Regulatory Reform in Denmark

Government Capacity to Assure High Quality Regulation

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government Capacity to Assure High Quality Regulation* analyses the institutional set-up and use of policy instruments in Denmark. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Denmark* published in 2000. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform.*

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, on specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was principally prepared Rex Deighton-Smith, and Scott H. Jacobs, in the Public Management Service, OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Denmark. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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Can the national administration ensure that social and economic regulations are based on core principles of good regulation? Regulatory reform requires clear policies and the administrative machinery to carry them out, backed by concrete political support. Good regulatory practices must be built into the administration itself if the public sector is to use regulation to carry out public policies efficiently and effectively. Such practices include administrative capacities to judge when and how to regulate in a highly complex world, transparency, flexibility, policy co-ordination, understanding of markets, and responsiveness to changing conditions.

Regulatory reform in Denmark is part of a wider process of adapting Danish governance to more competitive regional and global markets, and to changing domestic needs. In Denmark, as in other OECD countries, processes of accommodation and power-sharing have sometimes increased complexity and rigidity in regulatory regimes. Changing economic and social conditions require more nimble and rapid policy responses to reduce the costs of change, and Danish reforms are, in fact, speeding up.

A programme of "deregulation" that achieved only limited success in the mid-1980s was revitalised in 1993. Current Danish reform policies are firmly grounded in broad concepts of regulatory quality and enjoy support from across the political spectrum. Initiatives have been added as the policy has developed, and the programme is now multi-faceted, involving ministries and agencies across government. This "broad front" for reform within the government is an important strength, and ideas from various agencies have stimulated innovation and experimentation that will benefit future regulatory reform.

Despite a decentralised tradition of government that emphasises individual ministerial responsibility and independence in the operations of ministries, the Danish government has taken steps to co-ordinate, promote, and focus reform efforts. In particular, this has been through establishment of a high-level Regulation Committee, supported by a dedicated Secretariat and a parallel network of officials at working levels.

In contrast to regulatory quality initiatives in many countries, the focus in Denmark has been on primary laws, rather than on lower-level rules. Initiatives to improve the processes by which legislation is developed include issuing guidelines and circulars on best practices, including adoption of principles based on the *OECD Recommendation on Improving the Quality of Government Regulation*. Such efforts are useful. As the next step, it will be important that regulatory quality measures be applied to lower-level rules to ensure that the regulatory environment experienced by citizens and businesses reflects the principles of quality regulation.

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.

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 Parliament summarising aggregate regulatory costs due to new legislation.

Emphasis has also been placed on simplifying and reducing administrative burdens. Innovative mechanisms have been developed, including Business Test Panels and focus groups to gather data on likely administrative burdens,

While initiatives are underway across a wide range of areas, the recent adoption of the regulatory quality programme, as well as its *ad hoc* development, means that many initiatives are in their infancy. Attention to implementation, evaluation, and refinement is essential to ensure that potential benefits are realised. Moreover, important gaps remain unaddressed. Policy options that should be considered by the Danish government are the following:

- *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.*

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.

- *Adopt the principle of good regulation accepted by Ministers in the 1997 OECD Report on Regulatory Reform that regulations should be adopted only if costs are justified by benefits.*

The regulatory principles in the current reform programme are clearer and closer to international best practices than those in previous programmes. Yet a significant gap remains in defining the dimensions of regulatory quality: the principle that regulations shall only be adopted if costs are justified by benefits. Such a principle does not require that costly forms of analysis be carried out for every regulation, but it does require regulators to proceed only if there is reasonable expectation that the regulation will be socially beneficial, considering all important consequences of actions. Accountability and transparency of regulation will be increased, as well as the efficiency of public consultation.

- *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.*

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 the full RIA discipline should be extended to lower level rules as well as primary legislation. Currently, the assessment of lower level rules focuses on financial costs. 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 routinely integrated with public consultation processes. As is done currently for some regulations, 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; and public disclosure is a powerful incentive to produce realistic estimates of regulatory impacts.

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

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.

- *To reduce the risk that informal practices will result in insider/outsider problems in which some groups have less access than others, 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.*

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.

- *Apply reform disciplines to lower level rules as well as legislation.*

The application of the current legislative quality programme to all laws is an important strength of the Danish programme. However, as in most countries, significant policy initiatives are also taken through lower-level rules. This means that quality disciplines should equally be applied to them. Indeed, the fact that lower level rules receive much less parliamentary scrutiny than laws implies a greater role for other forms of quality assurance. As noted, the full RIA discipline in particular should be applied to lower level rules. This would increase the rate at which RIA disciplines and perspectives are disseminated among regulators and would prevent the development of perverse incentives to escape the application of rigorous RIA requirements to laws by using lower level rules instead.

1. THE INSTITUTIONAL FRAMEWORK FOR REGULATORY REFORM IN DENMARK

1.1. The administrative and legal environment in Denmark

Regulatory reform in Denmark is part of a wider process of adapting Danish governance to more competitive regional and global markets, and to changing domestic needs. Danish reforms, occurring within a domestic environment of solid economic performance and high levels of citizen satisfaction with the quality of life, have been pragmatic, proceeding step by step toward internationally-recognised good regulatory practices (see Box 1). Reforms have been shaped by an administrative and political system accustomed to consensus-building, informality, decentralisation, and partnership. Much change has been externally-driven, particularly by the European single market programme.

This review by the OECD has found evidence that in Denmark, as in other OECD countries, processes of accommodation and power-sharing have sometimes increased complexity and rigidity in regulatory regimes, and that changing economic and social conditions require more nimble and rapid policy responses to reduce the costs of change. There is evidence that Danish reforms are, in fact, speeding up, as illustrated by controversial decisions in the mid-1990s to liberalise aspects of the labour markets. A recognition of the need to avoid rigidity in governance practices in the face of global and technological change is shown by the Danish "Study of Democracy and Power," initiated by the Danish Parliament in 1997. The study aims "to illuminate the function of democracy in broad terms, including the influence of organisations, movements, and economic power structures in society as well as the consequences of internationalisation as far as transparency of decisions, influence and power in society." It will include an assessment of "societal processes of change." The study is motivated, among other things, by a sense that Danish democracy no longer works as it once did.[1]

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. Such committees tend to have extensive memberships, bringing together all groups with a major interest in the issue. Participation is further broadened by the practice of sending proposals from these deliberations to a yet wider range of interested groups for comment, before submitting bills to Parliament for consideration.

Consensus practices were in part driven by political structures. The Danish electoral system is based on a proportional representation system, with a minimum of only 2% of the vote required to be elected. As a result, a large number of political parties are represented in Danish Parliaments and governments have invariably been formed from coalitions. In recent times as many as four parties have been included in governing coalitions. In addition, many coalition governments have been in the minority in Parliament and have had to rely on support from parties remaining outside the coalition agreement to govern. Clearly, values of consensus, compromise and wide participation are essential to the effective functioning of such a model of government.

Social partnership arrangements have reinforced and sometimes replaced political negotiations, and business and trade union organisations have carried out a variety of services that have, in many other countries, been performed by public bodies (see Box 5).

These procedures have shared power among many stakeholders, have strengthened political stability, and have smoothed the management of policy trade-offs, such as the "jobs pact" that helped rein in inflationary pressures in the 1980s. At the same time, they have tended to give "insiders" a stronger role in policy. Indeed, historically, collusive and cartelistic arrangements have been tolerated in many sectors of the Danish economy (see background report to Chapter 3). As a small, open economy Denmark has necessarily developed a highly competitive traded goods sector, but sheltered sectors, including most service industries, have a tradition of co-operation and price fixing, which has contributed to the high consumer prices currently observed in Denmark. Denmark's membership of the European Union is changing this culture, both through harmonisation of national competition law with EU competition rules and through the progressive implementation of the Single Market Programme. However, the process of change is incomplete and there remains potential for insiders to use regulations for anti-competitive ends.

Processes of consultation on new laws are nowhere formally specified in legislation, yet they are widely observed and there is a high level of public confidence that they are followed. This is evidence of another key element of Danish political culture, that of extensive reliance on informal approaches and structures. Strong commitment to consensus and common interests underpins the success of these informal approaches. They are widely regarded as having allowed for flexibility and the adoption of pragmatic solutions. There is little evidence that the extensive consultative basis of law-making has led to an overly lengthy legislative process, as has been the case in the Netherlands, for example – a country that shares with Denmark political values such as a commitment to consensus politics, broad participation, and a high degree of social equity. For example, Denmark has developed more efficient and shorter procedures for making legislation in response to urgent problems.

Box 1. **Good practices for improving the capacities of national administrations to assure high-quality regulation**

The OECD Report on Regulatory Reform, welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These form the basis of the analysis undertaken in this report, and are reproduced below:

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels.
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making.
3. Build regulatory management capacities.

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis.
2. Systematic public consultation procedures with affected interests.
3. Using alternatives to regulation.
4. Improving regulatory co-ordination.

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS

(In addition to the strategies listed above)

1. Reviewing and updating existing regulations.
2. Reducing red tape and government formalities.

The decentralised nature of executive government can also be understood in light of coalition governments, as well as the commitment to consensus and mutual obligation. There is a strong tradition of individual ministerial responsibility in Denmark, with a relatively weak centre of government. Notwithstanding this, policy co-ordination and coherence have historically been good, and some

commentators believe that a more "horizontal" approach to legislative development has been adopted recently, with greater prominence being given to economic, environmental and trade issues.[2] One source of pressure for greater policy co-ordination has been Denmark's membership of the European Union and the consequent need to implement cross-cutting European law and participate in its development. An extensive formal policy co-ordination structure in relation to European legislation has been constructed (see Section 2.3). Perhaps partly as a result of this experience, recent initiatives in regulatory reform policy have also adopted more formalised co-ordination and central overview mechanisms and strengthened existing arrangements.

Increasing integration of the European Union countries is, and will continue to be, an important influence on the Danish economy and administration. Other important trends can be identified. Among the OECD's unitary countries, Denmark is relatively decentralised. Policymaking and especially policy implementation in many areas are located at regional or municipal levels. Denmark has since the 1970s progressively decentralised responsibilities to regional and local levels of government, particularly for service delivery functions. The 1980s saw the beginning of moves to increase the freedom of action for local authorities to carry out those responsibilities. This has in turn highlighted problems posed by the small average size of local authorities, notwithstanding a programme of amalgamation in 1970. The increasing role of local administrations has implications for regulatory reform and implementation.

Important recent initiatives have been taken to increase the effectiveness and efficiency of the Danish public sector (see Box 2), including benchmarking, contracting out, and use of IT. There has, however, been little innovation in the use of regulatory instruments. The use of market mechanisms to achieve policy ends is increasing at national and local levels of government, but in many policy areas there has, as yet, been little movement. The potential for effective uses of the market to reduce the costs of service delivery and maintain or increase governments' ability to deliver services demanded by citizens is increasingly recognised, as in competitive tendering for services now provided by the public sector.

In general, there continues to be a high level of satisfaction with the performance of Danish policy making structures in achieving economic, social and political goals. One of the strengths of governance in Denmark is that, unlike many other OECD countries, trust in government institutions is high. In 1998, the Gallup Institute conducted a survey for the Danish Ministry of Finance to explore several aspects of relations between Danish citizens and the public sector, including citizens' satisfaction with the public sector, trust in the public sector and public employees, general support for the public sector, and views on reforms of the public sector i.e. introduction of user charging, outsourcing, citizens' choice, supplementary services, and voluntary social work. The survey suggested that Danes are highly supportive of the welfare state. Trust in public institutions and in public employees is very high. Satisfaction with public services is also high and, for some services, increasing over the last years. Furthermore, the willingness to pay taxes increased markedly from 1990 to 1998, and today fewer Danes opt for public sector cutbacks, even if linked to tax reductions.

However, this has not blinded the Danes to the need for continuous evolution in the system. There is an increasing sense of the need for more rapid evolution of these structures to cope with rapid changes in the external environment, including European integration and wider globalisation. The challenge is to reconcile the change process to a political culture founded on consensus, pragmatism and incrementalism.

Box 2. **Improving efficiency and service quality in the Danish public sector**

Since the Danish public sector is one of the largest in the OECD relative to GDP, improvements in efficiency and effectiveness can produce very large cost-savings for Denmark. The Danish public sector is characterised by a large degree of decentralisation. Most social services, such as kindergartens, schools and hospitals, are provided and partly financed by the municipalities and counties, and most authorities, including ministries, have large degrees of freedom in regard to the organisation of their administration and production.

Decentralisation reflects a preference for nearness between providers and users. The philosophy of decentralisation is also based on the view that decentralised responsibility and local accountability enhance innovation and renewal *if* combined with central examination, pressure and development of common concepts. The strengths of this approach are that innovation is encouraged, large-scale failures in public management reform generally are avoided, and centrally-developed management tools (such as performance contracts, performance related pay and the EFQM model) are adapted to local contexts. The weakness is that not all agencies, municipalities and institutions engage in public sector reform in the same way, making it more difficult to assess outcomes, and perhaps slowing reform overall.

The public sector is also shaped by collective agreements governing not only pay and working conditions, but also agreements on reform of the public sector, new forms of working such as contracting out and teleworking, and training. Trade unions describe current reforms as "a negotiated modernisation of the public sector."

Driven in part by the central government and in part by collective framework agreements, many recent initiatives based on economic and performance incentives have been launched to increase public sector quality and efficiency:

Budgets of ministries and state agencies are reduced every year based on expected productivity gains. The revenue is usually reallocated to new government priorities. Recently, expected savings from competitive tendering and more efficient procurement have been added to productivity requirements.

