

Chapter 2

Institutional capacities for Better Regulation

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

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

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

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

Assessment and recommendations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Background

General institutional context

Developments in the general institutional context

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

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

Box 2.2. Institutional framework for Danish policy and law making

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

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

Government

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

Parliament

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

Courts

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

Public sector

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

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

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

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

Developments in Better Regulation institutions

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

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

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

Key institutional players for Better Regulation policy

The executive centre of government

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

The Ministry of Finance

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

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

The Ministry of Economic and Business Affairs

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

Other key central government players

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

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

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

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

Box 2.3. The Danish Commerce and Companies Agency

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

Functions

The DCCA has four main activities:

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

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

Role of DCCA in Better Regulation

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

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

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

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

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

Source: DCCA website (www.eogs.dk) and the government of Denmark.

Co-ordination across central government

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

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

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

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

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

Table 2.2. Key governmental co-ordination bodies in Denmark

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

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

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

Regulatory agencies

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

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

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

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

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

The legislature

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

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

The judiciary

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

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

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

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

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

Composition

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

Reading and passing of bills

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

The process for adopting a bill includes the following steps:

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

Control of the government

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

Standing committees

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

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

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

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

Local levels of government

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

National Audit Office

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

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

The products of the NAOD fall into three major groups:

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

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

Resources and training

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

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

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

Notes

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

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

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

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

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