

**DIRECTORATE GENERAL I – LEGAL AFFAIRS  
DEPARTMENT OF CRIME PROBLEMS**

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## **First Evaluation Round**

### **Evaluation Report on Denmark**

Adopted by GRECO  
at its 10<sup>th</sup> Plenary Meeting  
(Strasbourg, 8-12 July 2002)

## **I. INTRODUCTION**

1. Denmark was the twenty fourth GRECO member to be examined in the First Evaluation Round. The GRECO Evaluation Team (hereafter referred to as "the GET") was composed of Mr. Arnt Angell, Chief Public Prosecutor, the National Authority for Investigation and Prosecution of Economic and Environmental Crime (Norway, prosecution expert); Mr. Mato Blazanovic, Police Officer for Corruption, Economic Crime and Corruption Department, Criminal Police Directorate, Ministry of the Interior (Croatia, police expert); and, Mr. Richard M. Rogers, Senior Counsel to the Assistant Attorney General, Criminal Division, Department of Justice (United States of America, policy expert). This GET, accompanied by one member of the Council of Europe Secretariat visited Denmark from 5 to 8 February 2002. Prior to the visit, the GET experts were provided with a comprehensive reply to the Evaluation Questionnaire (document Greco Eval I (2000) 12E) as well as with copies of the relevant legislation.
2. The GET met with officials from the following Danish Governmental organisations: The Ministry of Justice, the Director of Public Prosecutions, the Office of the Public Prosecutor for Serious Economic Crime, the Eastern High Court, the National Commissioner of Police, the Parliamentary Ombudsman, the National Audit Office, the Danish Competition Authority of the Ministry of Trade and Industry, the Parliamentary Committee for Public Accounts, the Danish Commerce and Companies Agency, and the National Association of Local Authorities in Denmark. The GET also met with members of the Confederation of Danish Industries, the Danish Chapter of Transparency International and with representatives of the newspapers Jyllands-Posten and Politiken.
3. GRECO agreed, at its 2nd Plenary meeting (December 1999) that the evaluation procedure to be used in the 1st Evaluation round would, in accordance with Article 10.3 of its Statute, be based on the following provisions:
  - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
  - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
  - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).
4. Following the meetings indicated in paragraph 2 above, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned and proposals for Recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the Danish authorities, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in Denmark, the general anti-corruption policy, the institutions and authorities in charge of combating it – their functioning, structures, powers, expertise, means and specialisation – and the system of immunities. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in Denmark is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to Denmark in order for this country to improve its level of compliance with the GPCs under consideration.

## **II. GENERAL DESCRIPTION OF THE SITUATION**

5. The Kingdom of Denmark consists of Denmark, on mainland Europe, the Faroe Islands (an archipelago of 18 islands in the North Sea) and Greenland. Denmark, which is the southernmost of the Scandinavian countries includes most of the Jutland peninsula, the islands Sjaelland, Fyn, Lolland, Falster, Langeland, Als, Møn, Bornholm and Amager and about 450 other islands. Denmark has an area of 43,094 sq. km. and a population of about 5.3 million. The Faroe Islands cover 1,399 sq. km., with a population of about 46,000. Greenland is 2.17 million sq. km. in area, with 56,245 inhabitants.
  6. Denmark is a constitutional monarchy, governed according to the 1953 Constitution. The legislative power is exercised by Parliament (Folketing) which is a unicameral body consisting of 179 elected members. The executive power is exercised by the Queen (Head of State) through her Ministers, led by the Prime Minister (Head of Government). The Cabinet of Ministers is responsible to the Parliament and must have the support of its majority. There is no single law that delineates the division of responsibilities between state, county, and local authorities. The Parliament and the Government are in charge of determining which tasks should go to state, county, and local authorities, respectively, and what their responsibilities should be.
  7. In general, the State is responsible for the police and penal institutions, the judicial system, the foreign service, defence, universities and other institutions of higher learning, vocational training, unemployment insurance, job placement services, trade inspection, certain cultural affairs, business subsidies, agricultural control, environmental regulation, administration of customs excise duties and taxes, and traffic infrastructure and planning.
  8. County responsibilities include mainly the public hospitals, the public health insurance, upper secondary schools, environmental monitoring, maintaining and improving the roads, transportation and regional planning.
  9. Local government is an essential part of Danish democracy. Article 82 of the Danish Constitution provides for the right of local authorities to take independent charge of their own affairs, subject to measure of State supervision. Local self-government in Denmark relies on the power of local authorities to levy taxes on income as well as on property. The Danish Local Government Reform, enacted in 1970, reduced the number of local authorities from 1,300 to 275 and reduced the previous 25 counties to 14. The principle behind the reform was that all issues should be resolved as close to the individual citizen as possible, but at the same time that local government units be of sufficient size to be economically and administratively viable on their own. Local authorities deal mainly with child and youth care, care for the elderly, primary and secondary schools, immigration and all social benefits [some costs being financed or defrayed by the State], including welfare.
  10. Denmark's GDP per capita was approximately 34 000 Euros in 2001, which is above the average of member states of the EU and the OECD. More than 30 per cent of the total GDP is spent by the local authorities.
- a. The phenomenon of corruption and its perception in Denmark**
11. Denmark has very few corruption cases according to official statistics. The general perception of almost non-existence of corruption in Denmark as presented by representatives of various authorities met by the GET was shared by the various representatives of the media and

Transparency International. During the last two years, there had been only one serious corruption case (breach of trust against an international organisation) and, that case had been transferred to neighbouring countries for prosecution as the accused persons were citizens of these countries. There had been five cases of passive bribery, one of which was withdrawn, and ten cases of active bribery. The cases concerned minor matters of "petty corruption" relating to attempts to bribe police officers in connection with driving offences, mostly driving while under the influence of an intoxicant. In addition, some "scandals" on the local authority level have been highlighted in the press, however, these have not been legally qualified as corruption.

12. The authorities do not regard corruption as a major problem in Denmark. The GET was told that as a result there did not exist a national anti-corruption policy plan or programme. Nor are there particular anti corruption training programs in place for public officials, such as the police.
13. According to the Transparency International Perception Index for 2001, Denmark was ranked as the second least corrupt country out of 91 (with a score of 9.5 out of 10). It has held that rank during the last two polls, prior to which it was ranked as number one for several years.
14. The GET was informed that organised crime is not a big problem in Denmark. While there are a few gangs of the Hell's Angels type, there have not been detected any links between any organised criminal elements and corruption.

i) As to the law

15. The Danish *Criminal Code* contains provisions which encompass the various forms of bribery, including active bribery, passive bribery, "attempted" bribery, "complicity" to commit bribery, and "organised bribery." Both active and passive bribery of persons exercising a public office or function is an offence under sections 122 and 144, respectively, of the Danish Criminal Code (see Appendix I).
16. Section 122 of the Criminal Code applies to any person who unduly grants, promises or offers a person exercising a Danish, foreign or international public office or function a gift or privilege in order to induce him to do or fail to do anything in relation to his official duties (*active bribery*). The provision applies whether the person granting, promising or offering the bribe is a Danish national or not. It applies whether the advantage being offered benefits the public official or other individuals, for example, his spouse, his children or even others. The term "gift or other privilege" includes both pecuniary and other advantages, such as the promise of personal return services. Criminal bribery exists if the grant (promise or offer) of a gift or other privilege is "undue" or "unjustified." It is not necessary that the act or omission sought to be induced in the public official involve any breach of duty or that the briber have any such intent. Nor is it necessary that the act or omission sought to be induced by the bribe fall within the public official's competence.
17. Section 122 of the Criminal Code includes both "foreign" and "international" "public offices or functions". The term "foreign" public office or function is directed at persons who exercise a public function for another country, including for a public agency or a public undertaking. The term "international" public office or function includes offices and functions with the Council of Europe, OECD, EU, NATO, the UN, and similar organisations. The term "public office" includes judges and other staff of the judiciary. The term "public function" comprises both cases where the function is based on election and cases where the function is based on contract or service in pursuance of duty. Therefore, members of the Danish Parliament are encompassed by this term. The exercise of a "public function" also includes cases where functions are exercised on behalf of

the public in undertakings organised as companies engaged in commerce or industry. The penalty for active bribery is a fine or imprisonment up to three years. According to Danish law, there is no fixed maximum on the amount of a fine.