The performance of the Danish economy and public sector is systematically benchmarked with other OECD countries. This is done in the so-called Structural Monitoring System of Denmark.

The Ministry of Finance regularly benchmarks providers of public services. Most recently the police, primary schools and care for the elderly have been benchmarked.

Tools for financial management, performance management, knowledge management, benchmarking, outsourcing and Business Process Reengineering have recently been developed and promoted.

Citizens' choice and competition between public and/or private providers of public services has been promoted in a number of areas (education, childcare, care for the elderly, health etc.). The level of outsourcing is monitored and reported to Parliament every year.

Performance contracts with agencies and heads of agencies (bonus contracts) as well as private-sector- style annual reports have been introduced in state agencies.

A new performance related pay system is under implementation in most parts of the public sector.

Development of reforms aimed at optimising business processes and the quality of services are promoted through a Quality Award for the Public Sector based on the EFQM model.

The government has launched the Service & Welfare project aiming at 1) establishing Internet based networks facilitating inter-institutional learning, 2) promoting public awareness and debate about the challenges to the Danish welfare model as well as possible solutions, 3) initiating and evaluating specific experiments with public sector service provision.

The approach to public management reform in Denmark is based on an interaction between critical analysis, guidance and evaluation from the Ministry of Finance, collective agreements with public sector employees, and decentralised creativity, adaptation and responsibility for implementation. This approach can be seen as one of the reasons that the Danish public sector is seen to be relatively innovative and effective.

Source: The OECD Public Management Country Information, *http://www.oecd.org/puma/country/*.

1.2. Recent regulatory reform initiatives to improve public administration capacities

Regulatory reform in Denmark is part of the larger set of initiatives to improve public sector functioning (Box 2) by improving incentives at national and local levels of government to provide higher quality services at lower cost. This is critical in Denmark, because public expenditures are among the largest in the OECD, accounting for well over half of GDP. Perhaps because of the high degree of citizen satisfaction with governance in Denmark, however, regulatory reform has challenged the role of the state less in Denmark than in many other countries.

Regulatory reform has its genesis in the deregulation programme begun as part of a comprehensive "modernisation" effort by the new Liberal-Conservative government in 1982. This programme was promoted under the slogan "It shall be easier to be a Dane" and has been described as "an ambitious political campaign to abolish regulations and red-tape which hampered individual initiative and limited the freedom of choice of both private firms and local government".[3] The initial focus of the campaign was on providing greater autonomy to regional and local governments, though it subsequently shifted to the removal of regulations harmful to the competitiveness of the business sector.

This campaign had significant results on relations between national and local governments. The latter took on a much more significant role in service delivery to improve effectiveness and responsiveness. It is generally agreed that the campaign had a major impact in consolidation of existing legislation and removal of outdated and redundant laws. According to a 1985 report to the Parliament, the number of regulations was reduced by 2 000. However, the programme was less successful in achieving fundamental change to business regulation. In the area of economic regulation, a 1990 study[4] found that:

> *Some deregulation took place both within the fields of economic regulation and externalities regulation, although 21% and 24% respectively of the proposals [made] were never brought forward to a decision.*

The same study noted that in some areas regulation had become more burdensome:

> *Economic regulation … has been tightened up in a large number of cases. A rather large number of new laws and administrative regulations have even been introduced in fields where the state didn't interfere up to this point of time.*

The programme *per se* was effectively abandoned by the mid 1980s – in fact, soon after the shift in focus to competitiveness issues. Some deregulatory policy initiatives continued through the later 1980s in sectors like finance, telecoms, and television. A key reason for the failure to make greater progress is seen as a lack of strong support from business groups and others who stood to gain from deregulation. This is a rational response if:

> *More vital interests than deregulation were at stake. They were not interested in breaking up the traditional pattern of co-operation with their counterparts in the regulatory agencies and, in the case of the employers' association, with the trade unions. Neither were they interested in destroying the traditional willingness to co-operate with any government – and to support an ideologically inspired policy of deregulation might strain relations with a future Social Democratic government.*[5]

It was not until the election of a Social Democrat-led government in 1993 that an explicit programme of regulatory reform was again embraced. A fundamental difference between the reform philosophy espoused in the 1980s and the philosophy adopted since 1993 was the move from a focus on "deregulation" to a focus on "regulatory quality", which has been seen in almost all OECD countries. The Danish Bar and Law Society was a key proponent of improved legislative quality and was instrumental in

placing the issue on the political agenda. Improving regulatory quality does not imply the same ideological orientation as 'deregulation' and, if only because it seems to promise something to everyone, can garner wider support. Regulatory quality in practice, however, implies the pursuit of a wider and more fundamental range of policy goals. For example, the move toward regulatory quality has shifted reforms from abolishing or consolidating regulations to implementing new procedures to improve the quality of new legislation and managing the legislative agenda more effectively. The current Danish Business Policy notes:

> *In line with developments in other countries, the Danish government has shifted the focus from the number of rules and regulations to the content of such rules and regulations. Generally speaking, challenges to business will presumably mean that the number of laws and regulations will increase.*[6]

The move from deregulation to regulatory quality has indeed been observed in many countries' reform efforts and is a positive step, allowing for a more broadly based reform process likely to enjoy wider support in society and yield greater welfare gains.

The reform agenda begun in 1993 has been progressively broadened, with new initiatives added in each subsequent year (see Box 3). In 1995, the government established a committee charged with proposing initiatives to reduce administrative burdens on SMEs. The committee was composed of civil servants and representatives of business organisations and presented a plan of action to government based on the identification of key problem areas by the business representatives. The plan included 25 initiatives covering a wide range of issues, including fees, statistical reporting requirements and access to information on administrative formalities (see Section 4 below). The plan was implemented fully by the government. A related initiative has been to incorporate targets on achievement of regulatory simplification as a standard element of performance contracts with government agencies and agency heads. Further initiatives taken in 1996 and 1997 included establishment of annual reporting of the costs of new legislation for business, publication of criteria for "good" business regulation and the establishment of a division for administrative simplification within the Ministry of Business and Industry.

The reform programme was effectively relaunched with a significantly higher political profile following the formation of a new coalition government in March 1998. The improvement of regulatory quality was declared to be a high priority of the government in its coalition agreement and the twin themes of improving quality by better regulatory management and planning and by introducing a regulatory checklist and improving business regulation and market openness were identified. This represents a significant shift toward a more strategic and integrated basis for reform policy.

The key initiative taken to improve regulatory planning has been the formation of the Regulation Committee, described below, which manages the legislative agenda for the coming year against the first three items of the regulatory checklist:

- Identification of the policy problem being addressed and description of the purpose of the bill.
- Preliminary assessment of the likely impacts on business, industry, citizens, the environment and public authorities.
- Consideration of alternatives to "command and control" regulation.

In September 1998,[7] a four part strategy to improve the quality of legislation was published to guide the development of new initiatives. The four elements of this strategy are:

- Strengthening the law-drafting process.
- Examining and increasing the use of alternatives to traditional regulation to ensure flexible and effective regulation.
- Strengthening and improving regulatory impact analysis.
- Reducing administrative burdens on business.

Recent initiatives under each of these headings are discussed in more detail in the following sections of this report.

In October 1998, the speaker of the Parliament hosted a conference on improving legislative quality, with participation by the Prime Minister, other cabinet ministers, the Ombudsman, representatives of the legal system, academics and civil servants. This was regarded as a major step in establishing a common view of the nature and importance of regulatory quality goals.

Box 3. **Milestones in Danish regulatory reform, 1993 – 1998**

1993

- Revised Prime Minister's circular on intra-governmental consultation on legislative proposals is issued. This includes for the first time a requirement for ministries to identify business and environmental impacts.

1994

- Ministry of Business and Industry issues guidelines on preparation of business impact assessments.
- A Contact Committee is formed, comprising representatives of business and of the financial/economic ministries to monitor the aggregate impact of new legislation on competitiveness.

1995

- Prime Minister's circular on legislative proposals again amended 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

- Business Test panel established by Ministry of Business and Industry to assess administrative costs of new legislative proposals on business sector.
- Programme on simplification of rules and regulations launched
- Government publishes "Legislation and the cost imposed on business", an overview of the cost implications of legislation proposed for the coming year.
- Government defines criteria for good business regulation in "Business Environment in Denmark, 1996".

- Ministry of Business and Industry conducts a complete mapping of reports and payments to public authorities by enterprises (*i.e*. "business formalities").
- Ministry of Business and Industry initiates MobiDK project to assess business and social impacts of government proposals in a general equilibrium framework.

1997

- Parliament implements annual reporting on trends in administrative burdens on business.
- Ministry of Business and Industry establishes a division for administrative simplification.
- Business Test Panel system is expanded and made permanent.
- Ministry of Business and Industry establishes six rotating panels to review its legislation with a view to simplification or elimination of superfluous provisions.
- Ministry of Economic Affairs starts work on an expanded economic model able to model the impacts of various policy changes on parts of the business sector.

1998

- Regulation Committee established with mandate to monitor the implementation of the regulatory quality policy.
- Identification of four key points for the future development of the Regulatory Quality policy.

2. DRIVERS OF REGULATORY REFORM: NATIONAL POLICIES AND INSTITUTIONS

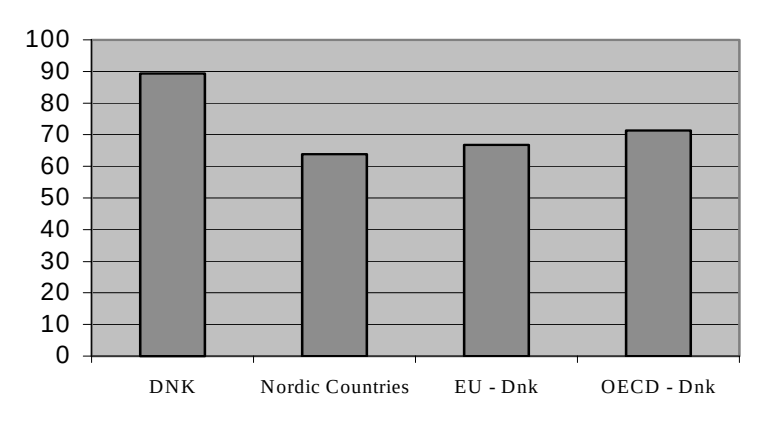
2.1. Regulatory reform policies and core principles

The 1997 *OECD Report on Regulatory Reform* recommends that countries "adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation." The 1995 *Recommendation of the OECD Council on Improving the Quality of Government Regulation*[8] contains a set of best practice principles against which reform policies can be measured. The expanding and developing Danish reform programme has consistently moved in the directions advocated by OECD recommendations, though clearer, government-wide decision criteria for adopting new regulations would improve regulatory quality.

The concept of regulatory quality has been adopted as the driving force of the reform programme. The regulatory quality checklist in the 1995 OECD Council Recommendation was adapted to the Danish context and formed a keystone of reform policy. The quality perspective, adopted in 1993-4, represents a significant step forward from the previous deregulation policy. Regulatory quality assurance initiatives have focussed on improving the procedures used to develop and implement new legislation. They have included the provision of a large quantity of guidance material to regulators and other tools by which they can improve quality, as well as a programme to establish specialist law-drafting units within each ministry. New elements continue to be added to the programme as it evolves.

Box 4. **Policy and organisational commitment**

This synthetic indicator measures the existence and content of explicit government policies on regulatory reform and the organisational arrangements that have been put in place to support them. It scores more highly policies that are adopted or revised by the current government, those that include explicit objectives and principles of good regulation and those that are supported by the establishment of a specific body with responsibility for promoting, supporting and reporting on progress on regulatory reform. Denmark's score on this indicator is among the highest in the OECD and is significantly ahead of the EU and Nordic averages.



Source: OECD Public Management Service.

To improve the coherence of the decisions by separate ministries and to ensure that reform principles are applied equally to new and old regulations, the Danish government should ensure that it adopts explicit and measurable government-wide criteria for making decisions as to whether and how to regulate, and support those principle with written guidance to ministries. The OECD recommends as a key principle that regulations should "produce benefits that justify costs, considering the distribution of effects across society." This principle is referred to in various countries as the "proportionality" principle or, in a more rigorous and quantitative form, as the benefit-cost test. This test is the preferred method for considering regulatory impacts because it aims to produce public policy that meets the criterion of being "socially optimal" (*i.e.*, maximising welfare).[9] This key principle is insufficiently developed in Denmark. The Danish principles for good regulation include, through judicial tradition, consideration of proportionality, but an explicit benefit-cost test has not been adopted. Thus, there is no standard by which ministries justify the need for regulations, no public testing of these conclusions, and little basis for challenge.

Adoption of the benefit-cost principle, as recommended in this report, as the common-sense test for new regulations does not require that full benefit-cost analysis be carried out for every regulation. The principle sets out the expectation that the costs and benefits of regulations will be assessed and weighed, and that no new regulation will be adopted unless there is a reasonable expectation that the benefits justify the costs. The analytical methods used will vary according to the importance of the regulatory decisions; in only a fraction of cases will full-fledged quantitative benefit-cost analysis be warranted. The advantages in accountability, consistency, and quality of decision-making will be considerable, however, and the improved transparency in decision criteria will boost the efficiency of public consultation.

The OECD Report also recommends that governments "ensure that reform goals and strategies are articulated clearly to the public." Engaging the public in a dialogue on the aims, benefits, and costs of regulatory reform has received, and will continue to need, attention in Denmark, given opposition from entrenched market interests, and others anxious that "excessive competition" will produce painful change. There should, perhaps, be a greater focus on monitoring and reporting of progress made, both within government and publicly, and on continuing to revise and update the programme to maintain relevance.

