

PDF hosted at the Radboud Repository of the Radboud University Nijmegen

The following full text is a publisher's version.

For additional information about this publication click this link.

<http://hdl.handle.net/2066/45638>

Please be advised that this information was generated on 2021-06-19 and may be subject to change.

9 Denmark

9.1 General overview of the constitutional and political system

9.1.1 Constitutional characteristics

Denmark is a constitutional monarchy with its first constitution dating from 1849 and several subsequent revisions, most recently from 1953. Legislative powers are formally divided between the Parliament and the Queen (article 3 of the Danish constitution).

The parliament, the Folketing, consists of one chamber. It has 179 members, directly elected for a mandate of 4 years. Seats are distributed using a mixed district based and proportional system (Thomsen and Pennings, 2002).

9.1.2 Political characteristics

The Danish government is formed in coalition between parties in the Folketing. The future Prime Minister is responsible for forming a coalition. Minority cabinets are frequently formed. Remarkably, no single party has had a parliamentary majority since 1909 (Danish Ministry of Foreign Affairs at www.denmark.dk, consulted at 19 January 2005). Ministers are chosen from the ranks of parliament and remain members during their executive term of office. They can also be occasionally recruited outside the parliament.

9.1.3 Political administrative characteristics

The Danish executive has 18 ministries. There are also a number of government agencies, which play a central role in EU policy making. They operate under the responsibility of the Minister, but enjoy a great degree of discretion (Steenbeek and Gilhuis, 2003: 86). Importantly, the bulk of administrative staff is in the agencies and ministries are small, compared to the Netherlands (Mandrup Thomsen and Pennings, 2002: 17).

Another important characteristic of the Danish political-administrative system is the high level of autonomy of local and regional authorities, seen by the Danes themselves as some of the most extensive in the world. The local authorities' right to manage their own affairs is enshrined in the constitution of 1849. There are 14 counties and 275 municipalities. A reform of the municipal system is due to take place after the parliamentary elections due on 8 February 2005 (Danish Ministry of Foreign Affairs).

A third important feature is the important role played by interest groups. A high degree of (neo-) corporatism is present in most policy fields (Jørgensen, 2002: 2). Denmark has a high density of societal organization in a wide range of areas. Policy-making is generally highly corporatist, with interest groups playing a crucial role.

Finally, the Danish politico-administrative system is generally considered open and informal, mainly oiled by unwritten rules. Policy making is very much decentralized, individual ministers being responsible for their policy areas. (Von Dosenrode, 1998: 52)

9.2 Political or public discussion concerning EU directives and their transposition

There is little wide public discussion on the transposition of directives in Denmark. Timely transposition for a long time was not considered an issue, because of Denmark's good record. Yet, sometimes relevant public or professional debate occurs. Public debate focuses on general topics of Denmark's involvement with the

EU, while recent professional debate has involved some limited discussion of transposition linked to the latest scoreboard results.

Public debate is mostly focused on the general issues of Denmark's EU membership and controversial decisions such as the adoption of the Euro. These discussions need to be understood in the general context of Denmark's attitude to the EU ever since the country's accession in 1973.

Denmark's accession to the EU and the ratification of subsequent EU treaties were based on referendums held in accordance with Article 20 of the 1953 Danish constitution. Article 20 is a provision allowing Denmark to commit itself to international treaties if a five-sixths majority in the Folketing, or alternatively a simple majority in a referendum, can be established. According to *the Economist*, Article 20 represented a significant shift in the Danish constitution by providing for the transfer of some sovereignty to international institutions.

The Danish system of incorporating international treaties is dualistic, with the principle of incorporating international treaties enshrined in the abovementioned article 20 of the Constitution. Yet is it arguable whether this dualism has much impact on the transposition of directives since the development of the doctrines of direct effect and supremacy of EC law by the ECJ in the 1960s⁷¹ has eroded national autonomy with secondary legislation from the EU. The direct effect of EC law has led to some debate in Denmark (Steenbeek en Gilhuis, 2003:70-71) and the erosion of sovereignty has not been accepted easily. As *the Economist* noted, the rejection of the Treaty on European Union (Maastricht treaty) in a referendum in 1992, as well as polls that consistently show that the population has some concerns about the EU encroaching upon national sovereignty, seem to indicate that a large part of the population disagrees with any transfers of sovereignty.⁷²

On the whole, Danish attitudes to European integration can be described as cautious or even Eurosceptic. In September 2000, the Danes rejected participation in the common European currency, the Euro, in a referendum which was the culmination of an intense societal discussion. Their foreign policy is described as 'torn between its activist stance and a very cautious approach to integration into the EU' (The Economist Country report).

In the light of this it is even more remarkable that Denmark has a very good record of transposing EU directives. Some experts suggest an indirect link, in the sense that the Danes' skepticism at the political level has led to procedures of extensive consultation which in their turn ensure smooth transposition once a measure is passed. And, interestingly, good transposition is seen in specialist circles as a way to ensure Denmark's room for maneuver at the negotiation stage and a positive stance from the Commission towards Danish positions. Interview evidence suggests that the Danes see their good transposition record as a key to their standing in the EU.

Also, occasionally there is public debate on the transposition of a particular directive, especially in the rare case that transposition is problematic for political reasons (interview ISA). An example is the directive on personal data protection.

⁷¹ HvJEG 5 February 1963, 26/62, *Jur.* 1963, p. 1-59, *Van Gend en Loos* and HvJEG 15 July 1964, 6/64, *Jur.* 1964, 1209-1259, *Costa/ENEL*).

⁷² The Economist Country Reports at http://www.economist.com/countries/Denmark/PrinterFriendly.cfm?Story_ID=2920616, consulted at 18 January 2005.