18. Section 144 of the Criminal Code applies to *passive bribery*. Contrary to the granting of bribery acceptance of bribery is liable to punishment, irrespective of whether the purpose of the granting of such bribery is to induce the public servant to do or fail to do anything in relation to his official duties, and irrespective of whether the acceptance takes place after the duty concerned has been performed without any prior promise of a remuneration. The expression "undue" in section 144 represents a reservation to exclude donations of minor importance, which do not represent any risk of influencing the exercise of the duty, from the scope of criminal acts. Occasional presents offered in acknowledgement of the recipient's general work, for instance at jubilees, resignations, or transfers, are generally not deemed undue. However, gifts granted for the purpose of expediting a transaction are normally encompassed by this section. The penalty for passive bribery is a fine or imprisonment up to six years.
19. Section 299, no. 2, of the Criminal Code relates to *bribery in private affairs* (see Appendix I). This provision makes active and passive bribery a criminal offence collectively. Under this provision, any person who, in his/her capacity as trustee of any property of any other person, in breach of his/her duty accepts, claims or accepts the promise of a third party to provide, for the benefit of himself/herself or of others, a gift or any other privilege, as well as any person who grants, promises, or offers such an advantage, shall be liable to a fine or to imprisonment for a term not exceeding one year and six months. In addition to (purely) private property affairs, this rule applies in cases where property belonging to public authorities is administered by persons falling outside the category of persons covered by section 144 of the Criminal Code. It is also a criminal offence to receive or grant a bribe in ongoing business relationships even though the receipt or granting of a bribe has not been discussed or implied before entering into prior agreements if the receipt or the granting of the bribe is made for the purpose of the further development of the business relationship.
20. The establishment of and participation in a criminal organisation is not an independent offence in Denmark. However, corruption committed in an organised manner is punished under the provisions already discussed and the organised nature of the offence may be considered an aggravating circumstance when the courts decide on the penalty. Moreover, under section 23 of the Danish Criminal Code, which deals with "complicity," any person who contributes to the execution of a wrongful act by instigation, advice or action, is liable to a penalty according to the same rules as the principal offender. Complicity may exist both in relation to the planning of the bribery and to the actual execution thereof. It is not necessary for criminal responsibility to attach that the person contributing to the bribery himself have any prospect of receiving a share in the advantage intended to be gained from the bribery. The fact, however, that the contributor receives a share in the advantage gained by the bribery may constitute an aggravating circumstance in determining the penalty. Under section 80(2) of the Criminal Code it is usually an aggravating circumstance that the offence or attempted offence was committed by several persons jointly.
21. If a bribery offence is not completed, a penalty can be imposed for participation in an attempt pursuant to section 21 of the Criminal Code. Rules on attempted offences, including bribery pursuant to section 122, are laid down in section 21 of the Criminal Code. According to this provision, acts that aim at the promotion or accomplishment of an offence are punishable as attempts when the offence is not completed. Attempts at complicity also fall within this provision.

22. Section 306 of the Criminal Code (see Appendix I) provides that criminal responsibility can be imposed on *legal persons* when violations have been committed to secure the legal persons share in a gain acquired by the offence<sup>1</sup>. Part 5 of the Criminal Code (sections 25 to 27) contains general supplementary provisions on the criminal responsibility of legal persons, laying down the detailed conditions for imposing such responsibility. The criminal responsibility pursuant to section 306 encompasses any legal person, including companies limited by shares, cooperative companies, local and state authorities, as well as sole proprietors in so far as they are comparable to companies, particularly with regard to their size and organisation. Responsibility of legal persons also applies to active bribery in the public and private sectors, including liability for handling bribes in relation to active and passive bribery in the public sector. The legal person's criminal responsibility does not preclude the personal responsibility of the natural person who intentionally violated the relevant provisions of the Criminal Code. The only penalty applicable to legal persons is a fine. The imposition of fines in cases of corporate responsibility is governed by the same rules as those applying to natural persons. In determining fines special consideration is given to the offender's capacity to pay and to the obtained or intended gain or amount saved. The fact that the offender's capacity to pay is considered when the fine is fixed makes it possible to impose a substantially larger fine on a legal person than on convicted single individuals.
23. Proceeds of corruption may be confiscated under general rules on confiscation of proceeds of crime in accordance with the Criminal Code.
24. Pursuant to Section 290 of the Danish Criminal Code, money laundering is a separate criminal offence in Denmark. Section 290 applies if the predicate offence is a violation of section 122, section 144 or section 299. The application of section 290 is not limited to cases where the predicate offence is connected with Denmark. The provision can also be applied in cases where the predicate offence involved would not be subject to Danish criminal jurisdiction.
25. A money launderer can be sentenced for a completed breach of section 290 even if he incorrectly assumes the proceeds come from another offence than the actual predicate offence. Criminal responsibility for attempted money laundering is an option where the defendant intended to commit money laundering with respect to bribery, but the predicate offence cannot be proven.
26. In May 2001 Denmark introduced an all crime money laundering offence, which means that the offence of money laundering no longer is limited to the handling of proceeds of specific predicate offences. The Danish Money Laundering Act follows the EU Money Laundering Directive, which means, that all beneficial owners of accounts are identified.
27. The rules on *Danish criminal jurisdiction* are laid down in sections 6 to 12 of the Criminal Code. Danish criminal jurisdiction includes acts committed within the territory of the Danish state [the principle of territoriality] and acts committed abroad by Danish nationals and foreigners domiciled in Denmark [the principle of personality]. Danish criminal jurisdiction applies to situations in which only part of a criminal activity is carried out in Denmark. Criminal acts not committed in Denmark, but which have an effect in Denmark, are also subject to Danish criminal jurisdiction.

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<sup>1</sup> An amendment to Section 306 was pending before the Danish Parliament at the time of the visit. The amendment would repeal the requirement that a violation must have been committed to obtain a gain for the legal person. The amendment would also make it clear that legal persons can be punished for attempted offences to the same extent as natural persons. The amendment was adopted after the visit of the GET

28. Acts such as bribery committed by Danish nationals abroad are subject to Danish criminal jurisdiction when the act is punishable both under the law in the territory where the act was committed and under Danish law (dual criminality). The same applies to acts, such as bribery, committed abroad by persons who are nationals of or reside in the other Nordic countries, but are present in Denmark. When prosecution takes place in Denmark in these situations, the decision concerning the punishment and any other legal consequences of the act is made under Danish law. The punishment, however, may not be more severe than that provided for by the law of the territory where the act was committed.
29. The *Danish Book-keeping Act* requires that every financial transaction be recorded exactly, properly and in due time in accordance with best practices and common customs and that every transaction be evidenced by a voucher or document. All commercial ventures established in Denmark – irrespective of ownership or conditions of liability – and all commercial activities performed in Denmark by organisations established in foreign countries are subject to the Book-keeping Act. The penalties for violating the Book-keeping Act range from fines to imprisonment up to one year.
30. Denmark has a number of provisions in its legislation on disqualification from participation in State and local government proceedings. For public employees, these provisions appear in Part 2 of the *Public Administration Act*. For members of local councils, the rules on disqualification are contained in the *Local Government Act*. The principle behind these rules is that a person is excluded from participating in the consideration of any matter in which s/he has an interest that is likely to raise doubts about his/her impartiality. If a public employee participates in the consideration of a matter in spite of being disqualified, criminal liability may be incurred in certain cases. The rules on this appear in sections 156 and 157 of the Criminal Code on the failure to fulfil official duties. Furthermore, disciplinary punishments may also be imposed on civil servants pursuant to Part 4 of the Civil Servants Act. Under section 61 c of the Local Government Act, a penalty for gross dereliction of official duties can be imposed on members of a local council. Section 61c(2) of that Act notes that prosecution for such conduct is possible.
31. The *Public Access to Documents in Administrative Files Act* provides, with some exceptions, for a right of access to documents received or created by an administrative authority as part of its work.
32. According to the general rules for calculation of taxable income, a tax deduction is not granted for expenses if the payment of these amounts constitutes a criminal offence. The *Tax Assessment Act* provides specifically that bribes paid to a public official are not tax deductible and has the effect that no deduction is granted for expenses for bribes referred to in section 144 of the Criminal Code to a person employed, appointed or elected for an office or function with legislative, administrative and judicial bodies, whether for Denmark, the Faroe Islands or Greenland or a foreign state, including local authorities or political subdivisions or for an international organisation formed by states, governments or other international organisations. This rule also applies if the payment is described not as a bribe, but as, for example, a commission. It is not a condition for denying the tax deduction for expenses for bribes paid to a public official that a court has ruled that a criminal offence has been committed.
- ii) *International undertakings*
33. Denmark ratified the Council of Europe Criminal Law Convention on Corruption on 2 August 2000. It has signed the Civil Law Convention on Corruption and has started preparations in order

to be able to ratify the latter Convention. Denmark ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 5 September 2000. The Convention on the Fight against corruption involving Officials of the European Communities or Officials of Member States of the European Union was ratified on 2 October 2000. As a member of the European Union, Denmark has also undertaken the obligations according to the Joint Action of 22 December 1998 on Bribery in the Private Sector.