Consistent with the generally participative approach to public policy-making in Denmark, the regulatory reform programme has sought to involve business groups, in particular, in policy development and data collection. A major example of the former is the 1995 programme to identify possible administrative burden reductions, while the latter includes business test panels and focus groups. Also in the latter category is the use of business panels to assist in compiling a summary of the business costs of legislation adopted in the past year. This is an important innovation, and is part of a frequently innovative approach taken in Denmark to mechanisms for moving regulatory reform forward.

A key focus of reform policy has been simplification of administrative requirements and minimisation of their cost burdens. This effort has covered new regulatory proposals, via the Business Test Panels, and existing regulation, through the adoption of programmes using information technology and other means to reduce costs. Benchmarking is an important tool in this area and is also seen as a means by which ideologically based perceptions of reform activity can be defused.

The issue of regulatory complexity is also prominent in Danish debate on regulatory reform and has led to initiatives. Simplification is a key theme of reform policy. Two causes of the perceived complexity of Danish regulation are commonly identified: the first is domestic, seeing complexity as a product of the consensual and participative nature of regulatory development in Denmark. In this view, legislation evolves through a series of small additions or adjustments to the initial framework to meet the specific concerns of individual interest groups and achieve a broad consensus on the outcome. Second, legislators and researchers argue that additional complexity also derives from the need to implement European Union legislation in Danish law. This is seen as particularly important in areas such as the labour market, where there is a strong Danish tradition of regulating outcomes by non-legislated bargaining processes. The detailed and structured approach of European legislation is seen as constraining the Danish approach. Despite the fact that the Single Market Programme is largely complete, at least at the legislative level, many regulators see no slackening in the volume of legislation emanating from European institutions. Danish policy-makers hope to take an active role in influencing the development of European legislation to prevent undue complexity.

2.2. Mechanisms to promote regulatory reform within the public administration

Mechanisms for managing and tracking reform inside the administration are needed to keep reform on schedule. In most OECD countries, this requires the allocation of specific responsibilities and powers to agencies at the centre of government. As discussed in section 1, however, Denmark is, like other small countries, relatively more informal, consensual, and decentralised in its policy structures than many countries. For example, Denmark emphasises a greater degree of responsibility of individual ministers for matters within their portfolios. Thus "each minister is responsible for the management and co-ordination of regulatory quality and reform as far as his or her field of responsibility is concerned".[10] As a result, while several agencies at or near the centre of government have responsibilities to promote and support aspects of regulatory reform, their operations are, to a very large degree, based on persuasion and education, rather than the exercise of formal powers.

The Danish government does not believe that a centralised autonomous unit directing regulatory reform would work well within Danish policy structures, and might increase conflict and formality at the expense of results. It has taken useful steps, however, to co-ordinate reforms across the public administration. The highest level co-ordinating body on regulatory reform is the **Regulation Committee**. Established in 1998, it comprises the Permanent Secretaries of the Prime Minister's Office and of the Ministries of Justice, Finance, Business and Industry, and Economics. The committee reports directly to the Prime Minister and is responsible for formulating and developing policy on legislative quality, and monitoring and ensuring its implementation in practice. The key mechanism for achieving the latter goal is its management of the legislative agenda for the coming year. The Regulation Committee is responsible for developing policy on legislative quality as well as for vetting proposals for inclusion on the legislative programme, based on criteria of necessity, feasibility and whether the proposals represent the most effective option. The Committee is supported by a Secretariat jointly operated by the Prime Minister's Office and the Ministry of Finance. When the Committee's recommendations regarding the legislative programme are not accepted by ministers, the matter is discussed by the Economic Committee of the Cabinet or in other relevant Cabinet committees.

The establishment of the Regulation Committee is consistent with the recommendation of the OECD's 1997 Report to Ministers on Regulatory Reform[11] that governments "Build capacities for regulatory management and the oversight of implementation of reform policy". The Committee affirms the importance of reform issues, since its members are the most senior bureaucrats in Denmark. Its ability to provide effective oversight and management is enhanced by its support by a Secretariat from the Prime Minister's Office and the Ministry of Finance and by a parallel committee of less senior officials.

It is too early to come to firm judgements on the effectiveness of the Regulatory Committee. It has been estimated that its intervention in weeding out unnecessary legislation reduced the size of the legislative agenda in 1998 by about 25%. Many of the items affected may prove to have been deferred, rather than defeated, by the scrutiny process, yet the 1999/2000 legislative programme was also reduced by about 25%. Another major benefit is an improvement in parliamentary scrutiny of bills, due to the Committee's ability to ensure that they are introduced to the Parliament earlier in the parliamentary session, providing more time for committee review and parliamentary debate. The requirement to consider proposals in relation to potential alternatives may be important here, as members of Parliament have indicated a desire to investigate the use of alternatives as a means of reducing the complexity of legislation.[12]

In the longer term, the establishment of the Regulation Committee mechanism may itself be the impact of greatest importance. Use of a formalised horizontal co-ordination mechanism is rare in Denmark, and the adoption of this mechanism to drive a key part of the regulatory quality programme is a major step. The prominence of the Committee, and its broad remit places it at the centre of future regulatory reform policy and means that its active promotion of reform will continue to be a key success factor.

The role of the prime minister is crucial to the effectiveness of the Regulation Committee, and sustained attention by the prime minister can well reinforce the efforts of the Committee to motivate reforms in the ministries. Yet there is no equivalent in Denmark of the Ministerial Committee which has been effective at managing the MDW programme[13] in the Netherlands. A more systematic oversight of results by the Economic Committee of the Cabinet, which already has an *ad hoc* role when disagreements arise, might complement the current structure. Review of progress by a ministerial committee does not require a rigid top-down process in which all ministries adopt the same reforms, but, rather, could reinforce incentives for results within a decentralised network of initiatives among the ministries. Periodic oversight and assessment of progress would strengthen the incentives in the ministries to innovate, to learn from each other, and to seek concrete results that are consistent with the priorities of the current government. Given the vulnerability of the line ministries to capture by narrow interests, more flexibility in reform

approaches and goals in the ministries implies stricter accountability mechanisms for results. In this vein, a ministerial committee could also set targets for reform -- reducing costs for business start-ups, for example – that guide reforms across the government, without reducing ministerial flexibility to take different approaches.

The Ministry of Finance is responsible for reviewing RIA prepared by ministries, based on the financial and administrative impacts of proposed legislation, and increasingly its effects on the business sector and overall economic effects. It also acts, together with the Prime Minister's Office, as the Secretariat for the Regulation Committee.

The Ministry of Justice has a general responsibility to ensure technical legislative quality. Thus, it has a central role in the current programme of reform, with its focus on improving legislative quality. Recent steps include intensified "plain language" scrutiny, established by Prime Ministerial Circular and the development of a general handbook for ministries on drafting bills. In addition, legal units are being established in all departments to enhance the technical quality of bills and lower level rules from the outset. All legislation is forwarded to the Ministry of Justice for scrutiny before being forwarded to Parliament. Contrary to the practice in some countries, the ministry does not exercise a similar scrutiny function with regard to lower-level rules, although it has issued guidance documents on producing lower-level rules.

The Ministry of Business and Industry is responsible for initiatives that monitor and reduce regulatory burdens on business. These are in three main areas. First, it has primary responsibility for Regulatory Impact Analysis, issuing guidelines for the use of ministries in assessing the likely impacts on business of proposed legislation and, more recently, providing technical support on request. Second, the legal division of the ministry is engaged in initiatives to promote the use of regulatory alternatives. Third, a specific unit has been established to carry forward initiatives related to the ministry's responsibility for administrative burden reduction, such as the Business Test Panels. The ministry also compiles, with the support of a business committee, the annual publication, *Business Environment in Denmark*, a summary of the total business impact of all legislation adopted over the previous year. Finally, it has established six industry panels to assist in reviewing its own legislative structure – a mechanism apparently not replicated in other ministries.

The Prime Minister's Office has general responsibility for co-ordinating and drawing up the annual law programme and provides Secretariat services to the Regulation Committee, in co-operation with the Ministry of Finance.

2.3. Co-ordination between levels of government

Denmark, a unitary state, has regional and municipal levels of government in addition to the national government. As a result of a sustained process of decentralisation, particularly since the fusion of local authorities in 1970, much government service delivery is carried out at lower levels of government. Regulatory policy remains concentrated at the national level, although there is significant consultation with local government as a result of its major role in implementation. From the perspective of local government, the key regulatory issue is that of increasing freedom to act to be able to achieve efficiency gains needed to allow services to be delivered within tight fiscal restraints.

Co-ordinating between levels of government is for Denmark increasingly important, due to its membership in the European Union. A significant proportion of Danish law originates in European legislation, hence an ability to co-ordinate effectively with European institutions is essential in terms of having effective input into the design of legislation and in terms of smoothly implementing European legislation. Denmark's small size in the EU means that ensuring its voice is heard is considered extremely important. As a result, Denmark has implemented an extensive and effective structure for dealing with the European Union. This comprises four levels, as follows:

- Special Committees. Thirty-two Special Committees comprise the lowest level of the decision process and are organised on functional lines. Membership is comprised of civil servants from relevant ministries, while interested parties from outside government are invited to participate ad hoc. These committees develop Denmark's substantive positions on specific EU issues in their areas of responsibility.
- EC Committee. This is composed of senior civil servants with EU co-ordination responsibilities in their ministries. It is chaired by the Ministry of Foreign Affairs and supports the Government Foreign Affairs Committee in relation to EU matters, as well as ensuring co-ordinated and consistent implementation of Danish EU policy.
- Government Foreign Affairs Committees. Two of these committees exist, one dealing with "Pillar One" issues and the other with pillars two and three (i.e. common foreign and security policy and justice and home affairs). These committees essentially consider issues to be dealt with at forthcoming European Council of Ministers meetings. However, major issues with political or cross-sectoral implications may also be discussed.
- Parliamentary European Affairs Committee. This Committee is consulted prior to European Council of Ministers meetings and is essentially a mechanism to avoid the possibility of the government binding Denmark to a position that the Parliament will not ratify. Its importance is thus in part a product of the character of Danish governments as being composed of coalitions and often being parliamentary minorities. In consequence, all political parties in the Parliament are represented on this committee and their voting rights are proportionate to their voting strength in the Parliament.

European Commission data indicate that Denmark has one of the highest rates of transposition of European legislation into national law, suggesting that this co-ordination structure is effective in practice.

3. ADMINISTRATIVE CAPACITIES FOR MAKING NEW REGULATION OF HIGH QUALITY

3.1. Administrative transparency and predictability

Transparency of the regulatory system is essential to establishing a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps ensure against undue influence by special interests. Just as important is the role of transparency in reinforcing the legitimacy and fairness of regulatory processes. Transparency is a multi-faceted concept that is not easy to change in practice. It involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; and implementation and appeals processes that are predictable and consistent. The Danish regulatory system is one of the most transparent among OECD countries, involving an extensive series of arrangements involving social partners, businesses, local governments, and other interests, but some risks merit attention.

Transparency of procedures: administrative procedure laws

Transparent and consistent processes for making and implementing legislation are fundamental to ensuring confidence in the legislative process and to safeguarding opportunities to participate in the formulation of laws. In the majority of OECD countries, such procedures are established in legislation.[14] Denmark does not have a general legal requirement for consultation, though requirements are established in defined policy fields governed by social partner relations. The Danish constitution gives a right of initiative on legislation to the government and this is believed to preclude the passage of legislation restricting the means by which government can develop legislation. The tradition of decentralised government, discussed above, may also be a contributing factor. Despite the absence of legislation, detailed law-drafting requirements are set out in a range of Prime Ministerial Circulars.

First, a circular of 16 May 1960 specifies that all bills must be forwarded to the Ministry of Justice for scrutiny before being presented to the Parliament. Ministry of Justice scrutiny has several objectives, which can be broadly divided into "technical" and "substantive" aspects. Technical checking includes the structuring of the bill, conformity with requirements on the language of drafting and the adequacy of accompanying explanatory notes. These matters have been the subject of a number of circulars, guides, and similar material. Most recently, a Prime Minister's Circular of 12 November 1998 sets out rules for the content of explanatory notes for regulations, and requires the Ministry of Justice to intensify its efforts in ensuring the use of "plain language." Another circular, dated 16 September 1998, sets out requirements for drafting of explanatory notes. Substantive checking includes checking consistency with the constitution and with other legislation (notably European law, human rights conventions and framework legislation such as the Administration of Justice Act, and the Access to Documents Act). One indicator of the effectiveness of these arrangements in practice, cited by the Danish government, is that only three laws have been struck down by the Danish courts as unconstitutional (in 1971, 1980, and 1999).[15]

These intra-governmental procedures are supplemented by an open and extensive process for developing the policy content of legislation, involving the use of committees of interested parties as well as broader public consultation (described in the following section on public consultation). Notwithstanding these requirements, the government recently took steps to strengthen the legislative process as a "special focus area" to improve the quality of legislation. These initiatives[16] are:

- The issue of a checklist on regulatory quality, based on the 1995 OECD checklist.
- A revised circular on legislative development, focusing on ensuring that business and administrative impacts are assessed and that processes for seeking comment on proposals are of high quality.
- Formation of the Regulation Committee to manage the overall legislative programme.

