new regulations on local government. The EU dimension is well handled and Denmark is active in seeking to ensure that Better Regulation policies are effective at the EU level.

*To secure an optimal performance, some aspects of Better Regulation policies could be further strengthened.* Significant progress has been made to develop the framework for *ex ante* impact assessment. However there is still a large potential for improvement of the framework if Denmark wants impact assessment to have a sustained positive impact on the flow and quality of new regulations (see Chapter 4). Public consultation on the development of new regulations would benefit from a more consistent approach to ensure that the same standards are systematically applied, building on the growing transparency of the past few years. Policies to simplify the stock of existing regulation may need more systematic attention. Effective monitoring of the De-bureaucratisation Programme needs to be put in place.

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**Recommendation 1.1. Denmark should give consideration to strengthening the institutional framework for impact assessment monitoring and quality control, further promoting quantification as well as qualitative analysis, and ensuring that public consultation is fully integrated into the process. (The recommendation is detailed in Chapter 4). Denmark should also consider whether further action is needed to strengthen public consultation practices, to ensure systematic simplification of the regulatory stock, and to establish effective monitoring of the De-bureaucratisation Programme (see Chapter 3 and Chapter 5).**

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*To sustain momentum, Denmark must now show clearly how Better Regulation policies combine and can be further developed into a strategy that supports long-term public policy goals.* Denmark's approach to Better Regulation is founded on a collection of policies, with

a large scope but with no clear “big picture” bringing the different policies together and linking them to overarching policy goals or a vision for the future. The 2000 OECD review had already pointed out this lack of strategic overall approach. The Danish civil service has a positive attitude, but the OECD peer review team picked up worries about the possible underperformance of Better Regulation processes compared with potential, leading to a possible loss of momentum. Is the government underperforming, compared with what it could achieve? How can public sector workers be motivated to sustain and enhance their efforts? How can the business community- which is also looking for reassurance and a vision- be persuaded to continue supporting Better Regulation efforts in a positive way?

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**Recommendation 1.2. Consider whether it would be helpful to develop a White Paper on Better Regulation to promote a clear purpose and vision. A White Paper could serve a number of purposes. First, it would trigger an evaluation of achievements so far, and the value of the different projects and processes that have been launched. Second, it would be an effective vehicle for wide ranging consultation with stakeholders (within and outside government) to gather views and ideas for the future, and validate current efforts. Third, it would put an integrated public face on Better Regulation, providing an opportunity to demonstrate joined up government and the respective responsibilities of different players.**

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### ***Communication on Better Regulation strategy and policies***

*Public communication of Better Regulation strategy and policies needs to be boosted.* There is a need to package and communicate reform proposals to promote more enthusiastic support by stakeholders and ensure that the more controversial proposals are not rejected by the parliament. Beyond the communication that takes place on the administrative burden reduction programme for business, there does not appear to be any sustained or co-ordinated effort to promote or explain the government’s work on Better Regulation. This creates a knowledge gap which can lead stakeholders to underestimate progress made and discourage support to reform. At this stage and in a more mature phase of Better Regulation policy development, there is a need to move away from the separate presentation of policies and towards a more integrated approach, which will clarify for stakeholders the overall government objectives and Better Regulation’s link with the achievement of economic and societal goals. The government’s capacity to communicate on its agenda within the administration, to external stakeholders and to the parliament would benefit from a clearly visible leadership for the overall Better Regulation agenda (see Chapter 2).

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**Recommendation 1.3. The government should consider how to make communication an integral part of Better Regulation strategy and policies.**

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### ***Ex post evaluation of Better Regulation strategy and policies***

*Ex post evaluation of Better Regulation has gained significant ground over the past few years, and could be boosted further through a more systematic approach.* The maturity and scope of Better Regulation policies in Denmark now calls for a more systematic approach to their evaluation, both strategically and programme by programme. Some important evaluations have been carried out, not least the 2007 evaluation by the National Audit Office of Denmark (NAOD) of the impact of Better Regulation and simplification. Monitoring reports on the programme for the reduction of administrative burdens on business have helped to shape and develop the action plans. Evaluation, however, is not

systematic across all the relevant programmes (the effectiveness of *ex ante* impact assessment processes for example, see Chapter 4). Evaluation is important in order to develop and strengthen all Better Regulation tools and processes. What are the benefits of specific policies? How much do they cost? What is the opportunity cost? Against the background of sustained Better Regulation initiatives over more than two decades, an overall strategic evaluation may also be useful, not least to point directions for the future.

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**Recommendation 1.4. Ensure that, where this is not already done, adequate *ex post* evaluations of Better Regulation tools and processes are carried out. Consider whether this is an appropriate time to carry out an overall evaluation of Better Regulation, in order to help set directions for the future (for which this OECD report could be an initial contribution). The White Paper mentioned above could be a way to take this forward.**

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### ***E-Government in support of Better Regulation***

*Denmark is an OECD leader in e-Government development and implementation, but e-Government policies and frameworks in support of Better Regulation could be further developed, as in most other OECD countries.* The OECD review of e-Government in Denmark from 2005 (OECD, 2006) shows that Denmark is among the front-runners in e-Government development and implementation among OECD countries. E-Government is rightly considered to be a key support tool for Better Regulation. A full evaluation of e-Government is beyond the scope of this review. However, interviews highlighted the progress made, as well as some indications that the potential in support of Better Regulation could be further developed (for example some ministries appeared considerably more advanced than others)

## **Background**

### ***Economic context and drivers of Better Regulation***

Better Regulation policy is part of Denmark's set of forward-looking reforms to sustain the positive economic and social performance of recent years. It has long been on the agenda of the Danish government. Initial policies for regulatory quality and simplification were established in the early 1980s as part of a comprehensive deregulation programme to modernise the economy. They aimed at removing regulations harmful to the competitiveness of the business sector. Over the years the focus of policy moved from "deregulation" to "regulatory quality". In the 1990s and 2000s the government took initiatives to improve the quality of new legislation and manage the legislative agenda more effectively. The programme was progressively broadened, in particular with respect to the reduction of administrative burdens on enterprises and more recently inside the administration.

In the recent period the Danish government has reached a set of reform agreements to address upcoming social and economic challenges, including preparing for an ageing population. These agreements are part of an overall medium-term strategy, which puts fiscal sustainability as the overarching objective (Box 1.1). The importance attached by Denmark to Better Regulation today is based on the contribution which it can make not only to the competitiveness of the economy, but also to meeting social and quality of life goals against the background of an ageing population and labour shortages, and the need to make the public sector an attractive career option for young people.

Labour markets are a key issue in the government's policy, and major reforms have been launched in this area. In 2006, the government entered major political agreements with a broad majority of the parliament to make structural reforms in the areas of employment, education and research. The Welfare Agreement includes measures to reform the pension system and increase the supply of labour. It implies that the eligible age for retirement is increased in line with life expectancy. In connection with the Welfare Agreement the government has developed a Globalisation Strategy to boost education and research and development.

Improving public services is another central element of the government's strategy. A major initiative has been the reform of municipalities and region structures which came into force in January 2007 and led to substantially fewer municipalities and a redistribution of responsibilities across levels of government. The aim is to create more efficient administrations and unlock resources which can be used to improve welfare services. In continuation of the local government reform, the Danish government launched the Quality Reform in August 2007, which aims at strengthening quality of public services and ensuring an efficient use of resources. Core initiatives have included investments in welfare services, definition of quality standards in childcare, elderly care and healthcare, and reforms to enhance the quality of services and improve the attractiveness of working in the public sector.

### **Box 1.2. Denmark's medium-term strategy: "Towards new goals – Denmark 2015"**

In August 2007 the Danish government presented a new medium-term strategy leading up to 2015. The 2015 plan sets out the overall framework and guidelines for economic policy in the coming years.

Key elements of the 2015 plan are:

#### **A sustainable public economy**

Fiscal policy must be sustainable in the long run. This implies that the planned priorities and improvements in tax and expenditure policies towards 2015 can be sustained thereafter – without tax increases or other tightening of fiscal policy.

The structural fiscal surplus must be kept at 0.75 – 1.75% of GDP towards 2010. From 2011 to 2015, the fiscal position must be in surplus or in balance. EMU-debt is reduced further towards 2015.

Fiscal policy aims at stable and high employment. Fiscal policy focus on stable economic developments and sustainable public finances ensures confidence in the fixed exchange rate policy.

#### **Higher employment**

New initiatives should increase employment (unsupported) by a further 20 000 persons towards 2015.

Average hours worked must remain at least at the present level towards 2015, even though demographics will tend to reduce average working hours for the employed.

The government appoints a labour market commission to give recommendations, by the end of 2008, on how to meet or exceed the requirements concerning employment and hours worked.

### **High quality of public services**

The expenditures for public consumption can increase in line with the overall economy. Expenditures may amount to up to 26.5% of GDP (cyclically-adjusted) in 2015.

The recent reform of the municipal and regional structures provides conditions for a better prioritisation of public expenditure. The target is to unlock resources for further public services in municipalities and regions amounting to DKK 1 billion every year in 2009 -13 or DKK 5 billion permanently by making administration more effective.

Strategy for better quality of public services – DKK 10 billion has been allocated over the next four years for the initiatives in the government’s proposed reforms – including tri-partite agreements.

A quality fund of DKK 50 billion to finance public investments in the health sector, primary and lower secondary schools, day care institutions, care of the elderly, etc. during the next ten years.

### **Tax freeze and lower labour tax**

The tax freeze will continue to ensure that taxes will not increase.

Tax on labour income is reduced. Income tax will be reduced by DKK 9.5 billion.

### **Climate- and energy strategies**

Energy consumption should remain stable and renewable energy sources should account for at least 30% of total energy consumption by 2025.

To reach the ambitious goals in the climate- and energy strategies, energy taxes will be fixed in real terms at their 2008 level.

*Source: The Danish Government (2007), Denmark’s National Reform Programme, Second Progress Report – October, Ministry of Finance, Copenhagen.*

## ***Main developments in Denmark’s Better Regulation agenda***

Since the end of the 1990s Better Regulation policy in Denmark has integrated efforts at improving the law-making process and the simplification of existing regulations, in particular through the reduction of administrative burdens. While in the 1980s regulatory reform in Denmark was linked to structural reforms aimed at deregulating parts of the economy, the 1993 programme of regulatory reform of the Social Democrat-led government marked a shift towards regulatory quality. This shift has been maintained and reinforced by subsequent governments. Over the past decade, the government has developed a Better Regulation policy as a support to the modernisation of the public sector and the competitiveness of the economy. The overall objective is not to eliminate regulations *per se* but to promote the most efficient business environment in Europe and to provide Danish citizens with public services that focus on their needs.

Better Regulation policy in Denmark has been directed towards all stakeholders (businesses, citizens, administration). In 2005, the National Reform Programme formulated by Denmark as a contribution to the EU Lisbon Strategy, stated: “*It is important that the regulation does not entail unnecessary costs for the business sector. Enterprises should spend their time on production and innovation – not on unnecessary administration*”. “*...The citizen regulation and decentralised authorities also constitute key factors for*

*Danish society's overall productivity*" (Danish government, 2005). There are however significant differences in pace and focus between the different elements of this policy.

- *Better Regulation policy towards business.* This is the most long-standing, developed and systematic policy, and is anchored in the reduction of administrative burdens. It constitutes the core of Denmark's Better Regulation agenda in the framework of the Lisbon strategy.
- *Better Regulation inside government* was addressed in previous years in a non-systematic way, but has been given a strong push since 2007. The government launched a broadly scoped project – the De-bureaucratisation programme – to address the interaction between the levels of government and make the administration more efficient. The programme has been heavily influenced by the experience gained in the reduction of administrative burdens on businesses. It reflects the need to provide efficient public services to citizens and businesses, but also the need to address challenging trends in the labour market, including the effects of an ageing population.
- *Better Regulation towards citizens* is formally part of the Better Regulation agenda, although there is no specific Better Regulation policy for citizens. Developments in this area are however significant, and have been closely associated with e-Government strategies, more specifically with a project for a common citizens' portal.

**Table 1.1. Milestones in the development of Better Regulation policies in Denmark**

1993	Prime Minister issues a revised circular on intra-governmental consultation on legislative proposals. This includes for the first time a requirement for ministries to identify business and environmental impacts.
1995	Prime Minister amends a circular on legislative proposals again to require that "the immediate cost implications of the proposal for the business sector" be stated. Report of a government committee investigating administrative burdens leads to an action plan outlining 25 specific reductions. Ministry of Business and Industry issues a manual on business impact assessment of bills. First report on the total business impact of legislation adopted in the previous year.
1996	Government launches a programme on simplification of rules and regulations. Ministry of Business and Industry establishes Business Test panels to assess administrative costs of new legislative proposals on business sector.
1997	Parliament implements annual reporting on trends in administrative burdens on business. Ministry of Business and Industry establishes a division for administrative simplification. Ministry of Business and Industry establishes six rotating panels to review its legislation with a view to simplifying or eliminating superfluous provisions.
1998	Government establishes the Regulation Committee with mandate to monitor the implementation of the regulatory quality policy. Government identifies four key points for the future development of the regulatory quality policy.
2002	Government launches its public sector modernisation programme titled "Citizens at the Wheel". Government presents a cross ministerial action plan for regulatory simplification consisting of close to 200 initiatives, and sets a 25% reduction target. This is followed by other annual action plans in 2003 and 2004.
2004	Establishment of 10 "burden committees" to help prepare action plans for the reduction of administrative burdens.
2005	Launch of the Consultation Portal (Høringsportalen) Ministry of Finance publishes guidelines on impact assessment, which law drafters have to use when preparing regulations.



	Measurement of administrative costs stemming from all business regulations is completed (2001 baseline). Government strengthens efforts to reduce administrative burdens by requiring that any new regulations with expected administrative costs over 10 000 hours (equivalent to approximately EUR 350 000) be submitted to the Economic Committee for approval.
2006	Government launches a new action plan for simplification, which focuses on businesses. From 2006 on the government reports to the parliament on progress in the ministries' individual action plan for simplification every six months. Government introduces VAKKS, a procedure for assessing the impact of new regulations on local governments, in the process of preparing regulations.
2007	In June, the government, the association of municipalities (LGDK), the association of regions (Danish Regions), and trade unions make a tripartite agreement on the need for further simplification of regulation inside government (between levels of government). Government launches the De-bureaucratisation Programme, which focuses on regulation inside government. The programme is part of the larger Quality Reform of the government. First projects are launched in four areas related to the labour market. Government launches the Burden Hunters project to identify "irritation" administrative burdens for businesses. Government releases its strategy for e-Government for the period 2007-10.
2008	Government announces the new user-driven project, Ten Business Flows, to reduce administrative burdens on businesses. A political agreement is reached for financing the De-bureaucratisation Programme (regulation inside government). A methodology for screening, mapping and measuring internal burdens is developed and applied in four areas related to public service provision.
2009	Government presents the Plan for De-bureaucratisation for Business. Government introduces a more systematic approach to reduce "irritation burdens" for businesses as a supplement to the 25% reduction target. Mapping and measurement of regulation inside government continues in six areas related to public service provision.

### ***Guiding principles for Better Regulation***

Although the government has been progressing on all fronts, administrative simplification is the keynote. The administrative burdens reduction programme (for business regulation) and now the De-bureaucratisation Programme (for regulation inside government) are the flagships of the government's Better Regulation policy. The formulation of a quantitative target for the reduction of business administrative burdens in 2002 has given this programme a particular prominence. However this policy is considered as only one of the pillars of Denmark's Better Regulation policy. Other pillars are strengthened impact assessment procedures, a strong policy for handling EU origin regulations as well as actions to influence EU level Better Regulation, digitalisation, and improved coherence and interaction between the central and local level of government.

### ***Main Better Regulation policies***

#### *The reduction of administrative burdens on businesses*

The current Danish programme for the reduction of administrative burdens on businesses dates back to 2002, when the government presented a cross ministerial action plan for administrative simplification consisting of close to 200 initiatives. Initiatives to reduce red tape are however older since a first action plan was launched in 1995. Since 2002 the government has carried out annual action plans, except in 2005 when it undertook a review of the policy.

The government has taken a broad approach to administrative simplification. The policy is not only about the simplification of existing procedures, but also preventing the creation of new burdens. through more thorough impact assessment procedures and specific

attention to any new regulation that would create significant burdens (with the requirement set in 2005 to get the approval of the Economic Committee for any regulation with expected administrative costs above 10 000 hours, equivalent to approximately EUR 350 000). Other tools for administrative simplification are the use of information and communication technologies (ICT) and efforts at ensuring quality of EU regulations.

### *The De-bureaucratisation Programme*

Following an agreement with local governments, trade unions and businesses, the government launched an initiative in 2007 to improve regulation inside government, as part of a broader Quality Reform of government. The aim is to simplify rules, requirements and procedures that place unnecessary burdens on local and central authorities, and public sector employees. The programme, which is mainly structured around action plans at the ministerial level, supports employees' initiatives to cut red tape by promoting innovation and service development, in order to free up time for service provision.

### *Legal quality and impact assessment*

Significant efforts have been made to enhance the quality of processes for the development of new regulations, including the development of guidance for law drafters. An integrated Internet guidance tool was put in place in 2007, following co-operation between the Ministry of Justice and the two core ministries for Better Regulation (Ministry of Finance and Ministry of Economic and Business Affairs). Steps have also been taken to strengthen *ex ante* impact assessment procedures (see Chapter 4) and ensure transparency of consultation (creation of a Consultation Portal, see Chapter 3). Specific procedures have been put in place or reinforced to prevent the creation of new burdens (*ex ante* impact assessment on administrative burdens for businesses and on local government).

### *Better Regulation and local government*

Alongside the De-bureaucratisation Programme the government is giving increasing attention to the interaction between central and local governments. The underlying strategy is to promote performance-based regulations, leaving municipalities the capacity to define their own processes for achieving required standards of service quality. This strategy is supported by initiatives to ensure better coherence between central government and subnational governments. The annual agreement between central and local government on the overall financial framework for municipalities now includes priorities and targets for Better Regulation. As well, the government has introduced specific procedures (“VAKKS”) for assessing the impact of new regulations on local governments, and created a dedicated unit (KREVI) in charge of carrying out VAKKS and more broadly of promoting regulatory quality and the effective management of resources in municipalities and regions.

### *The EU dimension*

The Danish government has put in place a highly institutionalised internal co-ordination system for dealing with the negotiation and transposition of EU regulations. The system closely associates the government and the parliament. The objective is to promote both internal and external unity, to maximise the influence of a small country in the EU arena. Denmark is also an active player in the development of the EU Better Regulation agenda.

### *Communication on the Better Regulation agenda*

Public communication on the Better Regulation agenda has mostly focused on administrative simplification and e-Government, and has been largely done through consultation of stakeholders (see Chapter 3).<sup>1</sup>

### ***Ex post evaluation of Better Regulation strategy and policies***

Some important *ex post* evaluations have been carried out. In 2005 the administrative burden reduction programme for business initiated in 2001-02 was subject to an assessment, following which action plans were adjusted. At a more strategic level, there have been external evaluations by the OECD (in 2000 and again with this report). The 2007 report of the National Audit Office of Denmark (NAOD) on the government's Better Regulation and administrative simplification programmes is the most recent example of an evaluation initiative (*Rigsrevisionen*, 2007). The NAOD examined the Better Regulation efforts of five ministries, and the results obtained. The evaluation covered simplification initiatives, measurement of administrative burdens on businesses and local government, and addressed the creation of new regulations (including impact assessment procedures). This evaluation goes some way towards capturing other key Better Regulation policies. However specific evaluations of these other policies have not yet been carried out or could be further developed (such as the *ex ante* impact assessment processes, the use of alternatives to regulation, or the effectiveness of the guidelines for the development of regulations). It may also be helpful to have an internal strategic view of what has been achieved and what could be improved, to complement the external views of bodies such as the OECD.

### ***E-Government in support of Better Regulation***

Denmark is an OECD leader in e-Government (OECD, 2006), which is seen as a key support tool for Better Regulation, and includes a target that “all relevant communication between government and business should be digitalised by 2012”, as well as addressing citizens' needs (who already benefit from some entirely digitalised services such as fully automated personal tax management). This has been done mainly through the development of a citizen portal (“*borger.dk*”) and a business portal (“*virksom.dk*”). Recent progress has been made to personalise the services on the citizen portal<sup>2</sup>, and to extend digital reporting by businesses to the administration through the business portal. (For an overview of Denmark's e-Government strategy for 2007-10, see Box 1.2 and for a detailed analysis, the 2006 OECD review of e-Government in Denmark). Institutionally, a joint public sector management board led by the Ministry of Finance (STS Committee, see Chapter 2), co-ordinates and develops policy for the roll out of e-Government, supported by a Digital Task Force. An important role is also played by the Ministry of Science, Technology and Innovation (notably as regards back office standardisation).

#### **Box 1.3. Denmark's e-Government strategy**

In 2007 the Danish government launched its third strategic programme to develop e-Government, jointly with Local Government Denmark (LGDK) and Danish Regions. The document entitled “Towards Better Digital Service, Increased Efficiency and Stronger Collaboration” sets the policy programme for the period 2007-10.

The strategy builds on the experience from the two previous e-Government strategies. The first e-Government strategy for 2001-04 primarily marked the start-up of joint digitalisation co-operation between the municipal, regional and state levels of administration — which is still the basic concept behind the Danish approach to e-Government. The second e-Government strategy for 2004-06 added impetus to the development of internal public-sector digitalisation. In turn, the new strategy period aims at raising the level of ambition and setting new standards for the development of citizens' services and cohesion across the public sector. The new strategy entails better and more binding co-operation and emphasises that implementation of specific digitalisation measures will enable to make efficiency gains within the administration.

The strategy is built on three overarching priority areas, that interact:

- Making public service more readily accessible to citizens and businesses.
- Facilitating increased efficiency of the administration.
- Enhancing collaboration within the administration.

Accessibility to public services is to be improved through the expansion of a government portal for citizens (“*borger.dk*”) and for businesses (“*virk.dk*”). These portals are to become central contact points between citizens, businesses and the public service. The Citizens Portal is the common public digital service channel for citizens, and is to make digital self-service more attractive and more widespread. The objective is to integrate all self-service digital services in the portal by 2012. Likewise, the objective of the Business Portal is to make it possible for businesses to perform their reporting to the public sector more quickly and easily (the objective being that by 2010 75% of business reporting be done digitally). A related objective to the development of the portals is to make it possible for businesses and citizen, as much as possible, to supply information to the public sector only once.

Other major actions to making public services more readily accessible include: improving communication channels (through digital communication between citizens, businesses and the administration), involving citizens and businesses in the development of digital services (such as the project for the simplification of 10 business flows), further strengthening security and safety in data handling.

*Source:* The Danish Government, Local Government Denmark (LGDK) and Danish Regions (2007), The Danish e-Government Strategy 2007-10, June 2007, The Digital Taskforce, Copenhagen, [http://modernisering.dk/da/english/e\\_government\\_strategy](http://modernisering.dk/da/english/e_government_strategy).

Interviews with the OECD peer review team showed that e-Government is considered to be a critical element of Better Regulation, and that Denmark is pro active and well advanced in its deployment.<sup>3</sup> Denmark has two important advantages relative to some other OECD countries: the high level of trust in government which facilitates the task of implementing key tools such as data re-use,<sup>4</sup> and the relatively small size of the country.<sup>5</sup> Most interviewees considered that Denmark has progressed well in recent years. It was also noted that the effective development of e-Government is demanding, resource intensive and takes time. Linked to this, there is a widespread awareness of potential still waiting to be exploited.<sup>6</sup> Some ministries have been very active in their own field. For example, the Ministry of Environment has a programme to digitalise permits. The Ministry of Taxation has developed a new system for the collection of business taxes. Further developing e-Government efforts requires a clear central steering and support, as initiatives are increasingly complex and involves different branches of government. The high level of ambition and many cross governmental initiatives demand a high degree of co-ordination to ensure cost efficient deployment, coherence, data re-use and interoperability.

## Notes

1. A communication campaign was launched in autumn 2008 with two main tracks: general promotion of Better Regulation and administrative simplification programmes, and initiatives aimed more specifically at informing companies of regulatory and other changes (such as ICT) intended to make their life easier.
2. Updated in October 2008.
3. The legal and regulatory environment for e-Government was analysed as part of the review of e-Government in 2005. Further details can be seen in: OECD (2006), chapter 3.1 on the *Legal and regulatory environment*, page 56 ff.
4. A report on public sector transformation mentions information and data sharing as one of the key drivers for transformation and thus simplification of public administrations. See OECD (2007), “E-Government as a Tool for Transformation”, GOV/PGC(2007)6, 28 March.
5. These are also known as prerequisites for uptake of e-Government services as analysed in OECD (2008), “User Take-up of e-Government Services”, GOV/PGC(2008)16, 13 October 2008. One of the interesting examples regarding Better Regulation is the Danish pro-active multi-channel management and the promotion of the use of digital channels where possible (see for example *Box 3.30. Denmark: Mandatory use of digital channels through proactive channel management* in the report).
6. We were told, for example, by the NAOD that digitalisation is now the main way to improve the situation for citizens.



## *Chapter 2*

### **Institutional capacities for Better Regulation**

Regulatory management needs to find its place in a country's institutional architecture, and have support from all the relevant institutions. The institutional framework within which Better Regulation must exert influence extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the subnational levels of government, as well as international structures (notably, for this project, the EU), also play critical roles in the development, implementation and enforcement of policies and regulations.

The parliament may initiate new primary legislation, and proposals from executive rarely if ever become law without integrating the changes generated by parliamentary scrutiny. The judiciary may have the role of constitutional guardian, and is generally responsible for ensuring that the executive acts within its proper authority, as well as playing an important role in the interpretation and enforcement of regulations. Regulatory agencies and subnational levels of government may exercise a range of regulatory responsibilities. They may be responsible (variously) for the development of secondary regulations, issue guidance on regulations, have discretionary powers to interpret regulations, enforce regulations, as well as influencing the development of the overall policy and regulatory framework. What role should each actor have, taking into account accountability, feasibility, and balance across government? What is the best way to secure effective institutional oversight of Better Regulation policies?

The OECD's previous country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customised, as countries' institutional settings and legal systems can be very specific, ranging from systems adapted to small societies with closely knit governments that rely on trust and informality, to large federal systems that must find ways of dealing with high levels of autonomy and diversity.

Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of Better Regulation. Beyond the technical need for training in certain processes such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

## Assessment and recommendations

*Strong traditions of autonomous ministries have encouraged the development of a generally successful institutional framework adapted to these traditions.* A number of formal inter-ministerial committees have responsibility for monitoring and developing Better Regulation policies and are involved in vetting draft regulations. This formal co-ordination co-exists with informal co-ordination between officials in ministries. Officials – especially those who form the “inner circle” for Better Regulation development – work well with each other, as evidenced by steady progress to develop Better Regulation policies and learn from each other. For example, the De-bureaucratisation initiative has drawn its inspiration from the more mature business burden reduction initiative. The establishment of a Better Regulation unit in the Ministry of Finance, combined with the establishment of a unit for business burdens in the Danish Commerce and Companies Agency, has reinforced the framework and its capacities to deliver an increasingly demanding agenda. The OECD team found considerable interest among government officials in the further development of Better Regulation.

*The current institutional structures fall short, however, of providing a fully effective strategic motor for the optimal future development of Better Regulation policies.* Although the Danish institutional set up is in many ways strong and effective, leadership is not clearly visible. This needs some attention at the strategic level as well as in daily management.

