

Chapter 3

Transparency through consultation and communication

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

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

Assessment and recommendations

Public consultation on regulations

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

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

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

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

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

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

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

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

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

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

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

Public communication on regulations

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

Background

Public consultation on regulations

Denmark's general approach to consultation

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

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

Preparatory committees

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

Calls for public consultation

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

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

Box 3.2. Høringsportalen (Consultation Portal)

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

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

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

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

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

Collective agreements

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

External stakeholders’ view on consultation practices

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

Box 3.3. Social partnership in Denmark

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

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

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

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

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

Public communication on regulations

The Danish government and the *Folketing* have been active in making regulations easily accessible to the public, making considerable use of the Internet to do so. New legislation – both primary and secondary – is published in *Lovtidende.dk*, the official gazette, which has been in electronic format since 1 January 2008.⁴ *Lovtidende.dk* also provides commencement dates for new regulations to the public (as Denmark does not use a common commencement date). Denmark has a Legal Information Database, which is a register of all regulations and is accessible on the Internet free of charge. The site “*retsinformation.dk*” allows searches of all primary and secondary regulations (Box 3.4), issued by ministries and central government agencies, as well as parliamentary documents and the parliamentary ombudsman's report cases. The citizens' portal⁵ offers easy access to all information about regulations published on the Internet (Official Gazette, Consultation Portal, *Folketing's* website, Danish registry of regulations, and EU registry of regulations). Interaction between information published by the government and the *Folketing* is facilitated by the use of a common database on legislation.

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

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

Box 3.4. *Retsinformation.dk*

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

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

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

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

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

Source: www.retsinformation.dk.

Notes

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