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Second Evaluation Round

Evaluation Report on Denmark

Adopted by GRECO
at its 22nd Plenary Meeting
(Strasbourg, 14-18 March 2005)

I. INTRODUCTION

1. Denmark was the 13th GRECO member to be examined in the Second Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mrs Teresa GÁLVEZ, Prosecutor, Special Attorney General's Office for the Repression of Economic Offences related with Corruption (Spain); Mrs Birgit LAITENBERGER, Head of Division, Ministry of Interior (Germany) and Mr Bostjan PENKO, Senior Public Prosecutor (Slovenia). This GET, accompanied by a member of the Council of Europe Secretariat, visited Denmark from 30 August to 3 September 2004. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval II (2004) 6E), as well as copies of relevant legislation.
2. The GET met with officials from the following governmental organisations: the Public Prosecutor for Serious Economic Crime (SØK), the National Commissioner of Police, the Danish Police College, the Director of Public Prosecutions, the National Audit Office, the State Employers' Authority, the Ministry of Foreign Affairs, the Eastern High Court, the Parliamentary Commissioner for Civil and Military Administration in Denmark (the Ombudsman), the Danish Commerce and Companies Agency and the Ministry of Taxation. Moreover, the GET met with members of the following non-governmental institutions: the Danish Association of Lawyers and Economists, the Confederation of Danish Industries, the Institute of State Authorized Public Accountants in Denmark, Transparency International, the University of Aalborg and media representatives.
3. The 2nd Evaluation Round runs from 1st January 2003 to 31 December 2005, in accordance with Article 10.3 of the Statute of GRECO. The evaluation procedure deals with the following themes:
 - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;
 - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
 - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

Denmark ratified the Criminal Law Convention on Corruption on 8 August 2000.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Danish authorities to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains first a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Denmark in order to improve its level of compliance with the provisions under consideration.

II. THEME I - PROCEEDS OF CORRUPTION

a. **Description of the situation**

Interim measures

5. Rules on seizure are laid down in Part 74 of the Administration of Justice Act (hereafter the AJA). The general scope and the purposes of seizure are defined in Section 801 of the same act. It is stipulated that seizure may take place "...(1) to secure evidence, (2) to secure the claim of the State for costs, confiscation and fines, (3) to secure the claim of the victim for compensation, and (4) when the defendant has evaded further prosecution in the case." Section 802 defines conditions under which an object or goods may be seized from a suspect. Moreover, it is stipulated in this section that, "A suspect's entire property or part thereof, including any property acquired subsequently by the suspect, can be seized if, (i) a charge has been made for an offence for which the potential statutory penalty is imprisonment for one year and six months or more, and, (ii) the accused has evaded further prosecution in the case."
6. Provisions in Section 805-807 lay down the general conditions for the implementation of and procedural issues concerning seizure. According to Section 805, "Seizure must not take place (...) if the measure is disproportional considering the significance of the case and the loss or the inconvenience, which the measure can cause." In other words, seizure is justified when a less "invasive" measure would be insufficient. Objects, goods or property may be seized when the person in question is reasonably suspected of an offence that can be prosecuted according to the Danish law, which includes corruption offences. Decisions on seizure are made by the courts under normal circumstances (Section 806(2)). According to Section 806 (3), the police may also carry out a preliminary seizure (*periculum in mora*) and they are required to bring the relevant decision before a court only upon request from the individual against whom the measure is directed. The administration of proceeds of crime seized is regulated by a circular, according to which cash amounts exceeding 2,000 DKK (approximately 300 euros) and other securities seized must be deposited in a bank or other financial institution until the release of the property. In case of seizure of immovable property, the seizure must be registered in the title register in order to ensure that the owner of the property cannot sell or in any other way dispose of it.
7. Whether specific investigations aimed at tracing and freezing proceeds of crime are regularly conducted in parallel with investigations aimed at gathering evidence against the criminal is determined on a case-by-case basis. There has never been a case concerning bribes where interim measures have been applied. The Danish authorities stated that corruption cases are small in number and generally of minor significance; it is therefore rare that property is seized.

