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 Affair 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.[1] 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).[2] 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
3.2	1.5	1.3	1.1	0.8	0.7
May-03	Jul-04	Dec-05	Nov-06	Nov-07	Dec-08
0.6	0.7	0.7	0.3	0.6	0.3

* European Communities (2009), Internal Market Scoreboard, December 2008, *No.* 18, available at: *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.*

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