34. Denmark recognises/is a party to all international legal standards on *money laundering*, including provisions on money laundering in the 1991 EU Money Laundering Directive, the 1988 UN Convention against illicit traffic in narcotic drugs and psychotropic substances (the Vienna Convention), the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime (the Strasbourg Convention), the 2000 UN Convention on transnational organised crime and the 1996 FATF 40 Recommendations.
35. Transfer of proceedings is made on the basis of the rules in the European Convention on the Transfer of Proceedings in Criminal Matters. The Transfer Convention was implemented in Danish law in 1975 and in 1986. Transfer is normally possible only to countries that have acceded to the Transfer Convention. Pursuant to section 5 of the Act, the Minister of Justice may, however, decide on the basis of mutuality that the Act must also be applied in the relationship between Denmark and a country that has not acceded to the Convention. A transfer of proceedings is made upon a recommendation from the prosecutor. A guideline for the prosecutor's decision in this respect is where the proceedings can be conducted most conveniently.
36. Denmark is a contracting party to the European Convention on Mutual Assistance in Criminal Matters, but it has no specific legislation relating to *mutual legal assistance*. In all cases where assistance to or from Danish authorities in criminal proceedings is required, the Danish authorities apply national legislation, principally the Danish Administration of Justice Act, by analogy. For that reason, generally there are no hindrances in Danish law that prevent mutual legal assistance in corruption cases. The principle of dual criminality may, however, in certain circumstances lead to Denmark refusing a request for mutual legal assistance.
37. The Act on Extradition of Offenders (the Extradition Act) governs *extraditions for prosecution*. Pursuant to section 3 of the Extradition Act, extradition can only take place if, under Danish law, the alleged crime upon which the requested extradition is based entails a penalty of imprisonment for more than one year (six months in cases of extradition to an EU member State). This requirement is satisfied in bribery cases. Dual criminality is a condition for extradition to non-Nordic countries. It is not a requirement that the criminal law of the foreign state contains an offence identical to the Danish provision (e.g. section 122 in the Danish Criminal Code) as long as the conduct in the specific case is covered by a criminal law provision in both Denmark and the foreign state. Extradition is not conditional upon the existence of a treaty. Extradition is therefore possible where no agreement on extradition exists between Denmark and the relevant foreign country. Section 2 of the Extradition Act lays down a general prohibition against extradition of Danish nationals. Extradition of a Danish national is thus excluded in corruption cases. However, Act No. 27 of 3 February 1960 on extradition of offenders to Finland, Iceland, Norway and Sweden, as amended by the *Nordic Extradition Act (1975)*, permits the extradition of Danish nationals to a limited extent, based on the close community of laws between the Nordic countries. Pursuant to section 2 of this Act, a Danish national can be extradited if, for the last two years prior to the criminal act, he has had his residence in the country to which extradition is sought, or the criminal act entails a penalty of imprisonment for more than four years.



38. Denmark has criminal jurisdiction over Danish nationals who have committed criminal offences abroad subject to certain conditions. Danish nationals whose extradition is declined based on nationality can thus be prosecuted in Denmark. A draft amendment to the Extradition Act was pending before Parliament at the visit of the GET<sup>2</sup>. The purpose of the amendment is to provide for the extradition of Danish nationals for prosecution abroad when the predicate criminal act carries a possible sentence of more than four years' imprisonment or the Danish national resided in the country seeking extradition for at least two years prior to the offence. The reason for the amendment is that prosecution should generally be carried out where an offence has been committed since it is often difficult to produce evidence of offences committed abroad, for example when witnesses and other evidence are not available in Denmark.

**b. Bodies and institutions in charge of the fight against corruption**

39. No specialised bodies<sup>3</sup> have been set up in Denmark to deal specifically with corruption or to coordinate anti-corruption efforts conducted by different institutions. As noted above, the Danish authorities perceive no need for such a structure in view of the low level of corruption supported by the low number of corruption cases.

**b1. The Police**

*The Organisation of the Police*

40. The Administration of Justice Act contains the statutory provisions that govern the work of the police. The duties of the police are set forth in section 108 of that Act and include maintaining security, peace and order; ensuring that laws and regulations are complied with; taking necessary measures to prevent crime; and, investigating crimes and prosecuting offenders.

41. The Police in Denmark, Greenland, and the Faroe Islands are part of the Ministry of Justice. The Minister of Justice exercises his police powers through the National Commissioner of Police, the Commissioner of the Copenhagen Police and the Chief Constables in charge of the 54 Police districts. It should be noted that the Minister of Justice has the power to interfere directly in the operation of an individual case at the level of the police districts (there is a direct link from the Minister to the Chief Constable).

*The National Commissioner of Police*

42. The National Commissioner of Police is appointed by the Queen upon proposal by the Minister of Justice. S/he may be dismissed by the Minister of Justice. According to the Administration of Justice Act, the National Commissioner of Police (NPC) performs various functions, the administration of police personnel and police finances being the most important responsibilities. The NPC is also in charge of the co-ordination and supervision of the work of the chief constables. In addition, the NPC establishes guidelines for the performance of police duties, but cannot interfere in individual cases. The role of the NPC's Office is to a great extent that of a centralised supporting body, leaving the operational police work to the police districts.

43. The NPC's Office is divided into eight departments, dealing mainly with the uniformed branch, crime prevention and detection, personnel and recruitment, budget and accounts, data and

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<sup>2</sup> The Bill was adopted after the visit of the GET.

<sup>3</sup> See also paragraphs 52 and onwards concerning SØK.

administrative matters, aliens, the Police College, the National Security Service and logistics. The National Centre of Investigative Support provides technical and professional assistance to local police districts. In case the NPC's Office supplies a local police district with additional personnel, this staff must follow the instructions of the local chief constable and cannot interfere in local decision-making concerning investigations. The NPC's Office has approximately 2500 staff members, including the students at the Police College, which are employed as probationary staff, see below.

### *The Police Districts*

44. The territory of Denmark is divided into 54 police districts<sup>4</sup> (plus the Faroes and Greenland), each headed by a Chief Constable, who has dual functions; the Chief Constables are not only operationally responsible for the police districts but also in charge of the prosecution service of the district. After the completion of the investigation of a case, the chief constables or their deputies or assistants appear before the district courts as prosecutors. According to "the Statement of the Overall Principles and General Aims of the Danish Police", police districts are decentralised, independent entities organised in a way which allows the Copenhagen Police Commissioner and the chief constables to implement the general aims and strategies for the police service. The Copenhagen Police has a specific status and organisation, adjusted to its needs.
45. The Chief Constable is responsible for the work of police in a police district. S/He is independent in managing the investigation of crime, maintaining security, law and order in the district. Depending on the size of a district, the Chief Constable has one or more deputies and is also assisted in his work by assistant prosecutors, who have to have legal training. Besides the main police station, the police districts also have sub-stations, community police posts and rural stations. Every police district has in its structure a Criminal Investigation Department, but there is no specialisation in corruption cases.