*It is important that a stronger strategic direction should emerge at this stage.* The Co-ordination Committee is the hub of Better Regulation management. It carries significant responsibilities (approval of the Law Programme, approval of draft laws, approval of action plans for the business administrative simplification programmes, and reporting hub for both this programme and the De-bureaucratisation Programme). The Economic Committee is responsible for economic aspects (it must approve proposals affecting public spending or with a significant expected impact on business). The STS officials’ committee is another key player, co-ordinating with local governments, including on e-Government. These committees are efficient in carrying out their allocated tasks. As the main hub, the Co-ordination Committee might be more visibly engaged in articulating and developing strategy for Better Regulation, based on its existing range of tasks.

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**Recommendation 2.1. Consider whether the current framework in the government is adequate to the task of consolidating progress and developing future strategy. The role of the Co-ordination Committee could be further developed as a cross-ministry political driver for Better Regulation policy. Consider whether there is a need to review the relationships between the different committees in order to ensure that relevant policies are well articulated with each other.**

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*Day-to-day management of the Better Regulation agenda raises challenges of co-ordination, coherence and communication across government.* There are currently at least two poles of responsibility. The Ministry of Finance plays a key role across all the relevant committees. Its ministerial responsibilities cover many (not all) of the key policies for Better Regulation. The Ministry of Economic and Business Affairs, together with the Business Better Regulation unit of the Danish Commerce and Companies Agency (DCCA, one of its agencies), plays a crucial role in the development of Better Regulation in relation



to businesses. This division of responsibilities may be a comfortable fit for Denmark's institutional traditions, but it reduces the visibility of Better Regulation policy and the capacity to exert effective leverage on outlying ministries.

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**Recommendation 2.2. Consider whether there is a need at this stage to strengthen and rationalise institutional support for Better Regulation at officials' level in order to enhance co-ordination, coherence and communication. One option might be to consider bringing together the two key ministries responsible for Better Regulation (the Ministry of Finance and the Ministry of Economic and Business Affairs together with the DCCA).**

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*Ownership of Better Regulation is developing across ministries, and needs further reinforcement, in particular with regard to impact assessment.* As in most other OECD countries, ministries are responsible for implementing Better Regulation policies (such as administrative burden reduction), but are also accountable for results through regular reports to the Prime Minister. Individual ministries decide on how to take forward the action plans in their sector. This has helped to spread ownership and promoted culture change. This constitutes significant progress compared with the assessment of the 2000 OECD review, which called for increased accountability for reform results of individual ministries (Box 2.1). Interviews indicated however that performance could be uneven across ministries, particularly in the area of impact assessment.

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**Recommendation 2.3. Consider how to consolidate further a durable ownership of Better Regulation across ministries. Ensure that there is effective communication on Better Regulation policies and results across the whole administration. Consideration should also be given to identifying and implementing specific processes to encourage further culture change. This could include integrating a Better Regulation dimension into performance evaluation for officials (an extension of the current system of Better Regulation bonuses for permanent secretaries for meeting the business burden reduction target); encouraging ministries to prioritise their work on Better Regulation (identifying key issues where progress is important for their policy goals); and not least, taking steps to reinforce monitoring and quality control of *ex ante* impact assessment (see Chapter 4).**

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#### **Box 2.1. Recommendations and comments from the 2000 OECD report: Institutional capacities for Better Regulation**

Increase accountability for reform results within the ministries by establishing a systematic process of oversight by a ministerial committee, such as the Economic Committee of the Cabinet, and by setting broad targets for reform in high-priority areas, against which ministries will be accountable.

Denmark's programme has important political and institutional strengths. Support for the regulatory quality programme exists across the political spectrum and is underpinned by extra-governmental bodies. The Danish Bar and Law Society, for example, had a significant role in initiating the programme and continues to be involved in regulatory quality issues through extensive participation on preparatory committees as well as initiatives such as a 1997 conference on regulatory quality. At the administrative level, the major ministries at the centre of government - the Ministry of Finance, the Ministry of Justice and the Ministry of Business and Industry, as well as the Prime Minister's Office -- all have major roles in the programme. This means that there is a broad front supporting reform efforts across government. The recent establishment of the

Regulation Committee imposes a clear responsibility for the regulatory quality programme on the most senior departmental secretaries. Its existence provides an excellent opportunity to further strengthen accountability for results at the highest levels of the administration.

The Prime Minister has a strong role in overseeing the reform programmes, assisted by the Regulation Committee. Yet there is currently no process for reviewing at the political level the concrete results achieved by the ministries, against priorities established by the government. A more systematic oversight of results by the Economic Committee of the Cabinet could reinforce incentives for results within a decentralised network of initiatives among the ministries. Such a ministerial committee could also set measurable targets to assist in focussing reform resources on priority issues such as business costs, barriers to entry, or rapid introduction of new technologies.

*Source:* OECD (2000), *Regulatory Reform in Denmark*, “Government Capacity to Assure High-Quality Regulation”, OECD Publishing, Paris, [www.oecd.org/dataoecd/31/55/2510615.pdf](http://www.oecd.org/dataoecd/31/55/2510615.pdf).

*The role of the parliament in Better Regulation processes is also important.* As in other OECD countries, the role of legislature is a cornerstone of the development and enactment of legislation. Reflecting this, some other countries’ executives are taking steps to strengthen their dialogue with the parliament. Processes such as *ex ante* impact assessment are especially relevant in order to secure the best possible outcome in terms of clear and effective legislation. Some Better Regulation programmes such as the administrative burden reduction increasingly engage the parliament. This makes it all the more important that Better Regulation proposals are presented to the *Folketing* (the Danish parliament) in the wider context of what the government is seeking to achieve, so that the parliament has a fully informed perspective for its own debates.

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**Recommendation 2.4.** Consider whether there is scope to strengthen the dialogue between the government and the parliament with respect to efficient development of legislation and the implementation of Better Regulation policies. This could draw inspiration from the existing well-functioning mechanisms to establish a consensus between the government and the parliament on negotiating positions for draft EU-origin regulations. The government may wish to emphasise that it wants to promote Better Regulation, not deregulation. The role of the National Audit Office, which reports to the parliament, is important and its reports on Better Regulation could be used to engage a stronger dialogue with the parliament on Better Regulation. Finally, the time may be ripe for another parliamentary conference of the kind organised by the Ministry of Finance three years ago.

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## Background

### *General institutional context*

#### *Developments in the general institutional context*

The political framework for making reforms in Denmark is characterised by a search for consensus, acceptance of compromise, widespread participation in decision-making, and institutionalised power-sharing. Values of consensus and participation are still reflected throughout Danish regulatory processes, typically taking the form of non-permanent law-preparation committees, permanent commissions, different forms of written consultation

procedures involving stakeholders, and strong involvement of social partners in preparation of legislation related for example to the labour market, workplace health and safety.

### **Box 2.2. Institutional framework for Danish policy and law making**

Denmark is a constitutional hereditary monarchy and representative democracy, based on a unicameral parliamentary system. The monarch is head of state, and the Prime Minister is head of the government.

Denmark is a unitary state, which now has three levels: central state, regions, and municipalities.

#### **Government**

The Prime Minister and members of the Cabinet are appointed by the monarch on basis of the party composition in the parliament), and confirmed by a vote of confidence in the parliament. Members of the government do not have to sit in the parliament. The government is answerable to the parliament. While primary regulation is enacted by the parliament, most of the laws originate in the government. Ministries of the government are traditionally very independent. Ministers are equal and may not command or be commanded by a fellow minister, with the Prime Minister being “first among equals”. Central ministries also include agencies, most of which remain within the hierarchical control of ministries, while a few ones are independent regulatory bodies (for example, Competition Authority).

#### **Parliament**

Elections for the unicameral parliament, the *Folketing*, are based on a proportional representation system, with a very low threshold of representation. Elections are held at least every four years, but the Prime Minister can dissolve the *Folketing* at any time and call for new elections. As a consequence of the election system, no single party has held an absolute majority in the *Folketing* since 1909, and Danish governments have been most often minority administrations, governing with the aid of one or more supporting parties. The current government is a two-party coalition, while eight parties are represented in the parliament. Hence in the Danish political system, the government usually needs to hold extensive negotiations and make compromises with supporting and/or opposition parties, and the legislature tends to be more powerful than in many other EU member states. The Danish multi-party system has also fostered a political and administrative culture of compromise and consensus.

#### **Courts**

The Danish courts exercise the judicial powers of government and resolve related issues, including probate, bankruptcy, enforcement, land registration and administrative issues. There is no separate constitutional court. Nor is there a separate administrative court.

#### **Public sector**

The Danish public sector, which is divided into state and local government, is notable for its decentralised structure and management. The structure of local government is based on a two-tier system of regions and municipalities, which have their own spheres of responsibilities and are not subordinated to central government. Municipalities have a high degree of political and administrative autonomy from state government.

The civil service is permanent and politically neutral. Senior civil servants remain in post upon a change of government. The head of civil servants in a ministry is the permanent secretary. The minister also has a private secretariat, with non-permanent staff.

Denmark's coalition-based political system has promoted a culture of consensus. The proportional representation system requires a minimum of only 2% of the vote to be elected. As a result, the parliament has a large number of political parties represented and Danish governments are invariably based on coalition of parties. Many coalition governments have been in the minority in the parliament and have had to rely on support from parties remaining outside the coalition agreement to govern. Values of consensus, compromise and wide participation are essential to the effective functioning of such a model of government. The Danish political culture also relies on informal approaches and structures, which is widely regarded as having allowed for flexibility and the adoption of pragmatic solutions. This has shaped Denmark's approach to the development of institutional structures and processes for Better Regulation.

While the structure of central government has remained stable over the past decade, the Danish government has led a sweeping reform of local government, alongside efforts to improve regulatory governance across all levels of government. In 2007, the government drastically reduced the number of local authorities, with the number of municipalities reduced from 271 to 98, and 5 regions replacing 14 counties. The reform also led to changes in their field of competence.<sup>1</sup>

### *Developments in Better Regulation institutions*

Over the past decade the main responsibilities for Better Regulation policies have been with the Ministry of Finance and the Ministry of Economic and Business Affairs. At the same time, initiatives have been taken to promote co-ordination and co-operation across government. These initiatives have included the creation of a dedicated unit within the Ministry of Finance in 2002, as well as the enhanced use of a network of inter-ministerial committees and steering groups to address different aspects of Better Regulation policy. The Danish Commerce and Companies Agency (DCCA) of the Ministry of Economic and Business Affairs has also seen a development of its role over the past few years along with the increasing effort to reduce administrative burdens on business.

**Table 2.1. Milestones in the development of Better Regulation institutions in Denmark**

1998	Establishment of the Regulation Committee (Group of Permanent Secretaries)
2002	Establishment of the Administration Policy Centre in the Ministry of Finance, as part of the government's programme for the modernisation of the public sector ("Citizens at the Wheel"). DCCA is charged with measuring administrative burdens for businesses as part of the administrative burden reduction programme.
2005	Establishment of the Steering Group for Cross-National Initiatives (STS), in charge of co-ordinating the action of central government and local governments (particularly in the area of e-Government). DCCA is charged with performing impact assessment regarding administrative burdens on business.
2006	Establishment of KREVI, a state-funded, independent evaluation institute on local governments in Denmark, charged with promoting efficiency and quality in local government.
2007	Structural reform of local governments. The number of municipalities is reduced from 271 to 98 and the 14 counties are replaced by 5 regions.
2008	In September 2008, the Administration Policy Centre in the Ministry of Finance is split into two units: KAL (Centre for Quality, De-bureaucratisation and Leadership) with a general responsibility for developing the Better Regulation agenda, and co-ordination with other ministries; CED (Centre for Administrative Efficiency and e-Government) with specific responsibility for digitalisation policies.

## ***Key institutional players for Better Regulation policy***

### *The executive centre of government*

The Ministry of Finance has a general responsibility for Better Regulation, and has joint responsibility with the Ministry of Economic and Business Affairs with respect to Better Regulation policy for businesses. Other key players are the Prime Minister's Office, the Ministry of Justice, and the Ministry of Foreign Affairs (in relation to quality of EU regulations).

### The Ministry of Finance

The Ministry of Finance has specific responsibilities for co-ordinating the government's Better Regulation programmes and for promoting regulatory quality. Its work on Better Regulation is carried out by the Administration Policy Centre (ACP), which was set up in 2002 and was reorganised into two units in September 2008 (KAL and CED).<sup>2</sup>

- *Co-ordination and implementation of Better Regulation programmes.* The Ministry of Finance leads the government's action plans for the reduction of administrative burdens on businesses (along with the Ministry of Economic and Business Affairs). Through its responsibility for the De-bureaucratisation Programme, it also leads the government's efforts to reduce administrative burdens within government and promotes Better Regulation and quality of public services in municipalities. As chair of the Steering Group for Cross-National Initiatives (STS), it also co-ordinates e-Government initiatives across ministries and local governments.
- *Regulatory management.* The Ministry of Finance plays a leading role in the development of the Law Programme and in the preparation of specific draft laws and executive orders.<sup>3</sup> It screens the proposals of ministries (including the impact assessment) for inclusion in the Law Programme. It plays a leading role (as secretariat and/or chair) in key government policy co-ordination bodies, including the Co-ordination Committee, the Regulation Committee, and the Economic Committee (see Table 2.2).

### The Ministry of Economic and Business Affairs

Alongside the Ministry of Finance, *the Ministry of Economic and Business Affairs* is responsible for the government's Better Regulation programme in relation to business. A dedicated unit for business regulation (Division for Better Business Regulation) has been established within the DCCA (for more on DCCA's role, see Box 2.3). This 22-employee unit plays a leading role in Denmark's efforts to reduce the administrative burdens on business. It is responsible for measuring the administrative burdens of all existing business regulations. It also carries out *ex ante* assessments of the administrative burdens on business of draft regulations.

### Other key central government players

*The Prime Minister's Office* has general responsibility for co-ordinating the policy of the various ministries and draws up the annual Law Programme. It leads the Co-ordination Committee of the Cabinet and the Regulation Committee, and provides secretariat services to these two committees in co-operation with the Ministry of Finance (see Table 2.2). It also monitors progress on the administrative simplification programme for the reduction of

burdens on business and the recently launched De-bureaucratisation Programme, through six-monthly reports to the Co-ordination Committee.

*The Ministry of Justice* has general responsibility for securing the technical quality of regulations. It provides guidance to other ministries, and scrutinises draft laws prepared by ministries before the drafts are sent to the parliament.

*The Ministry of Foreign Affairs* is the overall co-ordinator in relation to EU regulations. Denmark's position on EU matters is decided according to a specific procedure in which ministries, the parliament and relevant stakeholders are consulted to attain consensus (see Chapter 7).

### **Box 2.3. The Danish Commerce and Companies Agency**

The Danish Commerce and Companies Agency (DCCA – *Erhvervs- og Selskabsstyrelsen*) is an agency under the Minister of Economic and Business Affairs (Deputy Prime Minister) *Lene Espersen*.

#### **Functions**

The DCCA has four main activities:

- registration of and support to businesses;
- administration and development of a number of legislative business acts (for example company law);
- co-ordination and support to the implementation of the government's simplification action plan for businesses (Division for Better Business Regulation), including impact assessments of economic and administrative burdens in new regulations as part of the legislative preparatory process; and
- monitoring of the business portal *virksom.dk*.

The DCCA has around 280 employees, 22 of which are in the Division for Better Business Regulation and 15 in the secretariat for the business portal *Virksom.dk*. These numbers include secondments from other ministries.

#### **Role of DCCA in Better Regulation**

In the field of Better Regulation, the main role of the DCCA is to co-ordinate ministries in the implementation of the cross-ministerial action plan for the reduction of administrative burdens on businesses, and to provide them with support. The DCCA also co-ordinates the strategy of ministries in the field of digitalisation related to business needs, and develops and monitors the business portal *virksom.dk*.

With respect to the reduction of administrative burdens on business, the DCCA has the following activities:

- It is responsible for measuring the administrative burdens of all existing business regulations. The results are used by the individual ministries to identify areas for simplification and contribute to the 25% reduction target.
- It carries out impact assessments of all draft business regulations. The DCCA pursues corresponding objectives internationally and in particular with respect to the EU. In this regard, the DCCA promotes impact assessments of draft EU legislation and simplification of existing EU legislation. This work primarily takes place in the Economic and Financial Affairs (ECOFIN) Council and the Competitiveness Council of the EU.
- It develops new processes in support of business burden reduction. Two key recent initiatives

are the “burden hunter” project and the “ten business flows” project, which were recently launched to improve the business regulatory environment (see Chapter 5)

- It is responsible for communication on the business burden reduction initiatives.

Source: DCCA website ([www.eogs.dk](http://www.eogs.dk)) and the government of Denmark.

### *Co-ordination across central government*

Over the past decades the government has strengthened internal co-operation through inter-ministerial committees. These committees are made up of ministers and are usually assisted by mirror committees of high-level officials (Table 2.2). The Ministry of Finance plays a key role across the whole structure. Although co-operation across ministries still relies strongly on informal mechanisms, the development of these committees has implied a more formal approach to policy and regulatory development. The Co-ordination Committee, led by the Prime Minister, stands at the apex of the system. Together with the Economic Committee, the Co-ordination Committee has horizontal responsibilities for Better Regulation. Whilst the Co-ordination Committee vets high-priority policies, the Economic Committee is more closely involved in the day-to-day running of government and is vetting public spending.

*The Co-ordination Committee (Koordinationsudvalget)* vets and approves major new policy initiatives and changes. This ministerial committee is also the focal point for the government’s Better Regulation policy. It reviews the final version of the annual Law Programme before approval by the Cabinet, and approves individual draft laws before they are sent to the parliament. It endorses ministries’ action plans to reduce administrative burdens on business, and reviews progress reports from ministries on the De-bureaucratisation Programme. The Co-ordination Committee is headed by the Prime Minister and includes the most important ministries. Participation can extend to other ministries on occasion. *The Regulation Committee (Departementschefgruppen vedr. lov kvalitet)*, prepares the Co-ordination Committee’s work on Better Regulation policy. This officials’ committee, established in 1998, is formed out of the Group of Permanent Secretaries that prepares meetings of the Co-ordination Committee (*K-forberedelse*), and is the highest level for co-ordination between civil servants. It comprises the permanent secretaries of the Prime Minister’s Office (chair), Ministry of Finance, Ministry of Economic and Business Affairs, and Ministry of Justice. The group vets ministers’ proposals for inclusion in the annual Law Programme, including the impact assessments that must be carried out before a proposal can be tabled, and develops policy on regulatory quality.

*The Economic Committee (Økonomiudvalget)* co-ordinates economic policy and decides on policy priorities in that regard. This ministerial committee also has a major specific role in relation to Better Regulation, acting as a gate keeper on any draft primary or secondary regulation with significant estimated administrative costs on business (see Chapter 4). It generally discusses the issues that are later presented to the Co-ordination Committee. The Economic Committee is headed by the Minister of Finance and also comprises the Minister of Economic and Business Affairs, the Minister of Justice and the Minister of Taxation. Other ministers can participate on an *ad hoc* basis. As for the Co-ordination Committee, the Economic Committee also has a group of permanent secretaries to prepare decisions (the Steering Group to the Economic Committee – *Styregruppen til Økonomiudvalget*).

*The EU Committee (EU-udvalget)* stands at the apex of a network of special committees in charge of co-ordination relating to the EU decision making process. The EU Committee is chaired by the Minister of Foreign Affairs and comprises a representative of each ministry (usually at the level of head of department). The EU Committee sends its policy proposals for approval to the government's Foreign Policy Committee (minister's level). (For more on the process, see Chapter 7).

*The Steering Group for Cross-National Initiatives (STS – Styregruppen for Tværoffentlige Samarbejder)*, established in 2005, is the central decision-making body for projects involving co-operation between central and local governments. This officials' committee works on the basis of terms of references based on the annual economic agreements between the central government and the local governments. It co-ordinates and oversees cross-governmental initiatives for digitalisation (such as covering joint processes, security solutions, data exchange formats). It also monitors the Co-operation Project, launched in 2006, which aims at improving use of resources across all levels of government, and improving quality of public services (for more, see Chapter 8). It consists of the permanent secretaries from the Ministry of Finance (chair) and other key ministries, the Managing Director of LGDK (association of municipalities) and the Managing Director of Danish Regions. It reports to the central government, LGDK and Danish Regions.

**Table 2.2. Key governmental co-ordination bodies in Denmark**

	Co-ordination Committee	Regulation Committee	Economic Committee	Steering Group for Cross-National Initiatives	EU Committee
Date of establishment	1982	1998	<1980	2005	<1980
Role	Approves major new policy initiatives or changes. Approves law programme and draft laws before Cabinet meetings.	Prepares meetings of the Co-ordination Committee	Decides on economic policy priorities. Gatekeeper on draft laws with significant administrative burdens on businesses.	Co-ordinates cross-governmental initiatives and e-Government policy	Co-ordinates government action regarding EU policies
Chair	Prime Minister	Permanent Secretary of the Prime Minister's Office	Minister of Finance	Permanent Secretary of the Ministry of Finance	Minister of Foreign Affairs
Other members	Ministers of: Economic and Business Affairs, Foreign Affairs, Finance, Employment Justice, Climate and Energy, Taxation.	Permanent Secretaries of: Prime Minister's Office, Ministry of Finance, Ministry of Economic and Business Affairs Ministry of Justice	Ministers of: Economic and Business Affairs, Justice, Taxation Other ministers on <i>ad hoc</i> basis	Permanent Secretaries of: Ministry of Science, Technology and Innovation, Ministry of Economic and Business Affairs, Ministry of Welfare, Ministry of Taxation, Managing director of LGDK (municipalities) Managing director of Danish Regions.	Representative of each ministry
Secretariat	Prime Minister's Office and Ministry of Finance	Prime Minister's Office and Ministry of Finance	Ministry of Finance	Ministry of Finance	Ministry of Foreign Affairs
Frequency of meetings	Once a week	Once a week	Once a week	Approximately once a month	Once a week



As well as the formal structures, there is informal co-ordination between ministries. The implementation of the administrative simplification programme for business, the development of more recent administrative simplification projects (De-bureaucratisation Programme, Burden Hunter Programme, Ten Business Flows) and the ongoing roll out of e-Government have also relied on this informal co-ordination. These programmes have required increased harmonisation, extensive exchange of information and co-operation across ministries. They have enabled the spread of new approaches to regulatory management, for example as regards risk-based enforcement. This increased co-ordination across government is gradually transforming the administrative culture in Denmark. At the same time, ministries in Denmark have traditionally enjoyed considerable autonomy. This has certain advantages. Individual ministries are responsible for their own results, which includes taking credit for progress, and generates a sense of ownership of Better Regulation. Incentives to do well are supported by regular reports to the Prime Minister,<sup>4</sup> and first steps towards including Better Regulation achievements in performance appraisal systems.<sup>5</sup>

Interviews with the OECD peer review team showed overall that tangible progress has been achieved in terms of culture change. Interviews also revealed, however, that enthusiasm and achievements with regard to Better Regulation across ministries is uneven, which reflects ministries' extensive traditional autonomy, as well as the different challenges that they may face (for example in making changes to sensitive legislation). Several interviewees pointed out a tendency by some ministries to over-regulate, sometimes in response to crises, with repercussions on administrative burdens for municipalities, and different priorities given to the allocation of resources on Better Regulation projects. With regard to *ex ante* impact assessment (see Chapter 4), there can still be a reluctance to share emerging drafts with others until quite a late stage in development.

### *Regulatory agencies*

Danish ministries traditionally have a wide range of departments, agencies, boards, or institutes under them, with various degrees of autonomy. The major distinction is usually made between ministerial departments and agencies (*styrelser*). Agencies (around 60 in 2008) have broad responsibilities in the daily implementation of policy and regulations (including enforcement in some cases), which however does not affect the principle of ministerial accountability. The authority of agencies usually results from delegation from the ministry. The basis for delegation can vary a lot, ranging from a general delegation to a detailed description of responsibilities and tasks. Agencies usually report to ministers through a ministerial department, and hence are normally integrated in the ministerial hierarchy. They are usually managed by performance contracts negotiated with the ministry, and enjoy autonomy and independence over how to achieve the results defined in the contracts. They also have autonomy in managing their budget, within the budget envelope allocated through the ministry.

The responsibilities and autonomy of agencies can vary across ministries, as well as across agencies within a single ministry.

- In some cases, the department has a relatively small staff and mostly concentrates on intra-ministerial co-ordination and servicing the minister. In this case agencies are in charge of both policy work (for example drafting of bills) and the preparation of any documents made in the name of the minister (for example, the drafting of answers to the parliament and parliamentary standing committees) as well the drafting of briefings to the minister before meetings in the parliament or with interest groups.

They may be responsible for developing executive orders or other secondary regulations to give effect to primary laws.

- In other cases departments retain a relatively large capacity for hierarchical governance of its agencies. In this case, departments have a leading role in policy work, with agencies providing information and support to them. In some ministries the organisation is a mixed version of these two models. Some tasks are solved in the ministry without involvement of the agencies, while the agencies carry sole responsibility for the tasks that are delegated to them. Policy making is usually the function of the department.<sup>6</sup> Within a single ministry, the autonomy and competence of agencies or councils can differ (for example advisory role, capacity to make decisions).<sup>7</sup>
- In a limited number of cases, agencies have a much wider autonomy and are outside the ministerial hierarchy. They report to a management board rather than to the ministerial department. Examples include the National IT and Telecom Agency and the Competition Authority.

### *The legislature*

The *Folketing* has played a limited role so far in the development of Better Regulation policy (for the general role and structure of the parliament, see Box 2.4). Better Regulation policy, in particular the administrative simplification policy, is seen as the government's policy, and has not been formally endorsed by the parliament. The main standing parliamentary committee involved in Better Regulation is the Business Committee, via its monitoring of the government's policy on administrative burden reduction. Since 1996 the Minister of Economic and Business Affairs has released an annual statement to the parliament, "The Business Sector and Regulation", which presents developments in ministries' effort to simplify business-related regulations.

Co-operation between the government and the parliament has been necessary to carry out the administrative simplification programme, as a number of initiatives require legislative changes. This has so far worked quite well. However the OECD peer review team were told that many members of parliament are concerned about maintaining the same level of protection in areas such as employment, health and safety, which can raise obstacles if the initiatives are seen as de-regulating initiatives. Also, now that the "low-hanging fruits" of simplification have been picked, some ministries anticipate difficult debates ahead.

### *The judiciary*

The Danish judicial system is based on the traditions of continental Europe. The system of courts has a unified structure, in which there are no special courts of law, as well as no formal division within the courts. On 1 January 2007 a reform of courts reduced the number of district courts from 82 to 24. The objectives of the reform were to gain higher quality, reduce the time to review each case, and move the case load from the high courts to the district courts.

Denmark has no specialised courts for constitutional issues and for administrative issues. Constitutional questions must be decided by the court that is otherwise dealing with the case, and in the final instance the question can be decided by the Supreme Court. Danish courts have been very reluctant to have recourse to the constitution, and it was not until 1999 that the Supreme Court rejected a politically important act as being contrary to

the constitution. Administrative cases are dealt with by district courts. The administration has established a large number of complaint boards (internal to ministries) to deal with complaints of citizens, whose decisions can be appealed to the courts.

### **Box 2.4. Better Regulation in context: The parliament and parliamentary committees**

The *Folketing* is Denmark's unicameral parliament. Its principal functions are the reading and passing of laws together with the control of government and administration.

