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 our 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.

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

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.

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

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.

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.

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.[1]

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*

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.[2] They also have had a direct responsibility for implementing a number of online services to citizens,[3] 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.[4]

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.*

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*.

4. *www.borger.dk.*

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