In relation to bank, financial or commercial records

8. During investigations, the police can gather information from Danish Banks and Saving Banks Association in so far as a specific person is a customer of a Danish financial institute; furthermore, the police can gather information from the specific bank in which the suspect is a customer. According to the Danish Act on measures to prevent money laundering and financing of terrorism, Danish financial institutions are obliged to report to the police if a person is suspected of having financial means that derive from a criminal offence.

Confiscation of instrumentalities and proceeds of crime

9. The general conditions of confiscation are established in the Criminal Code (hereafter the CC), particularly Sections 75 to 77a. Confiscation can be total or partial. Under Danish criminal law, confiscation is a criminal legal consequence but not a mandatory measure; it is left to the courts to decide if confiscation should be imposed. In some cases, the confiscated property may be used to satisfy a claim of damages. Moreover, confiscation is generally taken into account when determining the perpetrator's sentence.
10. Generally, expenditures for gaining the proceeds cannot be deducted when assessing the amount to be confiscated, except for expenditures that are defrayed before the commission of the crime. Confiscation may also take place for proceeds that have been transformed into other property. Value confiscation is possible under Danish law. In some cases, confiscation may be used for preventive purposes without obtaining the conviction of the perpetrator (*in rem* confiscation). The burden of proof lies with the prosecution unless confiscation is adjudicated according to Section 76a (1)-(3) CC. Section 76a (1) establishes that total or partial confiscation of property belonging to a person found guilty of a "punishable act" may take place when (i) the act committed is of a nature which may entail a significant financial gain, and (ii) the act committed is punishable by imprisonment of six years or more. As regards Sections 76a (2) and (3) cf. paragraph 11. In these cases, the burden of proof is reversed, ie the defendant has to prove that a particular asset has a legitimate source. No case of corruption has been tried in Denmark over the last three years resulting in an adjudication of confiscation.

Third parties

11. According to Section 76 (1) confiscation of proceeds of a criminal act, or a sum equivalent thereto, is possible "(...) from any person to whom the proceeds have directly passed". If the perpetrator has disposed of the proceeds after the criminal act, the transferred property or its value may be confiscated from the acquirer if s/he knew of the connection of the transferred property to the criminal act, or has displayed gross negligence in this respect. "Total or partial confiscation of property acquired by a spouse or cohabitant of the offender may take place, unless the property has been acquired more than five years prior to the criminal act" (Section 76a(2)) and "total or partial confiscation of property transferred to a legal person upon whom the offender has a decisive influence may take place, unless the property was transferred to the legal person more than five years prior to the punishable act" (Section 76a (3)). As mentioned in paragraph 10 above, the burden of proof is reversed in these cases.

Statistics

12. Information on the exact number and type of criminal cases in which confiscation has been adjudicated is not available. However, according to the Danish authorities confiscation is typically adjudicated in cases concerning drug related crime and cases concerning serious economic crime. With regard to the total amount of confiscated proceeds of crime, this can be established on the basis of the accounts prepared by each individual police district in Denmark. Although the Danish authorities informed the GET that this information is subject to some uncertainty, the total amounts of confiscated proceeds based on the accounts of the 54 police districts can be summarised as follows:

2001: DKK 24,974,256 (approximately 3,360,000 euros)

2002: DKK 28,526,841 (approximately 3,800,000 euros)

2003: DKK 42,933,584 (approximately 5,750,000 euros)

Money laundering

13. Section 290 of the Danish Criminal Code deals with the money laundering offence. Active and passive bribery of public officials are predicate offences in order to prosecute a person for money laundering. Section 290 can also be applied in cases in which the predicated offence is not subject to Danish criminal jurisdiction. Reports of suspicious transactions are examined by the Public Prosecutor for Serious Economic Crime (the Danish FIU) who can carry out its own investigations. According to the Danish Money Laundering Act, *inter alia*, the following institutions must report suspicious transactions to the FIU: banks and other financial institutions; lawyers involved in relevant financial transactions; auditors and tax consultants; real estate agents; insurance brokers; retailers dealing with significant amounts of cash; undertakings which fall under the Danish Postal Services Act; money transport companies; and foreign exchange offices. The Danish authorities reported that there have been no cases of money laundering related to corruption over the past three years.