The Ministry of Justice prepared a general handbook on drafting bills that was issued in October 2000. It brings together the requirements of various circulars and provides additional detail on issues such as the consultative procedures to be followed. In general, the area of administrative procedures seems to be one in which relatively informal, and somewhat fragmented, mechanisms are used in Denmark with a high degree of success. However, strengthening the legislative process has been identified as a special focus area for reform policy, which indicates that the government sees significant room for improvement. A general handbook that places all requirements in a common framework will be a useful step forward.

Transparency for affected groups: use of public consultation

As indicated, general procedures used to develop and implement legislation in Denmark are not set out in law, though consultation arrangements are specified by law in specific areas such as labour law and workplace health and safety (see Box 5). In most policy areas, practices in public consultation are governed by traditions and internal government policies. This relatively informal framework governs a system of public consultation that is longstanding and extensive, with widespread participation in the process. In general, there is a high level of satisfaction with consultation practices in Denmark. For example, the Danish Bar and Law Society, which participates in the majority of preparatory committees on major legislation, characterises its dialogues with the administration as "fruitful" and "based on mutual confidence" and believes that government is responsive to its advice.[17] Access to legislators is generally highly rated.

Development of major legislation is sometimes conducted by a government-appointed preparatory committee, bringing together a wide range of groups with significant interests in the legislative proposal. Such preparatory committees are used flexibly. They are used particularly in the criminal justice area and other areas involving complex ethical and/or technical aspects. Preparatory committees are rarely used in areas requiring rapid or confidential preparation of legislation. Where preparatory committees are used, involvement of affected parties begins at the earliest stages and is sustained throughout legislative development – if indeed legislation emerges. The Danish government notes that appointment of a committee does not necessarily imply that legislation will ultimately be brought forward. The early start to consultation means that interested parties can have a major influence on the final legislation. The composition of the committees is at the discretion of the government -- no standardised rules or guidance have been issued on what interests should be included. The practice has been for wide representation on the committees. A new development is the use of "following groups", or "sub-committees" to examine particular aspects of the policy issue and report periodically to the full committee.

Changing use of the committee approach is evidence of a rebalancing within Danish legislative processes of the need for policy responsiveness with achievement of broad consensus. Committee deliberations on major legislation generally take place over six to 12 months, although the process is sometimes considerably slower. Two to three years have been taken on occasion, though this appears to have been largely due to resource issues (for example, the use of part-time chairs unable to commit extensive time to the process). There has been some decline in the extent of use of the committee process over the last two decades, and, more recently, the size of committees has dropped, as governments come under increasing pressure to pass legislation more quickly in response to issues of pressing public concern.

Another stress in relation to the committee process is the perception that fundamental reform is more difficult to achieve through a structure that provides extensive opportunities for the defence of entrenched interests. Danish government officials believe that there has been movement away from the use of preparatory committees in recent years, and that concerns about the possibility of interest group capture are part of the reason. Some suggest that the choice of committee chairs, and to some degree of members, is sometimes made for strategic reasons. A related point is that a committee structure inevitably contains the danger that legislative outcomes will be steered in directions that favour incumbent interests and discourage entry and innovation. The fact that interest groups are active from the very start of the process of legislating must increase the extent of the danger. On the other hand, while the extent of the involvement of the preparatory committees varies, they are described as a means of arriving at a better analysis of the problem and are not usually involved in the drafting of the resulting legislative proposals. The fact that the proposals derived from the work of the committees are then released to a wider public for comment provides a significant safeguard – provided that there is an expectation of responsiveness to public comment.

In addition to the *ad hoc* committees, a number of permanent commissions exist, with responsibilities to advise the government in broad areas such as penal codes. New permanent commissions have recently been established, including one with responsibilities for European Union legislation. The permanent commissions structure also provides a ready-made mechanism for government to consult experts on general policy issues, rather than those related only to a specific legislative proposal.

The consultation process also involves the distribution of legislative proposals to affected parties for comments prior to finalisation for submission to Parliament. Broad circulation is taken at this stage. For example, NGOs with an interest in the bill, though they may not be directly affected, are often invited to comment. Most recently, all Danish ministries are required to post bills on the Internet at the time they are made available for comment. This permits broad access, since any member of the public with Internet access now has the opportunity to be informed of legislative proposals and to comment on them.

The Parliament takes a keen interest in the views of those consulted. Committees commonly request copies of comments received and often request responses to these from the responsible minister. A September 1998 circular from the Prime Minister's Office provides increased transparency for Parliament by requiring that explanatory materials accompanying bills must provide information on the parties consulted.

The Committee process for legislative development is, unsurprisingly, not generally used for lower-level rules. Only the most important regulations are developed in this way. Notice and comment arrangements are widely used in the preparation of "substantially important" lower level rules, though there is no formal and systematic requirement for this. Informal consultations may be equally important, especially for less significant rules: officials point to extensive, informal co-ordination conducted day-to-day between ministries and organisations as a common means of ensuring that stakeholder views are taken into account. Such approaches have the advantages of flexibility and responsiveness, but also risk "locking out" important interests from the process when they are not a part of the regulating ministry's usual network. This can be a particular problem for less well-organised interests.

Box 5. **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 focussed 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.

The involvement of the unions and the employers' organisations in the formulation and implementation of labour market policies is laid down in a 1993 law on active labour market policy. At the national level the unions and the employer's organisations are represented in The National Labour Council. This council advises the minister of labour on an ongoing basis on all questions and reforms with relevance to labour market policy. In practice, few bills are presented to Parliament and few initiatives are taken without the acceptance of the council.

At the regional level, unions and the employer's organisations are represented in 13 Regional Labour Councils. These councils adjust the national labour market policy to regional needs and conditions within the national economic frames and performance targets.

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. Other examples include:

- The involvement of the unions and the employer's organisations is important in formulating regulations on health and safety at work and administering them. This involvement is institutionalised in the Work Environment Council which, according to the Health and Safety at Work Act, must be consulted when new rules are made. Unions and employer's organisations have seats in the Labour Market Board of Appeal, which settles complaints about decisions made in accordance with the Health and Safety at Work Act.

- An Agreement on Strategic Competence Development in the state sector is aimed at identifying the kinds of training needed, speeding up the development of new skills by focussing training resources. A framework agreement on teleworking has launched trials to develop new means of using information technologies to give employers and employees in the public sector more flexibility.[18]

- Experimental projects in areas such as improving the efficiency of the public sector and its capacity to attract and retain skilled workers are implemented and financed through agreements.

Previous OECD work on the use of public consultation in Member countries[19] has identified six major objectives of public consultation and documented the extent to which countries' programmes varied in terms of dominant objectives:

- Supporting democratic values.
- Building consensus and political support.
- Improving regulatory quality through information collection.
- Reducing regulatory costs on enterprises, citizens, and administrations.
- Quickening responsiveness.
- Carrying out strategic agendas.

The most important roles for consultation in Denmark have historically been those of supporting democratic values and building consensus and political support. These objectives are dominant in most consensus oriented societies, such as Denmark, and indicate a view of consultation as predominantly a means by which the legitimacy of government is assured and maximised. This requires both a high degree of participation in decision making and need to obtain the consent of the governed.

There are signs that other objectives are becoming more important as Denmark changes its consultation and associated policies. The objective of improving regulatory quality through information collection is an important consideration in the adoption of the Business Test Panels and Focus Groups, described elsewhere in this background report. Similarly, reducing regulatory costs on enterprises, citizens and administrations is another important objective of regulatory reform initiatives, again including the Business Test Panels. Recent moves to improve RIA in Denmark will almost certainly lead to a greater emphasis on obtaining quantitative information through the consultative process.

Increasing focus on these objectives does not imply that the importance of supporting democratic values and building consensus will be downgraded. Instead, it implies that consultation will have to serve a wider range of objectives and, as a result, will likely become more multifaceted. New structures such as the Business Test Panels, will continue to evolve. A key challenge will be to ensure the adjustment of consultative structures to ensure that the major objectives of consultation are met, while the regulatory process also ensures respect for aspects of regulatory quality such as simplicity, coherence and timeliness.

These *caveats* are particularly important given the concerns voiced by some groups regarding the extent to which legislation is now being made through "emergency" procedures that by-pass normal consultative arrangements. This has allegedly increased in recent years, due to increasing political pressure to respond to the issue of the day. At the same time, there appears to have been an increase in amending new legislation shortly after its introduction to cope with unanticipated difficulties in implementation. Recent legislation in relation to refugees and to motorcycle gang violence are cited as examples: both laws were passed quickly with the use of "emergency" procedures and amendment was required almost immediately.

The legislative handbook published in October 2000 contains more detailed guidance on consultation than previously issued. The handbook should help achieve a consistent and strategic approach to consultation so that it better supports high quality regulation, and democratic values of openness and involvement.

Transparency in implementation of regulation: communication, compliance, and enforcement

The Danish government is active in making regulatory requirements easily accessible to the population, and recently took new steps to broaden access via the use of technology. The government has established the Legal Information Database, a computerised, easily searchable register covering all legislation and lower level rules. Use of the system has been free of charge since January 1998 and it is accessible by the internet. This is an effective means of communication, as Denmark has one of the world's highest rates of internet use, with 22% of households connected. The comprehensiveness of the database is ensured. Laws are simultaneously listed in both the official Legal Gazette and the database. However, the register does not have strict "positive security": there is no formal rule stating that failure to include a law in the register prevents its enforceability.

This "formal" channel of communication is supplemented by widespread use of printed and electronic media to provide easily digested information on legislative matters affecting the general public. In addition, business organisations, unions, and other non-government bodies play an important role in informing their members about legislation. As noted elsewhere in this report, Denmark requires legislation to be drafted in "plain language" and has recently moved, via a new Prime Minister's Circular, to strengthen these requirements.

In contrast to this effort, issues of compliance and enforcement have not received prominence in Denmark to date. As in most OECD countries, there is little prior assessment of the enforceability of legislative proposals, although the review by the Regulation Committee of proposed legislation has included some focus on enforcement issues, such as the likely degree of public acceptance. However, there is no equivalent of the Dutch Inspectorate of Law Assessment within the Ministry of Justice, or of the "Table of Eleven" process for identifying *ex ante* compliance stresses.[20] Denmark has recently had experience with legislation that quickly proved to be unenforceable or required significant amendment shortly after coming into effect. A formal process of considering compliance issues, such as that undertaken in the Netherlands, should be considered by policymakers as a possible remedy.

3.2. Choice of policy instruments: regulation and alternatives

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. The range of policy tools and their uses is expanding as experimentation occurs, learning is diffused and understanding of the potential role of markets increases. At the same time, administrators often face risks in using relatively untried tools, bureaucracies are highly conservative, and there are typically strong disincentives for public servants to be innovative. A clear leading role – supportive of innovation and policy learning – must be taken by reform authorities if alternatives to traditional regulation are to make serious headway into the policy system.

The main requirement for regulating ministries to consider regulatory alternatives is imposed by the Regulation Committee, and is very recently implemented, and is limited in its application to primary legislation. The Committee checks compliance with the checklist for better regulation, among which Item 3 urges ministries to consider whether "command and control" regulation is likely to be the most effective policy instrument or whether other options might succeed in achieving policy goals at lower cost. Checking by the Committee occurs at a very early stage in regulatory development and this, together with its considerable authority, should maximise its effectiveness in having ministries reconsider alternatives when proposed legislation is not clearly justified. The Ministry of Business and Industry currently plans to strengthen ministries' capacities to choose between regulation and alternatives, and among different possible regulations, by drafting and disseminating a guidance document on comparing regulation and alternatives by October 2000. This is a useful step, but it will be undermined by the weakness of RIA for lower level rules.

The use of regulatory alternatives in OECD countries is, while increasing, still at a relatively low level. In this context, the performance of the Danish system in adopting a wide range of policy instruments is generally strong. The range of policy instruments in use in Denmark includes green taxes on specific substances and products, grants for environmentally sound behaviour, voluntary agreements with industry and information programmes targeting both the general public and government agencies (for example, public procurement guidelines). Experience with these instruments is discussed below. In general, the Danish situation can be characterised as one in which a wide range of instruments is used, covering a relatively wide range of policy areas. In addition, there appears to be a greater concern with evaluation and modification of policy programmes involving alternative instruments than is found in most other countries. For example, the Ministry of Environment and Energy in 1997 published the results of an extensive evaluation of its Cleaner Technology Programme. This is in line with the Ministry of Finance's recommendation to ministries to use evaluations, particularly where subsidy programmes are employed. This concern with evaluation and policy learning should contribute significantly to improving the quality of these instruments.

Despite the relatively frequent use of alternatives, there is scope for much more use. Traditions of flexibility and the use of informal approaches suggest that Denmark is ideally placed to maximise the use of co-operative alternatives to regulation. Increasing the use of alternatives can be an important strategy in reducing the growth of the number and complexity of regulations. Officials involved in existing programmes of regulatory alternatives believe that current experience with them has been largely successful and that their use is likely to expand. For example, a new project beginning in 1999 in the Environment Ministry will seek to make decision-making on alternatives more systematic.