Professional debate has recently focused on the deterioration of the Danish position in the latest edition of the internal market scoreboard. Danish civil servants have taken pride in their excellent transposition record and thus recent results have been some cause for concern, but it is clearly limited to a narrow circle of specialists. The Ministry of Economic Affairs has taken the lead in this respect, because the scoreboard concerns the area of the internal market. In terms of press comments, the Danish business newspaper has devoted a couple of articles to the worsening of the Danish position.

9.2.1 Discussion of recent reports and their recommendations

As a measure taken to improve the standing of Denmark in the last scoreboard, the Minister for economic and business affairs has recently written a letter to his colleagues responsible for directives on the scoreboard for Denmark. In the letter the minister urges his colleagues to pay attention to the obligations of securing correct and timely transposition. The ministry has also sent around a list of non transposed directives, the idea is to make the list shorter.

There has been also some reaction to a Commission idea of appointing a transposition coordinator. Most of our respondents found this would not be a good idea for Denmark as it would create a center of coordination that would potentially take away responsibilities from the line ministries. The Danes prefer that line ministries continue to take responsibility for transposition. Furthermore, no Ministry seems particularly keen to have such a position, although the Ministries of Justice and Economic affairs have been mentioned as potential centers where the coordinator could be placed.

Following a recent report, there has also been some professional discussion regarding the role of Parliament in the EU decision making process. One of the issues discussed was how to integrate the sub-committees and the entire parliament into the EU decision making cycle. The need was seen to balance the need for coordination with the need for substantive treatment. The Secretariat of The European Affairs committee (EAC) recognizes that in recent years they have been overwhelmed by information – nowadays members of parliament want not so much more information as they want better and specific information from us. The next step is simply to integrate EU policies in the entire Parliament.

9.2.2 Expectations regarding the process and results of these discussions

The expectation of most interviewed civil servants is that the Danish record will soon be improved again, mostly because they see the slip up in the scoreboard ranking as a result of failure to notify by ministries and difficulties with the electronic system of notification, rather than real cases of non-transposition.

9.3 Description of judicial instruments and techniques

9.3.1 Instruments

We can distinguish the following instruments (see Table 9.1 for an overview):

- Laws or amendments of existing laws
- Ministerial orders or amendments thereof: addressing the wider public, published in the State gazette. A particular form this instrument may take is the Technical Regulation, which addresses the professional world, and is published in the Notices of the implementing agency. Otherwise, the status and procedure of these two instruments is the same (Asser Instituut, 2004a: 24).

Laws and ministerial orders are by far the most important instruments, technical regulations are used only in a limited number of sectors, namely transport (air, motor vehicles, maritime) and electrical safety rules. According to experts from the Ministry of Justice, technical regulations are essentially the same as Ministerial orders. Only rarely is a totally new law required for transposition, as most policy areas are already densely regulated. Furthermore, there is no difference in speed between adopting a new law and amending an existing one. The same is claimed to hold for ministerial orders.

The bulk of transposition, about 85% of all directives, takes place by means of Ministerial orders (*bekendtgørelse*). Over time, the trend has been to use more and more delegation to a Minister to pass certain provisions. The use of delegation varies in time but also from policy area to policy area. While in agriculture and fisheries, all measures are transposed by delegated measures, in an area such as Justice and Home Affairs delegation is not used so much, due to the policy’s sensitivity and the fact that these areas are only now beginning to be regulated by the European Union. Other highly sensitive areas are taxation, financial regulation, and financial services. Most internal market directives are transposed through ministerial orders.

Delegation is specific and contained in a law relevant to a certain sector, a parent law. The delegating provision contained in a specific law stipulates that ‘The Minister of so-and-so can enact the necessary orders in order to fulfill Denmark’s obligations under EU law.’ This can only be done if it is clear what to do, that is if the necessary changes are quite specific. However, when the issues concerned is highly political, even if delegation is possible, a law may be used after all. Also, it is sometimes not clear to a civil servant which of the two is to be used.

Alternative instruments are never used. It is generally known that these cannot be used for transposition, as they are not binding. Denmark sometimes uses collective labor agreements, but then a backup law is used, covering those not included in the collective agreement and providing minimum guarantees.

Table 9.1: Danish legal instruments used for transposition

	<i>love</i>	<i>bekendtgørelse</i>
		<i>anordning/ kongelig anordning</i> ⁷³
	act	ministerial order
Main features	adopted by Parliament, often taking the form of framework laws	Based on delegation
Advice State Council	Not required (Denmark has no State Council)	Not required (Denmark has no State Council)
Parliamentary approval	Required	Not required formally, but sometimes informally needed
Remarks	All bills submitted in one parliamentary year must be concluded in the same year. If not, submitted again.	Sometimes these are called technical regulations.

9.3.2. Techniques

The two most important techniques or methods used in Denmark according to the interviewed officials and experts are copying and re-wording. Whereas for a long time rewording was the most popular technique, nowadays copying is increasingly used.

⁷³ According to our Danish sources, all these are identical.

A. *Copying*, one to one, the contents of a directive in a Danish translation into one law. This law is then an exact copy of the directive. Sometimes, but not always, such a law is then appended to the ‘original’ version of a law. However, the annex is in most cases for information and is not meant to be the legal text in force. Thus copying is sometimes combined with annexing, which is mostly used in technical areas.

- *Annexing*: the directive is annexed to a new Danish regulation. Annexing the directive is not very popular, mainly used in technical areas. E.g. transposing measures in industrial regulation can consist of 1 article: ‘The annex to this law is now in force’
- *Referencing*: As above, the passing of a law with only one article, which states that ‘this law is in force in Denmark’, with the directive as an appendage. We have not found many cases of using of this method alone. According to most interviewed experts, dynamic referencing is not used at all!