International co-operation

14. When Denmark is the requesting state: any request by Denmark for seizure of evidence, acts and documents would be founded on the European Convention on Mutual Assistance in Criminal Matters. Concerning the seizure of the proceeds of crime, a Danish request would be founded on the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (hereafter Convention on Laundering) or the European Convention on International Validity of Criminal judgements. The common Nordic legislation on cooperation between Finland, Iceland, Norway or Sweden would be applicable to a request from one of these countries. If the requested state has not adopted any of the above-mentioned regulations, the request is founded on ordinary diplomatic relations.
15. When Denmark is the requested state: the Danish AJA does not contain any provision concerning the execution of a foreign court decision (including on seizure). Since there is no specific Danish legislation relating to mutual legal assistance in criminal matters, the Danish authorities apply the national law in all cases where assistance from Denmark is required. This implies that Danish authorities can comply with requests for mutual legal assistance even though no bilateral or multilateral agreement exists between Denmark and the requesting country.
16. Danish Requests for confiscation would be founded on the Convention on Laundering (article 13 (1)) or the European Convention on the International Validity of Criminal Judgements (articles 45-47). When Denmark is the requested state, enforcement of confiscation can be founded on the European Convention on International Validity of Criminal Judgements, the Convention on Laundering and the United Nations Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and against Transnational Organised Crime. If none of the conventions are applicable and no bilateral agreement between Denmark and the state concerned has been concluded, the Minister of Justice may decide that penalties and other legal consequences which have been imposed in another state can be enforced in Denmark. The statutory basis to enforce decisions of confiscation in one of the Nordic countries is provided by the Common Nordic Legislation. As a general rule, confiscated property belongs to the Danish Treasury, unless it is decided by the courts that the confiscated property shall be used to satisfy a claim of damages. This is also the case when confiscation has been adjudicated upon the request of another state. However, it is assumed that the Danish Minister of Justice on a case-by-case basis can comply

with a request for transferral of confiscated proceeds of crime to the requesting state, if (i) the request for confiscation is based on either the Convention on Laundering or the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, (ii) reciprocity is demonstrated, and (iii) a claim of damages exists. The Danish Minister of Justice has used this competence in several cases.

b. Analysis

17. The GET noted the low average of reported corruption cases in Denmark. During the visit, the GET was informed that only two or three cases of confiscation of proceeds of corruption have occurred over the past ten years, at local government level. Denmark has a well-developed system of legislation, law enforcement and judicial authorities to deal with economic crime, including corruption and the confiscation of proceeds of corruption. The general framework is that decisions about seizure, freezing and orders of disclosure are issued by judges, upon request of the police. The Police will have to motivate their requests, and focus those requests on the suspicious transactions and the profile of the suspects.
18. The Criminal Code and the Administration of Justice Act provide a detailed definition and precise criteria regarding the confiscation of gains from a criminal act. Confiscation of assets from third parties is possible and, under certain conditions, extended confiscation as well. However, confiscation from a subsequent acquirer can only be imposed if he/she knew or should have known the connection or link between the transferred property and the criminal act.
19. With regard to specialisation and training, the GET was told by the Danish authorities that they organise regular seminars for law enforcement bodies to intensify their staff's knowledge on issues related to economic crime, investigative means and confiscation methods. This training focuses on the capacity to deal with new forms of economic crime and other complex criminal cases. The office of the Director of Public Prosecution plays a primary role in the training of prosecutors. Junior public prosecutors acquire experience in understanding, interpreting and using the professional criteria through long periods of work in different public prosecution offices. They start in the District Court and, after a certain time, are promoted to a superior level. The training of prosecutors consists of three years' working experience in different fields and trial procedural methods, and from two to four years in a police district. After these steps, the junior prosecutors are able to deal with more specialised cases.
20. The main authority responsible for the investigation of corruption is the Public Prosecutor for Serious Economic Crime. Police officials have special training in corruption matters. The police work closely with the prosecution authorities and under their supervision. The Investigation Support Department is integrated in the Public Prosecutor for Serious Economic Crime to support the police. The police are fully empowered to carry out investigative tasks, but a court order is mandatory in order to obtain sensitive information.
21. The Public Prosecutor for Serious Economic Crime is the main body responsible for the investigation of corruption and its proceeds. It is staffed by a multidisciplinary team composed of 26 prosecutors and 60 investigators with different professional backgrounds, ranging from police to accountants. When necessary, private auditors are hired for advice and counselling regarding a financial investigation. The Danish authorities emphasised that the main reason for hiring external experts is that the Public Prosecutor for Serious Economic Crime attaches great importance to the fact that the auditing reports are prepared by competent, independent external auditors with no link to the police and prosecution, since auditing reports often are an important