### *Police staff and training*

46. The Danish Police Service employed 13,404 persons (in year 2000), including prosecutors, regular police, clerical staff, and civilian administrative staff. Of these, 10,413 were regular police officers (uniformed). The personnel of the Criminal Investigation Departments and the uniformed police enter service through the National Commissioner's Office. After they are hired, they must complete a probationary period lasting three years. When recruiting new officers, the National Commissioner's Office strives to recruit applicants from different social and cultural environments, so that all sections of the population are represented. The Police Trade Union plays an active role with regard to ethical matters of the police; a code of ethics has been developed as well as training material, such as videos.
47. The Danish National Police College is an individual department within the office of the National Commissioner, headed by a Chief Constable. The initial basic training of new recruits takes three years. After the candidates have completed the probationary period, they are offered a number of additional, special courses for the purposes of their further training and specialisation in performing specific police duties, such as courses in advanced investigations, accountancy and other subject matters where special knowledge is required, such as economic crime, computer crime, etc. There are no specific training courses on corruption.

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<sup>4</sup> The GET was told that several police districts were likely to be merged and that the number of independent districts would be reduced to approximately half of the present number.

## **b2. Public Prosecution Service**

48. The Prosecution Service comes under the authority of the Minister of Justice who supervises the work of the public prosecutors. The Prosecution Service consists of the Director of Public Prosecutions (Prosecutor General), six regional public prosecutors and 54 chief constables. There are some 500 prosecutors in Denmark, 20 of them are in the Office of the Prosecutor General, 15-20 in each regional office and the remaining in the police districts.
49. The Director of Public Prosecutions is appointed by the Minister of Justice. S/he may be dismissed by the Minister of Justice. The Director of Public Prosecutions conducts prosecutions in criminal cases before the Supreme Court. The regional public prosecutors deal with criminal cases before the high courts (appeal courts) and superintend the chief constables, who may act as prosecutors before the county courts. The regional public prosecutors also deal with complaints against the police, see below. The Chief of Police of the Faroe Islands and the Chief Constable of Greenland have the same level of authority as regional public prosecutors, and thus come under the direct authority of the Director Public Prosecutions.
50. The Minister of Justice superintends the Public Prosecution Service, including the Director of Public Prosecutions, and may issue rules concerning the discharge of duties of the public prosecutors, pursuant to section 98(2) of the Administration of Justice Act. The Administration of Justice Act also authorises the Minister of Justice to give instructions concerning a specific case, including whether to prosecute or not to prosecute. The GET was told however that the Minister of Justice "by tradition and as a matter of principle exercises the utmost reluctance when dealing with specific decisions made by the competent public prosecutor".
51. Decisions by public prosecutors can be appealed to the Director of Public Prosecutions, or when s/he is biased, directly to the Minister of Justice. Decisions by the Director of Public Prosecutions may be appealed to the Minister of Justice (section 98 (4) of the Administration of Justice Act), i.e. a system of two instances.

### *The Office of the Public Prosecutor for Serious Economic Crime (SØK)*

52. The Office of the Public Prosecutor for Serious Economic Crime (SØK) was established in 1973 as a special branch under the authority of the Director of Public Prosecutions. SØK has national competence and deals with the most complex and serious cases of economic crime, such as various forms of fraud (including investment fraud), embezzlement, breach of trust, tax offences, corruption, extortion, usury and insider trading. When deciding to take on a case, that Office considers some of the following factors: the complexity of the case, whether there is a link to organised crime, whether special business methods were involved or whether the case is in any other way serious.
53. The office, which is headed by the Public Prosecutor for Serious Economic Crime, consists of 25 prosecutors, 40-50 investigators (police) and supporting staff. The prosecutors and investigators work closely together. In addition, auditors are employed on a case-by-case basis to assist the prosecutors and investigators.
54. Moreover, SØK is the prime body to handle serious cases of corruption, the corruption cases of a more simple nature being dealt with in the ordinary procedure, i.e. by the local police and the chief constables. The GET was informed that this Office has, as a result of the low level of

corruption in Denmark, dealt with few cases of corruption, however, recently it handled the investigation of a major corruption case involving an international organisation and persons of various nationalities. This case was successfully investigated in close co-operation with other Nordic States and was subsequently transferred to a neighbouring country. It should be added that SØK has investigated one major corruption case concerning bribery of municipal civil servants (1980) and another concerning private bribery (1986).

55. Moreover, the GET was informed that the perception within SØK is that the investigation of corruption does not differ from the investigation of serious economic crime. Staff of SØK participates regularly in conferences and training relating to corruption.

#### *Complaints against the police*

56. Complaints about police conduct (and crime) are dealt with in a specific procedure within the public prosecution, according to provisions contained in the Administration of Justice Act. The six regional public prosecutors handle these complaints in their respective regions and police personnel are involved in these investigations only exceptionally and to a limited extent, according to strict instructions given by the regional public prosecutor. Moreover, the regional prosecutor's investigation of complaints against the police is supervised by regional police complaints boards, consisting of one lawyer and two laymen. The regional public prosecutor has the obligation to keep the police complaints board regularly informed of the complaints reported and of the progress of the investigation. The police complaints board may initiate a case and it may also suggest the form of an inquiry. The Regional Public Prosecutor has to regularly inform the police complaints board of the progress of the investigation and of the completion of the investigation or inquiry. After the investigation has been completed, the Regional Public Prosecutor makes the decision on the outcome of the case, however, before doing so s/he must consult the police complaints board. The decision of the regional public prosecutor can be appealed by the parties of the case and by the complaints board, to the Director General of Public Prosecutions.

#### **b3. The Courts**

57. In Denmark all types of civil and criminal cases are processed in one court system. The Danish Courts comprise 82 District Courts, the Maritime and Commercial Court of Copenhagen, which are first instance courts, two High Courts (second instance) and the Supreme Court, which to a large extent deals with cases of interest for the development of the case law. In addition, there is the judiciary in the Faroe Islands (The County Court for the Faroe Islands) and in Greenland (The High Court of Greenland with 18 regional Magistrates Courts). The Courts are administrated (budget and staff matters, etc) by the Court Administration, which is an independent body under the responsibility of the Ministry of Justice. There are no special courts or departments of the courts for cases of corruption
58. Moreover, the Special Court of Indictment and Revision hears cases concerning disciplinary sanctions against judges and re-opening of criminal cases after a final decision, whereas the Court of Impeachment hears cases in which ministers are charged with violations of their duties.
59. Denmark has a court system comprising professional judges and lay judges. In the District Courts, a single judge presides in civil cases and in criminal cases a professional judge presides together with two lay judges. The High Courts consists of three professional judges in civil cases and three professional judges together with three lay judges in criminal cases. In the most serious

criminal cases three judges sit with a jury of 12 lay persons. The Supreme Court has only professional judges.

60. Judges are appointed by the Queen on recommendation from the Minister of Justice as advised by the Judicial Appointment Council. This Council consists of one Supreme Court judge, one High Court judge, one district court judge, one practising lawyer and two members appointed by organisations representing a broad spectre of interests in the Danish Society. It is envisaged that the recommendations of the Judicial Appointment Council will be followed by the Minister. Judges are appointed "for life", however, they must retire at the age of 70.
61. Lay judges are appointed for a period of four years by the High Courts following proposals by the municipalities. The lay judges are selected among public-spirited citizens, elected at the municipalities. Following a control of their criminal records, lists of available persons to act as lay judges are established through a system of lottery.
62. The Danish Constitution guarantees the judges (whether professional or lay judges) absolute independence from the Executive and the Parliament. Section 64 of the Constitution provides that judges in the execution of their duties are governed by the law only. Furthermore, judges cannot be removed against their wish and may be dismissed only by order of the Special Court of Indictment and Revision. A complaint against a judge must be lodged within four weeks (commencing from the moment when the complainant is aware of the facts complained of) with the Director of Public Prosecutions who in turn shall bring the matter before the Special Court of Indictment and Revision. The GET was told that there had been no cases concerning corruption against judges.
63. Professional judges are not allowed to have regular income outside the judiciary without the permission of the Presidential Council (consisting of presidents of courts). Moreover, all judges are obliged to report their extra incomes to the president of the court, which in turn reports to the Supreme Court. This information (except the amounts) is made public (even on internet).