#### **Composition**

The *Folketing's* seats are allocated to the parties on the basis of proportional representation. The Danish parliament has 179 members, of whom two are elected from the Faroe Islands and two from Greenland, 135 members are elected by proportional majority in constituencies while the remaining 40 seats are allotted in proportion to the total number of votes a list receives. All lists receiving more than 2% of the total vote are guaranteed parliamentary representation.

#### **Reading and passing of bills**

Ministers and any member of the parliament may submit bills. In accordance with the Constitutional Act of the Kingdom of Denmark, a bill shall be read three times before it is adopted. Between each reading, the laws are committed to debate by one of the standing committees.

The process for adopting a bill includes the following steps:

- **First reading:** At the first reading, the bill is discussed in general. No amendments may be moved. Normally, the bill is referred to a committee.
- **Report:** After having read the bill, the committee may make a report. The report contains recommendations to the parliament as well as eventual amendments.
- **Second reading:** The bill is discussed in general and in detail. The individual sections and eventual amendments to the bill are put to the vote. Usually, the bill passes on directly to the third reading.
- **Supplementary report:** The bill can also be referred to a new committee reading. Subsequent to this reading, the committee usually makes a supplementary report which may contain amendments.
- **Third reading:** At the third reading, eventual new amendments are discussed and put to the vote. Subsequently, the bill is discussed in its entirety and it is put to the final vote.
- **When the law has been passed after its third reading, it is signed by the monarch and countersigned by the minister, who thus assumes responsibility for the act.**

#### **Control of the government**

The parliament's control of the government is exercised through the plenum debates and for instance through questions, which enable members to table motions expressing criticism of or even no confidence in the government during the debate. In addition, members may direct questions to the ministers verbally or in writing, request written responses to a committee or summon ministers to appear personally before a committee debating important or politically sensitive matters. Control is also exercised through the public auditors chosen by the *Folketing* and the National Audit Office of Denmark (*Rigsrevisionen*).

#### **Standing committees**

The *Folketing* has 25 standing (*i.e.* permanent) committees. The work of the committees is primarily linked to the reading of bills and proposals for parliamentary resolution. The committees

also follow the current development within their spheres of competence. As a main rule, committee meetings take place behind closed doors. However, the committees may also hold open meetings. The committees may call in a minister for consultation, and put questions to a minister.

The working sphere of a committee largely corresponds to that of a ministry. Two of the standing committees are particularly influential: the Finance Committee and the European Affairs Committee. The main task of the Finance Committee is to read finance bills and supplementary appropriation bills as well as to take a stand on documents relating to supplementary appropriations required by the individual ministers over the year. The European Affairs Committee deals with questions related to the EU. It is this Committee which gives the ministers their mandates for negotiation in Brussels.

*Source:* Website of the Danish Ministry of Foreign Affairs ([www.denmark.dk](http://www.denmark.dk)) and website of the *Folketing* ([www.ft.dk](http://www.ft.dk)).

### *Local levels of government*

Since a structural reform of local government came into force on 1 January 2007, Denmark has been divided into 5 regions and 98 municipalities. Regulatory powers are concentrated at the central level but the delivery of public services is highly decentralised. Regional councils are responsible for health services and regional development, while the municipal councils are responsible for day care, primary and lower secondary schools, care for the elderly, culture, environment and roads (see Chapter 8).

### *National Audit Office*

The NAOD (*Rigsrevisionen*) is an independent institution under the authority of the *Folketing*, whose Public Accounts Committee is given authority under the Danish constitution to audit the Danish state accounts. The NAOD prepares audit reports for the Public Accounts Committee, which presents them to the parliament. The Public Accounts Committee can request that the NAOD audit particular matters. The NAOD is also able to determine the subject of its audits, which is an important safeguard of its independence. It is also independent in its choice of audit procedures, and has access to all information considered relevant for the audit. The NAOD is headed by the Auditor General, who is appointed by the Speaker of the *Folketing* upon the recommendation of the Public Accounts Committee.<sup>8</sup> The NAOD has a staff of 260 employees.

The NAOD audits public state accounts (encompassing 425 institutions including departments, agencies and universities) and audits and/or reviews a number of companies, enterprises and foundations that receive state funding or are owned by the state. With the amendment to the Auditor General's Act of 13 June 2006, the NAOD's authority to audit and conduct major examinations was extended to include the five regions. In 2007, the NAOD conducted a cross-sectoral examination of the healthcare sector in the regions and in the course of the year, created a basis for co-operation with the regions. Municipalities are not within its scope of competence. In 2008 the NAOD based its planning and auditing activities by focusing more accurately on the high-risk areas.

The products of the NAOD fall into three major groups:

- Financial audits cover the accounts of institutions and state accounts. The results of the financial audit are reported on an aggregate level in the Appropriation Control Report and, from 1999, at annual meetings between the NAOD and the management of various ministries.

- Performance audit examinations focus on economy, efficiency and effectiveness. The NAOD produces annually about 17-20 reports. In addition, about 80 memoranda are produced for the Public Accounts Committee annually. As part of this the NAOD produced a report on the impact of Better Regulation and simplification in 2007 (*Rigsrevisionen*, 2007). The examination took stock of the government's effort in the field of Better Regulation and simplification over 2001-06.
- The NAOD advises the government in two major areas: 1) advice on financial and accounting systems; and 2) statements of changing procedures.

### ***Resources and training***

The number of state employees directly involved in Better Regulation is estimated at 80, most of whom work in the Centre for Quality, De-bureaucratisation and Leadership (KAL) of the Ministry of Finance and the DCCA of the Ministry of Economy and Business Affairs.<sup>9</sup> The resources of the DCCA with respect to administrative simplification have increased over the past years, reflecting the government's priority to the programme. The number of staff working in the Better Business Regulation Division of the DCCA has risen from 6 in 2001 to 22 today. There has been a similar trend in the Ministry of Finance, where the number of senior officials working on Better Regulation (within KAL and CED or corresponding offices previous to their establishment) rose from 27 in August 2001 to 35 in December 2008.

The government has introduced new management practices into the public sector, as part of efforts to increase its efficiency. In 1998, it established new and more flexible pay systems for state employees. The system brought in the possibility of differential pay through individual and team-based wage allowances that are awarded against the background of the employees' qualifications, functions and performance. In 2006, approximately 80% of staff employed under collective agreements was on new pay systems (Ministry of Finance, 2007).

Interviews suggested that there is no major issue of general training or ability, and showed a generally positive commitment towards improving performance. The main concern is the difficulty of attracting young people into the civil service. However, there is very little specific training in evidence for the application of Better Regulation tools and processes (for example carrying out *ex ante* impact assessments).

## **Notes**

1. The local government reform and initiatives in the field of Better Regulation at the local levels are addressed in Chapter 8.
2. In September 2008, the APC was re-organised into two offices, which together have approximately the same number of staff and deal with the same tasks as the former APC. The first office is the Centre for Quality, De-bureaucratisation and Leadership (*Center for kvalitet, afbureaukratisering og ledelse*, KAL). It has a general responsibility for developing the Better Regulation agenda and plays a leading role in co-ordination across ministries (preparation of the Law programme, implementation of Better Regulation

initiatives, in particular the De-bureaucratisation programme). Its staff includes 15 experts (including 2 directors), 5 of whom work on the De-bureaucratisation Programme. It also houses the legal unit of the ministry. The second office is the Centre for Administrative Efficiency and e-Government (*Centre for Effektivisering og Digitalisering – CED*), which is charged with developing projects, in particular digitalisation projects, that can free up resources in the public administration. It includes a 12-staff Digital Taskforce, which is responsible for co-ordinating and implementing digital administration across the public sector.

3. Executive orders are included in the process if they follow from new laws and are “caught” under the preparation of the Law Programme, or if they have budgetary consequences leading to an obligation for ministries to achieve the consent of the Ministry of Finance and perhaps the *Folketing’s* Budgetary Committee.
4. See Chapter 5. The OECD peer review team was told, for example, that reports to the Prime Minister on progress with the action plans for the reduction of administrative burdens on businesses had a “name and shame” effect.
5. The performance appraisal for permanent secretaries takes account of their ministries’ progress with respect to Better Regulation-related projects.
6. The Ministry of Finance is an example of the mixed model, where the agencies on one hand have extended competencies and responsibilities in relation to their tasks, but on the other hand only cover a minor part of the ministry’s total portfolio. Thus, the department is responsible for a large part of the ministry’s policy making and this is done without involvement of the agencies. At the same time, specific tasks concerning financial and property management in the state administration, and the state’s general responsibilities as an employer in the area of wages, pensions, personnel and management policy are delegated to the three agencies.

Another example of the mixed model is the Ministry for Economic and Business Affairs. The ministry has delegated significant competencies to its agencies. In areas where a firm political line has been established, agencies report directly to the minister. When new political initiatives are developed, agencies and department co-operate. The agencies have responsibility for preparing legislation, for control activities, formal decisions and user related tasks. The department has responsibility for a number of tasks related to policy formulation and specific technical tasks concerning for example macro economic and structural monitoring; areas that are not covered by the agencies

7. See *Binderkrantz* (2007) and Ministry of Finance (2006).
8. Until 1991 *Rigsrevisionen* was under the Ministry of Economic Affairs. The monarch would appoint the Auditor General upon recommendation from the Minister of Economic Affairs and after consultation with the Public Accounts Committee of the *Folketing*.
9. Administration Policy Centre of the Ministry of Finance: 22 (of which 10 employees in the unit “rule simplification and Better Regulation, and 12 employees in the Digital TaskForce, which is responsible for the government e-strategy) – DCCA of the Ministry of Economic and Business Affairs: 37 (of which 21 in the Division for Better Regulation, and 16 in the Secretariat for the business portal *Virk.dk*) – Other ministries: 12 (2 people in charge of co-ordinating Better Regulation effort in the Ministry of Education, Ministry of Employment, Ministry of Refugees, Immigrants and Immigration, Ministry of Health, Ministry of Welfare, and Ministry of Taxation).

## Chapter 3

### Transparency through consultation and communication

Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardised procedures for making and changing regulations, consultation with stakeholders, effective communication and publication of regulations and plain language drafting, codification, controls on administrative discretion, and effective appeals processes. It can involve a mix of formal and informal processes. Techniques such as common commencement dates can make it easier for business to digest regulatory requirements. The contribution of e-Government to improve transparency, consultation and communication is of growing importance.

This chapter focuses on two main elements of transparency: public consultation and communication on regulations (other aspects are considered elsewhere in the text, for example appeals are considered in Chapter 6).

#### Assessment and recommendations

##### *Public consultation on regulations*

*Denmark has a tradition of deeply anchored consultation with key stakeholders as well as within government.* Consultation has evolved to combine formal and informal processes. The approach takes advantage of the small size of the country (with a population of 5.3 million and approximately 250 000 enterprises) and small closely connected ministries, where “everybody knows each other”. It relies on Denmark’s political culture of a search for consensus among coalition parties, acceptance of the need to compromise, and trust between government and external stakeholders. Informality remains a key feature, but there are major elements of formal consultation as well. Apart from the institutionalised framework of collective bargaining in the field of labour regulations, the standard procedure for making regulations includes prior formal public hearings and public consultation before a draft law is tabled before the parliament. These procedures are described in the Ministry of Justice’s Guidelines on Quality of Regulations (Ministry of Finance, 2005) and in *Lovprocessguide*, the online guide on procedures for the development of regulations.<sup>1</sup>

*Important developments in the approaches deployed for consultation are boosting transparency and the engagement of a wider range of stakeholders.* There has been a significant evolution since the 2000 OECD review, which cautioned against the insider/outsider problem (Box 3.1). In recent years Danish ministries have opened up

consultation with the development of new procedures to stimulate public debate and engage stakeholders. This has included public hearings and notice for comment on dedicated websites in preparation for larger reforms.<sup>2</sup> Greater transparency has been supported by the establishment of the Consultation Portal in 2005, which has provided a large amount of information on consultation processes. More generally Danish ministries have leaned towards broader and earlier participation in consultation processes. For example, the development of the business administrative burden reduction programme has been supported by very open arrangements to gather views and information. The basic frame of reference is changing, from seeking to establish a consensus on the way forward within a somewhat closed circle, to an active search for views from as many relevant stakeholders as possible.

### Box 3.1. Recommendations and comments from the 2000 OECD report: Transparency

To reduce the risk that informal practices will result in insider/outsider problems, continually monitor the use of public consultation and social partnership arrangements at all levels of government to ensure that they are consistently transparent and accessible to all affected stakeholders.

The current legislative quality improvement programme builds on the strengths of the Danish system for developing and implementing legislation. For much of this century, Danish political culture has been characterised by widespread participation in decision-making, a search for consensus among coalition parties, informality of procedures, acceptance of the necessity of compromise, and institutionalised power-sharing. Values of consensus and participation are still reflected throughout Danish regulatory processes, typically taking the form of non-permanent law-preparation committees, permanent commissions, different forms of written consultation procedures involving stakeholders, and delegation of regulatory powers to social partners. This is being extended by adopting new technologies to improve the dissemination of draft legislation and associated material. The cultural nature of values of openness and consultation is indicated by the fact that many of these processes are wholly informal, and based largely on tradition and practice, rather than on legislation.

This review has given a positive view of existing consultation processes in Denmark, but changes underway in Danish policy-making and the role of the state in evolving markets merit a review of how consultation processes can be improved. Considerations should include ensuring that adequate technical or expert information is obtained, that consultation is timely and does not impede policy responsiveness, and that individuals and relatively less well-organised groups have adequate access to the process.

Source: OECD (2000), *Regulatory Reform in Denmark*, “Government Capacity to Assure High-Quality Regulation”, OECD, Paris, [www.oecd.org/dataoecd/31/55/2510615.pdf](http://www.oecd.org/dataoecd/31/55/2510615.pdf).

*Progress in ensuring transparency needs to be consolidated.* While significant progress has been made in recent years, some issues need further attention. Informal consultation procedures may still create some uncertainty as to whether all stakeholders have had a chance to be heard. They may also lead to different standards of transparency between ministries. Informal consultation traditions have the advantage of legitimising policies, but can put a fence around openness for some key areas such as labour regulations. Ministries have to provide information on consultation (including the comments received and how they were dealt with) when sending a draft bill to the parliament. However several interviewees mentioned the lack of direct feedback in some cases (such as the consultation on administrative burdens). Securing effective and consistent feedback is important if the



interest of stakeholders is to be sustained for the next round of consultations, as a major input of time and effort is often needed to respond to consultation exercises.

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**Recommendation 3.1. Consider whether guidance to ministries should be strengthened in order to secure greater consistency of approach, including the more systematic provision of feedback on the use made of important contributions.**

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### ***Public communication on regulations***

*Communication on regulations is a particularly strong element of the Danish regulatory system.* The communication of new regulations is well managed, making it possible to find out easily what regulations apply to specific activities. This is partly because of a simple underlying regulatory structure. Transparency of the regulatory system is also supported by strong ICT tools. This includes a comprehensive system for accessing laws and regulations on the Internet and well-developed business and citizen portals for access to information and services. Denmark has developed a joint government/parliament database with a shared search facility, which is ahead of what is offered in most other countries.

## **Background**

### ***Public consultation on regulations***

#### ***Denmark's general approach to consultation***

In most policy areas, tradition and internal government guidelines rather than legal requirements have framed the approach to public consultation on new regulations. A key document in that respect is the Guidelines on Quality of Regulation issued by the Ministry of Justice and updated in 2005 (Ministry of Justice, 2005; see also Chapter 4). This framework has paved the way for a well-established and extensive system of public consultation, which takes the form of non-permanent law-preparation committees, permanent commissions, public hearings (*folkemøder*), different forms of written consultation procedures involving stakeholders, as well as collective negotiations with the social partners. While formal procedures are also now part of the development of regulations, informal consultation still plays a key role. Ministries usually consult interested parties at a very early stage in the preparation of regulations, well ahead of the formal procedure.

The government consults external stakeholders on a broad range of issues. Consultation is not “only” about draft primary laws. It also covers draft executive orders, guidelines, technical standards, as well as policy and strategy papers that can be the basis for future regulations. The implementation of a specific policy can give rise to consultation of external stakeholders. A prominent example has been the preparation of the action plan for the implementation of the programme for the reduction of administrative burdens on businesses. From 2004 to 2007, working groups (referred to as the “burden committees”), consisting of representatives from businesses and business organisations, were asked to make simplification proposals.<sup>3</sup> Officials also sometimes use direct interviews to identify the needs of stakeholders. An example is the “burden hunter” project launched in 2007, where DCCA officials visit companies to gather concrete evidence from companies about administrative burdens (for more on consultation in the administrative simplification programme, see Chapter 6).

### *Preparatory committees*

When developing major policies and legislation, ministries may appoint a preparatory committee, which brings together a wide range of stakeholders and representative groups with significant interests in the proposal. The practice is frequent in areas involving complex ethical and/or technical aspects, rarer in areas requiring rapid or confidential preparation of legislation. There are a few permanent committees (such as the Committee on EU regulation), but most are set up on *ad hoc* basis. The composition of the committees does not follow any standardised rules, but the practice has been for wide representation of affected parties. The objective of the preparatory committees is to collect information for analysing issues. There has been some decline in the use of *ad hoc* committees over the years as pressure has increased to pass legislation more quickly in response to public concerns. However these committees have played a role in the initiation of some of the large reforms over the last years (such as the structural reform of local governments).

### *Calls for public consultation*

The Ministry of Justice Guidelines on Quality of Regulation recommend holding consultations on draft laws, unless a shortage of time prevents it, and hearing all stakeholders (public organisations, private organisations), which will be affected by the draft law. They advise law drafters to organise consultation on a “ready” version of the draft, but as early as possible before the draft is sent to the parliament. When preparing new regulations, ministries send draft laws to bodies with a particular interest in the matter, and publish the draft on the Internet to enable all interested parties to comment on them. Publication on the Consultation Portal (Box 3.2) is mandatory, and many ministries also use their own websites in parallel.

An important development since the 2000 OECD review is the establishment of the Consultation Portal in 2005 (Box 3.2). Draft laws and executive orders must be published on the Consultation Portal, and failure to publish must be justified in the explanatory memorandum which comes with the draft and is sent to other ministries for internal consultation, Cabinet and further to the parliament. Public consultation is however extended in practice to a wider range of documents (including guidelines and policy papers). Usual deadlines for comments are three to four weeks. The portal gives information on organisations which were called in hearings. Written comments received by the authority are also published, once the draft law is sent to the parliament. Both the explanatory memorandum (including information on consultation) and attached document are published on the website of the parliament.

#### **Box 3.2. Høringsportalen (Consultation Portal)**

In 2005, the Danish administration set up a dedicated portal to ensure greater transparency in the consultation process when preparing new regulations. The Consultation Portal (*Høringsportalen*) is hosted on the citizens’ portal “*borger.dk*”, which has a specific page on law making ([www.borger.dk/forside/lovgivning/hoeringsportalen](http://www.borger.dk/forside/lovgivning/hoeringsportalen)).

The Consultation Portal collects consultation documents, dating back to mid-2005, relating to the preparation of regulation by all ministries and agencies. Publication is mandatory for all draft bills and executive orders. Other documents are also published for consultation. They include policy or strategy papers, European Commission’s draft regulations, draft technical standards, and guidelines.

Documentation includes the draft, the call for consultation (which specifies the deadline) and the

list of institutions and people, which have been called for hearing. Once the consultation period is over, the government also publishes the written comments, which have been received. Comments to draft law must be published no later than when the bill is forwarded to the parliament.

Draft regulations can be searched by category of document, date, authority, as well as key words. The portal also includes the possibility to receive regular updating electronic notices and a newsletter on consultation.

### *Collective agreements*

In the field of labour regulations, Denmark has a long-standing practice of very formal consultation procedures through the collective negotiations between the government and “social partners”, *i.e.* the trade unions and the employers’ organisations (Box 3.3). A 1993 law on active labour market policy requires the involvement of the unions and the employers’ organisations in the formulation and implementation of labour market policies. The National Labour Council, which comprises the unions and the employers’ organisations, advises the Minister of Labour on an ongoing basis on all questions and reforms with relevance to labour market policy. Similar arrangements are in place in the field of health and safety in the workplace.

### *External stakeholders’ view on consultation practices*

Interviews conducted by the OECD peer review team showed that consultation is well embedded in the regulatory practices of Danish authorities. Stakeholders are usually involved from the beginning of the policy-making process. It is a requirement on ministries to provide information on consultation (comments received, how they were handled) when sending a draft bill to the parliament. Interviews suggested that lack of feedback may be a weak point in some consultation exercises, some officials not always providing information on how comments received are used to amend the text. With respect to the administrative burden reduction programme, the OECD team was told that the action plans seem to have gone through a process of intensive bottom up engagement (through the “burden committees”), after which they have “disappeared” inside the ministries to be finalised. It was also pointed out that in some cases (such as pressure on time, political sensitivity of the issue) ministries neglect to consult some of the stakeholders.

### **Box 3.3. Social partnership in Denmark**

Social partnerships in Denmark date from the “September agreement” of 1899, the country’s first collective bargaining agreement. The pragmatic and broad nature of partnership was further illustrated by the 1987 “Job Pact” that focused on policies to maintain and expand jobs rather than wages.

A longstanding tradition of co-operation exists between government, unions and employers’ organisations in policy formulation and implementation relating to the labour market (approximately 88% of wage earners are members of unions). All three parties have responsibilities in the process, which is to a large degree institutionalised. According to the Danish Ministry of Labour, implementation of labour market policies is eased by the involvement of the unions and the employers’ organisations in policy formulation.

Compared to other countries, the Danish labour market is characterised by a high degree of regulation by voluntary agreements between the unions and the employers’ organisations and a low

degree of regulation by laws. The unions and the employers' organisations are themselves responsible for the regulation of wages and working conditions. This is done through a series of framework agreements governing many aspects of labour policy, such as training and pay. Even EU labour-market directives are implemented by collective agreements rather than legislation.

A range of tasks is undertaken by the unions and the employer's organisations themselves or in close co-operation with the public sector, including unemployment insurance and in-service training.

### ***Public communication on regulations***

The Danish government and the *Folketing* have been active in making regulations easily accessible to the public, making considerable use of the Internet to do so. New legislation – both primary and secondary – is published in *Lovtidende.dk*, the official gazette, which has been in electronic format since 1 January 2008.<sup>4</sup> *Lovtidende.dk* also provides commencement dates for new regulations to the public (as Denmark does not use a common commencement date). Denmark has a Legal Information Database, which is a register of all regulations and is accessible on the Internet free of charge. The site “*retsinformation.dk*” allows searches of all primary and secondary regulations (Box 3.4), issued by ministries and central government agencies, as well as parliamentary documents and the parliamentary ombudsman's report cases. The citizens' portal<sup>5</sup> offers easy access to all information about regulations published on the Internet (Official Gazette, Consultation Portal, *Folketing*'s website, Danish registry of regulations, and EU registry of regulations). Interaction between information published by the government and the *Folketing* is facilitated by the use of a common database on legislation.

In addition to publication of the information, ministries are recommended to provide relevant information to the public after adoption of a law (as stated in the Guidelines on Quality of Regulations). The Ministry of Justice also provides specific guidelines on communication for other ministries. A specific site has been made available to help officials with the preparation of communication plans. It contains a number of online tools that guide officials through the main stages of a communication process and includes a section on communicating about new regulations.<sup>6</sup>

More broadly access to information on regulations as well as the overall state system is provided by the citizens and business portals. These portals have been set up as part of the e-Government programme of the government. The business portal “*Virk.dk*” is the common public service channel for businesses. Here businesses can do their reporting to the public sector and obtain relevant information about public services. Government bodies are required to make information for businesses available on *Virk.dk*. The portal currently contains some 1 300 administrative forms, and enables to do approximately 93% of reporting requirements. The citizen portal “*Borger.dk*” is another digital one-stop shop for easy access to public sector information and the increasing number of citizen-centric digital self-service solutions, irrespective of the underlying administrative organisation.

### Box 3.4. *Retsinformation.dk*

*Retsinformation.dk* is a website that provides access to the state legal system. The overall objective is to ensure that there is one place where citizens, businesses and public authorities to access all laws and regulations from 1 January 2008.

*Retsinformation.dk* enables to search all laws and secondary regulations (such as executive orders and circulars) issued by ministries and central government agencies), and parliamentary documents. All documents are embedded in the legal information databases, except those of parliamentary documents, which relate to parliamentary debates. The site provides links to parliamentary debates on the *Folketing*'s website. Search in parliamentary debates, statements and answers to written questions by ministers can be done in the *Folketing*'s website.

*Retsinformation.dk* is updated at least once a day with the new or updated documents released by the Danish parliament and the ministries.

*Retsinformation.dk* gives access to websites *lovtidende.dk* (official gazette) and *Ministerialtidende.dk* (ministerial gazette, which publishes circulars, guidelines and other documents which are meant for the public administration).

*Civilstyrelsen*, which is an agency under the Ministry of Justice, is responsible for operating *retsinformation.dk*. However, the Danish parliament and the ministries, produce, own and are responsible for updating their own regulations.

Source: [www.retsinformation.dk](http://www.retsinformation.dk).

## Notes

1. [www.lovprocessguide.dk](http://www.lovprocessguide.dk).
2. For example, the “Quality Reform”, which aims at strengthening quality of public services.
3. One burden committee in the Ministry of Food, Agriculture and Fisheries met in 2009 to follow up on certain simplification proposals from business.
4. [www.lovtidende.dk](http://www.lovtidende.dk). The transfer to electronic format was made possible by the adoption of Law 305 of 19 April 2006.
5. [www.borger.dk](http://www.borger.dk).
6. [www.kommunikationsguide.dk](http://www.kommunikationsguide.dk).



## Chapter 4

### The development of new regulations

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

*Ex ante* impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the “no regulation” option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However the deployment of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (not true- impact assessment is a tool that helps to ensure a policy which has already been identified and agreed is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule making process, and helps to raise the quality of assessments.

Effective consultation needs to be an integral part of impact assessment. Impact assessment processes have- or should have- a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).

The use of a wide range of mechanisms, not just traditional “command and control” regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Experience shows that governments must lead strongly on this to overcome inbuilt inertia and risk aversion. The first response to a problem is often still to regulate. The range of alternative approaches is broad, from voluntary agreements, standardisation, conformity assessment, to self regulation in sectors such as corporate governance, financial markets and professional services such as accounting. At the same time care must be taken when deciding to use “soft” approaches such as self regulation, to ensure that regulatory quality is maintained.

An issue that is attracting increasing attention for the development of new regulations is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy, and can help to reduce the incidence of hazardous events and their severity. A few countries have started to explore how rule-making can better reflect the need to assess and manage risks appropriately.

## Assessment and recommendations

### *Processes for making new regulations*

*Well-structured, effective and transparent mechanisms govern the preparation of laws.* The development of new regulations is carried out within a well-organised and carefully-orchestrated framework. A key element of this framework is the annual Law Programme, which is a detailed list of all bills that the government plans to send to the parliament during the year. The Law Programme has the dual objective of acting as a steering instrument for the government's work, and of engaging the parliament early and closely in forward planning. It includes all draft bills to parliament, makes the schedule public and sets a timeframe for ministries. The information provided by ministries must identify expected secondary regulations which will be needed to implement the laws. The process is supported by two important ministerial committees (the Co-ordination Committee and the Economic Committee, see Chapter 3) which play a key role in evaluation and approval of the Law Programme. Last but not least, the process for making new regulations benefits from clear and comprehensive procedural guidelines established by the Ministry of Justice for the development of regulations, and a specific website on the law-making process. All these documents are publicly available. However, tools in place focus on the production of primary regulations, with less attention given to secondary regulations. The Ministry of Justice has issued specific guidelines on secondary regulations, but they are given less visibility.