part of the case material presented before the courts. They also stated that auditing reports prepared by independent external experts have greater evidential value than auditing reports prepared by experts within the police or prosecution. The GET was told that these experts/auditors are not subject to any influence or pressure on their work from their former customers and that the Public Prosecutor closely checks the possible relations or contacts between the auditors and companies under investigation. Representatives of the Danish agencies more directly involved in the investigative activities do not feel concerned by the use of private auditors. Moreover, the collaboration between private experts from the financial sector and investigative agencies does not seem to cause any problem.

22. Financial investigation is highly important in the detection of corruption, particularly in the context of the tracing of illegal and criminal assets that can be subject to confiscation. A key element of a successful financial investigation is the systematic and professional cooperation of police, the Prosecution Service or specialised structures such as the Public Prosecutor for Serious Economic Crime, with financial institutions, tax and auditing authorities as well as register offices in order to effectively identify important data regarding income, asset declaration, tax declaration etc. The GET noted with satisfaction that there is close cooperation between banks, anti-money laundering authorities and police. Banks regularly submit records and vouchers of the relevant transactions without delay. Moreover, the Anti-Money Laundering Secretariat is integrated in the office of the Public Prosecutor for Serious Economic Crime. The unit consists of three prosecutors and seven police officials. On average, they deal with about 300 reports per year.
23. During the visit, the GET was told that it is standing practice to start tracing the proceeds or benefits of criminal acts on the grounds of reasonable suspicion upon the commencement of an investigation carried out to collect evidence against suspects. During the visit, the GET could not check how the measures existing in Denmark to confiscate proceeds of corruption work because there are neither corruption cases nor, consequently, statistics on seizure, forfeiture, freezing of illegal proceeds from these crimes: the Danish authorities stated that no cases of corruption have been tried over the last three years. However, as complementary material, the GET was given figures related to confiscated proceeds in cases concerning drugs, and serious economic crime.

III. THEME II - PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

General description and anti-corruption policy

24. According to the Danish Public Administration Act and the Danish Access to Public Administration Files Act, the definition of “public administration” covers any administrative authority that is part of central or local government. The Parliament and the Judiciary are not part of the public administration.
25. Under the Civil Servants’ Act, the behaviour of a civil servant, both inside and outside the service, must be worthy of the respect and confidence demanded of his/her profession. The key value of the public sector is to ensure that civil servants act in conformity with the law . A civil servant may be entitled to hold separate functions when it is compatible with his/her duties, but s/he may only receive a salary warranted for his/her functions. Rules concerning corruption and severe cases of misconduct are laid down in the Criminal Code, including active, passive, indirect or attempted corruption of civil servants; partiality in official decision-making; and abuse of office or public trust. An anti-corruption strategy does not exist in Denmark; however, a Code of Conduct for public

employees which covers the issue of corruption is being drawn up by central, regional and local authorities and employees' organisations. In addition, measures for more effective action against corruption have been supported by the Ministry of Foreign Affairs. For instance, the "Danida Action Plan to Fight Corruption" has targeted specific objectives, measures and deadlines for implementation.