B. *Re-wording*: putting the directive into an own version. It seems to be the preferred strategy in Denmark, although respondents differ in their opinion as to how often it is used in relation to copying. It is a sort of unpacking of directives to be put into the Danish legal order. Sometimes the annex method and re—wording are combined, whereby certain sections are re-worded and in others the annex method is used.(Asser Instituut, 2004a: 18)

In addition to these, the following types of amendments should be differentiated: A common procedure is the adoption of subordinating legislation under an umbrella act (also called ‘parent act’ by experts) as in the case of transport directives described in the Asser report. In the case described by the Asser report, the umbrella law delegates to the Danish maritime agency the adoption of subordinate legislative acts, such as regulations. If the umbrella Act does not provide a legal basis for the transposing measure, the Act itself is amended.

Agencies or ministries responsible for negotiation of a directive check already at the negotiation stage whether subjects in a directive are in conflict with existing Danish law.

Finally, in densely regulated areas, one directive will often require changes in various existing laws/orders. In this case, one transposing measure is adopted, listing all the changes. As a next step, the various laws/orders thus changed are then consolidated into one piece. Ministries make sure we consolidate the act immediately so that the most advanced version is available to make it clear to the user. Also, sometimes several directives are combined into one transposing measure, which is called the ‘*package law*’ method.

9.3.3 Character and level of implementing measure

Directives are transposed at the levels of:

- Primary legislation: laws and amendments of Laws/acts
- subordinate/secondary legislation such as ministerial orders and technical Regulations.

9.3.4 Specific instruments

As said above, there are no possibilities for other instruments.

9.4 The national policy cycle concerning directives

9.4.1 General overview of the process

9.4.1.1. National preparation of Commission initiatives

There is no formal procedure for signaling and preparing Commission initiatives in an early stage. Even though the formal preparation procedure (see below) may be set in motion with an initiative that has not yet the status of a formal proposal, government and Parliament to a large extent have to rely on the Commission and informal contacts for information. Yet, individual ministries try to anticipate on forthcoming Commission proposals, and start working earlier (interview). At the same time, since 1991 the Folketing has had a representative in Brussels, which is to inform Parliament as early as possible on EU initiatives (Folketing et al., 2002: 18).

9.4.1.2 National treatment of Commission proposals

The process of EU policy making in Denmark has been described as having two sides: a government side and a parliament side, related to the activities of the Danish Parliament's European committee (Danish Ministry of Foreign Affairs). It mirrors the decision-making process at the European level, and it is characterized by high time pressure (Pedersen, 2000: 221). There are four levels: the EU special committees, the EU committee, the government's foreign policy committee and the Folketing's European Affairs Committee (see Table 9.2).

Table 9.2: Key meetings on EU decision-making on a weekly basis

	Government		Parliament
Ad hoc	Tuesday (if needed)	Thursday (if needed)	Friday
EU special committees	EU committee	Foreign Affairs Committee	European Affairs Committee

National decision making on EU matters starts in the *EU special committees (EF-special udvalgene)* based in the line ministries (Nedergaard, 1995:118). These committees have the task of coordinating the viewpoints of the different ministries involved and recommend a Danish position (Von Dosenrode, 1998: 55). Also, the special committees are the place for internal consultation involving interest groups at a very early stage. Already in 1972, it was formally stated that the special committees are responsible for hearing relevant interest groups (Von Dosenrode, 1998: 55). They are hence seen as real negotiating bodies in which public and private interests are merged (Asser Instituut, 2004a: 9). The special committees also hold the technical expertise necessary for deciding on many of the legislative proposals to be put forward by the Commission (Nedergaard, 1995:118-119).

There are currently 34 standing special committees, which largely reflect the division of policy areas in the European Commission's directorate-generals (Pedersen, 2000: 223). In addition, there may be ad hoc committees, concentrating on temporary matters. The committees are usually quite large; that of environmental affairs has 75 members (Pedersen, 2000; 223). They are normally chaired by a civil servant from the responsible ministry, typically the head of division and composed of civil servants from other

relevant ministries (interview). EU cases are generally handled by the sections that are responsible for the corresponding 'Danish' cases (Von Dosenrode, 1998: 57). Increasingly, committees have interest groups as their members (i.e. committees for environmental affairs, transport, and labor), though in some cases they are simply heard (i.e. finance). According to one of our respondents, the reason for the increased participation of interest groups is to prevent them 'taking revenge' when the proposal goes to Parliament. Because of its coordinating role vis-à-vis EU questions, the Ministry of Foreign Affairs is represented on all special committees.

The basis for deliberations in the special committees is formed by draft position papers. These are drawn up by the responsible ministry, and discussed by the other members of the committee. (Pedersen, 2000: 225). Also, the committee draws up memoranda for Parliament, which serve as the basis for discussions there (see section 9.4.4).

The process enters the second stage when the special committee presents its draft proposal to the leading ministry. Then the minister makes a proposal based on the advice of the special committee. This proposal is coordinated at the interdepartmental level⁷⁴ in the *EU Committee (EF-Udvalget)*, which meets when needed on Tuesdays⁷⁵. The ministries which are most involved in EU matters are permanent members of the Committee. Other Ministries participate on an ad-hoc basis. The head of the so-called North group of the Ministry of Foreign Affairs holds the chairmanship and secretariat of the EU Committee. Originally, the committee consisted of high-level civil servants, typically heads of division, but according to Pedersen (2000: 223-224) it is now usually attended by juniors.

Nowadays, the role of the EU Committee is to a great extent symbolic, in that agreement in the majority of the cases is reached in the special committees.⁷⁶ Politically sensitive issues are passed on to the higher level. For this reason, the EU committee deals in particular with EU questions that have horizontal, fundamental or sensitive aspects. It should be noted, though, that the committee over time seems to have lost power to the Government's Foreign Policy committee, which has taken to deciding all politically sensitive acts (Pedersen, 2000: 223). The task of the Committee hence seems to have been reduced to 'helping the government separate technical and administrative cases from political cases' (Nedergaard, 1995: 121).