### *Ex ante impact assessment of new regulations*

*Requirements for ex ante impact assessment, which go back to the early 1990s, have been significantly reinforced since 2005.* The OECD in its 2000 review drew attention to the need for improvement. Many of its recommendations have been acted on, including greater rigour and strengthened guidance, and a stronger commitment to tackling economic effects (Box 4.1). Ministries evaluate the consequences of their bills at an early stage, when they make proposals for the Law Programme. They need to refine the evaluation in a second stage, before the bill can be tabled before the parliament. The initial impact assessment also serves to identify proposals which require a more thorough impact assessment regarding business administrative burdens (with a specific procedure introduced in 2005) and local government (VAKKS procedure, established in 2006). In addition, any regulatory proposal (primary or secondary), which would lead to significant administrative burdens on business requires the approval of the Economic Committee. Transparency at the end of the impact assessment process is strong. The full impact assessment is accessible both to the parliament and to the wider public, once a bill is tabled before the parliament. This supports quality control.

*Reflecting the broader scope and detail of impact assessment processes, guidance material has been developed and brought together on the online law-making guide.* This is an important step for helping ministries to digest and understand what they need to do, and when. It also contributes to a more unified approach. The OECD team was told that the expanded guidance and online availability have contributed to improving the development of regulations, and making impact assessment more consistent and thorough.

*As in most other OECD countries, however, controlling the flow and complexity of new regulations remains a challenge.* There are concerns among external stakeholders and local governments that the flow of new regulations shows no sign of abating, and in particular,



that new regulation produced by some ministries can be increasingly detailed and complex. Some inside central government also remarked on the growing number of new regulations. In the specific Danish context, there appears to be two sets of issues. There is a tension between pressures for higher levels of safety implying more regulations, and efforts to reduce regulatory burdens. There is also a tension between efforts to move towards more outcome-based regulations and the consequent need for documentation which is, in effect, another form of regulation.

#### **Box 4.1. Recommendations and comments from the 2000 OECD report: *Ex ante* impact assessment**

Improve the value of regulatory impact assessments for policy officials by adopting the benefit-cost principle, gradually increasing the rigor of analysis for important regulations, expanding its scope to apply to lower level rules, and requiring ministries to include RIA in public consultation processes.

Danish regulatory reform efforts continue to have a legal focus, with less attention given to the economic aspects of regulatory quality. Issues of ensuring good procedural performance, including adequate parliamentary debate, plain language drafting and guidelines for public consultation have been prominent. Establishment of a benefit-cost principle, consistent assessment of regulations against alternatives and the integration of benefit/cost assessments with consultation procedures have been neglected. The legal focus may reflect the strong influence of the Danish Bar and Law Society on the establishment and early development of the programme. It may also be partly due to difficulties of integrating economic decision tools into the processes of debating and adopting primary legislation, *vis-à-vis* more administratively based mechanisms used to make lower-level rules. An important step forward was taken in 1998, when the Regulation Committee began reviewing proposed additions to the legislative programme in terms of a preliminary assessment of impacts and consideration of regulatory alternatives. Strengthening this process will represent a key development for Danish regulatory reform. Integration of RIA disciplines at very early stages of the policy process is a very positive move

Use of regulatory impact assessment in Denmark is at an early stage and, unsurprisingly, requires strengthening if the potential benefits of this policy tool in improving regulatory quality are to be achieved. RIA should be improved in four dimensions. First, a universal benefit-cost principle should be adopted, with step by step strategies to gradually improve the quantification of regulatory impacts for the most important regulations, while making qualitative assessments more consistent and reliable. Second, application of RIA should be extended to lower level rules as well as primary legislation. Third, RIA should be used in the review of existing regulations. Fourth, the cost of RIA would be reduced, and its quality increased, if it were integrated with public consultation processes. RIA should be made available as key inputs to participants in consultation and the results of consultation should be used as inputs for refining and developing RIA. The incentives for ministries to develop high-quality RIA are not strong; public disclosure is a powerful incentive to produce realistic estimates of regulatory impacts.

*Source:* OECD (2000), *Regulatory Reform in Denmark: Government Capacity to Assure High-Quality Regulation*, OECD, Paris, [www.oecd.org/dataoecd/31/55/2510615.pdf](http://www.oecd.org/dataoecd/31/55/2510615.pdf).

*Despite major improvements since the 2000 OECD report, the overall framework for impact assessments needs to be strengthened further if Denmark is to make a sustained positive impact on the flow and quality of new regulations. Although impact assessment procedures are well known throughout the administration, evidence from interviews by the OECD peer review team suggests that they are not applied evenly across ministries, and are often applied too late in the decision making process. This finding is supported by the 2007*

report of the NAOD on the impact of Better Regulation and simplification, and undermines the likely usefulness of the process as an aid to evidence-based decision making. The OECD peer review team heard that it was important not to create excessively bureaucratic processes for ministries to implement. However the current dispersed approach may in fact represent a sub optimal use of resources by the administration on impact assessment, which is also likely to yield sub optimal results for decision making.

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**Recommendation 4.1. Denmark should consider carrying out an evaluation of the overall effectiveness of its current impact assessment processes, with particular attention to the more detailed issues set out below.**

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*The complex and dispersed institutional framework for monitoring the application of impact assessments needs to be strengthened and streamlined, in order to promote quality control, and to embed the process as part of evidence-based decision making.*<sup>1</sup> Although the first stage process for impact assessment (when preparing the Law Programme) has a focal point through the role of the Ministry of Finance and the Regulation Committee, the responsibility for conducting the second stage institutional framework is spread across a range of ministries and other entities. Dispersed institutional responsibilities weaken overall management and monitoring, and slow the spread of further culture change among ministries. Although the need to evaluate likely costs for businesses has concentrated minds on this particular aspect of impact assessment, interviews showed that ministries may still be reluctant to share emerging policies before they have a full draft ready, by which time it can be too late to make necessary changes.

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**Recommendation 4.2. Denmark could consider the following actions to strengthen its institutional framework for impact assessment.**

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- First, consider whether a single lead unit of officials should be clearly designated with a general responsibility for monitoring the overall effectiveness of all impact assessments, including specific responsibility for assuring the overall quality of the stage two impact assessments, and of the local government dimension (see also Chapter 2 recommendation for the consideration of a single Better Regulation unit).
- Second, individual ministries should be encouraged to consider whether their institutional capacities to manage impact assessment need strengthening (for example by setting up a small internal unit responsible for providing advice, support and encouragement to officials in the development of impact assessments).

*The Danish impact assessment system could benefit from a more comprehensive interaction with public consultation.* The current public consultation processes (Chapter 3) imply that ministries must consult on draft regulations. Many ministries publish the impact assessment done in the first stage of bill preparation when they post the draft for comment on the Consultation Portal. This is often done for laws, but not for secondary regulations. The specific assessments on business administrative burdens (done by DCCA) and local governments (VAKKS) also make an integral use of public consultation. These are positive developments, which need to be applied across the whole impact assessment process. In particular more attention could be given to using public consultation in the development of second stage impact assessments. This is a separate issue from the accessibility of impact assessment to the parliament and the wider public, once a bill has been tabled.

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**Recommendation 4.3. Denmark should consider how public consultation could be made an integral and systematic part of the process of impact assessment (and just not for some parts of it), with particular regard to timing, so that stakeholders’ views can be taken into account as part of evaluating impacts.**

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*The progress achieved in developing impact assessment could be further consolidated with action in other areas.* First, there is a need to further develop methodologies (including the necessary guidance and training for ministries) for quantification of costs and benefits, building on the significant elements which are already in place for some key parts of the process. The 2000 OECD report emphasised the need to increase the rigour of analysis for important regulations. The team heard that some ministries face technical difficulties in making effective assessments, despite the updated guidance, whilst others are developing their own systems. There is a need for greater clarity, coherence and rigour in the methodologies to be applied. Second, the links between the different parts of impact assessment need to be clarified. For example the guidance material does not provide a clear view of the overall process and its different elements. The online law-making guide provides information on impact assessment, but this information is not highly visible, and does not provide an understanding of the whole process. Finally it is not clear to what extent the current system covers secondary regulations. It is important that *ex ante* impact assessment capture all significant regulations. At the same time the principle of proportionality should be observed (not all regulations will need the same in-depth treatment).

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**Recommendation 4.4. Denmark should consider promoting the use of quantitative methods alongside qualitative methods, further improving guidance material on impact assessment, and establishing appropriate training in assessment techniques. The online *Lovprocessguide* could be further improved to give impact assessment higher visibility, outline the process in a comprehensive way, and provide methodological tools. Denmark should also consider whether the current impact assessment system adequately covers all significant regulations, including significant secondary regulations.**

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### *Alternatives to regulation*

*Alternatives to regulation<sup>2</sup> are among the tools of Better Regulation policy in Denmark, but it is unclear to what extent they have been used in practice in recent years.* The 2000 OECD report noted that Denmark has for some time deployed various alternatives policy instruments to “command and control” regulation (for example co-regulation). It has made significant efforts to integrate the consideration of alternatives to regulation into the rule making process, and provided officials with thorough guidance. It was beyond the scope of this report to assess how these efforts have translated – or not – in increased use of alternatives (including the option of not regulating).

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**Recommendation 4.5. Consideration could be given to evaluating the actual uptake of alternatives and the use made of the current guidance, which dates back to 2001.**

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## Background

### *General context*

#### *The structure of regulations in Denmark*

Both government and parliament can initiate a law proposal (primary regulation). However, most new laws come from the executive. Secondary regulations include royal decrees and executive orders, which put binding requirements on citizens. Regulations on subordinate administrations include circulars (binding) and guidelines (not binding). (For details, see Box 4.2).

#### **Box 4.2. Structure of regulations in Denmark**

*The constitution.* The Constitutional Act represents the highest national legal authority. It first came into force in 1849. It was last revised in 1953.

*Statutory laws (lov).* Statutory law has primacy over other written legal sources, save for the constitution. It is enacted only by the *Folketing* (parliament), and published in the Official Gazette.

*Royal decrees and executive orders (kgl. anordning, Bekendtgørelser)* are issued by ministries only if explicitly permitted by the constitution or a law, and within the framework set by the law. They are signed by the ministry (not by an agency) and by the monarch in case of a royal decree. They put binding requirements on citizens, and are published in the Official Gazette.

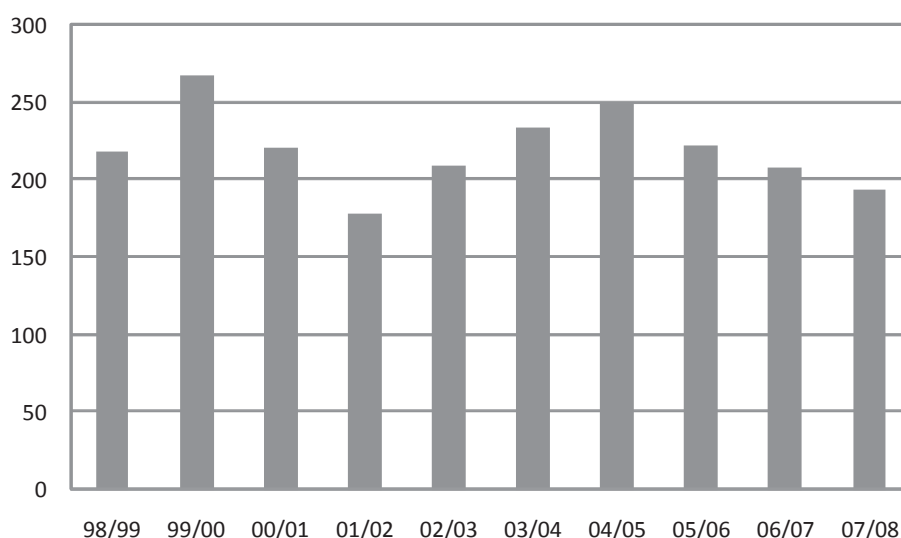
*Circulars (cirkulærer).* These are mandatory general provisions issued by ministries and agencies, which are only addressed to the subordinate administration.

*Guides (Vejledninger)* provide support to subordinate administration in understanding the rules and their application. They cannot set binding rules. Publication is not mandatory.

Circulars and guides can be published in the *Ministerialtidende*, if the Ministry considers that it is in the general interest. There are no legal consequences attached to the publication of regulations in *Ministerialtidende*.

#### *Trends in the production of new regulations*

The number of primary laws submitted by the government to the parliament every year has varied from 180 to 260 over the past decade.<sup>3</sup> While there has not been any significant inflation in the number of laws produced every year, there is no sign of a consistent downward trend over time either. The number of new regulations gives only part of the overall picture as the complexity of laws can vary. However health, safety, the environment, and education are examples of policy areas in which interviewees indicated to the team that there is or will likely be a significant flow of new regulations. In addition the team was told that many regulations in these areas tend to be increasingly detailed and complex.

**Figure 4.1. Trends in the number of laws enacted by the *Folketing***

Source: Government of Denmark

## ***Processes for making new regulations***

### ***The law making process***

The preparation of a new regulation by the government usually takes place in two steps. In the first step, ministries (either individually or through the Economic Committee) propose that a bill be included in the Law Programme, which is presented each year by the government to the *Folketing*. Once the bill has been included (which goes through assessment by inter-ministerial co-ordination committees and final approval in Cabinet meeting), the ministry prepares the draft, using a number of guidelines, as detailed in the paragraphs below (for an overview of the law making process, see Box 4.3 and Figure 4.2).

### **Box 4.3. The law making process in Denmark**

#### **Development of the Law Programme**

Ministries provide a list of their proposals for new legislation with the expected date of submission, and documentation (see below). The Regulation Committee evaluates draft bills for inclusion in the Law Programme, in the light of the government's general policy goals. The Co-ordination Committee reviews the finalised Law Programme, before final approval at a Cabinet meeting.

#### **Preparation of draft laws**

The preparation of a draft law by a ministry usually takes place within the framework of the Law Programme. When preparing its proposal for inclusion in the Law Programme, the ministry has to provide specific information, which will be further developed once the proposal has been included in the Law Programme and the drafting of the proposal starts. The documentation elaborated by the ministry includes the following elements:

- Title.
- Summary (three to six lines).

- Description (including background such as committee report, political and economic situation), purpose and main element of the proposal. Indication whether the proposal is submitted on basis of review clause, if relevant.
- Description of economic and administrative consequences for the state, regions and communities, for businesses, and for citizens. Description of environmental consequences. This includes examining the need for in-depth impact assessment on local governments (and justification if the answer is no).
- Relation to EU regulations (and if relevant indication whether the proposal relates to the implementation of an EU directive).
- Identification of any aspects relating to state aids.
- Relation with other legislation.
- Coherence with other legislation.
- Consideration of alternatives to regulation.
- Examination of need for in-depth impact assessment regarding administrative burdens on businesses by DCCA (systematically done for some ministries).

All draft bills must be submitted as early as possible to the Prime Minister's Office, the Ministry of Finance (financial consequences) and the Ministry of Justice (legal scrutiny), as well as other relevant ministries who may have a particular interest in the matter.

The preparation of the draft bill can entail preparatory work in committees (which can consist of representatives from other ministries, external stakeholders, local governments, experts, as required). Public consultation usually takes place once a "complete" draft version is available.

#### **Final approval by the executive**

Before presentation to Cabinet (usually in the few weeks before the meeting), the proposal must be approved by the Co-ordination Committee in a written procedure. The Co-ordination Committee includes the most important ministries. It receives a summary of the draft, and an explanatory memorandum including the information mentioned above (such as results of impact assessment). The draft then goes for approval to the weekly Cabinet meeting, before submission to the *Folketing*.

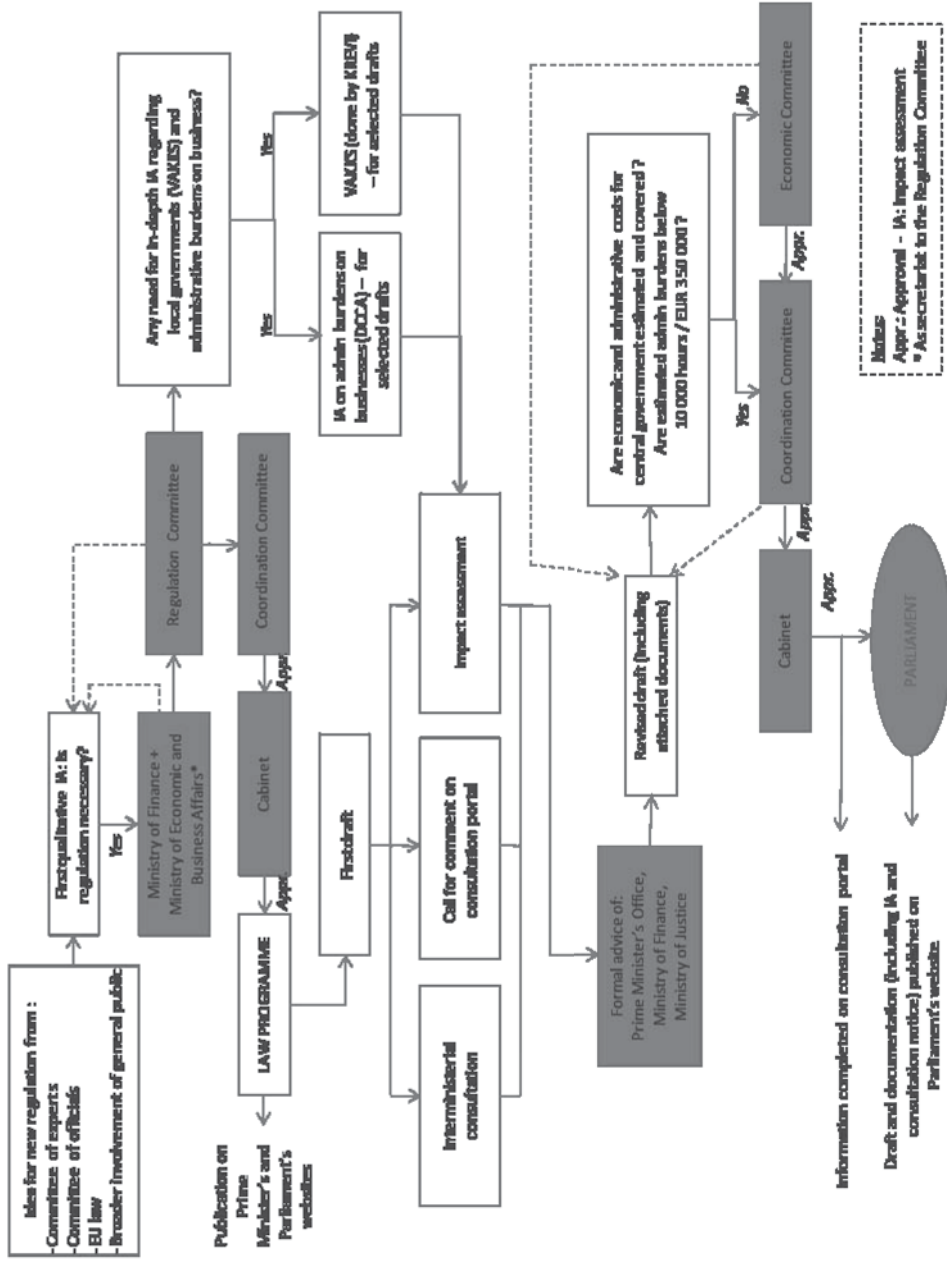
#### **Adoption by the parliament**

- **First reading:** Before the first reading, a parliamentary committee will have discussed the text and appointed a *rappporteur*. At the first reading, the bill is discussed in general. No amendments may be moved. Normally, the bill is referred to a committee.
- **Report:** After having read the bill, the committee may make a report. The report contains recommendations to the parliament as well as eventual amendments
- **Second reading:** The bill is discussed in general and in detail. The individual sections and eventual amendments to the bill are put to the vote. Usually, the bill passes on directly to the third reading
- **Supplementary report:** The bill can also be referred to a new committee reading. Subsequent to this reading, the committee usually makes a supplementary report which may among other things contain amendments
- **Third reading:** At the third reading, eventual new amendments are discussed and put to the vote. Subsequently, the bill is discussed in its entirety and it is put to the final vote

#### **Confirmation**

When the law has been passed after its third reading, it is given assent by the monarch and countersigned by the minister, who thus assumes responsibility for the act. Confirmation must be done within 30 days after adoption by the *Folketing*. It is then published in the official journal.

Figure 4.2. Danish government's process for preparing draft laws



### *Forward planning*

The production of new draft regulations by the executive takes place within the framework of the Law Programme, which is adopted every year and is presented by the Prime Minister in her/his annual opening speech to the *Folketing*. The preparation of the Law Programme follows a structured process, stretching from February to October, in which ministries propose draft bills and the Prime Minister's Office co-ordinates the initiatives. The objective of the Law Programme is to provide the parliament with an overview of the bills relating to government policy over the coming year. The Law Programme is also used as a steering instrument in the government's work. It is made public on the Internet websites of the Prime Minister's Office and of the *Folketing*.

- The Law Programme consists of a list of the planned bills by ministry, with a three- to six-line description and mention of the expected date of submission of the bills to the parliament. It can also include more general topics, such as the cohesion of the Law Programme and the general policy goals of the government. It covers all primary regulations, and also addresses the production of secondary regulations indirectly. It includes proposals originating from the EU. (For more on the Law Programme process, see Box 4.4).
- Ministry officials are required to provide detailed information on the draft bills which they submit for inclusion in the Law Programme. This includes spelling out purpose and content, and assessing the consequences of the bills on citizens, business and the administration, highlighting relationships to other laws, and considering the use of alternatives to regulation. These documents are not included in the Law Programme available to the public.
- The Regulation Committee (chaired by the Prime Minister and consisting of the permanent secretaries of core ministries), evaluates contributions in the light of the government's general policy goals and the Coalition Agreement. Ministry of Finance's KAL gives advice to the Regulation Committee, and interacts with other ministries in the preparation of submissions (*e.g.* asking to clarify or complete their submission). The finalisation of the Law Programme is then discussed by (or handled by written procedure in) the Co-ordination Committee (the "inner Cabinet", also chaired by the Prime Minister, which approves most major new policy initiatives) and then by the Cabinet.
- The Prime Minister's Office sends a status report to the *Folketing* at the beginning of December, February, March, and April. The status reports show bills not yet submitted and their dates of expected submission. They also include possible new proposals with their description. The process for preparing the status of the report is similar to the process for preparing the Law Programme, with each ministry making contributions.



#### **Box 4.4. Process for issuing the Law Programme**

According to Section 38 of the Danish constitution, the Prime Minister makes an opening speech to the *Folketing* every year. The Law Programme of the current government – including bills for the coming parliamentary year – makes up part of the Prime Minister’s speech.

##### **Preparation of the Law Programme**

The Prime Minister’s Office invites the other ministries to contribute to the Law Programme. These summonses are normally sent, by paper as well as electronically, in the beginning of February and the deadline for handing in contributions is at the beginning of May.

The various ministries’ contributions to the Law Programme – which come in a format different to the presentation of the final Law Programme – encompass among other things a description of the individual bills, decision proposals and reports, which have all been manufactured according to the form attached to the summons. All contributions are delivered electronically.

After first having been discussed in a civil servants’ subgroup, the ministries’ contributions to the Law Programme are discussed by a special Secretary of State Group in the Prime Minister’s Office with participants from the Ministry of Economic and Business Affairs, Ministry of Finance and Ministry of Justice (the Regulation Committee). This group evaluates the proposals in light of the government’s general financial politics and other central political goals, as for example Better Regulation in relation to the public and the private sector. This group also evaluates the suitability of the time plan for the legislative work. Finally, the group also evaluates possible questions in relation to the cohesion of the individual bills/proposals in the Law Programme.

##### **Consolidation of the Law Programme**

The consolidated Law Programme is compiled by the Prime Minister’s Office on the basis of contributions from the other ministries, discussions in the Secretary of State Group as well as continuous contact to the other ministries.

The main body of the Law Programme is a short description of the planned bills and decision proposals. An expected date of submission of the bills/proposals is indicated, for example October I and October II. The proposals are grouped according to ministers concerned and the ministers are listed alphabetically. The bills/proposals pertaining to each minister are then listed according to the time of submission. A short review of more general topics sometimes appears in the Law Programme, for example the cohesion of the Law Programme and the general political goals of the government. The Law Programme is published as mentioned below.

##### **Finalisation**

The Law Programme is normally discussed at meetings in the Co-ordination Committee of the Cabinet (“the inner Cabinet”) in June and in September.

The final draft of the Law Programme is also normally discussed at one or more Cabinet meetings during the month of September. It is also subject to a discussion between the Prime Minister and the Parliamentary Standing Orders Committee prior to the start of the parliamentary year, which addresses general aspects of the legislative work (number of bills, expected submission dates) and not the content of the legislative work.

The Law Programme in its final form is published on the first Tuesday of October, which is the start of the new parliamentary year. It is published in hard copy as well as electronically on the Internet (on the websites of the Prime Minister’s Office and of the *Folketing*).<sup>1</sup> The document

published on the Internet consists of a list of all the draft bills, with a summary and dates of expected submission to the parliament.

### **Status report on work progress**

A status report of the work progress on the Law Programme is handed over to the parliament in the beginning of December, February, March and April. The reports show bills not yet submitted and their dates of expected submission. Possible new proposals are also incorporated, as well as their dates of expected submission, and are marked “New”.

The status reports are being compiled in the Prime Minister’s Office on the basis of contributions from the various ministries. If ministries present new proposals, a description of the proposal is being made as well, according to the form used for contributions to the Law Programme, as mentioned above.

### *Administrative procedures*

Denmark has no specific law to frame the development of new regulations, but a number of guidelines which law drafters must follow. A key document is the “Guidelines on Quality of Regulations” established by the Ministry of Justice, and updated in 2005. The guide is comprehensive, covering legal quality and processes. It provides information on the whole process for drafting a bill, from the original proposal for including a draft law in the Law Programme to the detailed preparation of the draft law and adoption by the parliament. It defines a set of rules, aimed both at promoting the legal quality of the text, and ensuring adequate consultation and examination of the expected consequences of the bill (Box 4.5). It sets specific requirements concerning drafting techniques, the language to be used, etc. This includes rules on the definition of the title, the structure of the text, and the type of language. The guidelines have been integrated in *Lovprocessguide*, the government online guide for law making.

The Ministry of Justice has also issued guidelines on the preparation of secondary regulations in a separate document.<sup>2</sup> More specific guidance may also be available, such as the guide issued in 2001 by the Ministry of Welfare on how to incorporate local government concerns in new regulation (Ministry of Welfare, 2001).

#### **Box 4.5. Guidelines on the Quality of Regulation**

The Guidelines on the Quality of Regulation (*Vejledning om Lovkvalitet*) sets out rules on the procedures for making draft laws, including:

- When should a bill be prepared and would other ways of regulation be more suitable in a particular case.
- The main principles for layout of bills.
- A number of legal limits and common legal principles contained in the considerations when preparing bills concerning for example the constitution, the EU law, international human rights conventions, retrospective bills and authorisations.
- Planning of the legislative work including:
  - the need for a schedule for the individual bill;
  - the form of a bill preparation (*e.g.* in commissions, committees or in the individual ministries);

- hearing of bills;
- involvement of other ministries, the public auditors and the European Commission;
- submission to the government’s committees, including the Co-ordination Committee;
- submission to ministerial meeting;
- submission to the Queen in Council prior to submission to the *Folketing*; and
- royal assent by the Queen in Council.