#### **b4. Criminal investigation of corruption**

64. The Administration of Justice Act is the basic act regulating the rules of investigation and prosecution for all criminal acts. It does not contain specific provisions about investigating and prosecuting criminal acts of corruption. If a case involves a criminal act liable to public prosecution, the police initiate an investigation on the basis of information gathered by its own work or on the basis of information furnished to it. In more complex cases, the decision whether to initiate proceedings is made by one of six regional prosecutors. (It should be noted that there is an obligation for public officials to report suspicions of corruption to their superiors.)
65. Under the existing police organisational structure, there is no special unit for investigating corruption cases. When simple cases of corruption are in question, the investigation is carried out according to ordinary procedures at the police district, under the responsibility of the chief constable, who also embodies the prosecution authority at this level, including the performance before the district court. In more serious or complicated cases involving elements of economic crime, the investigation would fall under the jurisdiction of the Public Prosecutor for Serious Economic Crime (SØK).
66. It is the duty of the Prosecution Service to handle cases as quickly as possible. Denmark has a system of mandatory prosecution (with some specific exceptions contained in Section 722 of the

Administration of Justice Act, see Appendix II) and the Prosecution Service must make sure that offenders are called to account in accordance of the law, but must also ensure that innocent persons are not being prosecuted. The prosecution supervises the investigations, decides or files motions for coercive measures before the courts, charges and indicts, and prosecutes cases before court. Moreover, the prosecution service is in charge of the investigation and superintends the police. In practice the prosecution does not play an active role during the investigation of minor cases.

67. When the prosecutor decides to withdraw charges, the suspect and others who may have a reasonable interest therein are notified pursuant to the Administration of Justice Act. An appeal of a decision of withdrawal of charges may be lodged with the superior prosecuting authority pursuant to the rules of Part 10 of the Administration of Justice Act. Thousands of cases are discontinued every year (14 306 cases in 2000). A very small percentage of these decisions are changed following appeal by the parties (5% was mentioned to the GET).
68. The regional public prosecutors superintend the conduct of trials by the chief constables and hear appeals of decisions made by chief constables on prosecution. The decisions of regional public prosecutors on appeals cannot be appealed to the Director of Public Prosecutions or to the Minister of Justice. The Director of Public Prosecutions hears appeals on decisions made by the regional public prosecutors in the first instance. The decision of the Director of Public Prosecutions on an appeal cannot be appealed to the Minister of Justice. The Minister of Justice hears appeals of decisions made by the Director of Public Prosecutions in the first instance. This appeal system ensures that a prosecution is not discontinued as a result of for example undue pressure or undue considerations. The right to appeal rests with persons who are party to the case, i.e. persons individually and substantially affected by the decision of the prosecution service. However, nothing prevents the superior prosecution service from taking a decision not to prosecute after being approached by a non-party. The time limit for appealing is four weeks after the appellant has received notice of the decision.
69. If the matter is a corruption case with a police officer as the suspect, the investigation is conducted by the regional prosecutor and the police complaints board. However, if a more complicated case against the police is in question, the regional prosecutors may be assisted by the Public Prosecutor for Serious Economic Crime notwithstanding the fact that the investigation pertains to a police officer. Moreover, depending on the seriousness of a case, it is possible for the officers of both these authorities to be involved in the investigation.
70. With regard to *special investigative means*, the Danish legal system is composed of rules balancing the considerations of the effectiveness of criminal investigations and the protection of the rights of the individual. It follows from the Administration of Justice Act (sections 754 a and b) that the police must not arrange for assistance being offered for the purpose of inciting/to incite someone to commit a crime unless:
  - there is a strong suspicion that the offence is about to be committed or attempted
  - other investigative steps would not be suitable for gathering evidence in the case, and
  - the investigation concerns an offence punishable pursuant to the Danish Criminal Code by imprisonment of six years or more.
71. Similar conditions apply, for example, to invasions of the secrecy of communication, which may only be carried out if:

- there are specific reasons to presume that messages are given or mail is delivered by the means in question to or from a suspect;
  - the invasion is presumed to be of crucial importance for the investigation, and
  - the investigation concerns an offence, which under the law can be punished with imprisonment six years or more, an intentional violation of the Criminal Code Chapter 12 or 13, etc.
72. The GET was informed by the Danish authorities that since the maximum penalty in section 144 in the Criminal Code (passive bribery) is imprisonment up to 6 years, an undercover operation or telephone tapping may be used in the investigation of such an offence, if the other conditions are met. Moreover, as a violation of section 122 of the Criminal Code (active bribery) often implies a potential violation of section 144, special measures may in such cases also be applied with regard to active bribery.
73. The GET was informed that *special investigative* means have not been used for investigating corruption. The GET was also informed on more than one occasion that one of the biggest obstacles to conducting undercover operations, which can only be carried out by police officers according to the law, is the fact that Denmark is a small country and that there is a great danger of exposure of police officers involved in such measures.
74. Changes to Article 786 of the Administration of Justice Act aimed at improving the existing measures available to the police in the fight against new forms of crime were under consideration<sup>5</sup>. The changes involve the obligation of telecommunication companies and internet providers to record and store data exchanged via internet or other telecommunication means. The change should enable easier access to this data in individual cases. However, the proposed change does not encompass recording and storing the content of the communications; it relates only to data concerning the transmission of the communications. The requirement to record and store contents could only come into play in individual cases and would have to be based on a court authorisation.
75. There is no specialised body for *witness protection* in Denmark and there are no programs developed for that purpose. If the occasion arises in more serious cases, however, the police can take special security measures for the protection of witnesses outside court hearings. Those are only physical protection measures. Also, in extremely serious cases, when the level of estimated risk to a witness is high, the law enables the National Police Commissioner to offer complete change of identity to a witness. Article 123 of the Danish Criminal Code prescribes imprisonment up to 6 years or a fine for intimidation of witnesses.
76. Moreover, according to Article 841 of the Administration of Justice Act, a court can, before the beginning of a trial, at the request of the prosecutor, defence counsel or a witness, exclude the presence of the public, prohibit mentioning of a witness' name and exclude the presence of the accused during the hearing of the witness, for the purposes of protection of the witness in question.

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<sup>5</sup> The legislative changes have, after the visit of the GET, been adopted by Parliament. The legislation sets up an obligation for telecommunications companies and Internet service providers to record and store the said data for a period of one year. The new rules will enter into force subject to the issuance of administrative orders (containing the more detailed technical provisions) by the Minister of Justice.

## **b5. Other bodies and institutions**

77. Beside the police, the prosecution service and the judiciary, there are other State authorities in Denmark, which, although competent in areas other than criminal law, have an important role to play in the prevention and disclosure of corruption. Similar institutions exist, obviously, in every state, but the role they play in the fight against corruption differs from one country to another. In Denmark the following bodies and institutions should be mentioned: the Parliamentary Ombudsman, the National Audit Office, the Parliamentary Committee for Public Accounts, the Danish Competition Authority of the Ministry of Trade and Industry, the Danish Commerce and Companies Agency and the National Association of Local Authorities. In addition - although not a state body - the Confederation of Danish Industries should be mentioned as it is engaged in the prevention of corruption. Moreover, certain legislation which assists in preventing corruption is mentioned.

### *i) The Parliamentary Ombudsman*

78. The Parliamentary Ombudsman occupies a position between the Parliament, the ministers/civil service and the citizenry. This institution is governed by the Constitution, the Ombudsman Act and the Folketing's (Parliament) Directives to the Ombudsman. It is the Ombudsman's task to ensure the proper exercise of administrative powers. The Parliament elects the Ombudsman who on its behalf oversees the administration. The Ombudsman reports to the Parliament in annual reports and in connection with specific cases in which he finds errors or deficiencies of importance. Under the Ombudsman Act, however, the Ombudsman is independent of the Parliament in the discharge of his functions. The Ombudsman, who must be a lawyer, cannot be a member of Parliament or of the Executive. The Ombudsman is responsible for his own staff, about 60 members, half of whom are lawyers.