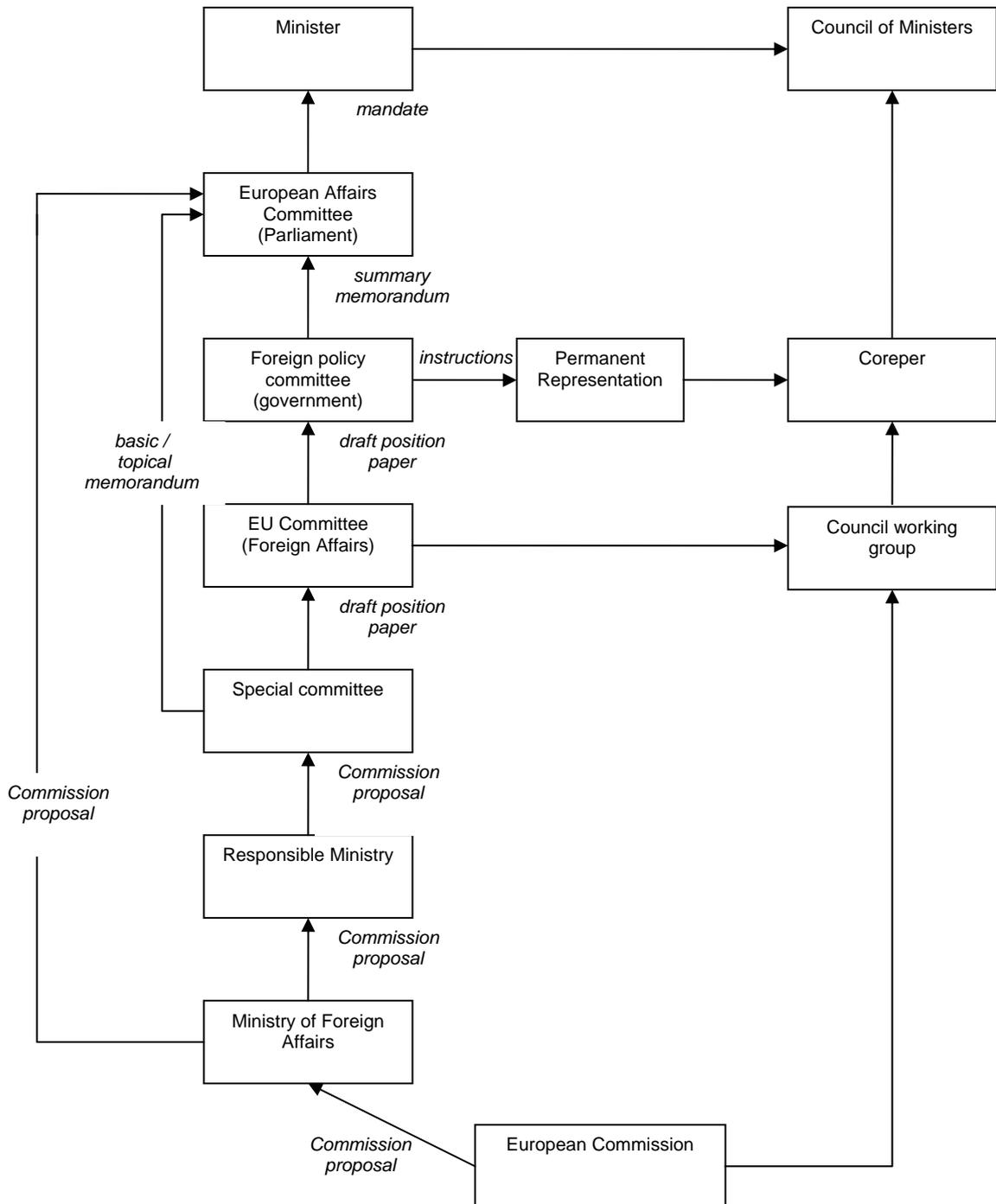
The third tier in the system is the *Government's Foreign Policy Committee (Regeringens Udenrigspolitiske Udvalg)*. This committee has as its members the Prime Minister, the Minister of Foreign Affairs, and eight sectoral ministers. Chaired by Foreign Affairs, it is the highest coordinating body. The committee is chaired by the Minister of Foreign Affairs and includes the prime Minister and other Ministers from Ministries most involved with European affairs. It meets on Tuesdays, if needed- which is not very often (Pedersen, 2000: 224). According to one of our interviewees, it often communicates through e-mail, as 'they don't want to meet on issues where everyone agrees.' The central task of the government's foreign policy committee is to formulate the political guidelines for the Danish position

⁷⁴ As a convention we use the term 'interdepartmental' for discussions between officials from different ministries, while the term 'interministerial' is reserved for discussions between different ministers.

⁷⁵ This is not to be confused with the Government's Foreign Policy Committee which lays down the Government's position in EU matters on a higher, 'political level'. The Chairman is the Minister for Foreign Affairs. In addition to the permanent members all other ministers are normally invited to the meetings. The Committee meets when needed on Thursdays.

⁷⁶ In the field of environment, this is estimated to be the case for some 95 per cent of the Commission proposals (Pedersen, 2000: 222).

Figure 9.1: The Danish EU decision making process



As a final step, the government's position has to be coordinated with the Folketing. Here, sectoral committees may play a role in evaluating proposals but the main role is reserved for the *European Affairs Committee (Europa Udvalget)* and its secretariat (see also Section 9.4).

All in all, the different steps in the decision-making process can be depicted as follows (see Figure 9.1).