Transparency in public administration

26. The Danish Access to Public Administration Files Act and the Danish Public Administration Act regulate the general access to administrative information. According to the Act, any person may be authorised to access documents of any public administrative bodies. This quite large right of access may be limited as necessary to protect certain interests¹. The Minister of Justice is authorised to introduce rules on fees payable for transcripts and copies of documents received by public administration offices.
27. Where an authority is in possession of specific information concerning the facts of a matter to which a party is linked, no decision shall be made until the authority has given the party an opportunity to make a statement².

Control of the public administration

28. Decisions made by an administrative authority can be appealed to a higher authority within the public administration. Furthermore, it is possible to file a complaint against the authority that made a particular decision. The plaintiff has to invoke new information of essential importance which has become available after the contested decision. Decisions made by an administrative authority can also be appealed before a court. This right to appeal follows from Section 63 of the Danish Constitution, according to which the courts of justice shall be entitled to decide any question bearing upon the scope of the authority of the executive power.
29. The National Audit Office (hereafter NAOD) is an independent institution under the authority of the Parliament. It assesses whether state organisations use their resources efficiently: it carries out financial audits (assessing the soundness of state accounts and compliance with appropriations) and performance audits (examining whether state funds are being administered appropriately). The public authorities and institutions audited have an obligation to co-operate with NAOD. NAOD presents the overall results of the financial audit to the Public Account Committee, which submits an annual "Final Report on State Accounts" to the Parliament. The report is made public. Most of the audits are conducted by private auditing companies. NAOD audits the work carried out by these big private auditing companies. If auditors/accountants working for the NAOD come across suspicions of crimes, they do not report directly to the competent law enforcement agencies but first inform the organisation concerned which, in cases of serious suspicions of a crime, would inform the police. The NAOD presents the overall result of its audits to the Public Accounts Committee. This Committee submits an annual "Final Report on State Accounts" to the Parliament.

¹ Exemptions and limitations providing protection of essential interests are listed in Sections 7 to 14 of the Public Administration Files Act. For instance, the right to access does not apply to an authority's internal case material, neither to information on private circumstances or in business procedures etc. if it is of material importance to the economy of the person or enterprise concerned. Or again when the security of the State, protection of Danish foreign policy, prevention and clearing-up of any infringement of the law, protection of public financial interests and protection of private or public interests where secrecy is required because of the special nature of the matter are involved.

² This only applies when the information is unfavourable to the party concerned and essential for making the decision. A circumstance in which such an obligation would not apply is when a wider range of persons or enterprises is affected.

Ombudsman

30. The Ombudsman is competent to examine administrative decisions and deal with any activity exercised by public authorities. S/he decides, on case-by-case basis, if a complaint requires to be examined and, eventually, if further information/investigation are needed. The Ombudsman's opinions and statements are only recommendations, but are consistently followed. The public authorities have an obligation to co-operate with the Ombudsman, providing any documents requested and answering any questions that may arise.

Recruitment, career and preventive measures

31. Generally, procedures of recruitment and promotion of civil servants are based on criteria such as qualifications and professional experience of candidates. There is no general procedure concerning screening of civil servants in connection with recruitment, but depending on the nature of the specific post, it may be required that employees must not have been convicted for a criminal offence.
32. There is no central training system for civil servants in Denmark. Training programmes, including courses on ethics, are therefore provided within individual organisations. When an employee finds himself in a situation of doubt concerning ethics, s/he can ask advice from his/her superior or the trade union representative. In its draft (see below), the Code of Conduct provides important tools for informing public officials of fundamental ethical principles.
33. As corruption is considered to be rare in the public sector, no specific provisions of rotation of staff have been implemented. Nevertheless, mobility and other measures aimed at developing competence are generally promoted to increase efficiency in the public sector.
34. According to the Civil Servants' Act, a civil servant may hold separate functions only when this is compatible with his/her duties. Incompatibilities may occur if, for instance, the "*decorum officiale*" is affected, or if the workload of the different positions is too heavy. There are no specific disclosure requirements for public servants. The Danish authorities stated that "according to principles of employment law in the public sector, an employee must inform, to a certain extent, the employer of potential conflicts of interest before and during his/her employment". In some cases, senior officials who are appointed members of the board or directors of certain companies have the obligation to inform their employer of the potential conflicts of interest. The AJA provides a special statute for judges, which requires them to report all remunerated functions. It also lists cases where a civil servant can be disqualified.
35. Confidentiality is required during and after employment in the public sector³. Some specific rules concerning confidentiality can be laid down by individual authorities. Apart from this, the issue of moving from the public to the private sector is not regulated, but relevant situations may be described in the Code of Conduct, which is being drawn up (see below).