Green taxes. The tax system has been widely used to pursue environmental objectives in recent years. The Green Tax System was designed in 1993 and implemented from 1994. The 1995 Energy Package made fundamental changes to the tax system for business in respect of energy use, and the system has been progressively refined and improved since this time. Reform has increased existing environmental taxes (*e.g.* energy, CO2 and waste taxes) and introduced new taxes (water tax, SO_2 tax, waste water

discharge tax). Thus, the tax system is used to influence behaviour in relation to a widening range of environmental goals. Moreover, the size of the impact is becoming significant, with a target of levying environmental taxes equivalent to 1.2% of GDP by 2000.[21]

Use of the tax system to promote environmental goals also includes tax expenditures. The Energy Package includes subsidy elements that have required formal approval from the European Commission. An element of this approval has been that businesses should not receive amounts via tax expenditure measures (including reductions in other taxes and discounted tax rates as a result of entering voluntary agreements) that exceed the total energy taxation. An evaluation conducted in Denmark in 1999 has concluded that this revenue neutrality requirement is being met, although the more rapid growth of tax expenditures means that they will overtake total energy tax receipts in the near future.[22]

The Green Tax System is complex in character, involving the application of several different rates for different uses or means of generation of the pollutant. For example, according to the 1999 OECD Environmental Performance Review of Denmark,

> *The current energy tax structure imposes a complex range of carbon tax rates, with the highest values given to residential space heating and the lowest to energy-intensive industrial processes, in order to maintain the competitiveness of Danish industry.*[23]

The OECD review recommends a careful examination of the effectiveness of the differentiation in providing this protection, and simplification of the structure. The recently completed review (see above) of the programme conducted by the Danish government also recommends simplification, in particular in relation to administrative requirements, as well as continued scrutiny of the international context in relation to greenhouse gas reductions and impacts on industry competitiveness. It notes, however, that the administrative complexity of the system is to a large extent a result of the policy's focus on balancing environmental incentives with regard for the international competitiveness of Danish industry.

One important element of green tax reform has been the opportunity for heavily affected enterprises to obtain tax reductions, or rebates, by entering into voluntary agreements to reduce energy consumption. Companies involved in one of 35 specified heavy industrial processes, as well as those for whom tax liability would exceed 3% of value added, are eligible to participate. Six hundred to 800 firms were initially expected to be eligible, out of a total of 200 000 taxable firms. Voluntary agreements are based on a standardised and verified energy audit and an action plan for reducing energy consumption and CO_2 emissions. Agreements last for three years. The energy audits identify energy saving investments and participating firms must agree to implement all those with payback periods of less than four years (heavy industry) or six years (others).[24] By early 1999, 230 companies were covered by either individually or collectively negotiated agreements, forecast to rise to 400 by the end of 2000. The OECD's Environmental Performance Review states that the high administrative costs of entering into and monitoring such agreements severely limits access to them, while the scope for obtaining tax rebates is also limited by the fact that most large industrial users of energy have already made many of the energy saving investments with payback periods of less than four years. As a result, it has recommended a review of the effectiveness of the rebate in improving energy efficiency.

Given the above, an innovation currently being introduced in the new round of agreements may prove important. This is the concept of "energy management", a form of "process regulation". Enterprises will be required under the agreements to agree to implement programmes and systems for the management of energy use. The introduction of this dynamic and systemic element to the process may increase benefits while reducing the costs of compliance.

The 1999 evaluation of the Green Tax Programme projects that the Energy Package will contribute to a total reduction in CO_2 output of 4% by 2005.[25] However, this reduction is measured against levels at the start of the programme. In the absence of a true baseline, the contribution of the programme to this reduction is not possible to estimate accurately. It is, for example, possible that new investments made for economic reasons would in any case have reduced CO_2 emissions. Moreover, there is little information on the opportunity cost of the diversions of investment implied by the Energy Package provisions. Finally, the performance of the existing programme has not been discussed in the context of the likely performance of major alternatives such as tradable pollution permits.

Voluntary agreements are concluded with industry sectors in pursuit of a specific environmental goal. Denmark ranks fourth among European Union countries in the use of negotiated voluntary agreements in the environmental field, although its total of 16 agreements is much smaller than the 93 in place in Germany and the 107 in the Netherlands. Danish agreements cover the agriculture and energy sectors, as well as industry. They cover a wide range of environmental concerns, including air, water, and soil quality, as well as climate change, waste management, and ozone depletion. As in virtually all EU countries (the Netherlands is the sole exception), the large majority of these agreements are non-binding in nature.[26] However, the voluntary nature of the Danish agreements is limited by the fact that legislation gives the minister the power to issue a formal order making the agreements enforceable and mandating that non-participant firms within the industry comply with their conditions. This power is rarely used. It should also be noted that additional laws or directives have been necessary in a majority of cases to support or give effect to the agreements

The Ministry of Environment and Energy recently concluded a survey of 13 such agreements, negotiated between 1987 and 1996 and, covering *inter alia* recycling transport packaging, collection of nickel-cadmium batteries, use of PVC, reduction in organic solvents in household products, cleaner diesel fuels, and disposal of refrigeration equipment containing CFCs. The results show a mixed, but generally positive picture. Five of the agreements were found to have succeeded fully in meeting environmental objectives, while a further three suffered delays *vis-à-vis* the originally envisaged timing but were expected to result in full compliance with objectives. In a further three cases it was judged too early to draw conclusions on their performance. Two agreements had failed to meet their objectives.

Ministry of Environment and Energy officials cite as major success factors the degree of coverage of the agreements (the involvement of a majority of the industry contributes to success), the ability to collect and monitor sufficient data to determine compliance levels, and the extent of trade exposure in the sector (the potential for competitive disadvantage in more trade exposed sectors is a disincentive to the conclusion of agreements).

Information based strategies are also widely used in Denmark. It is not uncommon for ministries to issue guidelines for the use of other ministries. One recent example is a 1995 Ministry of Environment and Energy circular recommending that ministries draw up action plans to incorporate environmental goals in procurement decisions and providing guidance on achieving this. Other examples include the Ministry of Business and Industry's 1995 manual on conducting business impact tests and the equivalent manual on conducting environmental impact assessments issued by the Ministry of Environment and Energy. The use of non-binding guidance material in preference to more formal mechanisms seems to be a feature of the Danish system, founded on the culture of co-operation and consensus. A high level of compliance with such informal guidance is generally expected and obtained.

In the public domain, initiatives have included information campaigns on the disposal of electric batteries and on reducing drinking water consumption. Another is the EPA's List of Undesirable Substances", published in 1997 and regularly updated. This is a list of approximately 100 chemical substances or groups of substances known to have harmful effects on humans and/or the environment and

to be used in Denmark in significant quantities. That is, the 100 substances are drawn from the 1 100 substances contained in EPA's "effects list"; the key criterion for inclusion on the List of Undesirable Substances is that more than 100 tonnes per annum of the substances are used in Denmark.

The preface to the list[27] states that:

> *The list should be considered as…a guideline for them manufacturers, product developers, purchasers and other players concerned with chemicals" and "The fact that a substance is included … does not signify that the EPA has decided to recommend prohibition … Regulations on total or partial prohibition are considered to be just one of many means of reducing the environmental loading caused by problematical substances. Other means of restricting use include,* e.g.*, classification and labelling, taxes on particularly problematical chemicals, stricter standards, voluntary agreements on phase-out initiatives, eco-labelling, green guidelines for purchasing, positive/negative lists for selected product areas, subsidies for substitution initiatives, emission control and information campaigns.*

Thus, the purpose of the list is to exercise a "moral suasion" in discouraging the use of these chemicals, with future regulatory action a possible, but not inevitable, next step.

Given the recent introduction of this initiative, evidence on its impact is unavailable. It is possible that the list acts to reduce compliance costs where chemicals are subsequently banned or restricted, by providing users more time to identify and adopt substitutes. However, this course raises the possibility that chemicals that have attracted adverse notice without justification (*i.e*. where further investigation shows that harms associated with them are smaller than believed, or non-existent) may be affected and that the results of the listing may be perverse, through lowering productivity or leading to harms greater than those associated with the chemical.

Guidelines are widely used as an alternative to regulation in the area of consumer protection in Denmark. The Consumer Ombudsman sees guidelines as a means, more flexible than formal regulation, to influence the behaviour of particular industries. Where a problem likely to be amenable to resolution by guidelines is identified, the Ombudsman invites relevant business and consumer groups to participate in their formulation. He has the power to make guidelines without the consent of these groups, but generally avoids doing so, as the utility of guidelines made without consent has been found in practice to be limited, due to lower compliance rates. Business has a clear incentive to support guidelines once made, as their cancellation (which might occur in cases of widespread non-compliance) is likely to lead to the promulgation of regulations, which are likely to diminish flexibility and increase compliance costs.

Where significant non-compliance with guidelines occurs, the Ombudsman is able to instigate court proceedings. Guidelines do not, themselves, have formal legal status. However, they do have evidentiary status in court proceedings, being regarded essentially as interpretations or clarifications of the application of legislation to the particular industry or situation. Thus, it must be shown in court that the non-compliance with the guidelines constitutes non-compliance with the legislation to which they refer.

Guidelines offer potentially significant advantages in terms of flexibility, but they can also have negative impacts on competition, due to strong incentives for existing producers to lobby for guidelines that pose barriers to new entrants or that legitimise existing anti-competitive behaviours. This requires that attention be given to safeguarding openness and transparency in designing the procedures under which guidelines are made. Mechanisms such as ensuring consumer representation, as used in Denmark, are useful. Review of proposed guidelines by the competition authority is also appropriate.

Performance based regulation. In common with many OECD countries, the major occupational health and safety legislation in Denmark is "performance based" and so are, to a large extent, the lower level rules supporting it. The legislation focuses on output standards, rather than requiring specific inputs. There is now around 30 years experience in Denmark with this performance-based approach, while reforms implemented two years ago moved the legislation further in this direction. In common with most countries that use performance based approaches, the Danish government issues non-compulsory guidance documents to assist firms in developing their own means of compliance with performance based standards. However, officials believe that businesses have in general a high degree of confidence about determining their own compliance requirements, perhaps due to the lengthy experience with the use of the such standards in Denmark. Thus, concerns that have arisen in some countries about guidance material becoming *de facto* regulation of a prescriptive, and often complex sort after the adoption of performance based rules do not appear to be relevant in Denmark. In addition, self-auditing of occupational safety and health compliance is widely used, while a targeted approach to government inspections was recently adopted to improve the focus on higher risk employers.

Subsidies are extensively used to support energy conservation and renewable energy. Fifteen subsidy programmes are currently in place to support energy efficiency investments and audits.[28] The Cleaner Technology Programme has been in place since 1987, with over Dk 300 million expended under the programme in the last five years. A review of projects commenced during the first five years of its operation was published in 1997. According to this evaluation,[29]

> *When the support scheme started, the goal was simple but ambitious – namely to bring about the development of process-integrated technologies that could reduce pollution. By using pilot projects to develop such technologies and demonstrate their environmental and economic results, it was hoped to be able to stimulate other enterprises to implement these technologies.*

The scheme was essentially envisaged as working in tandem with environmental regulation, in that it was hoped to demonstrate that certain "cleaner production" technologies allowed businesses to meet regulated environmental standards at lower cost than "end of pipe" treatments. Subsequently, it was determined that some of the technologies demonstrated under the programme had attractive rates of return on investment, were thus "good business" and might be adopted in the absence of regulatory requirements. However, this continues to be regarded as a minority aspect of the programme.

The evaluation focused on 150 "development and implementation" (of technologies) projects and found that a total of 40% of projects fully achieved their environmental goals while either lowering costs (30%) or being cost-neutral (10%). These evaluations also looked at number of developments actually implemented in production. A total of 76 projects had been implemented on a pilot basis in production processes, with six of these having been discontinued and five being of "limited use". The remaining 65 are regarded as having "good possibilities for diffusion". Notably, 31 further projects remained at the prototype or laboratory stage while being regarded as "potentially useful". Thus, while almost two-thirds of projects started (96 of 150) showed prospects of yielding real results, only two-thirds of these – or 43% of total projects – had reached production some 10 years after the commencement of the programme, demonstrating clearly the long-term nature of such programmes. On the other hand, the evaluation has also tracked diffusion rates of cleaner technologies developed under the programme for each of six industry "branches", finding that the "use or planned use of one or more forms of cleaner technology developed or demonstrated under the support scheme" varied from 27% in the wood and furniture industry to 100% in the Abattoir industry. The average (weighted by enterprise numbers in each sector) is 47%.

When asked why they adopted cleaner technologies, a large number of enterprises (averaging 39% and varying between 17% and 91% by branch) stated that "the investment pays". However, few were found to be able to provide detail on this, with "very many" unable to indicate the projected payback periods for these investments. The evaluation concludes that:

… a tendency has been observed for cleaner technology to be primarily a cost-effective alternative to traditional environmental technologies, whereas the use of cleaner technology more rarely leads to a direct increase in productivity. In cases where cleaner technology has lead to … productivity benefits, this is frequently because the cleaner technology has been integrated in the automation of formerly manual task.[30]

In sum, the picture emerging from this programme is mixed. A relatively high proportion of technology development projects are being continued through to production, while the take up rate in targeted industries is quite high. Attitudes of firms adopting the technologies are generally positive. However, while many firms believe "the investment pays" it appears that for most investments this is true in the specific sense of representing a saving on the cost of "end of pipe" treatment, rather than in the more general sense of representing a sound commercial investment *per se* as often claimed by supporters of cleaner technologies. There is little precise information on the benefits and costs incurred in practice.

It seems clear that the diffusion of the resulting technologies owes much to government pressures. Among the most commonly cited reasons for adoption were "environment permit required", "demand by environmental authority" and "action plan for the aquatic environment", each indicating a significant measure of compulsion, or at least encouragement, by government. The assessment implicitly downplays the intrinsic economic benefits of the projects by suggesting that the indirect benefit of being able to meet customer expectations of good environmental performance in production may be the most important one for most firms.