9.4.1.3 National transposition

There is a stark contrast between the phases of decision-making and transposition with respect to centralization and formality. Whereas the first stage is well-regulated and coordinated by Foreign Affairs the second stage is the responsibility of the ministries (Mandrup Thomsen and Pennings, 2002: 15). Coordination here is completely absent, except for the Special Legal Committee at the Ministry of Justice, which supervises all infringement cases (Biering, 2000: 959). There is no central body that keeps information on the progress made with transposition; The Ministry of Foreign Affairs is no longer involved. The general feeling is that to install coordinating bodies would lead to unnecessary bureaucracy, and at the same time take away the responsibility from the ministries, which take their job very seriously. For these reasons, it is hard to sketch a general picture of transposition; practices and procedures may differ from ministry to ministry, and agency to agency. Yet some commonalities exist.

Concerning the preparatory stage, one important characteristic is the absence of so-called Chinese Walls: the civil servants and ministers responsible for negotiating are also responsible for transposition (Biering, 2000: 959, Mandrup Thomsen and Pennings, 2002: 15). Moreover, Denmark has no clear dividing line between legislative and policy civil servants. Bills are drafted by lawyers who also have policy responsibilities (Mandrup Thomsen and Pennings, 2002: 9). This practice is sustained by the interviews we held at the Ministry of Economic and Business Affairs, the Danish Financial Supervisory Committee, and the Ministry of the Environment, which together are responsible for a great part of the directives. Most ministries have an EU law section, which is involved in transposition (Mandrup Thomsen and Pennings, 2002: 15). Yet often the several policy divisions are responsible for transposition in their own area.

A second crucial characteristic of Danish transposition is that, in principle, all substantive discussions are held during the decision-making stage. Generally, the tight coordination procedure in the first stage prevents further debates during transposition. In the words of one of our interviewees: 'We have a very participatory approach that creates a lot of awareness, so when we transpose we don't start from scratch.' There generally is no duplication (interview). What is more, the general attitude is 'to go by the rules, even if we are outvoted' (interview).

There is no special procedure for transposition; the regular procedures for adopting statutes or ministerial orders apply. In drafting statutes, the ministries are guided by the Guidelines on Quality of the Legislation (*Lovkvalitetsvejledning*). However, these only contain minimal provisions that specifically concern the process of transposition. Notably, these are that a transposing bill must clearly refer to the directive in question, as well as state the type, contents, and deadline of the directive in the explanatory notes. What is more, it must be clearly stated which parts of a transposing bill are EU relevant, and which are not. Gold-plating should also be explicitly stated. (*Lovkvalitetsvejledning*, art. 2.3.3. g).

When the draft of the bill is complete, it is sent to the Ministry of Justice for the usual advisory procedures (see 9.4.3.). Changes are not made very often. Then, the bill is discussed in Cabinet (*Ministersmøde*) (Steenbeek and Gilhuis, 2003: 90). If everything goes well, the bill can then be submitted to the Folketing. There are no 'Raad van State', nor advisory bodies that need to be heard. In Parliament, the

European Affairs Committee is no longer involved (Folketing et al, 2002, 9). Parliament treats every bill three times, at increasing levels of specificity. The sectoral committees play an important role here. After the third reading, the minister signs it, as well as the King, after which it is published in the Law Gazette (*Lovtidende*) (Steenbeek and Gilhuis, 2003: 91). The legislative process is hence much shorter than in the Netherlands. In reality it is even shorter, though, because generally transposing bills are not discussed in committees, but rubberstamped in the plenary. According to our interview partner at the Folketing: ‘The Danish parliament is not a legislator when it comes to already adopted EU issues.’

For ministerial orders, the procedure is even shorter. Drafts are not seen the Ministry of Justice, but by internal evaluators (Mandrup Thomsen and Pennings, 2002: 17).

9.4.2 Bureaucratic consultative and coordinating bodies

As said, the Danish politico-administrative system is generally informal and decentralized in nature. A puzzling exception to this general qualification is Denmark’s EU coordination system, which is remarkably formal and centralized (Von Dosenrode, 1998: 57; Nedergaard, 1995: 114). Yet this seeming contradiction in reality is more of a paradox, since the formal and centralized procedures are underpinned by flexibility and strong informal networks. What is more, over time centralization has been countered by a process of sectorization (Pedersen, 2000: 220), so that in reality individual ministries play the key role in the process (Nedergaard, 1995: 115). The role of the ministry of Foreign Affairs has developed from ‘police-patrol’ to that of a backstop (Pedersen, 2000: 226-228). Furthermore, ‘the wheels of the rigid procedure are oiled’ by a culture of pragmatism and informality, and a strong wish to reach consensus (Nedergaard, 1996: 115, Pedersen, 2000: 221). Finally, the formal and centralized coordination procedure only applies to the EU decision-making stage. Transposition is characterized by the common pattern of decentralization and informal rules. Coordination in this stage is virtually non-existing, ministries are on their own (Nedergaard, 1996: 115; interviews).

All, in all, the following institutions play some coordinating role:

- At the lowest level, the EU special committees coordinate positions with other ministries and interest groups.
- At the second tier, coordination takes place in the EU Committee composed of civil servants and chaired by the Foreign Affairs Ministry
- The highest coordinating actor is the Foreign Policy Committee of the cabinet
- Coordination in parliament is undertaken by the Parliamentary European Affairs committee and its secretariat which coordinate the positions of specialized standing committees
- The Ministry of Foreign Affairs plays the central coordinating role in the decision-making process. The North group of the Ministry participates in all meetings of the special committees, chairs the EU committees, functions as secretary for the government’s foreign policy committee, and attends all meetings of the Folketing’s European Affairs Committee. In addition, it acts as a clearing house for communications to and from the EU, and to the Folketing. Finally, it presents the final negotiating instruction to the Danish EU representation. All in all, it is a central node in the coordination system.
- In the transposition stage, an important role is played by the Special Legal Committee, chaired by the Ministry of Justice. This Committee meets biweekly to discuss all infringement cases, also the

relevant ones against other member states. Here, each line Ministry has to explain what went wrong. Being called for the Committee is considered harmful to a Ministry's professional pride and reputation (interview).