79. The jurisdiction of the Ombudsman is the entire public administration except the judiciary. The Ombudsman carries out *ex officio* investigations. In addition, any citizen may file a complaint; there is no cost and few conditions. A complaint may not be anonymous, the decision complained of must be final, and the complaint must be lodged within twelve months of the commission of the act complained of. About two thirds of all complaints are either refused or deferred. The complaints that are accepted for investigation are almost always conducted by examining the relevant documentation upon which the complained of action was taken. The public authority complained of is presented with the complaint and asked to provide an explanation and all the files relevant to the decision. The public authority has a duty to cooperate with the Ombudsman and provide any documentation asked for and answer any questions that may be asked. The Ombudsman may, if necessary, subpoena materials from a public authority, but this has never been necessary. If the public authority disagrees with the complainant, the public authority's explanation is provided to the complainant for review and comment. The public authority and the complainant are given total access to the other's files and information.

80. After this process, the Ombudsman issues his opinion. His authority is supervisory and his opinions and statements are recommendations. He has no power to direct a particular result or outcome. Nevertheless, his recommendations are almost invariably followed and the Ombudsman has served to help develop basic principles for the correct exercise of public administration.

81. In 1999, the Ombudsman received 3423 complaints, and 949 were investigated. In 118 cases the citizen's complaint was upheld. In 60 cases he asked the relevant public authority to reconsider



the cases. The Ombudsman could recall no complaint alleging corruption having been received since the 1970's, and that complaint dealt with a conflict of interest, not bribery as corruption is usually thought of in Denmark. The Get was informed that the Ombudsman had in the distant past dealt one case concerning gifts to a local politician, which had resulted in a recommendation.

ii) *The Audit*

82. The audit of state accounts is carried out by two bodies, the Auditor General and the Parliamentary Committee for Public Accounts.
83. *The Auditor General* is a member of the civil service and is appointed - on the recommendation of the Public Accounts Committee - by the Speaker of Parliament. The Auditor General, pursuant to the Act on the Audit of State Accounts, is independent in the performance of his/her duties. S/He hires and dismisses the staff, currently about 260 people. S/He heads the *National Audit Office* (NAOD), whose main task is to audit the central government accounts and to examine whether funds are administered as intended by Parliament. The audit of the central government accounts covers about 620 agencies and a number of other companies and enterprises. The Auditor General's Act, provides that audits are to ascertain whether accounts are correct and whether the transactions made in those accounts are in compliance with the granted budget appropriations, laws and other regulations, and with agreements made and customary practice. In addition an evaluation is made whether sound financial management has been applied to the administration of the funds and the running of the operations covered by the accounts. The NAOD has a statutory right of access to the records of all bodies that receive grants, loans, or other forms of financial support from the State. The NAOD has complete or partial access to limited liability companies' accounts or to accounts for which there are special audit arrangements established by law. NAOD also has access to local government accounts to the extent that expenditures are reimbursed by the State. There is no access to companies providing services to the Government on a contract basis, nor to the Crown, the Parliament or the National Bank accounts.
84. The *Parliamentary Committee for Public Accounts* was established with the Danish Constitution of 1849. Its current form, set up in 1976, is that of an independent agency, not subordinate to either Parliament or to the Government. It is composed of six members who need not be members of Parliament. The Committee's tenure is for four years and is not affected by general elections. Members are appointed by the Parliament on the basis of proportional representation so that each main party is represented on the Committee. The Committee reviews that central government accounts are correct and that all transactions are in compliance with granted budget appropriations. The Committee also assesses whether sound financial management has been used in administering the funds in the accounts. The Committee uses the Auditor General's reports as basis for its work. The Committee submits those reports together with its recommendations to Parliament and to the concerned ministries. A minister must respond within four months [two months for the Annual Appropriation Control Report] with a statement to the Public Accounts Committee on the measures taken in response to the report or an explanation why no action was taken. Such a statement is also submitted to the Auditor General who must submit his comments on the minister's statement to the Committee within one month. The statement and the Auditor General's comments are included in the final report of the Committee to Parliament. If the Committee finds problems with the administration of an account, it cannot sanction a minister, but it can inform Parliament directly of its views on a particular issue or it can include its views in comments to an audit report. The Committee's views are always, however, addressed to the minister directly. All documents relating to the audit, including ministerial reports, are made public.

85. Only the Public Accounts Committee is authorised to request that the NAOD examine certain matters. Such requests are provided for in the Auditor General's Act which requires the Auditor General to assist the Committee in its review of government accounts by carrying out inspections and submitting reports on matters the Committee wants examined. The NAOD cannot refuse a Committee request. The NAOD produces three types of reports: the Annual Appropriation Control Report; performance audit reports (some 15-20 each year) and an Annual Report on NAOD's activities. In addition, about 80 memoranda are produced each year for the Public Accounts Committee.
86. Every minister is legally and politically responsible for all spending decisions taken according to the appropriations by spending agencies in his/her ministry. Spending decisions must be taken in compliance with granted budget appropriations, the laws and other regulations and with agreements made and customary practice. Unlawful use of public finances can lead to a decision of no confidence by Parliament in which case the minister, or the Government as a whole, must resign. Unlawful use of public funds can also lead to criminal prosecution of the minister in compliance with the *Act on Ministers' Responsibility*. Moreover, unlawful use of public funds can lead to disciplinary action against the responsible civil servants. Unlawful use of public funds can also – depending on the circumstances – be considered as criminal acts such as theft or fraud and can lead to criminal prosecution of civil servants.
- iii) *The Danish Competition Authority of the Ministry of Trade and Industry*
87. The Competition Act (1998) introduced a prohibition against agreements restricting competition and abuse of dominant position, respectively. The provisions correspond to the competition rules in the European Union. The Competition Act was amended again in 2000 to include the fines for first-time abuse of a dominant position, merger control, and a possibility for the Danish competition authorities to apply the competition rules of the EC Treaty directly. Undertakings to conclude agreements whose direct or indirect purpose or consequence is to restrict competition, for example by fixing purchase or selling prices or other trading conditions, by sharing markets or sources of supply or by prior adjustment of offers, are forbidden. The provision also relates to decisions by associations of undertakings, such as the decisions of a trade association, and concerted practices between undertakings. The provision contains a non-exhaustive list of prohibited agreements and undertakings, abuse of a dominant position, for example by directly or indirectly imposing unfair purchase or selling conditions or limiting production, markets or technical development to the prejudice of the consumers.
88. *The Competition Council* ensures observance of the Competition Act and the regulations issued pursuant to the Act. *The Danish Competition Authority* is the secretariat of the Competition Council and handles the day-to-day administration of the Act on behalf of the Council. Pursuant to the Competition Act, the Competition Authority can gain access, by court order, to the premises and means of transport of an undertaking or an association for the purpose of carrying out an inspection and the Authority may review and copy material found in the undertaking, including its computer system. Furthermore, upon court order, the Competition Authority may demand oral explanations about matters of fact concerning the subject of the inspection.
89. According to the Competition Act, intentional or grossly negligent violations of the Competition Act are punished with a fine unless a more severe punishment is prescribed by other legislation and pursuant to the same Act, legal persons can incur criminal liability.