Finally, the evaluation shows that it is intrinsically difficult to monitor such projects and make them responsive due to the necessarily long timelines involved in developing and commercialising a new process. Thus, it is only now, after more than a decade of investment, that there is a reasonable information base about which to base decisions on future directions. Even now, questions of the extent to which government funding for the programme displaced private effort and the extent to which this might be true in the future (*i.e*. due to the concept underlying the programme having now been widely demonstrated), have apparently not received attention, while the extent to which diffusion of the technologies would have occurred in the absence of government pressures must be questioned. Nonetheless, detailed evaluation conducted has yielded a far superior information base for future planning than is often available in reviewing major government programmes. This commitment to evaluation and policy feedback is clearly a strength in terms Denmark's dynamic policy efficiency.

Conclusions. The picture of the performance of alternatives that emerges is uneven: the use of innovative policy options inherently involves risks of failure, one reason for the lack of take up of many alternatives in OECD countries. Nonetheless, significant benefits have been obtained in Denmark. Perhaps more importantly, a strong Danish culture of evaluation and policy feedback means that the use of alternatives is travelling up a learning curve, and that design and implementation are progressively refined and improved. A complicating factor in many instances has been that alternatives are used to pursue multiple policy objectives simultaneously, adding both to difficulties of design and implementation and to evaluation of outcomes. In this circumstance, the adoption of more rigorous and transparent processes for policy choice, including improved RIA, has much to contribute.

3.3. Understanding regulatory impacts: the use of Regulatory Impact Analysis (RIA)

The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasised the role of RIA in systematically ensuring that the most efficient and effective policy options were chosen. The 1997 OECD *Report on Regulatory Reform* recommended that governments "integrate regulatory impact analysis into the development review and reform of regulations".

A list of best practices is discussed in detail in Regulatory Impact Analysis: Best Practices in OECD Countries[31] and provides a framework for the following description and assessment of RIA practice in Denmark.

Denmark adopted RIA relatively later than did most OECD countries. Requirements for assessment of fiscal impacts have existed since the 1920s, but the first requirements for systematic assessment of proposed legislation for its likely economic and environmental effects on businesses was not implemented until 1993. This requirement was established by circular and required all ministries to complete a detailed description and, where possible, a quantification, of expected effects on business as part of the process of developing a draft bill. In 1995, this requirement was supplemented by annual reporting by the Ministry of Business and Industry on the total impacts on business of laws passed by the Parliament during the previous year. In Spring 1998, the Prime Minister's Department revised its circular on law-drafting to incorporate assessments of administrative costs for businesses and citizens, as well as a requirement that ministries use RIA and document the results in the explanatory notes that accompany draft laws. With this last 1998 revision, independent scrutiny of RIA was possible for the first time and with it the first opportunity for RIA to have a real effect on policy outcomes.

Under the current policy, ministries are "advised" to perform a comprehensive RIA if proposed laws have substantial economic impacts. The Ministry of Finance's guide to benefit-cost and cost-effectiveness assessments of public investment are suggested as the basis for conducting these comprehensive RIAs. RIA consists of a number of partial assessments, covering the following aspects of the draft law. These assessments are conducted independently and are not systematically combined to form a coherent and integrated whole:

- Financial impacts on national and local government.
- Administrative impacts on national and local government.
- Economic and administrative impacts for business and industry.
- Administrative impacts for citizens.
- Environmental impacts.
- Impacts in relation to EU legislation.

As the following assessment shows, Denmark has implemented many of the preconditions for a wide-ranging and effective RIA system, and is continuing to improve the basis for RIA. Of particular note is the adoption of measures such as Business Test Panels, as well as the development of the "model enterprise" programme, which have the potential to contribute to providing the information on which high quality RIA depends. However, most officials agree that RIA has, to date, had relatively little impact on the shape of regulation and therefore has made little contribution to the regulatory quality improvement programme. Officials responsible for RIA believe that regulators doubt the feasibility of conducting sophisticated RIA, and remain concerned at the risk of policy paralysis. The key task for the near term therefore remains to establish the benefit-cost principle as a "frame of reference" among regulatory policy-makers, and to ensure that the most important regulatory initiatives are based on reliable methods of assessing benefits and costs. Limited progress on quantification of RIA to date is unsurprising, given the relatively recent adoption of RIA requirements. Useful steps are being taken to address it. These must be accorded high priority in the future.

A further limitation of importance is that RIA has yet to be fully applied to lower level rules. Ensuring full application to such rules is highly desirable, since they are not subject to the parliamentary scrutiny applied to laws. OECD countries that apply RIA to lower level regulations manage the costs of RIA by targeting only the most significant regulations, by incorporating RIA into public consultation to reduce information costs, and by building RIA into the policy process from the very beginning, that is, not adding it as another step late in the process. Third, RIA is now being integrated into the extensive Danish system of public consultation, a process that should be standardised so that consultation is used as a means to assure and improve RIA quality. Fourth, scrutiny of RIA within the government is fragmented among different ministries with different mandates, and is unlikely to be fully effective in maximising quality and ensuring the comprehensiveness of analysis.

Maximise political commitment to RIA. Use of RIA to support reform should be supported at the highest levels of government. The Danish system rates highly on this criterion. The fact that the RIA requirement emanates from the Prime Minister's Office lends an important element of authority to it. Moreover, all bills presented to the Parliament by the government have RIAs attached, another tangible expression of government commitment to RIA. A third element is the establishment of the Regulation Committee. The Committee has worked to remove legislation that does not meet government quality criteria from the initial list of ministerial proposals, and here RIA has been able to take a role in determining the shape of the legislative programme presented to the Parliament.

Allocate responsibility for RIA programme elements carefully. To ensure "ownership" by the regulators, while at the same time establishing quality control and consistency, responsibilities should be shared between regulators and a central quality control unit. The Danish approach has positive and negative elements in this regard.

Like most countries, Denmark requires regulating ministries to be primarily responsible for the conduct of RIA. The extent of this decentralised responsibility is somewhat greater than in many countries, however, in that the decision as to whether to conduct "comprehensive" RIA, and the decision as to whether to use the Business Test Panel process to estimate administrative burdens is ultimately left to the ministries. That is, while there is a strong element of central "advice", there is a level of discretion as to the type of the RIA analysis that will be used in an individual case. In Danish political culture, it appears that the "advice" has generally been followed, though there have been exceptions; for example, it was not until recently that all ministries, have used the Business Test Panels.

Several players are involved in the exercise of central quality control over RIA. In the first instance, the Ministry of Finance evaluates individual RIAs, with a focus on the financial and administrative impacts of the draft laws.[32] This is the only formal scrutiny of RIA, although the Ministry of Business and Industry and the Ministry of Environment are consulted regarding their areas of responsibility. In effect, where RIAs are considered unsatisfactory, a dialogue will take place with the responsible ministry. Where this process does not resolve the concern, the Ministry of Finance can attempt to block the proposal at the weekly Cabinet meeting which approves all draft laws for submission to Parliament. Scrutiny by the Finance Ministry clearly could be a powerful means of quality control. However the effective split between the Ministry of Finance responsibility for financial, administrative and consumer/social impact, and the responsibility of the Ministry of Business and Industry to ensure that business impacts are properly estimated, risks inconsistent approaches, the possibility of duplication or, conversely, of a lack of scrutiny of some impacts. This is partly because the frame of reference for decisions on regulatory quality can differ under different analytical methods, and partly because constituencies for the different kinds of analysis may have different interests in the final outcome. Consumer interests and business interests are not always parallel, for example.

A second form of quality control is applied by the Ministry of Business and Industry through its annual report to Parliament on the impact on business of legislation adopted in the previous year. Impacts are reported in four categories: impacts on business costs, impacts on administrative costs, impacts on market opportunities and long term impacts on structural competitiveness. Only the first two types of impact are generally quantified. A panel of business representatives is consulted on the contents of the report on a biannual basis.

These reports represent an innovative additional tool in the RIA armoury. They do not constitute a true *ex post* analysis, as the real effects of the previous session's legislation would generally not be able to be determined as the report is prepared. However, their key contribution is in focussing on the cumulative impacts of the legislation passed during a parliamentary year. This is possibly without parallel in the OECD countries, though the United States Office of Management and Budget prepares a similar report on the costs of *subordinate regulations* issued during the year. The annual cost report seems conceptually linked to the Regulatory Budgeting concept, discussed *inter alia* in the United States and Australia, with its concern to ensure control and accountability for the total redirection of resources via regulatory means. If it is to contribute effectively to a debate on the direction or rate of change of the regulatory burden, however, a strong effort to quantify, at least in indicative terms, the major cost elements involve is essential.

The third form of quality control is review by the Regulation Committee. This does not relate to RIA in a formal sense, as the Committee considers proposals for inclusion on the legislative programme at the start of each Parliamentary year. However, the establishment of RIA means that justification of proposals on grounds of benefits and costs is necessary at this preliminary stage. According to the Ministry of Finance "... Ministries are required already at this very early stage in the law making process to give a thorough description of the policy problem at hand, to describe the purpose of the bill along with the expected impact on both business, industry, citizens, environment and the public authorities and finally to consider regulatory alternatives to traditional 'command and control' regulation."[33]

Train the regulators. Regulators must have the skills to do high quality RIA. The key means adopted in Denmark to ensure that they are available have been the issuance of detailed manuals on aspects of RIA and the offer of expert advice and assistance by the Ministry of Business and Industry. Manuals have been issued on the analysis of business impacts (by the Ministry of Business and Industry in 1995) and on the conduct of environmental impact analysis. These are expected to be revised and supplemented with additional guidelines on other aspects of RIA during 2000, following the release of a handbook for regulators on making high quality regulation. There is a considerable and growing quantity of written guidance material available.

The Ministry of Business and Industry has made expert advice and assistance available to ministries preparing business impact analyses, thus adding a further element to efforts to equip regulators with RIA skills. Initial experience is that the take up of this offer is low. Resources available to provide this advice have, so far, been minimal and a decision has now been taken to increase resources dedicated to this purpose to encourage further take up. However, ministry officials believe that another significant cause of the current low level of take up is the strong tradition of independence of individual ministries and a consequent reluctance to work closely with another ministry on the policy process due to possible loss of policy autonomy. Perhaps for the same reason, training *per se* has not been provided. This places Denmark in the minority of OECD countries without RIA training – almost two-thirds of countries provide specific RIA training. Provision of training is particularly important in the early stages of a RIA programme where both the level of technical skills and the cultural acceptance of the use of RIA as a policy tool need to be raised. This should be a high priority for the future development of Denmark's RIA programme.

Use a consistent, but flexible, analytical method. Denmark has not, to date, formally required any particular methodology to be used in the conduct of RIA, or even established minimum standards of analytical quality. As noted above, a wide ranging analysis has been required, although the degree of quantification expected, and achieved, has been low. There has been a focus on specific areas of impact, such as administrative burdens on business. More recently, the Ministry of Business and Industry has moved to encourage a more formal benefit-cost approach to assessing business impacts, although it believes that this has not yet been effected in practice. The Ministry of Finance is currently developing comprehensive RIA guidelines that will include material on how to conduct benefit-cost analysis and cost effectiveness analysis. These are primarily intended to be used in evaluating proposed public investment projects. However, ministries will also be advised to use the guidelines, when issued, to assess draft legislation that has substantial economic impacts. The regulatory quality checklist, published in spring 1998, has already advised the use of the existing guidelines for this purpose.

The trend in OECD countries is strongly toward the adoption of more rigorous and standardised methodologies over time, particularly as experience and expertise with the use of RIA is accumulated. In particular, an increasing number of countries is adopting benefit-cost analysis. While the Danish experience with RIA is, as yet, limited, there are major potential benefits in moving step by step to a formal and consistently applied BCA principle, including detailed methodological guidelines for the most significant regulations, such as those recently development by the Ministry of Finance for use in assessing public investment proposals. Such a move would have implications for the provision of training and support to ministries, as noted above, and would also need to be linked to data collection strategies and to public consultation. However, a number of existing strategies outlined in the following section have potential to be used in an expanded way to support a more quantified and rigorous RIA programme.

Develop and implement data collection strategies. Denmark rates highly in terms of its performance in adopting innovative strategies to improve the flow of information to ministries on the likely impacts of regulation, although the quality of the resulting data has in some cases fallen short of expectations and continued efforts are being undertaken. A key mechanism has been the development of Business Test Panels. This is a process in which a cross-section of businesses is asked directly about the expected administrative burdens of proposed legislation. Within a deliberate effort to minimise respondent burden (a target of a 15 minutes average response time for each form has been adopted), firms are asked for information on both costs they would incur internally and those that would be likely to be contracted to external service providers. Initially launched in 1996, with a panel of 200 firms, the initiative was made permanent in 1997 and was at the same time expanded to encompass three panels of 500 firms each, in order to improve the statistical reliability of the data. Response rates have been high, averaging about 50%.

Ministries have discretion about using the test panel procedure, but most have used it for legislation likely to have a significant business impact. During the 1997-98 parliamentary sittings, 18 bills were submitted to Test Panels,[34] while another 20-30 were assessed in "Focus Panels", a related mechanism for eliciting information on the impacts of bills with effects only on specific sectors of the economy. This compares with a total number of approximately 150 bills considered by the Parliament in 1998. The Test Panel concept has now been taken up by the European Commission, which began a trial of the concept in eight member countries in mid-1998. Five draft Directives will be assessed by mid-1999.

Notably, the EC pilot will use test panels to obtain information on the whole range of impacts on business, rather than merely the administrative impacts. This development of the concept should be carefully watched by Denmark with a view to considering whether it represents a cost-effective source of accurate additional information and whether the current balance between respondent burden and information quantity and quality is appropriate in the Danish Test Panel process. It is clear that the precision of current test panel data is low, and that the system is largely seen as an "early warning system" for unanticipated major impacts, rather than as a means of reliably estimating the administrative burdens

that would be imposed by a draft law. Nonetheless, administrators of the scheme point to at least two instances in which problems revealed by the Test Panel process have led to significant changes in proposed laws.