Codes of conduct/ethics

36. A Code of Conduct for civil servants is being drafted. It will take the form of general guidelines, allowing for the designation of rules appropriate to the needs of specific sectors. It will constitute a

³ The behaviour that should be followed by a public official after termination of employment would probably be included in the Code of Conduct which is being drawn up.

new tool for civil servants, covering fundamental principles and ethics. Numerous issues will be covered, including freedom of speech, rights and obligations of civil servants, reporting of illegal instructions, additional activities, acceptance of gifts and corruption.

37. According to the Civil Servants Act, disciplinary measures for misconduct range from reprimand to dismissal. Disciplinary measures are issued by the authority of the agency or the department itself and can be appealed. General terms allowing public employees to file law suits are provided for in the draft Code of Conduct.

Gifts

38. Danish law does not provide any specific rules concerning the acceptance of gifts by civil servants except when the nature of activities and interests imposes it. However, in the application of the Civil Servant's Act, a public employee may only receive the salary warranted for his/her functions. In the case of misconduct regarding this obligation, general disciplinary measures may apply.

Reporting on corruption

39. According to a general principle of administrative law, civil servants are obliged to inform their superior of suspicions of corruption or of any other criminal offence they may come across when exercising their functions. A civil servant may also report suspicions of corruption they may come across when exercising their duties directly to the law enforcement agencies. A civil servant may not be subject to disciplinary or any other sanctions for having reported suspected acts of corruption in good faith.

Disciplinary procedures

40. Every single agency and department is competent to examine disciplinary cases and to make its own internal investigations. Legality, impartiality, honesty and efficiency are some of the core values that must be applied during such an investigation. The disciplinary decisions/sanctions may be challenged before the courts. If the disciplinary case also involves a criminal offence, the police and the public prosecution are competent to start a criminal case before the administrative procedure is brought to the courts.

b. Analysis

41. Denmark has a century-old tradition of integrity. Civil servants - as well as employees in all private sectors - have a general understanding of what ethical standards are. The general impression of the GET is that in Danish society common values and high ethical standards are effective tools for preventing corruption. A tradition of transparency in all public procedures is an important additional element that has led to a sound understanding of what is corrupt, and what is not. A sort of natural consequence of this common understanding of integrity and transparency is that there are hardly any written rules dedicated solely to ethical behaviour and to the prevention of corruption in public administration. Nevertheless, the GET learned that over the last few years at central, county and municipal level, as well as within the business sector, there is a tendency to open discussions on the need for written rules.
42. Prevention of corruption plays a prominent role in Danish development and assistance policies managed by Danida (Danish International Development Agency). The Danida Action Plan to

Fight Corruption constitutes the framework for Danish development assistance targeted at fighting corruption. It aims at reducing corruption as part of its efforts to reduce poverty in the countries supported by Danish aid. A management structure and a monitoring framework have been established in order to efficiently carry out the implementation of the Action Plan, which covers all aspects of Danish development assistance. The GET welcomes that all Danida staff are additionally “coached” with regard to the Danida Anti-Corruption Code of Conduct in order to ensure professional behaviour and ethics characterised by high standards of personal and organisational integrity. The ten clearly formulated rules of this code are thoroughly explained in a guide for an in-depth understanding.