90. At the end of 1996, the Danish Competition Authority began to co-operate in a Pilot Project with seven countries in the handling of cross-border cases, matters in which a company wishes to compete for the award of a public contract in another country and encounters obstacles due to non-compliance with EU procurement rules. The Authority considers cases submitted by domestic companies encountering problems in other countries as well as cases filed by foreign companies encountering problems when competing for a public contract in Denmark.
91. The GET was informed that the Competition Authority has never received a complaint alleging that a Danish company was unfairly competing by payments of bribes. Representatives of the Authority told GET that it would notify the police upon the receipt of such a complaint.
- iv) *The Danish Commerce and Companies Agency*
92. In accordance with the EU directive 84/253 on the authorization of persons carrying out statutory auditing of accounts, the Danish Consolidated Act on State Authorised Public Accountants lays down several rules aiming at ensuring the independence of accountants executing their assignments. This Act is administered by the *Danish Commerce and Companies Agency of the Ministry of Trade and Industry* and sets forth, for example, the qualifications needed to be certified as a state authorised public accountant, those functions an accountant can legally perform, conflict of interest rules for accountants, rules on ownership interests in accounting firms, certain rules on accounting firm fees, and disciplinary procedures for rule infractions by accountants. The aim of the Danish legislation is to ensure that undue influence is not exercised on accountants. In addition, the Commerce and Companies Agency selects randomly samples of company annual reports and examines them to detect any obvious violations of the above Act, the Companies Act, the Private Companies Act, the Act on Operating Foundations, or the Book-keeping Act. The Agency is empowered, by law to demand from any company or its auditor any information it deems necessary to carry out its examinations and may as a coercive measure impose a daily or weekly fine on a company's officers for failing to deliver any information demanded by the agency.
- v) *The National Association of Local Authorities*
93. The legal framework of local government affairs is enshrined in the Local Government Act. The Ministry of the Interior is responsible for enforcing the Act and for the co-ordination between the local authorities, for example, concerning common guidelines for the budgets.
94. The Supervisory authority is a locally based central government body with the objective of ensuring that the local authorities follow the legislation. As such it may impose fines and take legal action against representatives of the local authorities. The Supervisory body is also empowered to rescind local authorities' decisions in conflict with the law and to receive complaints from the citizens.
95. Local government auditors are engaged by the local councils, subject to approval by the supervisory authority and can only be dismissed with the consent of the supervisory authority. This is to ensure the independence from the local council and professionalism of the audit.
96. The *National Association of Local Authorities* (NALA), which is a central service body of the local authorities in Denmark, provided GET with a paper drafted in 1996 on the *Prevention and combating of "corruption" in Danish local government*, "including every unprofessional influence of private or economic interests on public decisions..." in local government decisions. The paper,

describes in detail bribery, disqualification, sideline employment and tender invitations. The GET was informed that this paper had only been used as a working document by the NALA in its international cooperation/assistance to other States.

vi) *The Confederation of Danish Industries*

97. The *Confederation of Danish Industries* (DI) is the major industrial organisation of employers in Denmark (approximately 7000 members). A majority of its members have very high export ratios, which derive from doing business with and investing abroad, including countries with severe corruption problems. Therefore, DI has taken an active part in the negotiations that resulted in the OECD Convention, and DI has been consulting its members on corruption issues for several years. The recent international legal framework against corruption, Council of Europe and OECD Conventions, has established a new situation for business life and as a result, DI has an awareness service to its members on corruption issues. The GET was informed that DI members frequently express great frustration over business opportunities lost as a result of competing companies from other countries having paid bribes. DI representatives told the GET that they had no evidence that Danish companies engaged in such conduct themselves, but they could not entirely dismiss that possibility. DI advises its members that although it may be costly not to pay bribes, it is in their long-term interest to avoid doing so. Members are advised that three problems face those companies that choose to engage in corrupt practices: the conduct is illegal under Danish law and can lead to prosecution, it can lead to debarment from participation in public procurements, and it can lead to regulatory difficulties with United States authorities, particularly the Securities and Exchange Commission and the Stock Exchanges. Moreover, DI advises its members to establish Codes of Conduct dealing with business ethics and to live up to the standards set forth in such codes. In keeping with that advice, DI was, during the visit of the GET, in the final stages of publishing a model Code of Conduct for voluntary adoption by its members as well as an Internet-based anti-bribery manual<sup>6</sup>. Upon publication, DI also planned to arrange a conference on the topic open to the public. The GET was told that the establishment of a Code of Conduct for business ethics, particularly important for business abroad, had been developed in co-operation with the World Bank and would be of great interest for organisations like the Danish International Development Agency (Danida) in its work with Danish companies engaged in developing countries.

**c. Immunities from investigation, prosecution and adjudication for corruption offences**

98. According to the Danish Constitution, the King (Queen) has an absolute immunity from criminal and civil responsibility (non-liability immunity).
99. The Constitution, also provides for immunity of *Members of Parliament* (MP). Firstly, MPs' enjoy immunity with respect to all liability concerning opinions and votes cast in Parliament (*non-liability immunity*). This immunity is not limited in time but may be lifted by Parliament<sup>7</sup>. Secondly, MPs enjoy immunity against prosecution and imprisonment of any kind (including arrest and pre-trial detention) unless caught in the commission of a criminal act (*flagrante delicto*). The duration of this *in-violability immunity*, is the same as that of the mandate. This immunity applies only for as long as the individual in question is an MP. After the member has left Parliament, charges can be brought without Parliamentary consent. This is also the case for acts committed when the individual in question was an MP. If a charge is brought before an individual is elected to Parliament, it is the prevailing interpretation that it would be necessary to apply for consent in

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<sup>6</sup> The model Code of Conduct and the anti-bribery manual have been adopted and published after the visit of the GET.

<sup>7</sup> In practice, immunities are not lifted in such cases.

order to maintain a criminal charge. The proposal for lifting this immunity is made by the Prosecution Service to the Minister of Justice, who submits it to Parliament. Simple majority is needed for lifting the immunity. Ministers may be impeached by the King (Queen) or Parliament with mal administration of office. Such cases are prosecuted before the Court of Impeachment.

### **III. ANALYSIS**

#### **a. General policy on corruption**

100. The consensus of all of the representatives the GET visited is that there is almost no corruption in Denmark. Just about every authority visited by the GET agreed that corruption is not only not a problem in Denmark, but is also strongly condemned by all levels of Danish society. This sentiment was shared by representatives of the media and by Transparency International<sup>8</sup>. The GET heard several times the explanation that the relatively small size of the Danish society, the commonly shared norms and values, combined with the State policy of transparency in all official dealings, was a deterrent to corruption. A few minor instances of corruption were cited, but these were truly minor and were handled appropriately through the various mechanisms in place to deal with criminal or improper conduct. The view, that Denmark has little corruption, is apparently widely shared in the country. On the other hand, the GET received indications that outside Denmark's borders, Danish companies have to deal with a different kind of reality.
101. The GET was concerned that the very low rate of corruption cases in Denmark in conjunction with the attitude throughout Danish society that corruption is not a problem, may lead to a situation in which there is a low awareness of the dangers of corruption and possibly a low level of alertness to indications of corruption. If it has not already, this could lead to a lowered reporting to authorities of instances of suspicious dealings, thereby foreclosing law enforcement from pursuing investigative leads that could unearth corrupt activity, etc. Moreover, the GET was concerned that as Danish society becomes less homogeneous, as its commercial enterprises compete with those that do not share the same values etc, the social deterrents to corruption which it now apparently enjoys may be less important in the future. As a result, and despite the fact that corruption is not now, and will not be for some time, any serious threat to Danish society, it might nevertheless be advisable to refrain from a perception that corruption only exists outside Denmark.
102. Turning to the Danish legal system, the GET found it comprehensive and adequate for the general prevention of corruption in public administration at central as well as local levels. Moreover, the criminal legislation concerning corruption is very clear and precise. It must be noted, however, that during the entire evaluation the GET was confronted with the attitude that only active and passive bribery in the public sector, covered by provisions of the Articles 122 and 144 of the Criminal Code, are understood as corruption in Denmark. This leads to a conclusion that the perception of corruption in Denmark is rather narrow, which (although the fact that there is indeed a very low level of corruption in Denmark) nevertheless greatly contributes to statistics indicating little corruption. The GET observed that such a narrow concept of corruption hides in itself a danger that certain behaviour will not be perceived as corruption for the reason that the competent authorities in a concrete case cannot prove, for instance, bribery of a public official, but only some other criminal offence related to abuse of power or similar crime. It was also observed that the maximum penalties for corruption in the private sector (and, to a lesser extent, for active bribery in the public sector) could be called into question in the event of a serious case, even if such acts could be covered by other provisions providing for heavier penalties.

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<sup>8</sup> The GET was informed that Transparency International has some major Danish companies as members.

103. The GET was aware that a close cooperation between the law enforcement bodies was at stake with regard to economic crime. It also noted that in addition to the police and the prosecution services, Denmark has a number of excellent institutions as described in this report which currently play a major role - each one in its own field of competence - in the prevention and control of corruption. The GET was of the opinion that a close communication/co-operation between these bodies (agencies and authorities) and the police and prosecution services, would be beneficial in the detection of activities involving corruption as it could lead to a better use of knowledge and experience obtained in public administration as a whole.