Follow up to bills passed with a view to evaluating the effect, including expiry clauses, audit regulations and regulations on law surveillance.

Source: Ministry of Justice, Denmark

(<http://jm.schultzboghandel.dk/publikationer/publikationsdetaljer.aspx?Pid=a9e0219b-967e-467b-ac3c-c4a685a6106c>).

### *Legal quality*

Individual ministers are responsible for the legal quality of primary and secondary regulations issued within their area of responsibility. Draft regulations (as well as revision of existing regulations) are prepared by officials responsible for the specific policy field, rather than by specialised law drafters. Most ministries have a legal unit to support officials. Interviews showed some concerns about the capacities of individual ministries to provide adequate resources with respect to legal quality, given other demands on drafters (such as the need to carry out different impact assessments), as well as the need to deal with pressures from the overall flow of regulations, and the occasional use of fast-track processes in response to political pressure.

The Ministry of Justice has a supervisory role in relation to legal quality. In addition to providing legal quality guidance to other ministries, it controls the legal quality of regulations. All bills (except for the proposal for the annual budget) are submitted to its scrutiny before they are sent to the parliament.

### *The role of the parliament*

The Law Programme ensures co-ordination between the government and the parliament in the process of making laws. First of all, the Law Programme sets a detailed timetable for the production of laws. According to a longstanding practice, the Prime Minister and the Parliamentary Standing Orders Committee meet to discuss the number of laws and timetable set in the Law Programme before the start of the parliamentary year. As part of the Law Programme preparation, one of the tasks of the Co-ordination Committee is to ensure that draft laws are forwarded to the parliament early in the parliamentary session, providing more time for committee review and parliamentary debate. In addition, draft bills submitted to the parliament must include the information provided internally as part of the development of the Law Programme, as well as the conclusions of subsequent assessments of administrative burdens on business and impacts on local government, in the form of an attached explanatory memorandum.

When the draft law is sent to the parliament, an explanatory memorandum is attached in which all the comments received by the government during consultation are made available, including whether they have led to amendments of the draft. This information is published on the *Folketing*’s website.

## *Ex ante assessment of the impact of new regulations*

### *Policy on impact assessment*

A formal requirement for impact assessment dates back to 1993. There is no single integrated policy. *Ex ante* impact assessment today consists of a series of processes which follow the development of the Law Programme and the elaboration of specific draft bills. The range of impact assessments has been broadened over the last few years, to include analyses of impacts on local governments and on administrative burdens for business. An important aim is to capture administrative burdens on different stakeholders.

- In 1993 a circular of the Prime Minister's Office required all ministries to provide a detailed description, and where possible quantification, of the expected administrative effects on business of the planned regulation as part of the process for developing a draft bill.
- In 1998 the Prime Minister's Office revised its circular on law drafting to incorporate assessment of the administrative costs for businesses and citizens, and document the results in the explanatory notes that accompany draft bills to the parliament. The requirement to carry out impact assessments was incorporated into the Ministry of Justice Guidelines on Quality of Regulation. It was progressively expanded to cover a range of impacts such as on the environment, and to extend beyond administrative burdens.
- In 2005, the government introduced a specific mechanism to assess expected administrative burdens on business (through scrutiny by DCCA).
- In 2006 the government introduced a further specific mechanism to assess expected administrative impacts on local government (VAKKS procedure).

### *Institutional framework*

Responsibilities are shared across a network of different authorities and committees, either to supervise the process or to perform impact assessment (or both).

- *Assessment* prior to inclusion in the Law Programme. Individual ministries are responsible for carrying out the evaluations in the first stage of the process (preparation of the Law Programme). The Ministry of Finance has a general responsibility to check the assessments (including the need for a VAKKS procedure and in-depth analysis of administrative burdens). It sends its recommendations to the Regulation Committee (Group of Permanent Secretaries), which makes the formal decisions. As members of the Regulation Committee, the Ministry of Justice and the Ministry of Economic and Business Affairs can also check the evaluations. The Ministry of Finance may call on other ministries for support in its evaluation (for example the Ministry of Environment). When it considers that an impact assessment is unsatisfactory, it engages a dialogue with the responsible ministry. When this process does not resolve the concern, it can block the proposal from going to Cabinet for final approval of the draft's inclusion in the Law Programme sent to the parliament.
- Assessment prior to tabling a draft bill. The process is much more decentralised once the drafting of the bill starts. The Ministry of Finance vets the analysis of economic consequences on government, but does not assess the overall analysis. The DCCA

screens all drafts published on the Consultation Portal, and can decide to carry out an impact assessment of administrative burdens on businesses on any the draft regulations.

### *Guidance and training*

Several guidelines have been published regarding impact assessment. They provide background information on processes in addition to specific instructions which can be given to ministries through specific circulars (for example, letter of instruction from the Prime Ministry's Office about the process for preparing the Law Programme). The key guidelines are:

- “Guidelines on Impact Assessment”, issued by the Ministry of Finance in 2005;
- “Guidelines on Quality of Regulation” (“*Justitministeriets Vejledning om Lovkvalitet*”), issued by the Ministry of Justice (updated in 2005); and
- “Guide on How to Incorporate Concerns for Local Governments in New Regulation” (“*Vejledning om regeludstedelse i forhold til kommunerne*”), issued by the Ministry of Welfare in 2001.

The first two guides have been integrated in the online guide, *Lovprocessguide*,<sup>3</sup> which was launched in January 2007, as a result of co-operation between the Ministry of Justice, the Ministry of Finance and the Ministry of Economic and Business Affairs. The integrated guide makes available in one place, accessible on the Internet, most of the rules, procedure descriptions, contact data and guidelines in the form of templates for law-making. It also contains a tool for the preparation of time schedules and a law dictionary. The website spells out the different stages for preparing a regulation, through a set of sections and sub-sections. *Lovprocessguide* is very comprehensive and detailed for primary regulations, but does not specifically examine the processes for preparing secondary regulations. With respect to impact assessment, it provides definition and explanation, but does not provide specific methodological guidance (such as cost-benefit analysis).

The Ministry of Finance considers that these guidelines have helped promote coherence in law making across the administration, as well as increased planning and co-ordination between ministries. There has not been however a formal evaluation of the different guidelines and their actual use by law drafters.

The Ministry of Finance organised a training session on impact assessment in 2005. Since then, there has been no specific training on impact assessment. Individual ministries have organised training sessions on the preparation of regulations, mostly on legal issues.

### *Process and methodology*

*Ex ante* impact assessment is carried out into two main stages. The first stage takes place with the preparation of the Law Programme. Ministries are required to make an initial impact assessment when preparing their proposals for inclusion in the Law Programme. The main objective of this stage is to ensure that the proposed regulation is necessary, and to consider whether there could be an alternative to “command and control” regulation. In a second stage, when specific bills are drafted, ministries have to develop their initial impact assessment. In some cases the proposal is subject to in-depth analysis in terms of administrative burdens on business and local governments.

### Stage one: impact assessment during preparation of Law Programme

As part of preparing its proposals for inclusion in the Law Programme, the responsible ministry must assess the impact of its proposal, mainly in qualitative terms, using appropriate guides (see below). Without this evaluation, the draft bill cannot be included in the Law Programme.

- The evaluation entails answering a number of questions regarding the economic and administrative consequences for central government, the regions and municipalities, administrative consequences for citizens, major economic and administrative consequences for businesses, and major environmental consequences. Ministries must also examine the relationship to EU law, and if necessary assess other consequences such as regional politics, gender equality, and voluntary work.
- The evaluation required is largely qualitative, and focuses on the costs of a draft regulation, with less attention given to benefits. Some parts of the *Lovprocessguide* encourage ministries to quantify the impact, but this is not mandatory (except for the evaluation of the economic costs on central government and local governments) and is seldom done. With respect to business administrative costs, ministries are requested to provide a rough estimate (no impact, below EUR 10 000, or over EUR 10 000) both in terms of transition costs and operational costs. The guidelines provide information on the different set of issues, such as definitions and suggestions for questions to assess the impact. They do not specify a methodology for collecting the information necessary to the analysis. Ministries can elaborate their own methodology (as done for example by the Ministry of Environment, which has a specialised unit for impact assessment).
- A key element of this first evaluation is to assess whether traditional regulation is really necessary, and whether alternatives (such as economic incentives or voluntary agreements) could be deployed instead. Is a new regulation actually needed?
- The need for to carry out an in-depth assessment of impacts on local government (VAKKS) and on administrative burdens on businesses is also considered at this stage.

### Stage two: preparing draft bills

When preparing the draft bill, ministries are required to expand the initial results of their impact assessment. The different elements of the analysis are assembled into a synthesis table (Table 4.1). Except for in-depth assessment regarding administrative burdens on businesses, the analysis remains largely qualitative (as for the first stage of impact assessment).

**Table 4.1. Summary table for impact assessment**

	Positive Consequences / lower costs (If yes, please extent)	Negative Effects / costs (If yes, please extent)
Economic consequences on central government, regions or municipalities		
Administrative consequences on central government, regions or municipalities		
Economic consequences on businesses		
Administrative consequences on businesses		
Environmental consequences		
Administrative consequences on citizens		
Relationship with EU regulations		

Source: *www.lovprocessguide.dk* (Ministry of Justice, Ministry of Economic and Business Affairs, Ministry of Finance).

*Impact assessment in terms of administrative burdens on businesses.* A number of ministries are requested to send all their draft regulations relating to economic issues to the DCCA. Other ministries are requested to do it when they estimate that the proposal will result in “substantial” administrative burdens. In addition the DCCA reviews all draft (primary or secondary) regulations which are posted on the Consultation Portal and, based on a preliminary assessment of their impact on businesses, decides whether to make a detailed measurement of their estimated costs. The DCCA performs this measurement in co-operation with the relevant ministries, a consultancy firm and relevant business organisations. Unlike most of the other impact assessments, this is a quantitative assessment, based on the Standard Cost Model (SCM). When expected administrative costs are substantial the DCCA sets up a business panel to make a more detailed assessment. When the costs for businesses are above 10 000 hours (approximately EUR 350 000), the draft regulation must be approved by the Economic Committee before it goes to the parliament or is adopted by the ministry in case of secondary regulation. In addition to the *ex ante* estimate of costs, the DCCA updates its estimate of administrative costs of the new regulations once a year (*ex post* estimate).

*Impact assessment in terms of administrative burdens on local governments (VAKKS procedure).* When preparing its proposal for the Law Programme, the ministry has to propose whether or not the law proposal should be subject to a VAKKS investigation, where the proposal will be studied in depth in order to evaluate administrative consequences for the municipalities and consequences relating to their autonomy (Box 4.6) This evaluation is qualitative and is performed by an independent body (KREVI). It is based on interviews with the ministry and a number of municipalities. It must be carried out within a ten-week period. If the relevant ministry does not want proposals with the above-mentioned consequences on municipalities to be the subject of a VAKKS investigation, it has to justify this.

#### **Box 4.6. VAKKS**

The Ministry of Finance has developed a new system called “VAKKS”, which stands for “assessment of administrative impact on municipalities by new government regulation”. The methodology has been developed by a consulting firm on the initiative of the STS Committee, under the supervision of a working party composed of the Ministry of Finance, the Ministry of Interior, and LGDK, the Danish association of municipalities.

The responsibility for conducting VAKKS study has been given to KREVI, an independent

institution (see Chapter 8).

A VAKKS study examines the one-shot and recurrent costs implied by a new regulation for municipalities as well as the changes required from municipalities to implement the regulation (such as changes in the administrative organisation, requirements for specific skills). It is similar to the SCM method used for measuring burdens on businesses to some extent, as it breaks down the various rules into specific activities which local government have to carry out. However the VAKKS methodology differs since it includes the costs related to the adjustment of new regulation, and provides an assessment on the consequences in terms of organisation, work processes, budget, etc. New regulatory proposals with significant administrative costs for business are measured *ex ante* to estimate costs. Once a year the SCM-measurement is updated *ex post* with the costs / reductions of all new regulation.

The ministry in charge of the draft regulation has to identify whether the planned rule should be subject to a VAKKS when it presents it for inclusion in the Law Programme. VAKKS can be conducted before the bill goes to the parliament, and occasionally after it is adopted by the parliament. In both cases the objective is to improve the implementation process and reduce the costs of implementation.

KREVI uses inputs from the relevant ministries as well as municipalities through interviews with staff.

The result of a VAKKS is an informed estimate of the expected time and resources used by the 98 municipalities in the implementation and ongoing operation of the legislation. In addition a VAKKS study assesses the adaptations required in the organisations of municipalities and can recommend measures of simplifications in the bill or regulation.

The VAKKS system is now being implemented in the regular process of preparing regulations, following a phase of test in 2007 during which KREVI conducted four pilot studies (three draft laws – law on competition, law on day care, law on supervision of retirement homes – and a draft ministerial notice on the application of quality standards in schools). Two VAKKS are currently under preparation.

The standard time for performing a VAKKS study has been around ten weeks so far according to KREVI. Reports are published on KREVI's website ([www.krevi.dk/materiale/rapporter](http://www.krevi.dk/materiale/rapporter)).

### *Public consultation and communication*

There are clear formal recommendations for public consultation in the preparation of draft bills. The Ministry of Justice Guidelines on Quality of Regulation recommend holding consultations on draft bills, unless a shortage of time prevents it, and hearing all stakeholders (public organisations, private organisations), which will be affected by the draft law. They advise law drafters to organise consultation on a “ready” version of the draft, as early as possible before the draft is sent to the parliament. All draft regulations are published on the Consultation Portal to allow interested parties to comment on them (see Chapter 3).

As part of this consultation process, the impact assessments prepared by ministries are also made available. Ministries now usually publish the impact assessment material which they have prepared in support of their proposal to include a bill in the Law Programme. When a draft bill is sent to the parliament, the explanatory memorandum attached to the bill, which assembles information on the final impact assessments and on the results of public consultation, is published on the *Folketing's* website and thus made available to the wider public. The VAKKS procedure to assess administrative burdens for local



governments and the assessment of administrative burdens on business may each entail specific public consultation exercises (interviews, panels). KREVI publishes its VAKKS impact assessment reports on its website.

Although considerable material is made available to the public on the development of bills, it is not clear that ministries apply the guidance on consultation consistently. With the notable exception of the VAKKS and KREVI processes, the extent to which external stakeholders are specifically asked to help shape the development of impact assessments is not clear. There was some feedback to the OECD peer review team that the timing of impact assessments may not allow the effective use of public consultation in the shaping of impact assessments. Inadequate timing (for example impact assessment on administrative burdens by DCCA done after the public consultation period) and short deadlines were mentioned by several interviewees. It is also not clear to what extent stakeholders take the opportunity in practice to comment on the development of bills.

### *Evaluation*

In 2007, a report of the National Audit Office (NAOD) on the impact of Better Regulation and simplification included a statement on impact analysis based on a sample of assessments:<sup>4</sup> “The NAOD’s review of four regulatory impact assessments showed that the extent and depth of the analyses inherently varied, and that the assessments were subject to some uncertainty. However, the review also showed that the ministries had adhered to the Guideline on Impact Assessment. There has not been an overall evaluation of impact assessment, which could provide additional insights.

Interviews however corroborated the conclusions of the NAOD. Individual ministries have been more or less active in developing methodologies and using the impact assessment as a tool for regulatory quality. Interviews showed that some ministries have technical difficulties in developing adequate methodologies, which can raise doubts over the relevance of the exercise relative to the resources and time it requires. Promoting further co-ordination and co-operation may require further changes in culture, as interviews also showed that ministries are still often reluctant to share emerging policies before they have a full draft ready. Despite significant effort to communicate on the development of draft laws, impact assessment is still not always used adequately by relevant stakeholders within and outside the administration.

### *Alternatives to regulation*

The 2000 OECD review of regulatory reform in Denmark noted that Denmark has a generally strong performance in using a wide range of policy instruments, including economic instruments such as taxes, subsidies and tradable permits, and voluntary agreements. Environmental policy is an area where Denmark has used economic instruments and voluntary agreements extensively (Box 4.7).<sup>5</sup> Public authorities also use training and information campaigns, usually in combination with other types of instruments.<sup>6</sup>

The law profession is an example of co-regulatory and self-regulatory arrangements, under which authorities delegate some regulatory powers to non-governmental bodies. It is regulated by public law as well by rules set by the Danish Bar and Law Society (*Advokatsamfundet*), which is a private organisation.<sup>7</sup> Another example of self-regulation is the regulation of Internet domain names. The Ministry of Science, Technology and Innovation has made an agreement, in co-operation with the industry, on minimum requirements on the organisation in charge of managing domain names.

Some aspects of employment policy are not regulated by law, but through collective agreements covering issues such as minimum wages and notice periods (“*Flexicurity*”). Self and co-regulation, when effectively covered, can be an effective alternative to command-and-control regulation. But care must be taken to ensure that regulatory quality is maintained.

**Box 4.7. Comments from the 2000 OECD report: Alternatives to regulation**

Denmark is relatively experienced in the use of alternatives to traditional regulation, including a range of economic instruments and voluntary and co-regulatory approaches. Use of these tools has expanded recently, notably adoption of a green taxes programme. The relative underdevelopment of regulatory impact analysis is notable. Promising new practices include a model enterprise project under development to obtain more detailed information on likely regulatory costs and benefits, and adoption of an annual report to the parliament summarising aggregate regulatory costs due to new legislation.

*Source:* OECD (2000), *Regulatory Reform in Denmark*, “Government Capacity to Assure High-Quality Regulation”, OECD, Paris, [www.oecd.org/dataoecd/31/55/2510615.pdf](http://www.oecd.org/dataoecd/31/55/2510615.pdf).

The process for making regulations in Denmark includes a requirement to consider alternatives to regulation at an early stage. In their contributions to the Law Programme, ministries send a description of planned individual laws, which has to include an assessment of possible alternatives to regulation. As noted above, a key objective at this stage is in fact to determine whether or not go ahead with a draft law.

The Ministry of Economic and Business Affairs has issued guidance material to strengthen the capacities of ministries to assess the possibility of using alternatives to “command and control” regulation. The guidelines, which are available on the Internet, were published in March 2001. They define alternatives to regulation, review the main types of alternatives, and give examples of how to use them in a number of practical situations.<sup>8</sup> They list self-certification, voluntary agreements, co-regulation, and information, as the major alternatives to regulation. The guidelines are embedded in the law process description available to all rule drafters. OECD interviews showed that the concept of alternatives to regulation is well known across ministries. It was however beyond the scope of this review to assess the extent to which alternatives have been developed or used since the 2000 OECD report.

## Notes

1. According to the 1997 OECD report on impact assessment, “experiences in OECD countries show no exceptions to the general rule that” [regulatory impact analysis (RIA)] “will fail if it is left entirely to regulators, but will also fail if it is too centralised. Regulators must take primary responsibility under a system of incentives overseen by reformers. Much RIA, for example, is carried out because

central overseers are able to convince regulators and policy officials that it is worth the benefits.” *Source: OECD (1997), p. 19.*

2. Alternatives to regulation are policy instruments other than “command and control” regulation used to obtain policy goals. They include instruments such as performance based regulation, process regulation, waiver or variance provisions, delegated, self and co-regulation, contractual arrangements, voluntary commitments, tradable permits, taxes and subsidies, insurance schemes, information campaigns.
3. There are no available statistics on the number of secondary regulations.
4. The Law Programme for 2008/2009 issued in October 2008 is available at [www.stm.dk/publikationer/SkriftligDel08/Lovprogram%202008-2009.pdf](http://www.stm.dk/publikationer/SkriftligDel08/Lovprogram%202008-2009.pdf) (Prime Minister’s Office website), and at: [www.folketinget.dk/doc.aspx?samling/20081/MENU/00000002.htm](http://www.folketinget.dk/doc.aspx?samling/20081/MENU/00000002.htm) (Parliament’s website).
5. [www.retsinformation.dk/Forms/R0710.aspx?id=60787](http://www.retsinformation.dk/Forms/R0710.aspx?id=60787).
6. [www.lovprocessguide.dk](http://www.lovprocessguide.dk).
7. As part of its report, the NAOD reviewed four regulatory impact assessments –one from each of the selected ministries for the review. The objective was to assess whether the regulatory impact assessments secured that the Parliament is provided with the best possible basis for decision-making. It did not review the ministries’ work with regulatory impact assessments aimed at the government’s internal decision process. The NAOD had selected the following four ministries for the examination: the Ministry of Finance, the Ministry of Economic and Business Affairs, the Ministry of Taxation, the Ministry of Justice, and the Ministry of Social Affairs. The selection was based on the overall co-ordinating role of the ministries and/or their prominent role in producing regulation affecting citizens and businesses.
8. Since the design of the Green Tax System in 1993, the tax system has been used to pursue successfully objectives in relation to air, water and waste management policies. The OECD’s Environmental Performance Review states that green taxes, such as the tax on sulphur emissions (1996) and the waste water tax (1997) have contributed to significant improvement on the environment.
9. For example, the Marketing Act of 2006 indicates that the Consumer Ombudsman “will seek to influence the conduct of traders by the preparation and issue of guidelines for marketing in specified areas that must be considered essential, especially in the interests of the consumer”.
10. The law requires that the Bar and Law Society establish rules regarding the duties of lawyers in certain areas. The law also sets some safeguards. The rules must be approved by the Minister of Justice and the Bar and Law Society must establish a disciplinary board.
11. [www.oem.dk/publikationer/html/altregu/download/ren.htm](http://www.oem.dk/publikationer/html/altregu/download/ren.htm).



## Chapter 5

### The management and rationalisation of existing regulations

This chapter covers two areas of regulatory policy. The first is simplification of regulations. The large stock of regulations and administrative formalities accumulated over time needs regular review and updating to remove obsolete or inefficient material. Approaches vary from consolidation, codification, recasting, repeal, *ad hoc* reviews of the regulations covering specific sectors, and sun setting mechanisms for the automatic review or cancellation of regulations past a certain date.

The second area concerns the reduction of administrative burdens and has gained considerable momentum over the last few years. Government formalities are important tools to support public policies, and can help businesses by setting a level playing field for commercial activity. But they may also represent an administrative burden as well as an irritation factor for business and citizens, and one which tends to grow over time. Difficult areas include employment regulations, environmental standards, tax regulations, and planning regulations. Permits and licences can also be a major potential burden on businesses, especially SMEs. A lack of clear information about the sources of and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the application by a growing number of countries of variants on the standard cost model (SCM) analysis to information obligations imposed by laws, which also helps to sustain political momentum for regulatory reform by quantifying the burden.

A number of governments have started to consider the issue of administrative burdens inside government, with the aim of improving the quality and efficiency of internal regulation in order to reduce costs and free up resources for improved public service delivery. Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example, government agencies or local government service providers). Fiscal restraints may preclude the allocation of increased resources to the bureaucracy, and a better approach is to improve the efficiency and effectiveness of the regulations imposed on administrators and public service providers.

The effective deployment of e-Government is of increasing importance as a tool for reducing the costs and burdens of regulation on businesses and citizens, as well as inside government.

#### Assessment and recommendations

##### *Simplification of regulations*

*Policies to simplify the stock of existing regulations need more systematic attention.* This issue was already picked up in the 2000 OECD report (Box 5.1). Denmark has some initiatives in place to promote simplification of the regulatory stock. These include, in

particular, *ex post* implementation reviews of specific regulations, as well as *ad hoc* codifications of amendments to specific laws. The approach, however, is not systematic.

**Box 5.1. Recommendations and comments from the 2000 OECD report:  
The management of existing legislation**

Implement a targeted programme of review of existing laws and lower-level regulations, including regulation at municipal levels.

Danish reform efforts have also been directed more at improving the quality of the “flow” of regulations, rather than the quality of the “stock” of regulations, that is, the quality of new laws rather than the quality of existing laws. New policy challenges such as ageing will require that laws and other regulations cutting across ministerial jurisdictions be reviewed and updated within a framework of consistent quality criteria. This will require more co-ordination and government-wide application of quality standards.

Concepts of “regulatory quality” should be embedded throughout various levels of Danish regulatory regimes by systematically assessing and upgrading the quality of legislation and other regulations already in place. This can best be done by designing a programme to regularly revisit and revise existing regulatory policies, based on clear objectives and results orientation, on identification of priority areas for reform, and on establishment of central oversight and co-ordination responsibilities. In Denmark’s decentralised administrative structure, it will be particularly important to co-ordinate between central and local reforms, and among local reforms

*Source:* OECD (2000), *Regulatory Reform in Denmark*, “Government Capacity to Assure High-Quality Regulation”, OECD, Paris, [www.oecd.org/dataoecd/31/55/2510615.pdf](http://www.oecd.org/dataoecd/31/55/2510615.pdf).

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**Recommendation 5.1. Consider the establishment of a more systematic codification policy over time, targeting selected areas that other Better Regulation policies such as the administrative burden reduction programmes have identified as problematic.**

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***Administrative burden reduction for businesses***

*The action plan to reduce administrative burdens on business is a substantial, well-run policy that has already delivered results.* The Danish government is one of the front runners in the area of administrative burden reduction for business. It has used the Standard Cost Model (SCM) to measure administrative burdens, and has committed to a reduction of 25% within a timeframe of eight years, between 2001 and 2010. A reduction of 15% was achieved by mid-2008. The reduction is net (it takes account of expected burdens from new regulations as well as existing regulations). The DCCA attached to the Ministry of Economic and Business Affairs is well organised to carry forward the practical aspects (delivery of the business action plan, burden measurement supported by consultants, advising and chasing ministries). Setting an ambitious target and regular monitoring has helped create momentum and sustain pressure for progress.

*The project has had positive external effects and has been an efficient and necessary motor for developing Better Regulation policy in Denmark.* It has demonstrated that significant change can be made both in regulation and in the interface between the civil service and businesses. It has promoted co-operation across the government, brought forward initiatives from within the administration, and stimulated knowledge-sharing between the Ministry of Economic and Business Affairs and line ministries. It has also

paved the way for new Better Regulation policies such as the De-bureaucratisation Programme.

*Further progress in meeting the target does raise challenges which need to be addressed.* While an important reduction was achieved by mid-2008, the government now needs to deliver the remaining 10% reduction by 2010. Interviews revealed some doubts among stakeholders as to the capacity of the government to reach this target. Meeting the actual target may matter less than the process and specific outcomes. Nevertheless, making progress needs to take account of a number of factors. These include a negative perception by business of achievements so far (which may, at least in part, signal that substantive issues that matter to them are not yet effectively addressed, as well as a relative failure of communication on achievements); the fact that the process faces an ongoing flow of new regulations; and the need at this stage to tackle substantive changes to regulations as the “low-hanging fruits” no longer exist. These issues are considered in more detail below.

*Business perceptions of achievements are negative, and the recent initiatives to further strengthen the programme are to be welcomed in this regard.* Interviews showed that while businesses support the burden reduction policy, they do not have a positive perception of its actual impact on their activity (a situation that is not unique to Denmark). This may have part of its roots in reality, in that some issues have not yet been effectively tackled, despite the significant efforts so far to involve the business community through interviews and the consultative committees (the “burden committees”). A number of stakeholders expressed some disappointment with the consultation process for the development of the programme so far. The government has recently developed two new projects (the “Burden Hunters” project to address irritants, and the “Ten Business Flows” project) to match its administrative burden reduction policy more closely to real business needs. Denmark has also developed new initiatives on communication since the OECD review took place, in particular with the release of a De-bureaucratisation Plan for Business Regulation, which explains how the government intends to meet the 25% reduction target. An assessment of the concrete impact of these initiatives is premature, and will need to address how effectively the information gathered is integrated into ministry action plans for burden reduction. There is scope to share ideas and experiences with other countries that are also testing new approaches, including for communication.