9.4.3 The role of compulsory advisory bodies

Denmark does not have any advisory bodies, nor an advisory institution similar to the Dutch *Raad van State* (Mandrup Thomsen and Pennings, 2002: 11). However, each department is required to consult with relevant interest groups and the public. Furthermore, all draft law proposals coming from the government, including those for implementation, are subject to a quality of legislation check by the Legislative Department of the Ministry of Justice (Mandrup Thomsen and Pennings, 2002: 15). The Ministry of Justice also has a division EC law which controls compatibility of proposals with EC law (Mandrup Thomsen and Pennings, 2002:9). This section may also be consulted about particular issues concerning transposition (Mandrup Thomsen and Pennings, 2002: 15). Finally, a compulsory assessment of the administrative burdens resulting from new legislation is made by the Ministry of Economics and Business Affairs in a panel with business representatives. The line ministries have to include the results of these assessments in their advice on the proposed legislation (Asser Instituut, 2004b: 9).

9.4.4 The role of parliament

Denmark has an unparalleled system for democratic control over EU policies: the Folketing has an extremely powerful role in the preparation of Danish European policy. For each negotiation process, government is required to obtain a mandate from Parliament. The rationale for this construction, is twofold. First, because Denmark has a strong tradition of minority government, it is deemed important to prevent cabinets from being voted down by Parliament (Nedergaard, 1995, 129). Second, due to Denmark's EU-skeptical stance, most political parties want to keep a firm check on EU policy. This system is not known in any other member state, even though the UK and Sweden come close.

The key player in Parliament is the European Affairs Committee, previously called the Market Relations Committee. It has seventeen members, proportionally representing the political parties represented in Parliament. It is mostly comprised of senior MPs, among whom many former ministers (Von Dosenrode, 1998: 60). It is supported by a secretariat consisting of 22 staff members and some 8 interns, which is the largest staff of all Parliamentary committees (Folketing et al, 2002: 23, Von Dosenrode, 1998; 61), The meetings of the European Affairs Committee normally take place on Fridays and deal with all the Council meetings taking place in the following week. The meetings typically take 2 to 5 hours (Eliason, 2001: 200).

Parliament's powers in EU policy-making are laid down in the 1972 Law on Denmark's accession to the EC, and have been further specified in reports by the Committee, agreed by the government (Folketing et al, 2002: 5). Originally, the Government was obliged to consult with the Parliament's European Committee in EU matters of essential importance. The mandate obligation follows from the first report from the Committee in 1973, which holds that 'Prior to negotiations in the EC Council of Ministers on decisions of a wider scope, the Government submits an oral mandate for Negotiation to the Market Committee. If there is no majority against the mandate, the Government negotiates on this basis'. Thus, the Danish government cannot conduct negotiations without receiving a mandate from the Parliament (Nordic Parliaments Report, (2002:7). The political development has been such, that the mandate procedure now applies to every

proposal for a new directive. The mandate is never set in writing and is not legally binding, yet in the context of Danish politics it has decisive weight in determining the positions of Danish Ministers in the Council of Ministers (Rehof, 1996:68-69).

Deliberations in the EAC's meeting are structured on basis of a so-called summary memorandum, which is an annotated agenda of an upcoming Council meeting (Folketing et al, 2002: 13). This is distributed Friday morning at the latest, so 8 days before the Council meeting, and a few hours before the EAC meeting (Nedergaard, 1995: 124). For each pending proposal, the responsible minister has two options (Von Dosenrode, 1998: 60). First, he or she may simply brief the committee, if no decision by the Council of Ministers is to be expected. The second option is to propose a negotiating mandate (*forhandlingsopslæg*). If the latter is the case, the parties proceed by giving their positions, after which discussions may ensue. Finally, the Chairman of the Committee presents the conclusion, after counting the number of votes. The mandate is not written, but oral, even though a stenographic record is kept (Eliason, 2001: 200). It contains agreement on the subject matter, the allies to be sought, and the degree of discretion for the negotiator (Von Dosenrode, 1998: 60).

Table 9.3: Contents of Danish basic memorandum

1	Title and nickname of initiative
2	Parallel distribution to sectoral committees
3	Identification, relevant dates and legal basis
4	Previous presentation to the EAC
5	Resume of contents
6	Most important elements
7	Consequences for Danish law
8	Principles of subsidiarity and proportionality (<i>new</i>)
9	Financial, socio-economic, and environmental consequences
10	Hearings of interest groups
11	Danish attitude (<i>new</i>)
12	Public attitudes of other member states (<i>new</i>)
13	Relevant Danish decisions on European policies

Source: European Affairs Committee, 2004: 23-24.

In forming its opinion about a proposed mandate, Parliament to a great extent relies on the so-called basic memorandum (*grundnotat*). This is a standardized document, composed by the special committee, which must be sent to the EAC within four weeks after a Commission proposal is made. Over the course of the negotiation process, the memo may be modified, after which it is called a topical memorandum (Folketing *et al*, 2002: 13). Its main elements are: a description of the Commission proposal, its legislative and financial consequences, previous considerations by the EAC, possible compromise proposals by the Presidency, amendments proposed by the European Parliament, its itinerary through the EU institutions, and the opinion of interest groups (Folketing, 2002: 7; Pedersen, 2000: 230; Von Dosenrode, 1998: 61; see Table 9.3 for a full overview). For a long time, it did not contain the government's opinion, but this has changed in January 2005, when a new EAC report entered into force. Parliament is generally satisfied with the documents it gets. They are usually rather elaborate, comprising 5 to 20 pages (interview). Finally, Parliament receives all Commission proposals directly from the Ministry of Foreign Affairs, as well as lists of all the proposals received (Folketing, 2002: 5-6).