104. In conclusion, **the GET recommended the Danish authorities to maintain and enhance:**

- **the general awareness of corruption in its wider sense, its dangers to society and to the particular sectors which are likely to be affected,**
- **the cooperation between the law enforcement authorities and other State bodies, agencies and authorities which play a role in the prevention and control of corruption.**

**b. Bodies and institutions in charge of the fight against corruption**

105. The GET noted that Denmark has the necessary police and prosecution structures in place for an efficient detection of corruption. It felt, however, concern over the fact that the Minister of Justice can directly interfere in the decision making of the Police and the Public Prosecution Service in individual cases under investigation and/or prosecution. This possibility poses doubts as to the full independence of these bodies *vis-à-vis* the political sphere. In case of corruption within political parties and the higher circles of power there exists the possibility that the investigation and the prosecution may be hindered by order of the Minister of Justice. The GET does not doubt that this problem may be more of an academic issue as it was told that the Minister, *de facto*, would exercise the utmost reluctance to interfering in particular cases and that this rarely used authority clearly implies a political responsibility of the Minister. Nevertheless, **the GET recommended that Denmark re-consider the situation that the Minister of Justice may, in principle, intervene in the work of the police and/or the prosecutor in individual cases of corruption during investigation/prosecution, in order to avoid risks of undue or improper influence.**

106. Denmark does not have specialised bodies (except SØK for economic crime and serious corruption) or persons at police or prosecution level to deal with corruption. Given the current low level of corruption in Denmark, the GET does not see the need for the creation of a special body in addition to SØK designed to deal solely with corruption. Moreover, SØK appears to be an appropriate body for cases of serious corruption. The GET considers that Denmark should undertake a complementary effort to prepare its ordinary law enforcement system to remain alert to possible situations involving corruption at any level that may occur in the future. The GET was of the opinion that the differences between economic crime and corruption related offences would need to be focused upon. This would require appropriate education and training of personnel (on both domestic and international corruption) as well as specialisation to some extent within the framework of existing staff structures along the lines foreseen in Guiding Principle 7. Therefore, **the GET recommended Denmark to organise additional training – in particular on the typologies of corruption, including its international dimension - for police staff and prosecutors dealing with corruption and connected offences and to provide a higher**

**degree of specialised staff on corruption offences within the existing structures of the police and the prosecution service.**

107. Moreover, the GET was concerned that special investigative means in cases of corruption had never been used even though it was legally possible in Denmark, except in cases of isolated active bribery and private sector bribery. It also understood that the legal requirements as well as political difficulties hindered the use of special investigative means to a large extent in reality. **It therefore recommended that the conditions for using special investigative means in cases involving serious corruption be reconsidered, keeping in mind the need to respect the principle of proportionality and existing constitutional and legal safeguards.**

**c. Immunities**

108. The GET noted that the Danish system of immunities applies only to the Head of State and members of Parliament. The procedural immunity with regard to MPs only concerns prosecution and imprisonment/arrest/pre-trial detention and does not prevent criminal investigation against MPs. Accordingly, the GET found that the system of immunity afforded in the Danish legal system posed no hindrance in the corruption area and was compatible with the undertaking in Guiding Principle 6 (*to limit immunities to the degree necessary in a democratic society*).

**IV. CONCLUSIONS**

109. Denmark appears to have very little corruption. The few cases it has experienced over the years have - with one exception - been minor and were competently dealt with by the criminal justice system. Moreover, there seems to be a general consensus throughout Danish society that corruption is almost non-existent. For that reason, corruption - in contrast to economic and organised crime, for example - is not of major concern in Denmark. As a consequence, there is no national anti-corruption policy or programme established and, the investigation of corruption is carried out by the ordinary bodies of the Police and the Prosecution Service, except in cases of serious corruption. Moreover, Denmark has addressed its concern about keeping corruption at bay by clearly heeding all international legal standards in the anti-corruption field and implementing them in the national legislation as well as within public administration.
110. The situation concerning corruption is thus very favourable in Denmark and the recommendations are limited only to a few points where Denmark, nevertheless, could improve its policy and system; The general awareness of corruption and its dangers could be more developed, in particular as Denmark is a small country, to a large extent dependent on international relations and trade and with an increasingly multi-cultural dimension. The law enforcement system appears to be sufficiently efficient, however, its independence *vis-à-vis* the Executive power could be more clearly emphasised. Moreover, the law enforcement system could be improved with some degree of specialisation on corruption accompanied by staff training and, through an enlarged scope of using special investigative means. Finally, the various authorities involved in the supervision and control of the public sector could be closer connected between themselves as well as to the law enforcement system.

111. In view of the above, GRECO addressed the following recommendations to Denmark:
- i. **to maintain and enhance :**
    - **the general awareness of corruption in its wider sense, its dangers to society and to the particular sectors which are likely to be affected,**
    - **the cooperation between the law enforcement authorities and other State bodies, agencies and authorities which play a role in the prevention and control of corruption;**
  - ii. **to re-consider the situation that the Minister of Justice may, in principle, intervene in the work of the police and/or the prosecutor in individual cases of corruption during investigation/prosecution, in order to avoid risks of undue or improper influence;**
  - iii. **to organise additional training – in particular on the typologies of corruption, including its international dimension - for police staff and prosecutors dealing with corruption and connected offences and to provide a higher degree of specialised staff on corruption offences within the existing structures of the police and the prosecution service;**
  - iv. **that the conditions for using special investigative means in cases involving serious corruption be reconsidered, keeping in mind the need to respect the principle of proportionality and existing constitutional and legal safeguards;**
112. Moreover, GRECO invites the authorities of Denmark to take account of the observation made by the experts in the analytical part of this report.
113. Finally, in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of Denmark to present a report on the implementation of the above-mentioned recommendations before 31 December 2003.



## APPENDIX I

### **Criminal Code of Denmark**

#### Active Bribery:

**“Section 122.** Any person who unduly grants, promises or offers some other person exercising a Danish, foreign or international public office or function a gift or other privilege in order to induce him to do or fail to do anything in relation to his official duties shall be liable to a fine or imprisonment for any term not exceeding three years.”

#### Passive Bribery:

**“Section 144.** Any person who, while exercising a Danish, foreign or international public office or function, unduly receives, demands or accepts the promise of a gift or other privilege shall be liable to imprisonment for any term not exceeding six years or, in mitigating circumstances, to a fine.”

#### Bribery in private affairs:

**“Section 299.** Any person who, in circumstances other than those covered by Section 280 of the Danish Criminal Code

(1) .....

(2) in his capacity as trustee of any property of any other person in breach of his duty claims or accepts a promise of a third party, for the benefit of himself or of others, a gift or any other privilege, as well as any person who grants, promises or offers such an advantage, shall be liable to a fine or to imprisonment for a term not exceeding one year and six months.”

#### Criminal responsibility - Legal persons:

**“Section 306.** Criminal responsibility can be imposed on companies, etc. (legal persons) under the rules of Part 5 for violation of the Criminal Code.”

## APPENDIX II

### Administration of Justice Act

#### Mandatory prosecution – exception from:

“**Section 722.** (1) Discharge in a case may be given in full or in part in cases

(i) where the offence on which the charge is based cannot under the law result in a punishment exceeding a fine, and the offence is of low punishable merit,

(ii) where, pursuant to section 723(1) of this Act, it is laid down as a condition that the suspect submits to measures according to section 40 of the Social Service Act,

(iii) where the suspect was under 18 years of age at the time of the offence, and conditions are laid down pursuant to section 723(1) of this Act,

(iv) where section 10b or section 89 of the Criminal Code is applicable, when it is deemed that no sentence or only an insignificant sentence would be imposed, and that conviction will not otherwise be of substantial importance,

(v) where completion of a case will result in difficulties, costs or trial times which are not commensurate with the importance of the case and with the sentence, the imposition of which may be expected in case of conviction,

(vi) where legislation provides special authority for discharge, or

(vii) where such discharge follows from provisions laid down by the Minister of Justice or the Director of Public Prosecutions.

(2) In other cases, discharge may only be given where especially mitigating circumstances or other special circumstances are present, and prosecution cannot be deemed to be necessary in the public interest.

(3) The prosecutor may discharge a suspect pursuant to subsection (1) hereof, while discharge pursuant to subsection (2) hereof is decided by the nearest superior public prosecutor.”