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**Recommendation 5.2. Ensure that the new projects are evaluated for their effectiveness, by seeking feedback from stakeholders on how they have affected the relevance and quality of ministry action plans for burden reduction. Consider whether any of the initiatives being taken by other countries to respond more closely to real business needs might provide useful insights for the development of the Danish approach.**

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*The process faces the ongoing flow of new regulations.* There can be serious tensions arising from contradictory trends. On the one hand ministries have to reach the target of a net 25% reduction. On the other hand, new regulations are being adopted, partly stemming from EU requirements, but also from requests at the national level for high security and safety standards. Part of the answer to this challenge lies in ensuring that *ex ante* impact assessment of new regulations is further strengthened with a more rigorous approach to assessing overall costs and benefits (see Chapter 4).

*Some ministries are struggling to deliver further results, because these increasingly involve changes in the substance of legislation.* If substantive changes are involved, for example the level of protection, this is inevitably controversial, not least because they need

to be approved by the parliament. Hence it is important that the parliament has a clear understanding of the programme as a whole, rather than a “case by case” perception of burden reduction initiatives. The annual report by the Minister of Economic and Business Affairs on developments in ministries’ efforts to simplify business related regulations (presented to the parliament since 1996) is a helpful starting point. The publication of the Plan for De-bureaucratisation for Business, which was sent to the parliament, is a further positive step towards improved communication towards the parliament.

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**Recommendation 5.3. Consider whether further action is needed to ensure that the parliament has a full understanding of the government’s objectives.**

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### *Administrative burden reduction inside the administration*

*The De-bureaucratisation Programme is an ambitious and promising initiative.* Denmark appears to have successfully used the experience of its business administrative burden reduction programme to launch a new initiative aimed at reducing burdens on frontline public sector workers (the De-bureaucratisation Action Plan). A particularly positive feature of this programme is that it links central and local governments in a shared effort, in a way that is not found in many other OECD countries. It is also an important programme for sending a signal to public sector workers that their needs are being considered, and for encouraging new entrants into public sector work.

*Effective monitoring is needed to secure progress and ensure that policy objectives are matched with practical outcomes.* The action plans being developed are binding, but what this means in practice is not yet clear. There are currently no obvious burden reduction targets because a bottom-up approach, based on identifying needs in specific situations, is favoured. Challenges are considerable, not least because of the scope of the project. Municipalities, which are in charge of delivering public services, have their own organisation and processes. It can be difficult to isolate tasks related to the delivery of specific services, as these tasks are often part of the core tasks of civil servants. Beyond the need to report to the Co-ordination Committee on progress, there is a need to improve structures to secure effective monitoring and quality control.

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**Recommendation 5.4. Clarify the targets and requirements on ministries and others involved in the programme. Establish a strong monitoring framework, based on what has been put in place for the programme to reduce administrative burdens on business. Provide support and guidance to municipalities for their role in the programme’s implementation.**

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## Background

### *Simplification of regulations*

The Danish government tackles simplification of regulations mainly through the programme for the reduction of administrative burdens on businesses, and has no centralised or systematic process underway to consolidate and codify the stock of regulations. In the 1980s, the deregulation programme launched by the new liberal-conservative government, promoted under the slogan “It shall be easier to be a Dane” entailed the removal of regulations harmful to the competitiveness of the business sector. It was generally agreed that the campaign had a major impact on the consolidation of existing legislation and removal of outdated and redundant laws. According to a 1985 report to the *Folketing*, the number of regulations was reduced by 2 000. However, the programme was



less successful in achieving fundamental change to business regulation, and by the mid-1980s the government's effort shifted towards the quality of regulations. Current policies to reduce administrative burdens can result in the consolidation of regulations in specific areas, but only as a secondary effect. Codification of amendments to specific laws happens in a number of cases (such as the yearly consolidation of the Administration of Justice Act). In 2008, 92 consolidated acts were issued. In the first quarter of 2009, 32 consolidated acts were issued. There is a requirement in the Ministry of Justice guidance on law quality that ministries regularly codify their regulations.

### ***Post implementation reviews***

The Danish government has established a law surveillance procedure to scrutinise *ex post* the economic and administrative consequences of existing laws, and also to find out whether they fulfil the goals they are meant to serve. The initiative dates back to 2000, with the first reports issued in 2002-03. Law monitoring applies to a number of laws which are selected every year as part of the preparation of the law programme. The process can also be undertaken for laws that have already been promulgated. Priority is given to laws which regulate in a new area, laws for which there are uncertainties about the consequences or about the management and resources needed to achieve their goals. The report is prepared by the relevant ministry, and sent to the relevant parliamentary committee. The process involves consultation with external stakeholders and relevant authorities.

### ***Administrative burden reduction for businesses***

#### *Policy on administrative burden reduction for businesses*

The Danish government has pursued action plans for the reduction of administrative burdens since 2002, and gradually focused them on businesses. The first action plan consisted of close to 200 initiatives. The instruments for simplification included removing obligations for citizens, companies or local governments, reducing the number of authorities that citizens or companies need to interact with by changing administrative procedures, reducing burdens by using the Internet (for example, online reporting and applications, information sharing between authorities and re-use of data, single access points for citizens and companies). Following an overall evaluation of the programme in 2005, after three annual action plans, the government focused its new action plan on the reduction of administrative burdens on businesses.

Denmark's action plans for burden reduction have been based on a quantitative target. In 2002, the government announced that administrative burdens on business should be reduced by 25% by 2010, compared to a baseline set in 2001. The formulation of the target is flexible, but it is quantified and the impact of new regulations has been included (this is a net target). The target is similar to that of other EU countries, but Danish officials estimate that the administrative costs for businesses are a lower share of GDP in Denmark. The baseline includes EU-origin regulations, which Danish officials estimate to account for 40% of administrative costs borne by businesses.

The administrative burden reduction project is a government programme, and has not been subject to endorsement by the *Folketing*. However the parliament is part of the process as the government sends it regular monitoring reports. Furthermore many reduction initiatives require changing the law, and thereby involve the parliament.

### *Institutional framework, guidance and support*

The Ministry of Finance and the Ministry of Economic and Business Affairs co-operate closely in the development, implementation and monitoring of the programme. The Ministry of Economic and Business Affairs plays the lead role, overseeing the work of the DCCA (which is one of nine agencies attached to the ministry, the other most important ones cover competition and innovation, and SMEs), and providing progress reports to the Prime Minister. A small unit within the Ministry supports the work, and meets at least once a week with the DCCA.

The DCCA (which has considerably more staff on the project than the ministry) is at the frontline of the project and appears to have considerable autonomy in its practical management and development. This includes the development of measurement methods and performing measurements, as well as the identification and testing of new methods of consultation. The DCCA acts as a co-ordinator of the government's action through a network of contacts in ministries, which are tracked by dedicated teams. It provides support to ministries (such as guidelines on application of the SCM), and monitors progress in implementation. The DCCA reports twice a year to the Co-ordination Committee chaired by the Prime Minister, and once a year to the parliament, on progress with the simplification programme (including ICT and initiatives at EU level).<sup>1</sup>

The DCCA has no capacity of direct action on ministries, but the Prime Minister's commitment to simplification appears to have put pressure on ministries. The OECD team was told that regular reporting provides incentives to show progress, and engages ministries in competition with each other. The Ministry of Economic and Business Affairs sends six monthly progress reports to the Prime Minister. The OECD team was told that these reports have a "name and shame" effect, and that the 25% target is really stretching for ministries. Incentives also come from the performance appraisal of permanent secretaries, which takes account of their ministries' progress on Better Regulation, with a bonus for good performance.

### *Methodology and process*

The Danish administration has developed a methodology for measuring administrative burdens, on the basis of the Dutch Standard Cost Model (SCM). The Division for Better Business Regulation in the DCCA, which has overall responsibility for the measurement, appointed a consultancy firm to carry out the actual measurements, including mapping the regulations and business interviews. The methodology focused on the nature of the specific details which businesses are required to report by law, and on the related administrative costs. The results of the measurement were validated through consultation with both ministries and business organisations. The measurement was completed in 2004-05, on the basis of regulations applying in 2001.

The purpose of the measurement was to assess the aggregate cost of administrative procedures and to identify the "heavy" sectors, and thereby the ministries which should be the main contributors to the programme. Seven ministries were identified as responsible for 96% of the burdens, and required to draw up action plans for their ten most burdensome areas of regulations. They set up working groups to help prepare these action plans ("burden committees"). Other ministries were not required to prepare action plans, but were requested to reduce the administrative costs of their most burdensome obligation(s). The 25% target is divided across ministries (they each have their own target). The SCM methodology is also used to anticipate burdens from new regulations (though the DCCA told the OECD peer review team that this was a difficult exercise).

### *Public consultation and communication*

The government has involved external stakeholders in the development of the business burden reduction programme. In 2004, it established ten working groups in relevant ministries (e.g. “burden committees”), which included representatives from business organisations. The purpose of these committees was to identify the suggestions of the business community for simplification. During the interviews held by the OECD team, various stakeholders expressed disappointment with this consultation process, and in particular showed frustration at the lack of feedback. The issue was not with the organisation of the committees themselves and their work, but with the lack of transparency as regards the result and the ultimate usefulness of the exercise. The outcome of the consultation, as reflected in the action plans, varied across committees, with some of them integrating inputs from the committees, while others did not.

Progress is monitored on a regular basis and given publicity. The Ministry of Economic and Business Affairs prepares an annual public report, which is sent to the parliament. It has also tried to strengthen communication on specific tools and measures, as studies showed that many businesses, especially SMEs, are not aware of new arrangements, for example, new digital solutions. According to Danish officials, the experience from the recent *Burden Hunter Project* (Box 5.2) has provided new insights about the irritation factors. The government plans to extend it and make it more systematic.

The government provides detailed information on the administrative environment, in particular through its business portal “*virksom.dk*”. The DCCA publishes general information on the programme on its website.<sup>2</sup> It has also set up a dedicated website on burden measurement,<sup>3</sup> which displays a barometer of burdens, showing progress both at an aggregate level and ministry by ministry. Studies have however shown that many businesses, especially SMEs, are often not aware of possibilities brought by simplification initiatives, such as new digital solutions. Communication on new initiatives has relied on the individual initiatives of ministries, which tends to give a piecemeal view of the programme and its results.

### *Achievements so far*

Danish officials have announced that the programme has led to a 15.3% reduction of administrative burdens so far, and estimate that the cost of administrative procedures on business has decreased from 2.3% of GDP in 2001 to 1.9% in 2008. The figure is based on the latest SCM measurement to be published in May 2009 (which includes regulation adopted until July 2008).<sup>4</sup> Interviews with Danish officials and external stakeholders highlighted a number of difficulties which had to be tackled in implementing the programme:

- The action plans have not only tackled “low-hanging fruits”, but also addressed areas in which there is an underlying complexity of regulations (for example, accounting regulations).
- Some of the actions relied on digitalisation, which has proved more demanding than anticipated. Re-use of data has been difficult to implement. There are few barriers within the business community, as there is a general trust between government and the private sector. The difficulty is to harmonise information and systems across ministries, both for cultural and technical reasons.

- New regulations tend to catch up with efforts to prune back existing regulations. There is an ongoing flow of new regulations with significant administrative costs and a high level of complexity.<sup>5</sup> This can reflect the emergence of new policy areas, a shift in policies or EU requirements, which entail changes in regulation. It can also reflect a request by society for regulations (for example, in the field of safety, security and the environment).
- Another area of difficulty lies in the time entailed when initiatives require changing the legislation, especially when it comes to health, safety and environment.

As in other countries which set a quantitative target, Denmark has faced a widening perception gap between the reduction of administrative burdens as measured by the administration, and the reduction as perceived by businesses. There are difficulties inherent with measuring perception (including the fact that there is a general dislike for any forms of administrative procedures, making any evaluation difficult to do). Apart from these difficulties, interviews highlighted that a number of factors combine to explain the gap. First of all, progress can be significant when measured at the level of the country, but not significant at the level of an individual company. Secondly some initiatives focus on a small group of businesses. Thirdly procedures are not isolated items but usually part of processes, which need to be addressed as a whole. In addition some changes take time to be translated in the daily routine of businesses, and conversely once changes are made, the memory of past difficulties quickly fades away. Fourthly, businesses are sometimes not aware of the initiatives. The DCCA also suggested that businesses sometimes push the negative agenda too far, and are unwilling to acknowledge progress.

### *New initiatives*

Denmark has launched new initiatives to improve its programme by drawing it closer to business, partly in response to the perception gap felt by businesses.<sup>6</sup>

In 2007 the government initiated the *Burden Hunters Project*, which supplements the work initiated within the “burden committees”. This was the first step in the development of a more systematic approach towards the reduction of irritation burdens. DCCA staff and representatives from the line ministries visit businesses to get concrete and specific knowledge about how they experience the interaction with government authorities and the service provided. The project has relied on user-centric innovation methodologies. It has allowed the identification of nine major causes of irritation for business and a number of problems for 28 areas. This has led to identifying a number of new initiatives which could be taken to cut red tape (Box 5.2).

### Box 5.2. The Burden Hunters Project

The *Burden Hunters Project* is a component of the Danish government's efforts to reduce the administrative burden affecting Danish business. It supplements existing red tape reduction efforts by placing particular emphasis on the burdens experienced by enterprises, and on how other factors besides the expenditure of time can cause enterprises to regard business regulation as being a burden.

The *Burden Hunters* initiative was organised as a cross-ministerial project consisting of a project team of 15 officials plus a steering committee comprising decision-makers from the ministries of Economic and Business Affairs, Employment, Taxation, and Finance. The project was implemented in co-operation with *Mindlab* (a development entity owned by the Ministry of Economic and Business Affairs, Ministry of Taxation and Ministry of Employment, whose purpose is to involve citizens and enterprises in the development projects undertaken by these three ministries) plus external consultants.

The project conducted in 2007-08 consisted of the following phases:

**Definition of project focus.** The target audience was defined as small and medium enterprises. The project also focused on the total quantity of administrative burdens that these enterprises experienced. The enterprises' business sector, size and growth ambitions were chosen as the selection criteria. A total of six business sectors were chosen: finance, construction, service, restaurants, hotels and cafes, industry and trade. Enterprises with increasing sales were selected within these six sectors that ranged in size from 5 to around 100 employees.

**Learning about the users.** One or two officials in the project team plus a consultant with expertise in qualitative ethnographic methodologies visited 24 enterprises and remained there for half a day. Their focus was on understanding the practices of the enterprises, their relationship with the public authorities and the challenges and experiences connected with business regulations that they were experiencing. The visits consisted of a mix of interviews and observations. The first three visits were used as a pilot test. This phase showed that the recruitment of enterprises is a major challenge in terms of the logistics of finding relevant enterprises and in terms of persuading them to participate. One difficulty was also to reconcile the comprehensive perspective with the need to dig deeply into precisely how the enterprises are dealing with various requirements imposed by business regulations. The answer to this challenge was the selection of eight requirements which were then analysed further in a set of flow analysis.

**Analysis.** The analysis of data was based on a model for the user-centric innovation of public services. The analysis focused on giving an overview of the problems faced by the enterprises in the individual areas of regulation, and on understanding which of the enterprises' experience in dealing with the authorities cause the enterprises to regard business regulations as an annoyance. The large quantity of data collected in visits was processed using qualitative analysis software. Metadata was systematically added to all the data collected (*i.e.* pictures, notes and video clips). Results identified 28 burden areas and 9 experiences that generate irritation. All the analysis results were compiled in matrix, which brought together all the challenges for the enterprises for each of the major burden areas and indicated which of the nine experiences the particular burden was associated with.

**Idea and concept development – new initiatives aimed at reducing bureaucracy.** Innovation possibilities were identified through a systematic review of all the data in the burden matrix. The burden matrix was used to have an overview of all the challenges in an individual regulatory area and an overview of the actual situations for each of the nine "irritation" experiences. The result was the identification of 100 possibilities for reducing bureaucracy with varying levels of detail.

Examples:

- Possibility in the area of regulation concerned with statistics: match reporting deadlines to the daily activities of the enterprises (such as summer holidays).
- Possibility in the experience area concerned with lack of flexibility: failure to differentiate rules and requirements in accordance with the differing sizes of enterprises.

Further work was done to integrate the 100 possibilities into a smaller number of possibilities and to describe how the possibility could turn into a specific initiative relating to one three groups: 1) solutions relating to individual authorities 2) projects that cut across the authorities, 3) concepts that cut across the public sector.

*Source:* MindLab (2008), *The Burden-Hunter Technique – A User-centric Approach to Cutting Red Tape*, Beskæftigelses Ministeriet, Skatteministeriet, Økonomi- og Erhvervsministeriet, Copenhagen.

Another recently launched project is Ten Business Flows. This is a cross-governmental project as part of Denmark's e-Government strategy. The objective is to simplify and improve ten "difficult" flows of processes, where businesses interact with government, using digital solutions (Box 5.3).

### Box 5.3. Ten Business Flows

*Ten Business Flows* is a cross governmental project initiated by the Steering Group for Cross Governmental Initiatives (STS).

The project has identified ten flows and mapped the process and challenges that businesses and government authorities face when carrying out specific tasks.

The purpose of the project is to:

- Identify ten flows / processes where businesses interact with government in a way that is ineffective and where this contact / interaction / process can be simplified / optimised to the benefit of business as well as authorities.
- Develop new concepts with a focus on service, digitalisation, simplification, reuse of data etc., and strengthening of communication channels between the public sector and businesses in order to promote the digital solutions.

The starting point of the project has been a user oriented approach with focus on the user experience of the given process. Since users do not distinguish between different government agencies (but sees the public sector as a whole) a lot of the identified solutions are cross-ministerial. Mapping of the work-flow in detail has proven very useful to identify new and better solutions with less administrative costs for businesses as well as government agencies.

The ten flows have been mapped and conceptual solutions / visions have been prepared. These solutions need to be further developed by the relevant institutions in order to possibly be implemented.

STS expects to discuss the visions for the ten business flows early 2009 with decision on how to proceed.

*Source:* Note of the Danish Commerce and Companies Agency, 17 December 2008.

In March 2009, the Danish government released the De-bureaucratisation Plan for Business Regulation” (Danish government, 2009). The plan presents 33 selected initiatives grouped into four areas (better conditions for start-up and running businesses, easy access to regulatory authorities, less and simplified reporting, and efficient and focused inspections). This plan is part of the government’s new communication strategy unveiled in summer 2008, which includes initiatives aimed at informing companies of specific regulatory, ICT and other changes that are intended to make their life easier. As part of this strategy, the government has also launched a “LET Administration” (“EASY Administration”) label to improve the visibility of its initiatives.

### ***Administrative burden reduction for the administration***

#### *The De-bureaucratisation Programme*

In 2007-08, the Danish government broadened further the scope of its programme on burden reduction by launching an initiative on regulation inside government. The initiative was part of the broader Quality Reform, which was launched in August 2007 and confirmed by the budget agreement for the financial year 2008 (political agreement of March 2008). Earlier a tripartite agreement of 17 June 2007 had concluded on the need for further simplification effort. The agreement associated the government, the Association of Municipalities (LGDK), the Association of Regions (Danish Regions), the Danish Confederation of Trade Unions (LO) and the Danish Confederation of Professional Associations (AC).

The De-bureaucratisation Programme generally aims at improving regulatory management within government. It relates not only to the need to make the public sector more efficient, but also to make the civil service a more attractive workplace, given the implications of an ageing population for the labour market. The specific objectives of the programme are: *i*) to reduce the time spent by public servants on administrative tasks; *ii*) to confer increased managerial autonomy on municipalities and local managers; and *iii*) to give public servants a better perception of the meaningfulness of their work. The programme will run from 2008 to 2011 with a budget of EUR 6.7 million.

#### **Box 5.4. The De-bureaucratisation Programme**

The De-bureaucratisation Programme includes four initiatives:

1. Broad screenings of local and national rules on the critical service areas:
  - The goal is to identify problems and find possible solutions by engaging local managers and employees.
  - The method consists of target group interviews, works shops where the employees exchange ideas and national conferences where the ideas are discussed and prioritised.
  - The screenings are followed by thorough analyses of the most complex areas/rules.
2. Mapping and measurement of administrative burdens of selected professionals:
  - The goal is to map and measure the administrative tasks of selected professionals in order to identify areas with need and potential for simplification, and to set up binding targets for the reduction of the administrative tasks, such as quantitative targets.
  - A new method to measure the administrative tasks has been developed in the programme,

using *Personas* to map how much time the selected professionals spend on administrative tasks.

- The focus is not only on how much time is spent, but also on the perception by the professionals of the tasks.

3. Challenge of existing local and national rules by institutions:

- The government will give some institutions (primary and lower secondary schools, nursing homes, kindergartens etc.) the right to be exempted from burdensome national rules for one or two years, following applications for this from the boards of the relevant municipalities. Likewise municipalities will give institutions the right to be exempted from burdensome local rules.
- These institutions will get the possibility to try alternatives to regulation.
- The results of the experiments will contribute to the overall solutions of the De-bureaucratisation Programme.

4. Better Regulation at local and regional levels:

- The goal is to improve the overall national regulation of local and regional governments.
- The methods include education of “law-writers” in the ministries, the use of impact assessments such as VAKKS and involvement of the users of regulation.

The initiative aims at creating more freedom to local service providers, but better documentation of results and effects.

### *Scope of the De-bureaucratisation Programme*

The government has designed the programme to include four different initiatives (Box 5.5), taking a very wide approach:

- The programme covers local as well as central governments, and focuses not only on laws but also on secondary regulations such as executive orders. The programme also tackles issues of poor working procedures in the municipalities and regions, lack of communication and insufficient use of ICT-support of procedures.
- Given the time-consuming nature of the process and the size of the public sector, the government has decided not to include all policy areas, but to select a number of critical public services. However, the selection amounts to a broad range of services as it includes elderly care, public primary and lower secondary schools, hospitals, support for disabled people, support for exposed children and young people, the integration of immigrants, day care, and employment agencies.
- The programme not only focuses on simplifying the existing system, but also aims at promoting Better Regulation in a more general sense, *e.g.* through implementation of impact assessment (see the VAKKS procedure in Chapter 4).
- The programme promotes a more efficient system of multi-level governance. Its objective is to establish a more clear-cut distribution of responsibility between the different levels of government. In the governance of regulations at the local level, the central government is to shift from issuing detailed regulations and processes towards a performance-based approach. Governance of the local level is based on objectives and results, leaving municipalities autonomy in the implementation of regulations and



delivery of public services. Conversely municipalities are to provide documentation on their achievements and results.

- The programme introduces a new tool by giving specific institutions the right to be exempted from burdensome national rules for one or two years and to use alternatives to regulations (Box 5.5).

### **Box 5.5. Exemptions from regulation**

The Danish government has established a new right for municipal and regional public institutions to “challenge” existing rules. The goal is to give a number of well-functioning institutions an opportunity to try new ways and methods to achieve the purpose of the regulation. This can contribute to identifying and spreading examples of the best solutions that will serve as inspiration for others and give inputs to possible simplifications or adjustments in existing rules.

The right will include both state and regional/municipal rules and requirements. A working party with participation from the relevant ministries, LGDK and Danish Regions will discuss the applications for challenging rules, award exemptions and monitor the results. At the local level, municipalities and regions will consider challenges to local level regulation.

The Ministry of Welfare is co-ordinating the initiative and has circulated information on the project in December 2008. The goal is to launch the first experiments by mid-2009. Examples of applications from the institutions could be:

#### **Municipal rules**

- A reduction in the frequency of budget follow-ups in the beginning of the year.

#### **Regional rules**

- Exemption from the rules that applies for the management of processes and documentation.

#### **State rules**

- Experiments on the day-care area with local solutions to existing documentation and reporting tasks which come from the day-care law.
- Experiments on the elderly area with local solutions concerning the Danish councils of users and relatives.

### *Monitoring and co-ordination at central government level*

Ministries have an extensive right to decide autonomously on how to implement the programme within their policy area. They are however accountable to the Cabinet’s Co-ordination Committee, which the Prime Minister chairs. A unit in the Ministry of Finance is co-ordinating the programme.

Each of the seven ministries currently involved in the project<sup>7</sup> is to define an action plan, which describes its effort, goals, methods, and key performance indicators. Once defined, the action plan is “binding”, which means that the ministry is politically accountable for the target that has been agreed. Ministries will report regularly to the Co-

ordination Committee on progress. Conversely, ministries will also take credit for results, so as to promote ownership of the programme.

Given the high degree of autonomy of local governments in Denmark, there will be some challenges concerning the simplification of regulations created by the municipalities and regions themselves. The approach from the central government is to make voluntary but binding agreements with the local and regional level, under which the municipalities and regions commit themselves to look into their own regulations.

### *Co-ordination with local governments*

The central government has closely associated local governments in the preparation of the De-bureaucratisation Programme. First of all, municipalities and regions were part of the initial agreement to launch the project in 2007, through the Association of Municipalities (LGDK) and the Association of Regions (Danish Regions). Secondly the government has selected policy areas to be included in the programme after consultation with ministries, LGDK and Danish Regions. Consultation and co-ordination with subnational bodies will continue as the programme is being implemented, through the Steering Group for Cross-National Initiatives (STS, see Chapter 2). Through this steering committee, municipalities and regions have access to the process and have the opportunity to discuss the results and methods with the government. LGDK and Danish Regions have been involved in the development of the methodology and in working groups.

### *Methodology*

As for the programme on burden reduction for businesses, the De-bureaucratisation Programme includes a quantitative target. In their action plans ministries will have to set up goals of how much they will reduce the administrative burdens in their area. Contrary to the programme for businesses, however, the De-bureaucratisation Programme does not have an overall reduction target of *e.g.* 25%. The reduction target for each ministry will depend on the complexity of the area in question, and will be decided after mapping and measuring administrative burdens of professionals and civil servants. While the decision has not been firmly taken, the Danish government foresees that reduction targets should be set for each service area individually. This would entail that a ministry can be responsible for reaching more than one reduction target.

The government has developed a specific methodology to map and measure administrative burdens inside government and will set the reduction target for each ministry, which is different from the SCM methodology used for the business administrative burden reduction programme. Specific services are to be singled out (such as public primary and lower secondary schools, elderly care, employment agencies). For each service ministries will map the tasks of typical employees. Mapping consists not only of measuring the time spent on the tasks but also grasping employees' perception of their tasks. Ministries will use the information to prepare "*Personas*", which describe the standard workday of different types of public servants. *Personas* will enable the measurement of how much time civil servants spend on administration and how much time they spend providing services to the citizens. They will be used to set up quantitative targets on how much the administrative burdens should be reduced, to monitor progress, and communicate to the public.

### *Consultation and communication*

Consultation has mainly focused on central and local governments, but the preparation of the programme has also included consultation of external stakeholders (in particular

trade unions, business representatives). The government has given frontline public sector workers in central and local governments an opportunity to make simplification proposals. Projects include the organisation of target group interviews and workshops to identify issues and possible solutions. The government will combine this bottom-up approach with a top-down approach, as ministries will define the overall strategy. As for external communication the government envisages publishing the action plans on the Internet,<sup>8</sup> but has not yet finalised its communication strategy.