The model enterprise programme is a new way of assessing administrative burdens. The first phase consists of the selection of a number of "model" enterprises that are statistically representative of their particular industry segment. In the next phase, the use of existing statistical databases will make it possible to compute total administrative burdens from extensive interviews with a limited number of model enterprises. Thus, the programme is seeking to accumulate knowledge on the factors determining administrative burdens. These factors are expected to include administrative routines and competence, organisation, use of information technology and outsourcing and attitudes toward the regulation. The programme is expected to allow tracking of annual changes in administrative burdens as well as helping explain the observation of widely varying administrative burdens reported by similar enterprises. It represents an innovative approach to the issues of RIA data collection and has the potential advantage of removing many respondent biases of survey or consultative based approaches.

Concurrently with the implementation of the Business Test Panel, work commenced on the MobiDK project in the Ministry of Business and Industry. The project is developing a general equilibrium model of the Danish economy, focusing on industrial policy analysis. The model has to date been used to evaluate the impacts on business of regulations on greenhouse gas emission reductions and of competition regulation. It is also intended to model the consequences of changes in shop trading hours legislation. Although work began in 1996, progress has been slower than expected and as of early 1999, no concrete results had yet been obtained from this effort.

Also relevant to the issue of data collection is the use in Denmark of widely representative "committees" to assist in the initial development of legislative proposals. This mechanism, which has strong roots in the consensual and consultative basis of Danish political culture, also provides access to a potentially rich set of data sources on regulatory impacts from early stages. This clearly has potential to be drawn upon more strongly as the degree of formal analysis and quantification of impacts in Danish RIA increases.

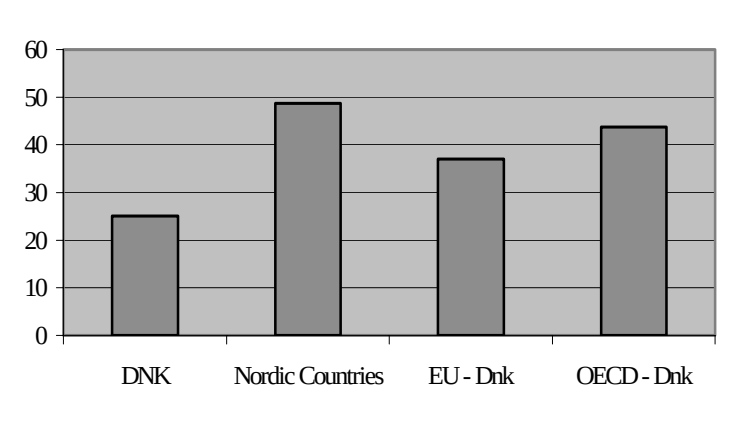
Target RIA efforts. RIA resources should be targeted to those regulations where impacts are the most significant and where the prospects are best for altering outcomes. RIA in Denmark is almost totally focussed on primary legislation, with the option of using the Business Test Panels to analyse the administrative implications of lower level rules being the major exception. This is generally consistent with a focus on the most significant impacts, although the focus is almost certainly too narrow, since many lower level rules also have major impacts. While Denmark has moved quickly to establish and refine RIA processes for law, the experience of the Netherlands indicates that it is feasible to work to adopt RIA for both laws and lower level rules simultaneously. Indeed, there are significant benefits in doing so, as the disciplines and information requirements imposed should be mutually supporting. The extension of RIA requirements to major lower-level rules should be a key focus of the programme's future development.

Integrate RIA with the policy development process, beginning as early as possible. Perhaps unsurprisingly, given the relatively recent nature of RIA efforts in Denmark, it does not currently seem to demonstrate strong integration with the policy process. Policy officials are not able to point to cases in which the conduct of RIA has lead to significant changes in legislative proposals, while the Ministry of Business and Industry has found ministries reluctant to make use of its offers expert assistance in the conduct of RIA, attributing this to a concern to guard policy independence.

On the other hand, the nature of the Danish Parliament, with its large number of political parties and history of minority coalition governments, makes the provision of detailed and structured information on bills via RIA a potentially significant influence on the process of debating and modifying bills presented by the government. This aspect of RIA, with parliamentarians as the primary audience, indicates the particular importance of working to *communicate the results* of RIA effectively if they are to be influential in policy outcomes.

Box 6. **The quality of Regulatory Impact Analysis**

This synthetic indicator of the application and methodology of regulatory impact analysis looks at several aspects of the use of RIA and ranks more highly those programmes where RIA is applied both to legislation and lower-level regulations, where independent controls on the quality of analysis are in place and where competition and trade impacts are identified, as well as the distribution of effects across society. It also ranks more highly the use of RIA documents for consultation purposes, RIA programmes where benefits and costs are quantified and where a benefit-cost test is used in decision-making. Denmark has a low score on this indicator, trailing both the OECD average and the average of the Nordic countries by a significant margin. Among the contributors to this outcome are the lack of the use of quantified, benefit/cost based analysis, the fact that RIA is not applied to lower-level rules and the fact that RIA documents are not used to inform the public consultation process.



Source: Public Management Service, OECD.

Involve the public extensively. As indicated above, Denmark has a number of mechanisms by which to ensure public involvement in the development of policy. The committee structure used for developing bills ensures wide representation of organised interest groups and can act as a conduit of RIA data, while the Business Test Panels provide for input on specific inputs from a large number of individual business entities. In addition, the custom of releasing legislative proposals for public consultation provides a further opportunity for input into the policy content and impact assessments. A key initiative being taken in 1999 is the release of the results of business impact assessments conducted as part of the RIA process on an internet site. These factors mean that Denmark is well placed to profit from extensive public input into the RIA process. However, as the formal publication of RIA is only a new requirement, there is as yet no experience with this public involvement and its successful development in practice remains a high priority task for the future.

Apply RIA to existing, as well as new, regulation. RIA disciplines are equally useful in the review of existing regulation as in the *ex ante* assessment of new regulatory proposals. Indeed, the *ex post* nature of regulatory review means that data problems will be fewer and the quality of the resulting analysis potentially higher. Despite this, there is no evidence of a consistent methodological approach being taken to review activity in Denmark. Ministries have, to date, been asked to review legislation for which they are responsible but such reviews have not been directed by detailed guidance from the centre, nor subjected to

scrutiny by centre of government agencies. This is apparently a function of the highly decentralised nature of the governing process in Denmark and the strong tradition of individual ministerial responsibility. However, the result is that there is no evidence that RIA is consistently applied to the review of existing regulation.

4. DYNAMIC CHANGE: KEEPING REGULATIONS UP TO DATE

The OECD *Report on Regulatory Reform* recommends that governments "review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively". In Denmark, review activity has historically been decentralised and focussing on only those policy objectives relevant to the field under reform. Recent initiatives, however, in particular the establishment of the Regulation Committee with a broad reform mandate, constitute a major change of approach.

The strong view in Denmark of individual ministerial responsibility and the relatively weak co-ordinating role of the centre of government agencies combine to make difficult the establishment of a strategic, centrally directed or supervised programme of review of existing legislation. It is "the responsibility of the minister to make sure that legislation is relevant and up to date", according to the Danish government.[35] Nonetheless, important informal co-ordination mechanisms exist. Strategic planning by centre of government agencies is likely to be put into action through informal co-ordination, rather than through widely published "strategic review" programmes. According to the Danish government, the entire structure of environmental regulation has been reformed and modernised over several years, beginning in the late 1980s. In addition, much of the structure of health, safety and consumer protection regulation has been reformed in recent years.

Danish measures to review and improve existing regulation are likely to broaden considerably in the near future. A key initiative under consideration by the Regulation Committee would involve the establishment of a monitoring system for major legislation that collects relevant data for a "comprehensive evaluation and review process, also involving regular reports to the relevant Parliamentary Committee".[36] Few details of such a proposal have as yet emerged. However, officials indicate that it is likely to be based on the implementation of a process of mandatory *ex post* reviews of legislation three to five years after introduction. Such *ex post* review requirements are rapidly becoming more common in OECD countries and can act as a powerful adjunct to *ex ante* RIA by checking the performance of regulations against initial assumptions. This proposed development is likely to represent a major step forward for Danish regulatory reform policy. The likely benefits of this proposal are increased by the fact that it is proposed to be administered through the powerful Regulation Committee, with its strategic role in relation to regulatory quality. It is important to see *ex post* review of this sort as a complement to rigorous *ex ante* RIA, rather than a substitute for it. *Ex post* review can help to determine whether legislation is meeting its initial objectives, but cannot substitute for RIA's role in providing a systematic basis for the weighing of policy alternatives from the very beginning. *Ex ante* analysis avoids problems, while *ex post* analysis corrects problems early.

Finally, an additional "trigger" for review of existing legislation was implemented in March 1999. This requirement relates to all proposals to amend Danish legislation to implement European legislation. In a brief to be prepared for review of a legislative proposal by the Parliamentary European Affairs Committee, the relevant ministry must summarise the effect of the proposal on existing regulation and the relationship of the new requirement to existing European law.[37] The process is intended to provide a proactive assessment of new European legislation against the principles of subsidiarity and proportionality. However, it also potentially provides an important check on policy coherence and may become an important review mechanism.

Reducing administrative burdens

Reducing administrative burdens imposed on business by regulation has been a prominent theme in Danish efforts to improve the quality of existing legislation and new proposals. The Ministry of Business and Industry is responsible for co-ordinating and promoting specific actions in this area. Work on reducing administrative burdens began in 1995 with the establishment of a committee with the specific responsibility to recommend ways to reduce administrative burdens on SMEs. The committee, composed of a mix of civil servants and business representatives, presented an action plan to the government that was largely composed of initiatives proposed by the latter. As a result of the action plan, 25 initiatives were implemented, including the abolition of 47 fees regarded as especially burdensome to SMEs, exemptions from statistical reporting requirements, establishment of a telephone hotline to answer questions on administrative formalities, a guide to environmental regulation, and the pilot programme for the Business Test Panels.

The burden reduction programme has become an ongoing initiative, with permanent workgroups, including ministry and business representatives, now established to identify further opportunities for simplification and burden reduction. These have been successful in generating a large number of proposals for change, the most recent of which have been the agreement of eight specific changes to ease the administration of legislation, especially for SMEs, in the 1999 budget.

In 1996 the Ministry of Business and Industry conducted a survey to identify and sum the total administrative burdens imposed in all existing legislation. The result was an estimate of total administrative costs of DKr 22 billion, or about 2.3% of GDP.[38] This was benchmarked against available estimates from comparable countries and found to be broadly similar. Danish programmes continue to be expanded to reduce this burden, although quantitative targets and fixed timelines for burden reductions have not been set, in contrast to the approach taken in the Netherlands after it prepared estimates of total administrative burdens. The survey has been used as an input to these programmes by identifying the most burdensome areas of legislation and *a priori* areas for priority action.

The importance of administrative burden reduction in Danish regulatory reform has been such that a specific co-ordinating unit has been established in the Ministry of Business and Industry. The unit led a review of the ministry's own legislation in 1997 and identified 100 suggestions for improvements. Many of these are currently in the course of implementation.

Information technology is being used as part of administrative burden reduction efforts. The government has decided that all forms used by businesses in communications with public authorities should be made available on the Internet. This has been achieved on www.indberetning.dk. Electronic Data Interchange (EDI) reporting of accounting information, including annual accounts, tax returns and some statistical reports has been made possible. A second project involving EDI of information related to employees (taxes, wages, pension entitlements, etc.) recently began and is expected to be operational by early 2001.

A qualitatively different approach is taken in two related projects that aim to improve SME effectiveness in dealing with administrative burdens and reduce their costs. The first is aimed at encouraging SMEs to outsource this work to external providers, while the second will provide consultancy services to assist SMEs in improving their internal administration. Both of these projects are entering pilot testing phases in 1999.

Finally, an "administrative" initiative intended to give widespread prominence to the effort to reduce administrative burdens is the inclusion, in recent years, of regulatory simplification as a criterion in all performance contracts entered into between the government and its agencies and between the government and the most senior civil servants.

5. CONCLUSIONS AND POLICY OPTIONS FOR REFORM

5.1. General assessment of current strengths and weaknesses

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.

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[39] 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 Economic Affairs, 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 programme has had a strong focus on primary legislation, in contrast to many countries where, in the early stages of reform, the focus was on lower-level rules. The Danish focus on laws means that reform efforts are concentrated on the fundamental source of regulation, where potential gains from improving outcome quality are great. It also highlights the issues of ensuring that regulatory quality initiatives are integrated with existing democratic processes and do not unduly slow the legislative process.

Gaps in the programme remain, however, due to the relatively recent adoption of new regulatory practices and to scepticism about the benefits of some regulatory quality tools that might reduce ministerial flexibility. An important gap is that lower level rules have received too little attention. This is a key area for further development of the regulatory quality programme. Due in part to the wide discretion granted to regulators by framework laws, lower level rules are crucial in determining the overall quality of regulatory regimes in Denmark. Similar quality assurance controls should be applied to both primary legislation and to lower level rules. This is essential to embed regulatory quality principles throughout the regulatory system. It will assist in the crucial task of bringing about a "cultural change" in ministries toward acceptance of regulatory quality assurance based on systematic policy choices and rigorous impact assessment.

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 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.