9.4.5 *The role of other, subnational or functional governments*

Local government is represented in the special committees, as they represent employers throughout the country. According to one of our interviewees (ENV), this is really important, as local government often needs extra resources to comply with European directives.

9.4.6 *The role of interest groups*

Interest groups are involved throughout the process of EU policy-making and implementation. First, they are member of or heard by the special committees that make the initial policy proposals. They are consulted at the early stage of preparation of legislation. Second, they play a role in preparing transposition, and the actual application of directives, just like normal Danish law (Von Dosenrode, 1998: 55). Third, they have a rather close relationship with the European Affairs Committee in Parliament. They have rather good access, as all interest groups can present a delegation to the EAC. Usually they present their point of view right before a minister appears for the EAC. In this way, the committee benefits from their expertise. Groups that often make their appearance are the Unions, anti-federalist movements, the anti-constitution movement, fishermen organizations, and industry representatives. Generally, no attempts are made to lobby Parliament during the transposition stage (interview).

9.5 *Analysis of instruments*

9.5.1 *Advantages and disadvantages of instruments*

As one expert pointed out, the pro-s and con-s of instruments are different depending on whom you ask: the opposition prefers using laws so that they get debated in parliament, the government prefers administrative orders.

Undoubtedly, ministerial orders are faster. They are used much more frequently and considered much faster as they do not have to pass through Parliament. It takes much longer to get a bill through parliament and ministers can never be quite sure of success as linkages with other issues might occur. Still, in general the parliament does not make problems at the transposition stage since they have been consulted extensively at the negotiations stage. A rare example of a difficult act to pass was the law transposing the personal data protection directive where the parliament felt it had not received all the relevant information during the first stage of the policy process.

However, in terms of speed laws present another problem. Ministries and agencies are bound by the regularity of Parliamentary meetings and the preparation of the legislative program for the whole year. The way the parliamentary year is organized, all bills must be dealt with within one and the same parliamentary year. On the 2nd Tuesday in October, the new year starts. All outstanding bills must be withdrawn and submitted again in the new year (Mandrup, Thomsen and Pennings, 2002: 6). To deal with this civil servants often combine and make a lot of changes in 1 act.

As for Ministerial orders, even though in legal terms the government is not obliged to go to the Parliament, in practice, since Denmark operates with minority governments sometimes there is a political agreement or pressure/imposition from parliament for a draft of the administrative order to be seen by parliament before being adopted.

As mentioned before, delegation differs from area to area and there are areas where one cannot avoid using legislation as they are so politically sensitive. Examples of such areas are: Justice and Home affairs, taxation, financial regulation, and financial services.

There is no difference between amendments and new laws in terms of speed as the debates look at the substance. The reason for that is that any piece of legislation, whether it is original or an amendment, has a written explanation with comments and reasoning by the government, also anticipated impact on the administration and on finance. This enables the politicians to focus on the substance.

However, another expert points out that sometimes amendments of existing laws are problematic because national concerns are re-examined and other issues may be added to the list. Ministries and agencies busy with transposition try not to have this and limit the discussion to transposition, because it can be a problem when the agency is pressed for time.

9.5.2 Advantages and disadvantages of techniques

For a long time, re-wording was the preferred strategy, because this is considered more user-friendly. Problems of interpretation are solved in an early stage, rather than pushed to the end user. The **re-worded** directives, are therefore evaluated as clearer for the citizens. In the words of one official, 'we try to make it fit the Danish legislation and use legal language used here'. Another expert points out that 'Directives are not 'microwave ready' text. They need to be unpacked and put into our legal order.' Thus re-worded directives are also considered more compatible with national legal frameworks rewriting then has the clear preference of the Ministry of Justice. However, rewording is considered more difficult, which makes it slower than rewriting. Also, according to some, if you re-word there is a risk you may be using the wrong words. That's because there is not so much leeway in transposition as there should be.

Copying is seen as faster and according to at least one interviewed expert is used increasingly as a way to cope with the growing number of directives. However, it is also seen as unfriendly to the end user. Another expert pointed out that copying is done 'if we can't make up our minds', when a directive is considered difficult. Again, it is seen as undesirable as it transfers responsibility for understanding and interpreting the provisions to the next user – local government, businesses and courts.

9.6 Analysis of national policy process

The Danish transposition record has been consistently good, one of the best in the EU. According to Nedergaard, this is due to the fact that the Danish position in the EU is based on domestic consensus which is achieved by a time-consuming process of consultation of a multiplicity of interests before a policy proposal is negotiated in Brussels (Nedergaard, 1995:114). Similarly, the Asser report attributes the success of implementation in Denmark to the attention for internal consultation during the drafting of national position phase. In this internal negotiation phase, all stakeholders are consulted, including Parliament (Asser Instituut, 2004b: 3; Nedergaard, 1995: 114; interviews). This implies there is no political force attempting to stop transposition and implementation later.

Parliamentary involvement is generally evaluated rather positively. Even though Parliament is said to reject a mandate only rarely⁷⁷ (Folketing et al, 2002: 10), government usually anticipates on the EAC's stance (Pedersen, 2000: 30). Furthermore, its power is boosted by seniority of its members. All in all, the strong role of parliament is considered one of the factors ultimately facilitating transposition as it 'ensures that sudden surprises do not occur when new legislation is necessary' (Biering, 2000: 959). According to one of our interviewees, the procedure ensures that 'the train is set in motion, and it will arrive at the next station.'