## Notes

1. The title of the report is “The business sector and regulation”.
2. [www.eogs.dk](http://www.eogs.dk).
3. [www.amvab.dk](http://www.amvab.dk).
4. The experience shows that progress has gone through periods of acceleration and deceleration. In the period 2001 to 2005, the reduction amounted to 5%. By 2006 it amounted to 9.5%. While the reduction over 2006-08 stood at only 0.6%, the programme gathered speed over the past year. The reduction reached 5.2% between mid-2007 and mid-2008.
5. The 2007 report of the NAOD (*Rigsrevision, 2007*) to the Public Accounts Committee on the impact of Better Regulation and simplification gives the example of the Ministry of Social Affairs: “The Ministry of social Affairs has informed the NAOD that the Act on Social Housing, etc. is still very extensive and complicated as the area has been subject to political priorities. The NAOD agrees with the ministry’s evaluation of the rules and finds that the impact of the ministry’s better regulation and simplification activities has so far been limited”.
6. These initiatives have been taken since the OECD conducted its study mission in spring 2008. Consequently they could not be evaluated for this report.
7. Seven ministries are currently participating in the project: Ministry of Education, Ministry of Employment, Ministry of Refugees, Immigrants and Integration, Ministry of Health, Ministry of Welfare and Ministry of Finance.
8. The De-bureaucratisation Programme is presented at: [www.fm.dk/afbureaukratisering](http://www.fm.dk/afbureaukratisering).



## Chapter 6

### Compliance, enforcement, appeals

Whilst adoption and communication of a law sets the framework for achieving a policy objective, effective implementation, compliance and enforcement are essential for actually meeting the objective. An *ex ante* assessment of compliance and enforcement prospects is increasingly a part of the regulatory process in OECD countries. Within the EU's institutional context these processes include the correct transposition of EU rules into national legislation (this aspect will be considered in Chapter 7).

The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).

Rule-makers must apply and enforce regulations systematically and fairly, and regulated citizens and businesses need access to administrative and judicial review procedures for raising issues related to the rules that bind them, as well as timely decisions on their appeals. Tools that may be deployed include administrative procedures acts, the use of independent and standardised appeals processes, and the adoption of rules to promote responsiveness, such as “silence is consent”. Access to review procedures ensures that rule-makers are held accountable.

Review by the judiciary of administrative decisions can also be an important instrument of quality control. For example, scrutiny by the judiciary may capture whether subordinate rules are consistent with the primary laws, and may help to assess whether rules are proportional to their objective.

### Assessment and recommendations

#### *Compliance and enforcement*

*A risk-based approach to enforcement has already gathered momentum and needs further encouragement.* Denmark has made compliance and enforcement a greater priority over the past years and has been developing new approaches. Enforcement authorities have started to roll out a risk-based approach, and a number of inspection bodies now use risk analysis. The small size of the country and the concentration of enforcement responsibilities within central government inspection agencies have facilitated the development of the new approach as inspection agencies have accumulated a thorough knowledge of companies. Experiences such as that of the Veterinary and Food Administration show that the

involvement of front line enforcement workers can encourage acceptance of new approaches.

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**Recommendation 6.1. Communication on the new approach should not be neglected, in order to highlight the positive effects, and also provide reassurance, where needed, to sometimes risk averse citizens and parliament.**

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### *Appeals*

*The appeal system rests on administrative procedures and complaint boards within ministries, with the general courts as last resort, and this seems to work well.* The creation of boards is considered a generally effective tool for addressing and resolving complaints, and avoids overcrowding the courts. The boards are subject to control mechanisms and transparency rules. Their decisions can be appealed to courts. The parliamentary ombudsman also plays a significant role in the development of good administrative practices. The publication of its conclusions can give it significant power. These structures appear to avoid the complications of some other countries systems, which leave greater scope for judicial review and litigation. Denmark understandably wants to keep it that way. However the diversity of complaint boards and differences in their legal framework may make it difficult for citizens to get a clear view of the complaint system. This calls for further attention to ensuring transparency of these bodies.

## **Background**

### *Compliance and enforcement*

#### *Compliance monitoring*

A number of administrative bodies monitor compliance rates on a regular basis, which is associated with the development of risk-based enforcement policies. While there is no overall assessment of the level of compliance with regulations, monitoring in respect of particular sectors indicates high levels of compliance. As an example, the Ministry of Taxation, which has developed a strategy to enhance compliance (Box 6.1), assesses the general level of compliance by measuring the under-declaration of personal income, which it estimates at below 4% of GDP. Another example is the Danish Veterinary and Food Administration (an agency under the Ministry of Agriculture, Food and Fisheries), which monitors compliance in support of risk-based controls. Officials report that 25% of food companies have gained “elite status” (defined as having received no remarks for four inspections in a row over a minimum of one year), 75% of retail businesses have had no remarks in their latest inspection, and 5% were fined.

#### *Responsibilities for enforcement*

Enforcement of regulations is mainly the responsibility of central government. Municipalities have some responsibilities regarding enforcement of regulations applying to businesses (in relation to spatial planning, waste management, and environmental protection). Within ministries, departments often delegate the task of enforcing regulations to agencies or directorates, which have some managerial autonomy but are integrated in the ministerial hierarchy. Examples are: the Veterinary and Food Administration within the Ministry of Agriculture; Food and Fisheries; and the Road Safety and Transport Agency within the Ministry of Transport.

### **Box 6.1. Compliance and enforcement policy of the Ministry of Taxation**

The tax administration in Denmark uses a number of strategies to sustain and enhance compliance with tax regulations. The tax system in Denmark is highly based on self-assessment and voluntary compliance. A balanced mix of service and enforcement strategies are used in order to make it easy to comply and difficult to evade:

- Service and information policies to ensure taxpayers understand their rights and obligations making it as easy as possible to comply.
- Audit and enforcement activities to verify non-compliance.
- Activities to influence social behaviour in order to promote voluntary compliance by using the media to campaign against underground activities.

Regulatory enforcement is considered to have commenced when the first enforcement letter is generated in the systems. Typically, one or two enforcement letters will be issued. If the arrears remain unsettled, distraint procedures will be initiated and implemented (including the issuing of summonses).

Distraint may be levied either at the offices of the authorities or by carrying out a distraint call. The collector will decide what enforcement steps are to be taken on a case-by-case basis. The distraint procedure is considered completed when, for instance, a manageable payment arrangement has been negotiated, and the items seized have been registered in the distraint notice (also termed the inventory) and picked up, if applicable.

Distraint levied is followed up on an ongoing basis, for instance by following up payments, petitions for compulsory sale, endorsement of postponement in respect of distraint registered on real property, releasing distraint on real property, etc. until the arrears have been settled. A major part of the enforcement effort is expended on monitoring the group of tax debtors who have the potential for paying in due time, but who tend to obtain additional credit by postponing settlements. Minor arrears, such as student loans, licence fees and the like are transferred to “Enforcement”, which then initiates automated enforcement.

### *Policy on enforcement*

#### Development of risk-based enforcement policies

The Danish government has initiated a cross-governmental project to develop an enforcement strategy to be applied by all ministries with business regulation, which would use a risk-based approach. The government plans to use the experience from other countries when developing the strategy, in particular the recent experience of the United Kingdom following the Hampton report.<sup>1</sup> Some academic work also sheds some light on development of risk-based policies in Denmark. The Confederation of Danish Industries has been involved in a project with the Copenhagen Business School on control and enforcement. The project has compared seven areas of regulations, and tried to set up a model to define targets, level of risks, processes associated. Result show that the approach to control is very different according to areas of regulation in Denmark, and that there is no explicit definition of the risks. Some agencies are experiencing pressure on resources (such as in the area of environment and health), and are changing their approach to control, towards increased differentiation in control systems.

The proposed strategy combines risk-based controls, reinforced sanctioning and increased guidance to business to promote higher compliance. It is expected to include the following elements:

- overall prioritising of enforcement efforts;
- a differentiated control based on businesses level of compliance;
- improved guidance of businesses;
- co-ordinated control across ministries/authorities;
- effective sanctioning (including different types of sanctions); and
- systematic learning and effect-evaluations of enforcement efforts.

Several ministries have already developed enforcement systems based on the evaluation of risk. This is the case of the Danish tax administration and the Ministry of Agriculture, Food and Fisheries (Box 6.2). Several interviewees noted that Danish society shows a rather high level of risk aversion, which is reflected in the parliament. However constraints on the labour market have also made it urgent to find ways to make inspectorates more efficient with fewer resources.

#### **Box 6.2. Enforcement policy within the Ministry of Agriculture, Food and Fisheries**

The Ministry of Agriculture, Food and Fisheries has several agencies, which are specialised in the implementation and enforcement of regulations in specific areas. These agencies have developed risk-based enforcement policy, as shown in the following examples:

- The Danish Veterinary and Food Administration has introduced risk-based enforcement with respect to food regulations, and is to extend it to veterinary regulations. The administration determines the frequency of inspections on risk assessment. For example, restaurants are controlled three times a year. If they have no problem four times in a row, the frequency of inspection will be reduced. Conversely sanctions result in additional inspections as part of a follow-up procedure. In this case additional control is financed by a fee. The system was developed in co-operation with the inspectorates (such as deciding the frequency system).
- The Danish Plant Directorate uses a risk-based approach in as many areas as possible, given EU regulations. In the area of feeding stuffs, for example, EU regulations stipulate that control is targeted and carried out on a risk basis. In Denmark, the degree of control at the single company level is based on a risk categorisation of the companies. With respect to organic farming and seeds, EU legislation states that all organic farms and factories are fully controlled at least once a year. The same approach is applied in the area of seeds control. Therefore the risk based approach is limited to on-the-spot inspections.
- In 2006 the Directorate of Fisheries adopted a risk-based strategy. It is still developing measures and a new risk-analysis programme is expected to be implemented in the autumn of 2008. In January 2007 a national control plan was introduced to allocate inspection resources in accordance with established priorities and a risk assessment group was established.

#### **Enforcement and the grey economy**

The Danish government has also developed a specific enforcement policy to tackle the grey economy. In 2004, it launched the Fair Play Programme to combat moonlighting,



social fraud and illegal employment. The programme associates four approaches: *i*) co-ordination of Denmark's authorities; *ii*) increase in unannounced inspections; *iii*) initiatives such as a publicity campaign to promote a change in attitude of the public towards moonlighting and social fraud; and *iv*) consideration of increased power for inspection entities or higher penalties. The Fair Play Programme has been revised and strengthened in 2006 and again in 2008.

## *Appeals*

### *General principles*

The Danish Public Administration Act,<sup>2</sup> which applies to all branches of the public administration, including local governments, sets requirements on citizens' access to information and right to appeal administrative decisions. According to the law the administration has to provide grounds when its decision is not in favour of the party concerned, and has to provide written guidance on the right to appeal, including on where to appeal and any time limit to do it. Citizens can send a complaint to the administration. The government has established a number of dedicated units to deal with these complaints. The decisions of the administration and of these complaint boards can be appealed in the court system.

### *Appeal entities*

Unlike most other countries, the Danish judicial system does not have special courts for administrative matters, criminal matters, civil matters, or for constitutional matters. The Supreme Court hears appeals on all matters. District (ordinary) courts hear and resolve cases related to probate, bankruptcy, enforcement, land registration and administrative issues, with two high courts and the Supreme Court as the second and third tier for appeal.

Many complaints relating to administrative decisions are dealt with at the administrative level, through a number of complaint boards set up within ministries (sometimes referred to as "administrative tribunals"). Complaint boards are independent in making their decisions, although they do not have the same level of independence from government as do judicial courts. They are also subject to control mechanisms. In particular their decisions can be brought in appeal to Danish courts, and fall under the supervision of the parliamentary ombudsman (Box 6.3).

The objective of these boards is to ensure independence in handling complaint cases and to provide an efficient system for handling complaints (as otherwise complaints can get "lost" in the ministry's tasks). Complaint boards are often seen as a low-cost, fast decision maker that prevents long court cases, and avoids crowding courts. Several interviewees for example considered that the creation of the Food and Veterinary Complaint Unit in 2008 has improved the complaint system in the area of food inspections.

Most complaint boards are administrative bodies (falling under the general provisions of administrative legislation and under review by the courts and the ombudsman), but there is no single legal framework. There are also dissimilarities in size and competences. Some complaint boards offer similarities with judicial courts in terms of organisation and composition, and fulfil functions which in other countries are dealt with by administrative courts. In a few cases (for example the Refugee Board, the Business Board of Appeal (*Erhvervsankenævnet*) under the Ministry of Economic and Business Affairs), they are considered as "quasi-judicial bodies", which implies that their decisions can be appealed to a limited extent.

### Box 6.3. Complaint boards in Denmark

Complaint boards are dedicated entities of ministries charged with processing complaints of citizens relating to decisions of the administration.

Members of complaint boards are usually appointed by the government or a municipal council. Complaint boards are independent from local councils or ministers in processing cases, making their decisions, and launching or terminating an investigation. A board that makes binding decisions on citizens must be established under an act of the parliament, which defines its statute.

Most boards are subject to the same control mechanisms as other administrative courts, in particular the Public Administration Act and the Access to Public Administration Files Act. They are not subject to the processing rules governing the courts. Their decisions may be appealed to the ordinary courts. They cannot be appealed to another administrative authority unless otherwise specified in their statute. The complaint boards fall under the supervision of the parliamentary ombudsman, which can investigate the case as a result of a complaint or by its own initiative.\*

Examples:

- The Food and Veterinary Complaint Unit was created in February 2008 within the Ministry of Agriculture, Food and Fisheries. It deals with complaints of business on decisions of the Danish Food and Veterinary Agency. It is independent from the agency, and its decisions can be appealed in ordinary courts.
- The Competition Appeals Tribunal is the appeal body for decision made by the Danish Competition Council and the Danish Competition Authority. It consists of five independent experts (three lawyers and two economists). Its decisions can be further appealed to ordinary courts. The chairman of the Competition Appeals Tribunal is a justice of the Supreme Court.
- The Danish National Tax Tribunal is the supreme administrative appeal authority for cases involving taxation, VAT, duties, customs duty and property valuation (for example citizens can appeal the decisions made by their local tax authorities and the local tax appeals boards). The National Tax Tribunal is not a court, although there are many similarities. The tribunal consists of a president, 3 chairmen and 28 members. Seventeen tribunal members are appointed by the Minister of Taxation while eleven are elected by the Danish parliament. At least nine tribunal members meet the conditions for being high-court judges and will normally be employed by the two regional high courts. The other members widely represent the Danish society. The tribunal consists of seven offices in which lawyers prepare the cases. The National Tax Tribunal decides on about 4 000 cases concerning tax and duties, and about 500 cases concerning property valuation each year. The work of the Danish National Tax Tribunal is governed by the Tax Administration Act as well as the rules of procedure for the tribunal.
- The Refugee Board is the second instance of appeal for assessing a claim for asylum. It is considered as a quasi judicial body, and its decisions are final. Asylum cases are heard by a board consisting of three members. The refugee board is an institution under the Ministry of Refugee, Immigration and Integration affairs. It is at the same time independent from the political process and does not take instructions from the parliament or the government. The chairman must be an appointed judge. One member is appointed by the Ministry of Refugee, Immigration and Integration Affairs, and one member is appointed upon nomination from the Council of the Danish Bar and Law Society.

- The Nature Protection Board of Appeal (*Naturklagenævnet*) and the Environmental Board of Appeal (*Miljøklagenævnet*) are two independent appeal boards, which are part of the Ministry of the Environment. The Nature Appeals Board is the appeal body for administrative decisions made in accordance with regulations of real estate (such as law on nature protection, forest law, summer-cottage law). The board consists of a chairman, who is appointed by the Minister for the Environment, two high-court judges and a number of political members who are appointed by the political parties represented in the Finance Committee of the Danish parliament. The Environmental Appeals Board is the supreme appeal body for a number of decisions taken under the Environmental Protection Act, the law on Land, the law on environment and gene technology, the law on chemical products, law on sea-environment, law on water supply and law on right of access to documents on environment. The Nature Protection Board of Appeal and the Environmental Board of Appeal are considered administrative bodies and are subject to the general administrative legislation. Decisions made by the boards may be brought before the courts and the boards are subject to the supervision of the parliamentary ombudsman.

\* See Jon Andersen (2007), “Administrative Tribunals in Denmark”, available at [www.council-on-tribunals.gov.uk/adjust/item/comment\\_denmark.htm](http://www.council-on-tribunals.gov.uk/adjust/item/comment_denmark.htm).

### *Parliamentary Ombudsman*

The position of the Ombudsman was established in 1955, based on the Swedish model. His/her activities are defined in the Parliamentary Ombudsman Act of 1996. The Ombudsman is appointed by the *Folketing* following each general election. He/she is independent from the government, and reports his/her activities to the parliament through an annual report.

The Ombudsman can initiate an investigation concerning public administration, either as a consequence of a complaint or on his/her own initiative. Any citizen may lodge a complaint directly to the Ombudsman, but must have gone through an administrative recourse first. The investigation covers both the content of the decisions and the processing of the case by the administrative authority. The Ombudsman’s conclusions are made public.

The jurisdiction of the Ombudsman covers both central and local government administrative bodies. This includes complaint boards. Judicial courts are outside his/her jurisdiction, which implies that the Ombudsman will neither investigate court rulings nor investigate on cases brought before the courts. The Ombudsman has wide powers to obtain information from the public administration. The outcome of his/her investigations is on an advisory basis and has no binding effect. The Ombudsman investigates over 4 000 cases each year, a large number of which relate to complaint boards.

## Notes

1. See OECD (2009), “Better Regulation in the United Kingdom”, GOV/PGC/REG(2009)4/ANN4.
2. Act 571 of 19 December 1985, “The Danish Public Administration Act”.

## Chapter 7

### The interface between Member States and the European Union

An increasing proportion of national regulations originate at EU level. Whilst EU regulations have direct application in member states and do not have to be transposed into national regulations, EU directives need to be transposed, raising the issue of how to ensure that the regulations implementing EU legislation are fully coherent with the underlying policy objectives, do not create new barriers to the smooth functioning of the EU Single Market, avoid “gold plating” and the placing of unnecessary burdens on business and citizens. Transposition also needs to be timely, to minimise the risk of uncertainty as regards the state of the law, especially for business.

The national (and subnational) perspective on how the production of regulations is managed in Brussels itself is important. Better Regulation policies, including impact assessment, have been put in place by the European Commission to improve the quality of EU law. The view from “below” on the effectiveness of these policies may be a valuable input to improving them further.

#### Assessment and recommendations

*The government has an effective, well-managed and highly-institutionalised internal co-ordination system for EU affairs.* This not only minimises internal conflict, including with the parliament, but also ensures that Denmark always speaks with one voice in EU affairs. Internal and external unity is considered essential to maximise the influence of a small country. The government consults the parliament, which gives it a mandate for negotiation. Although it can be time-consuming, the scrutiny system ensures parliamentary control and involvement of stakeholders at an early stage of rule making, as well as coherence and a strong position for the ministry going to Brussels.

*Denmark has a very good performance as regards transposition but may need to pay closer attention to gold plating.* The procedure for discussing EU rules facilitates the transposition of the rules into the Danish system, as building a consensus at the negotiating stage – including the parliament – removes later obstacles to transposition. There is no clear evidence of gold plating in transposition, although there were several comments to the effect that Denmark wants to keep its high standards and a significant share of administrative burdens on business stems from EU-origin regulations. A broader perspective is important on the issue of standards, given that the smooth functioning of the EU internal market is also important for the competitiveness of Danish companies in that market. Differences may however sometimes be justified to give effect to the subsidiarity

principle. The issue of where administrative burdens originate is a complex one, and may reflect a restricted choice in the method of transposition. It may, however, also reflect an over-detailed implementation that could be avoided.

## Background

### *General context*

Effective co-ordination with European institutions has become increasingly important as a significant proportion of Danish law originates in EU legislation (Table 7.1). According to Denmark's officials, EU regulations account for a majority of the new regulations in some key sectors such as food and agriculture. Danish officials estimate from the baseline measurement of administrative burdens on business that EU origin regulations account for 40% of these. In 2005, the Ministry of Justice estimated that around 18% of laws enacted by the *Folketing* in 2004 aimed at carrying through a directive, or parts of a directive, or laid down rules in relation to EU regulations.

**Table 7.1. Trends in the number of new laws stemming from EU-related requirements**

	Total	As % of number of new laws
1975	9	5
1985	2	1
1995	25	10
2000	43	17
2001	22	18
2002	30	13
2003	30	16
2004	43	18

Source: Danish Ministry of Justice.

### *Negotiating EU regulations*

#### *Institutional framework and processes*

Denmark has a well-established structure for dealing with EU-related issues, with different levels of committees (Box 7.1). The overall co-ordinator is the Ministry of Foreign Affairs. In co-operation with the Prime Minister's Office it consults ministries, the parliament and relevant stakeholders to build a consensual position within Denmark, as well as with other EU countries, at a very early stage of development of EU policy. Policy formulation on EU-related issues is based on a number of special committees, which reflect the division of policy areas at the EU level. These committees assess the EU proposal, and identify any problems at an early stage. They include external stakeholders such as business representatives. Public hearings and consultations may also be carried out. Usually, agreement on a position is reached within these special committees. Overall co-ordination is ensured by the participation of the Ministry of Foreign Affairs in all special committees and by the EU Committee. Following the process Danish negotiators in Brussels have a clear and up-to-date mandate for negotiating the proposal. Relevant parts of the administration participate in the negotiations. For example, the DCCA prepares briefs on the administrative burden aspects.

### *The role of the parliament*

The parliament is closely associated with the preparation of EU negotiations. It must approve the position of the Danish government when it negotiates in Brussels, through its European Affairs Committee, before votes of the EU Council. The government prepares an explanatory note including comments from external stakeholders and the results of consultations, which is made public, based on a standard format. Government representatives also report to the European Affairs Committee when they return from negotiations. The parliament therefore exerts significant influence on the government's position. This system is largely influenced by the tradition of minority (coalition) governments, which require the government to seek a consensus.

### *Ex ante impact assessment (negotiation stage)*

The preliminary work of special committees includes an examination of the consequences which EU proposals would have in Denmark, with particular reference to budgetary consequences and administrative burdens on business (see role of special committees in Box 7.1).

#### **Box 7.1. Process for handling EU negotiations in Denmark**

*Special committees* are the lowest level for discussing European Commission's proposals. Denmark has 33 special committees, which are organised on functional lines at the level of individual ministries. Their objective is to prepare a mandate for the Danish negotiating position and to ensure the inclusion of special interests. They are composed of civil servants, including a representative from the Ministry of Foreign Affairs, and stakeholders such as social partners, non-governmental organisations, etc. The special committees examine the proposal from the European Commission in detail (including economic consequences on Denmark's budgets, administrative cost for business), and prepare a note for the government, which includes recommendations on how to deal with the rule. The note is made public and is based on a standard format. Most of the issues related to the EU proposal are resolved at the level of ministerial special committees.

The next level is the government's *EU Committee*, which deals with the issue at the horizontal level. Its objective is to ensure interdepartmental co-ordination, to discuss all EU issues with importance for Denmark and to secure co-ordination and consistency of the Danish position in Brussels. The EU Committee is composed of heads of unit who have responsibilities for EU co-ordination in their ministries and is chaired by the Ministry of Foreign Affairs. The EU Committee meets once a week. The EU Committee addresses issues left unsolved by special committees, and more horizontal or sensitive issues.

The last level is the *Committee of Foreign Affairs*. It is composed of ministers and presided by the Minister for Foreign Affairs. It considers and adopts the policy proposals prepared by the EU Committee. The objective is to ensure the final co-ordination at government level and to give general political guidelines.

Following the internal procedure within the government, the responsible minister for a specific EU issue consults the *Folketing's* European Affairs Committee. All political parties in the parliament are represented in the European Committee in proportion to their number of seats. The European Affairs Committee meetings take place on a weekly basis, one week ahead of the EU Council meetings. The government presents the EU's proposals and outlines its position. For issues of a wide scope, the relevant minister will ask the European Affairs Committee for a mandate of negotiation to ensure parliamentary support to the government's position. There is no vote in the European Affairs Committee. The chair of the European Affairs Committee concludes whether there is a majority for or against the government's position after a debate.

## *Transposing EU regulations*

### *Institutional framework and processes*

Transposition of EU regulations is the responsibility of the relevant ministry. The Ministry of Justice Guidelines on Quality of Regulations has sections on transposition. Processes can vary across ministries, but ministries usually prepare implementation guidelines.<sup>1</sup> In the case of the Services Directive, responsibility for transposition has been decentralised to the respective sector ministries, with the Minister for Economic and Business Affairs supervising the process and providing guidance (it is responsible for preparing implementation guidelines). Interviews did not show clear evidence of gold plating. However several interviewees underlined that initiatives for Better Regulation should not negatively affect the level of protection regarding the environment, consumers and health.

### *Legal provisions and the role of the parliament*

There are no special legal provisions, as exist in some other EU countries. Most EU directives are transposed by executive orders.

### *Ex ante impact assessment (transposition stage)*

The Ministry of Justice Guidelines on Quality of Regulations includes a requirement to consider the impacts on citizens, business and the administration. The requirement applies to EU regulations.

### *Monitoring transposition*

European Commission's data indicate that Denmark has one of the highest rates of transposition of European legislation into national law (Box 7.2).<sup>2</sup> The centralised, co-operative and simple structure of the Danish government facilitates co-ordination. Smooth transposition is also ensured by having the same officials handling the case throughout the process of elaboration of EU regulations and transposition. A key factor for smooth transposition however stems from the processes in place to evaluate EU regulations at an early stage. Special committees detect any problems for future transposition and seek to reach a consensus that includes all stakeholders. The early and substantial involvement of the parliament minimises difficulties at the transposition stage. It also makes it possible to transpose a large number of directives by executive orders, rather than primary laws, as political scrutiny has been done early. The NAOD however told the OECD peer review team that there was a need to monitor EU origin regulation for administrative burdens.



### Box 7.2. Denmark's performance in the transposition of EU directives

The latest EU Internal Market Scoreboard,\* which considers internal market directives, ranks Denmark first (along with Malta) among the 27 EU member states, with a transposition deficit of 0.3%. Denmark has five outstanding directives, in the areas of financial services, transport and energy, environment, and free movement of persons. Transposition delays in the area of financial services and transport services are common to most EU member states.

#### *Transposition deficit as % in terms of internal market directives*

Nov-97	Nov-98	Nov-99	Nov-00	Nov-01	Nov-02
<b>3.2</b>	<b>1.5</b>	<b>1.3</b>	<b>1.1</b>	<b>0.8</b>	<b>0.7</b>
May-03	Jul-04	Dec-05	Nov-06	Nov-07	Dec-08
<b>0.6</b>	<b>0.7</b>	<b>0.7</b>	<b>0.3</b>	<b>0.6</b>	<b>0.3</b>

\* European Communities (2009), Internal Market Scoreboard, December 2008, No. 18, available at: [www.ec.europa.eu/internal\\_market/score/docs/score18\\_en.pdf](http://www.ec.europa.eu/internal_market/score/docs/score18_en.pdf)

### *Interface with Better Regulation at EU level*

Denmark is active in promoting its policies at EU level, and influencing the preparation of EU regulations. The DCCA, for example, takes an active part in the European Commission's initiative to reduce administrative burdens, and the OECD team were told that setting an EU level target had helped to create a positive momentum for change. Danish policy also includes a proactive stance at the EU level to maintain the country's standards of health, environmental and social protection, often in co-operation with other Nordic countries. Danish officials have frequent bilateral contacts with the European Commission to secure rapid access to information, and are also highly involved in the EU comitology system.