43. The GET noted that there are no specific rules in place (beyond those mentioned in paragraph 36) that can be applied to civil servants of all levels of public administration who move from the public to the private sector. The GET was informed that moving from the public to the private sector is seen as something absolutely normal and even beneficial. The government is in favour of people moving from one sector to the other and municipalities are planning to employ more people from the private sector who bring in their practical experience. No rules exist concerning sideline activities/outside employment of public service staff (beyond those mentioned in paragraph 35). Therefore, **the GET recommends to introduce clear rules/guidelines for situations where civil servants move to the private sector and to consider introducing guidelines with regard to sideline activities / outside employment, in order to avoid conflicts of interest.**
44. The GET welcomed the auditing activities carried out by the National Audit Office (hereafter NAOD), which are conducted in accordance with Danish Auditing Standards. The NAOD’s activities are twofold: financial and performance audits. Performance audits may include recommendations related to the prevention of corruption or creation of transparency such as making greater use of the second check system and job rotation. The NAOD is an independent institution and submits an annual “Final Report on State Accounts” to the Parliament. During the visit, the GET was told that, within the framework of its auditing activities, the NAOD discovered only one case of suspected corruption (in 2004). The NAOD is staffed by a total of 260 people, who carry out the majority of auditing and other supervisory activity of the institution. In addition, private companies may be commissioned with carrying out some audits. In these cases the NAOD controls the work of these companies.
45. The GET noted that no code of conduct or ethical guidelines exist for public administration in general, nor for individual authorities. During the evaluation visit, the GET was told that, at the initiative of the Danish Association of Lawyers and Economists, the State Employers’ Authority was working on a draft Code of Conduct for civil servants. Under the Ministry of Finance (the State Employers’ Authority is part of it), representatives of the Ministry of Interior and Health, of the Ministry of Justice, the Association of Municipalities, the Association of Counties and the Danish Association of Lawyers and Economists are involved in the working group that is drafting the Code. The GET was surprised that only a few ministries have been included in this drafting process and that no administrative organisation has been required to submit reports on their experience related to anti-corruption measures or on their needs in their field of competence so far. As an explanation, the GET was told that, because of a well-established long-standing tradition, corruption is not an important issue in public administration: only very few cases of corruption have occurred in Denmark. During the second drafting stage of the code of conduct, all ministries, relevant organisations and the Ombudsman will be involved. Representatives of the Danish authorities met by the GET were not able to clearly indicate when the code of conduct/ethical guidelines for civil servants will be adopted. **The GET recommends to adopt the**

ethical guidelines (Code of Conduct) for public administration which are under preparation as soon as possible.

46. The Danish authorities are convinced that the long-standing tradition of maximum transparency in governmental action in general and in decision-making in particular is one of the best tools to fight corruption in the country. The GET recognises that, as a general rule, all information within the Danish public administration is public and shall be disclosed to anyone requesting access to it. This transparency is ensured at all levels of public administration. The Danish Access to Public Administration Files Act contains clear regulations on access to administrative information and the limitations on (sensitive) private, personal or economic data (such as business secrets) and in cases which could harm Danish public interests including State security. The provisions of the Act are used by the population and especially by the media to gain access to public information. However, the GET was told that the media receive indications concerning corruption through other channels and that sometimes they are confronted with limitations on freedom of access. Nevertheless, even the press are in general happy with these regulations as they enable them to do good investigative work.
47. As already mentioned in the descriptive part of the present report, in Denmark there is a lack of regulations concerning the reporting by civil servants on suspected corrupt behaviour directly to the competent law enforcement authorities. Therefore, **the GET recommends to ensure that civil servants are aware of the possibility to report suspicions of corruption in public administration directly to the competent law enforcement authorities – i.e. even without previously informing their superior -, and to ensure that civil servants who report such suspicions in good faith are adequately protected.**