Yet, some weaknesses are also reported. It is positioned rather late in the EU decision/making process, when the Danish position has already been formulated in Coreper (Nedergaard, 1995, 126). What is more, it depends almost fully on the government for information, and must trust the latter that it followed its mandate, due to the secrecy of Council meetings. The biggest concern, though is that it suffers from work overload (Pedersen, 2000: 231). The staff is considered wholly inadequate (Eliason, 2001: 201). For this reason, debate has ensued about the role of the sectoral committees. For a long time, EU affairs were the sole responsibility of the EAC. EAC could forward memoranda to the sectoral committees, or informally hear their opinion, but this was completely optional. If it happened, the committees were usually not very interested (Nedergaard, 1995: 128; Pedersen, 2000: 231). Therefore, in May 2001, the Parliamentary European Affairs committee recommended that memoranda are sent by the government simultaneously to the specialized committees and the European Affairs committee (Danish Parliament information fact sheet, at <http://www.ft.dk/?/samling/20041/menu/00000005.htm>). This has been effected in the most recent Folketing report (2004), which has made EU issues a formal responsibility of the sectoral committees. Their instruments for exerting influence are that they can call the minister, make recommendations to the EAC, and arrange public hearings, something which is often done for Green and White papers (interview, Folketing).

On the whole, even though the Danish process of EU policy making at first sight seems rather formal and centralized, in reality it is highly informal (interview). It is a bottom up approach, starting with the sectoral committees and the individual teams of civil servants in Ministries/agencies and then ending up there again for transposition. One and the same team is responsible for the whole process of negotiation and implementation, which creates a sense of ownership and prevents 'Chinese walls' between those who negotiate and those who implement. Furthermore, the coordination style is informal, except for the part where Parliament is involved, but also there the stress is on obtaining an oral mandate and not on increasing the paper trail. A final important factor seems to be the rule of law, which is one of the fundamental building blocks of Danish politics and administration. The basic attitude is that EU laws must be implemented properly, even if they go against Denmark's wishes.

Despite the good Danish record, sometimes transposition is delayed. The major reason for delay, according to our respondents, is formed by notification problems (also see Von Dosenrode, 1998, 58). Sometimes the European Commission has not registered notification, or sometimes it is forgotten by the ministries. Real delays are generally said to be very rare. One of our respondents reports that on average

⁷⁷ According to Nedergaard (1995) this happens only in some 95 % of the cases. According to one of our interviewees, the frequency has increased over the last three to four years, due to the generally Euro-skeptical stance of the Dansk Folkeparti. It allegedly has been especially difficult in the fields of GMOs and food directives. According to our interviewee at the Folketing, however, there are no particular sectors in which mandates are hard to obtain.

once a year transposition is problematic for substantive reasons. Other reasons for delays reported are a lack of manpower, and the ambiguity and difficulty of some directives.

9.7 Conclusions

- The swift transposition of EU directives in Denmark is not a direct result of the use of special legal instruments or techniques. In fact, Denmark knows only two legal instruments used for transposition. The very simplicity of the legal options seems to contribute to swift transposition. Most transposition happens through ministerial orders, but this does not diminish the role of Parliament.
- The extensive involvement of the Danish Parliament at the pre-negotiation stage is seen by many experts and civil servants as key to Denmark's success in transposition. Interviewees have all stressed that the process of obtaining a mandate from Parliament before negotiations on a proposal have taken place in the Council of Ministers is crucial. Parliament takes its task of scrutinizing EU proposals highly seriously, which prevents surprises during transposition.
- Consultation and domestic consensus building at the pre-negotiations stage contribute to swift transposition. The extensive consultation not only with Parliament but also with interest groups at a very early stage creates awareness which also helps successful transposition later.
- Ministerial powers of delegation are important, but delegation is specific and based on sectoral laws. As proposals have been already discussed in parliament, at the transposition stage powers can be delegated to a Minister to pass the necessary legislation by a Ministerial order.
- Another reason for Denmark's good transposition record is that lines of responsibility are clear and final responsibility is not in a centralizing authority but in the line ministries. On this bottom up basis, administrative coordination is maintained throughout the policy cycle. More specifically, the same civil servants/teams which negotiate a directive are involved in transposing it, so that there are no 'Chinese walls between negotiation and transposition.' Teams consist of both lawyers and practitioners, drafting of transposing acts is done by the same people. This means that those who negotiate are familiar with the domestic situation and are aware of the EU policy context in which a decision is made.
- Flexible consultation mechanisms and an informal manner of coordination save time and make the Danish approach highly effective.
- A culture of obeying the law is credited with ensuring that directives are transposed even when they were seen to be to Denmark's disadvantage. The values and beliefs of administrators play a crucial role in this process. Danish civil servants take a pride in transposing directives well and on time, and conversely, it is considered shameful for ministries to have been late with transposition.
- The naming and shaming of laggards among ministries in the Special Legal Committee based in the Ministry of Justice is a helpful mechanism that reinforces the rule of law culture that exists in Ministries.

Appendix: List of interviewees

- Peter Biering, Legal adviser to the Danish government, Law firm Poul Schmith
- Susanne Isaksen, Department of EU Coordination, Ministry of Foreign Affairs
- Peter Riis, European Affairs Committee of the Folketing
- Klaus Werner, International Unit, Ministry of Economic and Business Affairs
- Leif Thomassen, Senior EU Coordinator, Danish Financial Supervisory Authority
- Christina Toftegaard Nielsen, EU Affairs Unit, Department of Law
- Nikolaj Aaro-Hansen, EU Affairs Unit, Department of Law
- Jørgen Molde, EU Law Department, Legal Service, Ministry of Foreign Affairs
- Merete Voetmann, EU Law Department, Legal Service, Ministry of Foreign Affairs
- Lise Wesenberg Jensen, Specialkonsulent Legal Affairs, Danish Environmental Protection Agency