One result of the focus of Danish policy on new legislation has been that the issue of "millimetre democracy" has not been effectively addressed. The incremental and fragmented approach to policymaking is regarded as of primary importance by the Danish Bar and Law Society[40] and is recognised as a key concern for future regulatory reform policy at the centre of the Danish administration. To illustrate the problem, telecommunications regulation is contained in 10 different acts, many amended annually, and a range of Executive Orders (see background report to Chapter 6). Moreover, there are continuing concerns about the effectiveness of quality assurance measures for new legislation. Bar and Law Society and Ministry of Justice officials agree that there is a significant, and possibly growing, problem of legislation being framed in very general terms, with "second reading" speeches used to provide guidance on interpretation – a trend that has been attributed largely to time pressures in preparing and passing legislation. Recent efforts to give more time to the parliament (a new rule from October 2000 requires a minimum of 30 days for the presentation of a bill to final adoption) for important laws can help here.

A large part of the regulatory quality improvement programme has been devoted to areas of legislative simplification and particularly administrative burden reduction for SMEs. These issues have become prominent in reform efforts in many countries. Some 24 countries now have explicit burden reduction programmes and 11 of these have quantitative reduction targets.[41] However, the depth of Denmark's current emphasis on this area is uncommon. Business representatives interviewed during this review argued that, while administrative burdens are of concern, they are of second order importance in comparison with regulation that constrains the development of new business opportunities and that the latter deserve greater focus. Administrative burden reduction has the attraction for regulatory reformers that there are few vested interests likely to oppose -- it is "victimless" regulatory reform. Here, competition principles consistently applied by ministries may evoke more resistance from vested interests, but are likely to yield far more benefits for Denmark than attempts to make administrative procedures more efficient. Again, the incentives of the ministries to take these steps are not strong without sustained central oversight.

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.

Danish pragmatism seems to promote policy innovativeness. Denmark has adopted highly innovative approaches to regulatory reform. Its establishment of the Business Test Panel structure was virtually unique at its inception and the system is a valuable mechanism for providing "early warning" of unexpectedly large burdens, even if there are considerable doubts as to its ability to supply cost data of any precision. It is notable that Business Test Panels have now been taken up on a pilot basis by the European Commission, with eight member countries currently participating in the pilot. The EU pilot programme has gone beyond the Danish model by extending the information gathering role of the panels to all expected compliance costs, rather than only administrative burdens. The success of the European pilot has yet to be evaluated, but it seems likely that steps in this direction are justified in Denmark. This would be particularly useful as Denmark moves to more rigorous RIA requirements.

Other innovations are also promising. Within the framework of the Business Test Panels, the establishment of Focus Groups to provide equivalent scrutiny of proposals with more narrowly focused effects is a flexible and creative approach that minimises respondent burden. Significant work is also being undertaken to ensure that the potential of new electronic technologies for improved regulatory quality is fully exploited.

Also of importance is the annual report to Parliament on the burdens to business of legislation adopted during the past year, which draws on a significant input from business representatives. This report is perhaps unique, although annual reporting to the United States Congress on the costs and benefits of all subordinate regulation in force began in 1997.[42]

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 a 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.

Lack of strategic orientation is reflected in the structure of Danish legislation, which is regarded by many as being often fragmented and lacking in overall coherence. Overarching legislation is relatively rare. Legislative structures instead are built from many small, detailed pieces of legislation. Over time, these tend to be amended repeatedly, rather than repealed and replaced, as the process of completely rewriting a major piece of legislation is often seen as threatening too many established interests and constituencies. This can result in a tendency for legislation to lose consistency and coherence, while business representatives have complained that this approach to legislating means that the law changes frequently and becomes increasingly detailed. These characteristics in turn reduce the ability of business and other affected groups to comply with the law and also increase compliance costs. Adoption of a more prioritised approach to regulatory management and reform, founded on a clearer view of regulatory quality and on identification of accountable reform goals, would speed up and increase the results of reform.

5.2. Potential benefits and costs of further regulatory reform

The benefits of further steps to improve the capacity of the public sector to reform regulations and to ensure that new regulations are of high quality could be substantial in terms of policy effectiveness and economic performance. Danes demand high standards of environmental protection, health and safety, consumer protection, and other social goods. Improving the use of key regulatory quality assurance tools will enhance the government's ability to deliver higher standards at lower costs. For example, implementing more rigorous RIA, based on benefit-cost analysis and a requirement to assess all feasible alternative policy actions will systematically improve the quality of regulatory (and non-regulatory) choices. Integrating these disciplines with public consultation processes can enhance the participation of Danish citizens in public policy debates by equipping them with the information necessary for effective input.

Much has been achieved to date, but a recent survey by the Danish Bar and Law Council indicated that legislative quality issues remain significant. Ten to fifteen percent of legislation made in 1997-8 was deemed to fall short of the Council's quality criteria. Moreover, the adoption of a more thoroughgoing and strategic approach could address issues not amenable to the current, largely piecemeal, programme. In moving away from "millimetre democracy," key legislative programmes must be comprehensively evaluated and reformed in their totality. Improving the quality of the stock of regulations also requires a strategic means of selecting review areas and standardising 'best practice' review methodologies.

Potential costs associated with such an approach are important and need to be managed carefully. If the outcome of "millimetre democracy" is often regulation of less than optimal quality, the high degree of participation in developing laws that gives rise to it is highly valued in Danish society, has significant benefits in terms of legitimacy, democratic values and obtaining data and consent to proposed rules. These traditional strengths within the right framework can support good regulatory quality, too. This implies a review of the process of legislative development to ensure that participation is balanced with a strategic direction and framework by government.

5.3. Policy options for consideration

This section identifies actions that, based on international consensus on good regulatory practices and on concrete experiences in OECD countries, are likely to be particularly beneficial to improving regulation in Denmark. They are based on the recommendations and policy framework in the OECD *Report on Regulatory Reform.*

- *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.*

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.

- *Adopt the principle of good regulation accepted by Ministers in the 1997 OECD Report on Regulatory Reform that regulations should be adopted only if costs are justified by benefits.*

The regulatory principles in the current reform programme are clearer and closer to international best practices than those in previous programmes. Yet a significant gap remains in defining the dimensions of regulatory quality: the principle that regulations shall only be adopted if costs are justified by benefits. Such a principle does not require that costly forms of analysis be carried out for every regulation, but it does require regulators to proceed only if there is reasonable expectation that the regulation will be socially beneficial, considering all important consequences of actions. Accountability and transparency of regulation will be increased, as well as the efficiency of public consultation.

- *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.*

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. As is already occurring in practice for some regulations, RIA should routinely 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.

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

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.

- *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,.*

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.

- *Apply reform disciplines to lower level rules as well as legislation.*

The application of the current legislative quality programme to all laws is an important strength of the Danish programme. However, as in most countries, significant policy initiatives are also taken through lower-level rules. This means that quality disciplines should equally be applied to them. Indeed, the fact that lower level rules receive much less parliamentary scrutiny than laws implies a greater role for other forms of quality assurance. As noted, RIA in particular should be applied to lower level rules. This would increase the rate at which RIA disciplines and perspectives are disseminated among regulators and would prevent the development of perverse incentives to escape the application of rigorous RIA requirements to laws by using lower level rules instead.

An additional discipline to be considered is the provision of powers to the Parliament to disallow lower level rules that it believes do not meet quality standards. This power exists in a number of OECD countries and is often seen as a necessary safeguard over the use of delegated legislative powers by the executive. Disallowance may occur if the Parliament believes that the authorised delegations have been exceeded (given the purposes of the Act) or if the powers have been used in an ill-defined way or one which compromises individual rights. While disallowance powers may be relatively rarely used, the credible threat of their use can exercise a real and important discipline over the quality of lower level rules.

5.4. Managing regulatory reform

The focus on regulatory quality in current Danish regulatory reform policy is more likely than the previous deregulation policy of the 1980s to find sustained support in a population with strong demands for social protections such as health, safety and environmental quality, as well as social equity. Political support is an important benefit that should enable further broadening and deepening of reform efforts at a relatively rapid pace.

The attitude of business interests also favour a bold approach to future reform. They have had significant involvement in initiatives taken thus far, including the Business Test Panels, Focus Groups and the committee process leading to the annual reports to Parliament on the costs of regulation. In this context, there is some frustration that tangible benefits from reform are not greater. Some business representatives believe that reform efforts to date are misdirected, for example, in overemphasising administrative burdens when a larger concern is regulation that restricts new business opportunities in various sectors. To the extent that progress has been made, the driving force is often seen as the European Union, rather than the national government. Maintaining business support for the policy, and investment in it, will require that expectations of significant gains from reform are met. The more strategic and prioritised approach to reform will help speed up results.

NOTES

1. More information on The Danish Democracy and Power Study can be found on the Internet at http://www.ps.au.dk/host/magtudredningen/Engelsk/frame.htm.
2. Seminar with Professor Lars Nordskov Nielsen & others, Copenhagen, 8 February 1999.
3. Jørgen Grønnegard Christensen (1989), "Regulation, Deregulation and Public Bureaucracy" *in European Journal of Political Research 17*, pp. 223-239.
4. Jørgen Grønnegard Christensen (1990), "Interest Groups and Public Bureaucracy in Danish Regulatory Policy-Making," Institute of Political Science, University of Aarhus, pp. 10-12.
5. Christensen, 1989, *op. cit*, p. 236.
6. Danish Business Policy 1998, Ministry of Business and Industry, Copenhagen, November 1998, p. 84 and p. 69.
7. Danish Business Policy 1998, *op. cit*, p. 87.
8. OECD (1995), "Recommendation of the OECD Council on Improving the Quality of Government Regulation," incorporating the OECD Reference Checklist for Regulatory Decision-Making, OCDE/GD(95)95, Paris.
9. Deighton-Smith, Rex (1997), p. 221.
10. Written communication from the Danish government to the OECD, February 1999.
11. OECD (1997), "Regulatory Quality and Public Sector Reform" in *The OECD Report on Regulatory Reform*. Volume 2, Chapter 2, p. 234.
12. Meeting with members of the Danish Parliament, February 9, 1999.
13. MDW = Functioning of Markets, Deregulation and Regulatory Quality. This is the central element of the Dutch regulatory reform programme and its overall direction is the responsibility of a specific ministerial committee.
14. According to the OECD Regulatory Indicators Database (1998), 17 OECD countries (of 27 respondents) establish procedures for making legislation in a specific law, while 16 countries do so in the case of lower-level rules.
15. Danish government response to OECD Review Questionnaire on Regulatory Reform, February 1999. Note that a recent ruling of the Supreme Court has now effectively overturned the adverse rulings made in 1971 and 1980.
16. Danish Business Policy 1998, *op. cit*, pp. 87-88.
17. OECD meeting with Danish Bar and Law Society, Copenhagen, February 1999.
18. Danish Ministry of Finance and Danish Central Federation of State Employees' Organisations (1999) "Guidelines for teleworking in the Danish state", Copenhagen, May.
19. Public Consultation in Regulatory Development: Practices and Experiences in Ten OECD Countries. PUMA/OECD, 1994.
20. See The *OECD Reviews of Regulatory Reform: Regulatory Reform in the Netherlands*, Paris, 1999. Chapter 2: "Government Capacity to Assure High Quality Regulation".
21. OECD (1999), *OECD Environmental Performance Reviews: Denmark*, Paris, Spring, pp. 106-110.
22. Evaluation of Green Taxes and Trade and Industry: Summary. English translation supplied to the review by the Ministry of Finance, Copenhagen, April 1999.

23. *OECD Environmental Performance Reviews: Denmark, op. cit*., p. 115.

24. OECD (1998), "Voluntary Approaches for Environmental Protection in the European Union," p. 10. OECD Working Party on Economic and Environmental Policy Integration.

25. Evaluation of Green Taxes and Trade and Industry: Summary.

26. EEA (1997), Oko-Institut (1998), cited in "Voluntary Approaches for Environmental Protection in the European Union," *op. cit*., pp. 12, 15.

27. English translation – internet version at www.mst.dk, April 1999.

28. OECD (1999), *OECD Environmental Performance Review of Denmark*, Paris, Spring, p. 110.

29. Environmental Review No. 14, 1997 "Evaluation of the Cleaner Technology Programme, 1987-1992." Ministry of Environment and Energy/Danish Environmental Protection Agency, 1997, p. 22.

30. Ministry of Environment and Energy/Danish Environmental Protection Agency, 1997, *op.cit.*, p. 166.

31. OECD (1997), Paris.

32. Danish government response to OECD Review Questionnaire on Regulatory Reform, February 1999, p. 16.

33. Danish government response to OECD Review Questionnaire on Regulatory Reform, February 1999, p. 4.

34. Danish Business Policy, *op.cit.*, p. 93.

35. Danish government communication to the OECD, February 1999.

36. Danish government communication to the OECD, February 1999.

37. Communication from Ministry of Finance, 8 April 1999.

38. This figure has been controversial within Denmark as it takes a broad view of administrative burdens, including elements such as the cost of preparing annual accounts which, while required by legislation, would almost certainly be incurred in large part in the absence of any legislative basis.

39. The Society's 13 "Special Commissions" bring together specialist lawyers in a range of fields and allow it to marshal considerable expertise in contributing to legislative proposals through both *ad hoc* and permanent committees.

40. Meeting with Mr Henrik Rothe, Secretary-General, Danish Bar and Law Society, Copenhagen, 10 February 1999.

41. OECD Public Management Service, 1998.

42. US Office of Information and Regulatory Affairs, Office of Management and Budget, 1997. Report to Congress on the Costs and Benefits of Federal Regulations.