## Notes

1. For example, the DCCA has prepared an electronic guide for the Ministry of Economic and Business Affairs regarding the preparation, negotiation and implementation of EU regulations.
2. [www.ec.europa.eu/community\\_law/directives/directives\\_communication\\_en.htm](http://www.ec.europa.eu/community_law/directives/directives_communication_en.htm).



## Chapter 8

### The interface between subnational and national levels of government

Multilevel regulatory governance- that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level- is another core element of effective regulatory management. The OECD's 2005 Guiding Principles for Regulatory Quality and Performance "encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government". It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EC regulations. All of this requires a pro active consideration of:

- The allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EC regulations; responsibilities for supervision/enforcement of national or subnational regulations; or responsibilities for service delivery).
- The capacities of these different levels to produce quality regulation.
- The co-ordination mechanisms between the different levels, and across the same levels.

#### Assessment and recommendations

##### *Allocation of regulatory responsibilities*

*The simplification of local government structures has set a more effective framework for the development of Better Regulation policies at local level. In 2007 Denmark engaged in a fundamental reform and simplification of its local government structures. This facilitates the task of rolling out Better Regulation policies.*

*Municipalities are central to citizen issues and wield considerable financial power. Municipalities are responsible for the delivery of most public services related to citizens, and consequently are major players in the development of e-Government and online*

services for citizens. Their role is much more limited with respect to business-related regulations. Their financial power derives from their capacity to raise local income taxes and their discretion over the allocation of funds made available to them by the central government.

### ***Better Regulation policies deployed at the local level***

*The De-bureaucratisation Programme engages the local level for the first time in a specific Better Regulation policy.* Alongside implementation of the VAKKS procedure to assess the impact of new regulations on municipalities, the De-bureaucratisation Programme reinforces the process of developing multilevel governance. The means by which it was agreed is also noteworthy. The annual framework agreement between the central government and the two organisations for municipal and regional interests (LGDK, the association of municipalities, and Danish Regions) appears to be an effective instrument for taking both central-local and local Better Regulation initiatives forward. Municipalities are invited to participate actively in developing ideas for de-bureaucratisation (while central government will remain responsible for the delivery of the programme). There is also a commitment to the shared development of ICT and e-Government between local and central levels of government (through the STS Committee). The common citizen portal is an example of this. As in many other countries some municipalities will be better equipped than others for these tasks. A clear assessment at this stage is difficult because the major recent mergers and restructuring need time to settle.

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#### **Recommendation 8.1. It will be important to monitor capacity and competence issues at the local level.**

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*Local governments express concern over increased “documentation” requirements.* One of the challenges of Denmark’s current policies on Better Regulation is to combine the objective of less burdensome regulations within government and the objective of greater decentralisation in the implementation of regulations. The government’s objective is to shift from detailed process-based regulations to performance-based regulations. Some interviewees expressed concerns that this approach may, perversely, give rise to increased requirements on municipalities to document their results. The risk would be to increase administrative burdens for local civil servants, and undermine the underlying “lighter touch” objective of the De-bureaucratisation Programme. Denmark intends to address this issue as part of its De-bureaucratisation Programme.

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#### **Recommendation 8.2. Concerns raised with the OECD team about increased documentation requirements should be investigated with a sample of municipalities.**

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### ***Co-ordination mechanisms***

*There seems to be effective and regular co-operation between the central and local levels of governments.* LGDK plays an important role in this co-operation, both through the negotiation of the annual framework agreement, which includes discussing priorities and targets for Better Regulation, and through regular informal consultations with ministries. Along with Danish Regions it is also part of STS, which plays a key role in the development of e-Government policy and strategy. The establishment of KREVI is an important further development in the co-operation between local governments and central government. KREVI was set up in 2005, as an independent local evaluation agency. It is charged with mapping local capacities and funding streams. It is also responsible for

conducting the VAKKS assessments (*ex ante* evaluation of burdens from national regulation on municipalities, see Chapter 4). KREVI seems to have established itself in a short time as an effective independent body and partner for both central government and local governments, providing support to local governments and promoting coherence of regulations between central and local levels of government.

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**Recommendation 8.3. Ensure that the annual budget agreement continues to include Better Regulation discussion and priority setting, for so long as this is relevant.**

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## Background

### *Structure, responsibilities and funding of local governments*

#### *Structure of local governments*

Denmark is a unitary state, with three political and administrative levels: central government, regions, and municipalities. The regions and municipalities are both led by councils elected every four years, but only the municipal councils have the power to levy taxes. The current structure results from a reform which entered into force on 1 January 2007. The former 13 counties were integrated into 5 regions, while the number of municipalities was reduced from 271 to 98 through mergers, with an average population of 55 000 inhabitants. In 1970 a first reform had already simplified the administrative structure of Denmark.<sup>1</sup>

The purpose of the 2007 reform was to strengthen the efficiency of local governments by increasing the size of municipalities and scaling down the authority of regions. The effects however cannot be immediate. Mergers result in transition costs associated with the harmonisation of organisations and procedures. The re-organisation of counties into regions has shifted the jurisdiction over operations that were previously run by counties – excluding hospital management – to the control of municipalities or the national government.

In most cases the mergers that took place in 2007 were agreed on a voluntary basis at the local level, with general guidelines (such as minimum size) and deadlines set by the central government following a thorough process of discussion and consultation, which started in 2002. The voluntary participation of municipalities can be explained by the consensus that was built up before launching the reform. The reform was based on an agreement between the government (the Liberal Party and the Conservative Party) and the Danish People's Party. The preparation of the reform involved all stakeholders, through the work of the Commission on Administrative Structure and several consultation procedures (on the conclusion of the commission, on the draft bills which were subsequently submitted to the parliament). Municipalities were asked to come up with proposals to live up to the requirements regarding size and sustainability. In most cases municipalities took an active approach, preferring to come up with their own proposals (for more on the reform, see Annex).

#### *Responsibilities and powers of local governments*

As is usually the case in other unitary states, municipalities have very limited powers to make their own regulations, and can only regulate in areas where such powers have been delegated (for example, waste management). They have some responsibilities with respect to the enforcement of regulations (most enforcement activity is carried out by entities linked to central government ministries).

Municipalities' main responsibilities lie with the delivery of public services. The Danish public sector is now highly decentralised. Since the fusion of local authorities in 1970, local governments have gradually obtained a greater share of responsibilities with respect to the implementation of regulations relating to public services. The administration of many public services has been placed closer to citizens and a greater autonomy granted to local governments. The 2007 reform, which further restructured local governments, has reinforced decentralisation of public services. Municipalities are now responsible for the delivery of public services in practically all welfare areas (social services, primary education including special education, etc.), and are citizens' main entrance to the public sector. Municipalities also have responsibilities in the environmental area, urban planning, construction, roads and transport. These responsibilities include supervision, planning, and delivery of permits, approvals and prohibitions.

### Box 8.1. Responsibilities of Danish municipalities and regions

Responsibilities of municipalities (since 1 January 2007):

- social services (total responsibility for financing, supply and authority);
- child care;
- primary and lower secondary school, including any special education and special pedagogical assistance for small children;
- special education for adults;
- care for the elderly;
- health care: preventive treatment, care and rehabilitation that do not take place during hospitalisation, treatment of alcohol and drug abuse, home care, local dental care, special dental care and social psychiatry;
- activation and employment projects for the unemployed without insurance in job centres *hitherto* run jointly with the state. From August 2009, the municipalities will be sole operators of the job centres;
- integration and language education for immigrants;
- citizen service regarding taxation and collection in co-operation with state tax centres;
- supplies and emergency preparedness;
- nature, environment and planning: *e.g.* specific authority and citizen-related tasks, preparation of local plans and plans regarding waste water, waste and water supply;
- local business service and promotion of tourism;
- participation in regional transport companies;
- local road network; and
- libraries, schools of music, local sports facilities and culture.

Responsibilities of regions (since 1 January 2007):

- hospital service, including hospitals, psychiatry and health insurance as well as general practitioners and specialists;
- regional development, *i.e.* nature, environment, business, tourism, employment,

education and culture as well as development in the fringe areas of the regions and in the rural districts;

- soil pollution;
- raw material mapping and planning;
- operation of a number of institutions for exposed groups and groups with special needs for social services and special education; and
- establishment of transport companies throughout Denmark.

*Source:* Ministry of Interior and Health (2008), *The Local Government Reform – In Brief*, [www.im.dk/publikationer/government\\_reform\\_in\\_brief/ren.htm](http://www.im.dk/publikationer/government_reform_in_brief/ren.htm)

According to the municipal self-rule developed around the reform of 1970, each municipality has a large amount of managerial and financial autonomy (Box 8.2). It has a significant level of discretion in the choice of services and processes. It can set the standard and decide on specific solutions for the delivery of public services under its responsibility, within the requirements set by law. The autonomy of local governments in the implementation of rules also derives from the Danish law-making process. A principle for making primary laws is “framework legislation”, which leaves local authorities the choice of the method to fill out the general frame set by the law. However, in practice, many laws are very detailed and specify the internal processes of local government, thereby reducing the room for manoeuvre of local governments. Interviews suggested that this trend has strengthened over the past years.

The regions now have a much narrower set of tasks than previously. Their main tasks are within the health sector, including hospital, psychiatry and health insurance as well as general practitioners and specialists. Following the 2007 reform, the central government has taken over the operation of high schools and various environmental and cultural tasks from former counties (Box 8.1).

### *Funding of local governments*

Municipalities’ primary revenue (over 50%) comes from taxes (income tax, real estate tax and a share of the corporation tax). The level of the local tax varies from municipality to municipality. In addition, municipalities receive an annual block grant from the government. State financing is not earmarked for specific activities. Municipalities can decide on how to distribute the grant between task areas (such as public primary and lower secondary schools, employment agencies, elderly care, etc.), providing they meet the statutory requirements for each of them. (For more on funding of municipalities, see Box 8.2).

### Box 8.2. Municipal self-rule and municipal economy in Denmark

The main principles of the Danish model for the financing of municipalities are:

1. Danish municipalities have an extensive right to taxation regarding both income and land value. They however need to take the financial policy of the government into account. During the last ten years an objective of the government has been to avoid higher taxes. Consequently the financial agreements set between LGDK and the government have provided that the overall level of taxes for municipalities remain unchanged.
2. The state financing has changed from activity-related subsidies and reimbursements to block grants which the municipalities can distribute freely. Municipalities are expected to meet the statutory minimum requirement for each task area, but each municipal council can prioritise and determine the distribution of financing between tasks. Municipalities also finance social security benefit, sickness benefit and early retirement pension, partly by state reimbursements. However over 50% is financed by block grants and local taxes to give local governments an incentive to keep expenses at a minimum.
3. There is an equalisation system to ensure that the same service level involves the same tax percentage regardless of the income of the inhabitants and any demographic factors. The system has been reformed to take account of the mergers and new competences resulting from the 2007 reform.
4. Each municipality gains from its own financial efficiency. If a municipality handles its finances wisely the profit stays in the municipality. This principle has lately been transferred to the health sector.
5. A fundamental financial principle in Danish local government, the DUT-principle, aims at ensuring the financial balance when new state initiatives result in changing the tasks of municipalities. The idea behind the DUT-principle is that the state should ensure that municipalities have the necessary means to implement new laws or rules, which result in more expenses for them. The principle works in reverse if the municipalities are relieved of tasks.

By tradition the Danish government and the municipalities enter into agreements. These yearly agreements regulate the total public consumption of the municipalities and the agreements are a means to adjust local economy to national financial policies.

*Source:* Memorandum of LGDK (Local Government Denmark), 2 October 2006.

Each year the central government, LGDK and Danish Regions conclude an annual agreement, which includes setting the aggregate expenditure levels and tax rates for local governments, as well as the block grant from the central government. The agreement applies to local governments as a whole. This allows specific local governments to deviate as long as the effect of this deviation is neutralised by other governments. The Ministry of Finance acts as the central government's representative and negotiator.

### ***Better Regulation policies deployed at local level***

Denmark's Better Regulation policy is now giving increasing attention to the local level and to the interaction between central and local governments. The VAKKS mechanism, a procedure to assess the impact of new regulations on municipalities (Chapter 4), is meant to secure greater awareness of consequences across levels of government in policy making. The De-bureaucratisation Programme also means further attention given to local government as it addresses all levels of the administration, and should lead to reinforced co-operation. One objective is to shift from detailed process-based regulations to performance-



based regulations, leaving municipalities more latitude in the definition of procedures and requirements regarding implementation of regulations and the delivery of public services. Another feature of the De-bureaucratisation Programme is the participation of local civil servants in the identification of issues related to burdensome regulation inside government (see Chapter 5).

These developments will affect local governments and their organisation, giving them more autonomy in the implementation of policies and regulations, but also generating other requirements to provide evidence on results. Some interviewees pointed out that these developments raise strong challenges for municipalities, which will have to adapt their processes and resources. Procedures for documenting performance need to be defined, and there is no clear view on the capacity of municipalities to handle this. Mergers have increased their capacities, but the results are not easy to assess in the short term, given transitional restructuring costs.

Given the role played by municipalities in the delivery of public services, the development of e-Government at the local level has a considerable importance in the overall development of e-Government in Denmark. Despite the high degree of local government autonomy, local governments have been strongly involved in, and committed to, the national e-Government programme. They have developed digital strategies to improve administration and the services offered.<sup>2</sup> They also have had a direct responsibility for implementing a number of online services to citizens,<sup>3</sup> and this responsibility is expected to grow.

### *Co-ordination mechanisms*

#### *Co-ordination between local governments*

While municipalities traditionally operate independently of each other, they have increasingly co-operated over the years— not least through the mergers of 2007. The association of municipalities (LGDK) and the association of regions (Danish Regions) also play a major role in this co-ordination. They represent local governments in a number of government committees, as well as with the parliament. LGDK is also the employers' association and represents the local authorities with regard to negotiations with trade unions over municipal employees.

#### *Co-ordination between central and local governments*

Given the autonomy of Danish local governments, co-ordination between central and local governments relies on co-operation as the central government cannot force the municipalities and the regions to act in a specific way. Co-ordination does not result from the law but traditionally works through co-operative agreements. The annual agreement between the central government, LGDK and Danish Regions defines the overall financial framework of local government, and contains political and economic priorities in the local communities.

As part of the annual agreement the government discusses with municipalities the priorities and targets of Better Regulation policy. In summer 2007 through their representative associations, municipalities and regions agreed to support the De-bureaucratisation Programme, and more specifically engaged to change some of their own regulations in order to ease administrative burdens within the administration. Co-operation is not limited to annual negotiations. LGDK and Danish Regions are members of STS, the Steering Group for Cross-national Initiatives. They are thus involved in the discussion of methods and results in areas such as e-Government initiatives and the De-bureaucratisation

Programme. LGDK and Danish Regions are also usually involved at a very early stage in the process of making rules, in an informal way.

An example of policy based on co-operation between central and local government is the creation of a common citizens' portal. Following the annual agreement of 2007, the government has developed a portal, in co-operation with municipalities and regions. The objective of the portal is to provide a single guide to information regarding the public sector, and a common access for citizens to digital self-service solutions and access to own data across authority structures and levels. A first version of the portal was launched in 2008.<sup>4</sup>

In 2006 the government established KREVI as an independent body to further promote the quality of public service delivery and efficient use of resources. The role of KREVI is to help local governments, and increase central government's understanding of the issues faced by local governments in the implementation of regulations. As part of its annual programme of work, KREVI carries out specific projects related to regulation at central and local levels (for example, evaluation of internal contracts used by local governments). KREVI also provides technical assistance to local governments, and is charged with performing the VAKKS (impact assessment of new regulations on local governments). KREVI is independent from the government with its own board and a DKK 10 million budget (financed by the state budget) and reports to the Ministry of Welfare. Its board consists of representatives from central government, municipalities and regions, and academics (Box 8.3).

### Box 8.3. KREVI

KREVI (Danish Evaluation Institute for Local Governments) is an independent institution under the Ministry of Social Welfare. It was established in 2005.

KREVI's overall task is to promote quality of service delivery and the best application of the resources in the public sector. KREVI analyses, evaluates and promotes the performance of the public sector and the state regulation of the local governments through consulting, dissemination and exchanges of information.

KREVI is directed by a board of six members who are appointed by a number of organisations and authorities. The day-to-day administration and financial management of KREVI is undertaken by the director who reports to the board. The board establishes KREVI's strategy, vision and mission.

KREVI is financed from a basic appropriation under the Danish Finance Act. Projects can also be financed by grants or initiating parties – typically local/regional authorities and research institutions.

*Source: [www.krevi.dk](http://www.krevi.dk).*

## Notes

1. The reform of 1970 reduced the 1 300 municipalities to 275 and the 25 counties to 14.
2. The OECD e-Government review of 2006 highlighted that their policies and actions in these fields have been heavily influenced by their traditional independence and in many cases their small size (until the reform of 2007). Few common ICT systems and frameworks have been developed by municipalities themselves and a majority of the systems and services used by municipalities are provided by a company called *KommuneData* (KMD), a 100% publicly owned company created by municipalities and counties in 1972. While this has created a monopoly with its usual downside effects, this has also provided municipalities with the necessary ICT capacity to allow for relatively uniform implementation of many different municipal e-Government systems, applications and services. See OECD (2006).
3. Under municipal responsibility: online services related to child allowances, applications for passport and driver's licence, request and delivery of birth and marriage certificates. Under regional responsibility: online services related to reimbursement of direct settlement of medical costs. See "e-Government Factsheet – Denmark", available at [www.epractice.eu/document/3321](http://www.epractice.eu/document/3321).
4. [www.borger.dk](http://www.borger.dk).



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## Annex A: The Local Government Reform in Denmark

This annex presents the process of the local government reform, which took place in Denmark on 1 January 2007. It is adapted from “The Local Government Reform – In Brief”, *Inderigs- og Sundhedsministeriet*.<sup>1</sup>

### Preparatory stage: the report of the Commission on Administrative Structure

On the basis of the increasing debate on the structure of the public sector, the government established a Commission on Administrative Structure in October 2002. The Commission on Administrative Structure consisted of representatives from local governments, ministries, and people with a special expertise within the area. The Commission on Administrative Structure was charged with the task of assessing “*advantages and disadvantages of alternative models for the structure of the public sector and on this basis to make recommendations for changes that would remain sustainable for a number of years*” (the Commission’s Terms of Reference).

In January 2004, the Commission on Administrative Structure concluded that a reform of the structure of the public sector was required. The conclusion was partly based on the fact that the size of the counties and municipalities was insufficient for proper task performance and partly that the distribution of tasks in the public sector in various areas was inappropriate. The commission concluded:

- A major part of the current administrative units are too small considering the performance required by the legislators today.
- In a number of areas it is difficult to ensure a consistent and co-ordinated effort. The problem is mainly based on the fact that responsibility for some tasks has been divided between several decentralised administrative units. The result is a risk of “grey zones”.
- In some areas there are problems due to parallel functions/tasks in several administrative units. This makes it more difficult for the administrative units to co-ordinate and prioritise task performance and to improve efficiency and quality.
- The Commission on Administrative Structure made six models for the structure of the public sector, describing advantages and disadvantages of the six models, but without recommending any specific model.
- After publication, the government submitted the recommendation of the Commission on Administrative Structure for a public hearing inviting everyone to express their opinion. Almost 500 organisations, counties, municipalities, associations and individuals made use of this opportunity.

### **Agreement on structural reform**

In April 2004, the government (the Liberal Party and the Conservative Party) presented its proposal for a reform of the structure of the public sector "The new Denmark – a simple public sector close to the citizen", based on the analyses of the Commission on Administrative Structure and on the hearing of the recommendation. The proposal subsequently formed the basis for negotiations between the government and the other parties of the parliament. In June 2004, these negotiations resulted in an agreement on a reform between the government and the Danish People's Party (the Structural Reform).

The Structural Reform contained the criteria for a new division of municipalities and regions and a new distribution of tasks between municipalities, regions and the state. Finally, the agreement included a decision regarding a financing and equalisation reform.

The parties behind the Agreement on a Structural Reform recommended aiming for 30 000 inhabitants when creating the new municipalities. A minimum size for the new municipalities was set at 20 000 inhabitants. Municipalities with less than 20 000 inhabitants should therefore merge into new, larger municipalities with at least 20 000 inhabitants. Alternatively, they could enter into a (voluntary) binding partnership with neighbouring municipalities (the so-called trapdoor solution). Such a partnership should be based on a population of at least 30 000 inhabitants. When drawing the new map of Denmark, special allowances were made for island municipalities who were given the option to enter into a binding partnership with a municipality on the mainland to be able to meet the new requirements regarding size.

On the basis of the Agreement on a Structural Reform, 50 bills were prepared during the autumn of 2004. The bills were submitted for a public hearing on 1 December 2004 and the hearing resulted in 2 300 responses.

The bills were submitted to the parliament on 24 February 2005. During the debate in the parliament in the spring of 2005, the ministries answered 1 739 questions from committees regarding the 50 bills. At the final voting, about half of the bills were approved by the government (the Liberal Party and the Conservative Party) and The Danish People's Party and by several of the other parties in the parliament.

### **The bills become reality**

From the adoption of the bills to the commencement of the local government reform on 1 January 2007, preparations were made in the state, counties and municipalities to implement the new geographic division and distribution of tasks. Tasks had to be organised within the new authorities, buildings and materials had to be transferred and thousands of public employees had new employers. The overall estimate was that public employees, approx. 170 000 full-time equivalents, would have a new employer as a result of the local government reform. However, only a minority of these people would physically have to move to another workplace.

Basically, the principle applied that buildings, material and public employees followed the task. In other words, employees, who were exclusively or mainly involved with one task, which was transferred to another authority, moved to the authority in question. Buildings, equipment, etc. that were exclusively related to the performance of one task would likewise be transferred to the authority who would become responsible for the task in question as per 1 January 2007.



The same principles applied to public expenditure. Changes in the distribution of tasks were made on the basis of the principle that the reform must be neutral in terms of expenditure and that funds follow the tasks. This means that tasks were moved whilst maintaining the current service level. This also meant that the expenditure of the counties, which amounted to approximately DKK 100 billion in 2006, would be distributed between the authorities that take over the responsibilities of the counties in connection with the reform, *i.e.* the municipalities, regions and the state.

The government, the National Association of Local Authorities and the Association of County Councils in Denmark agreed on a distribution of county expenditure to the effect that DKK 12.5 billion go to the state, approximately DKK 59 billion to the regions and approximately DKK 29 billion to the municipalities.

### **Merging costs and synergy effects**

The fact that the local government reform, in general, should be neutral in terms of expenditure does not mean that there are no costs involved in merging municipalities and creating new regions. But these costs very much depend on how the individual municipalities and regions plan the processes.

The municipalities have to bear the costs of the mergers. But they can keep whatever they gain from the synergy effect. In this way the local government reform encourages the municipalities to keep costs down and also to gain as many benefits from the synergy effect as possible.

Naturally, it is difficult to assess the exact level of expenditure involved in implementation of the local government reform. In connection with the legislative process in the parliament, the Ministry of the Interior and Health estimated costs for the municipalities at almost DKK 1.2 billion, including approx. DKK 750 million for IT adjustments, approximately DKK 175 million for relocation, approx. DKK 75 million for employee re-organisation and approximately DKK 175 million for remuneration of integration committees in 2006. This estimate is based on experience from the merger of municipalities on Bornholm.

As the non-recurrent expenditure falls due before it is possible to gain the benefits of the synergy effect, loan facilities of DKK 1 billion and DKK 500 million, respectively, have been made available for certain non-recurrent costs in municipalities and counties/regions in connection with the local government reform. This loan facility should be seen in relation to the restructuring funds that the municipalities and counties already have available for the implementation of the local government reform.

### **Integration and preparation committees in 2006**

In order to ensure proper preparation of the merger of municipalities, the district councils elected in the merged municipalities as a result of the local government election on 15 November 2005 acted as integration committees in 2006. It was the responsibility of these committees to prepare the merger of municipalities, *i.e.* make decisions on the administration, service level, etc. of the merged municipality. Already prior to the local government election in November 2005, the municipalities made a major effort in preparing the merger, but the final decisions were made by the integration committees elected in November 2005.

In order to ensure continued operation in the municipalities included in mergers, the tenure of the district Council in these municipalities was prolonged by one year until the end of 2006. Any financial decisions exceeding a certain limit had to be approved by the

integration committees. The newly elected district councils in the municipalities that were not included in a merger commenced their tenure on 1 January 2006.

The same principles applied to the new regions. Here, the newly elected regional councils acted as preparation committees in 2006 with the responsibility of preparing establishment of the new regions. In order to ensure continued operation in the counties, the tenure of the current county councils was prolonged by one year till the end of 2006. As is the case in the municipalities, financial decisions made by the acting county councils that exceed a certain limit had to be approved by the preparation committees or by the state.

### **A voluntary and locally anchored process**

In the summer of 2004, all the municipalities were asked before 1 January 2005 to provide information on how they planned to ensure that the municipality in future would live up to the requirements regarding sustainability (size).

During the autumn of 2004, concrete negotiations regarding mergers of municipalities took place all over the country. Some municipalities were large enough to continue independently. Nevertheless, several of these municipalities chose to merge with one or more neighbouring municipalities. Other municipalities were too small and had to merge or enter into partnerships with one or more neighbouring municipalities.

In January 2005, all the municipalities in Denmark had submitted their feedback to the Ministry of the Interior and Health. Only four of the 271 municipalities did not meet the requirements stipulated in the Agreement on a Structural Reform. They were the municipalities of Farum, Værløse, Holmsland and Hvorslev.

### **Agreement on the map of municipalities**

On the basis of the feedback from the municipalities, the Minister for the Interior and Health initiated negotiations with the conciliation parties (the Liberal Party, the Conservative Party and the Danish People's Party) as well as the Social Democratic Party and the Danish Social- Liberal Party at the end of February 2005 regarding the new map of Denmark. On 3 March 2005, these negotiations resulted in a broad political agreement on the new map of Denmark. The parties accepted most of the requests submitted regarding the new municipalities. However, due to strong citizen requests, local referendums (primarily in counties) were held in 12 of the "old" municipalities regarding affiliation before approval of the planned merger of municipalities. In addition, it was agreed that the Minister for the Interior and Health should enter into discussions with the three municipalities that did not meet the requirements regarding size, namely the municipalities of Farum, Værløse and Holmsland. The purpose of the discussions was to determine the special conditions to apply to the mergers in which the three municipalities were to be included.

Finally, the parties asked former Minister for the Interior, Thorkild Simonsen, to act as an arbitrator in the municipalities of Hvorslev/Langå, Aalestrup, Christiansfeld, Ikast/Brandeb/ Nr.-Snedeb, Nørager, Fredensborg-Humlebæk and Give as well as Lolland. The responsibility of the arbitrator was to investigate the circumstances on which the feedback from the municipalities were based and whether the solution chosen had local support. The investigations of the arbitrator resulted in local referendums in another 12 of the "old" municipalities. Concurrently with the local referendums and the arbitrator's visit to the municipalities, the parliament adopted the legislative basis for the map in June 2005 as part of the legislation for the reform. At the same time, the new municipalities submitted proposals for new names and the number of district council members in the new municipalities.

On 23 June 2005 – almost a year after the Agreement on a Structural Reform was entered into – the new map of Denmark with 98 municipalities was completed.

### Note

1. [www.im.dk/publikationer/government\\_reform\\_in\\_brief/ren.htm](http://www.im.dk/publikationer/government_reform_in_brief/ren.htm).

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