IV. THEME III - LEGAL PERSONS AND CORRUPTION

a. Description of the situation

Legal persons

48. Legal persons in Denmark can be, among others, public companies (aktieselskaber, A/S), or private companies (anpartsselskaber, ApS), companies or associations with limited liability (virksomheder med begrænset ansvar, V.M.B.A.), limited liability co-operatives (andelsselskaber, A.M.B.A.), limited partnerships (kommanditselskaber, K/S), the European Company (*Det Europæiske Selskab, ES*) partnerships with personal liability of partners (interessentskaber, I/S), commercial foundations. In general, all these legal persons have full legal capacities. To be recognised as a legal person, these entities have to be registered and must fulfil some conditions such as, *inter alia*, the minimum capital and the number of representatives. The Danish Commerce and Companies Agency is competent to register entities as legal persons. This central register is accessible to the public.
49. Neither the number of accounts a company can hold nor the interests in one legal person held by another legal person are restricted. However, certain changes in the share portfolio must be reported to the company (Danish Public Companies Act). If all shares of a private company are held by a single shareholder, information on that shareholder must be available to the public. A promoter, a member of the board of management or directors of a legal person found guilty of a criminal offence can be disqualified by a court's decision from occupying such positions (Section 79 of the Danish Criminal Code). A register of disqualified persons is kept by the Danish Commerce and Companies Agency.

Liability of legal persons

50. According to Sections 25 to 27 of the Criminal Code, legal persons can be held criminally liable for any offences under the Criminal Code, including for active and passive bribery within the public and private sectors and money laundering. Any legal person may be liable for a crime committed intentionally or with negligence, if negligence is criminalised⁴. State and local authorities can be punished only for violations committed in the exercise of activities in the capacity of private individuals and undertakings. A legal person may be held responsible for an offence committed by an employee only in the exercise of his/her official functions. According to case law established with regard to offences other than corruption, this remains true even if the employee acted in conflict with explicit instructions received from management.
51. The liability of a legal person does not preclude the personal responsibility of a natural person who intentionally violates the relevant provisions of the Criminal Code. There have been no cases of proceedings instituted against legal persons for corruption.

Sanctions

52. The only penalty applicable to a legal person is a fine determined by courts. According to Article 51 (3) of the Criminal Code, the fine is fixed taking account, in particular, of the offender's capacity to pay and the financial gains obtained from the criminal activity. To prevent a legal person from escaping sanctions incurred, sanctions may be imposed even if the management or the employees have been replaced. In case of dissolution, liability will be assumed by the company which has taken over the business (universal succession). No sanction can be imposed on companies that have been dissolved in connection with bankruptcy or liquidation. All convictions and fines for violation of the Criminal Code are registered in the Central Criminal Register administered by the National Commission of the Danish Police.

Tax deductibility and fiscal authorities

53. According to Section 8D of the Tax Assessment Act, no tax deduction can be granted for expenses which originates from a criminal offence. The rule mainly applies to bribes, but also to facilitation payments and payments intended to induce public officials to perform their function.
54. The Danish Tax authorities and their officials are subject to statutory rules of secrecy. Therefore, access to data banks is controlled by appropriate measures. Nevertheless, transferring information to other administration bodies is allowed by the Act on Administrative Law. The tax authorities can also be requested by other administrative bodies to provide information concerning a tax payer's record.

⁴ Section 306 which reads: "Criminal responsibility can be imposed on companies, etc. (legal persons) under the rules of Part 5 in respect of violations of this act."

Section 25. A legal person may be punished by a fine, if such punishment is authorised by law or by rules pursuant thereto.
Section 26. Unless otherwise stated, provisions on criminal responsibility for legal persons etc. apply to any legal person, including joint-stock companies, co-operative societies, partnerships, associations, foundations, estates, municipalities and state authorities. (2) Furthermore, such provisions apply to one-person businesses if, considering their size and organisation, these are comparable to the companies referred to in Subsection (1) above.

Section 27. Criminal liability of a legal person is conditional upon a transgression having been committed within the establishment of this person by one or more persons connected to this legal person himself. As for punishment for attempt, Section 21 (3) similarly applies. (2) Agencies of the state and of municipalities may only be punished for acts committed in the course of the performance of functions comparable to functions exercised by natural or legal persons."

Account offences

55. According to the Danish Bookkeeping Act accounting records and books must be kept for five years from the end of the accounting period concerned. The rule does not apply to non-commercial legal persons and legal persons not liable to taxation and/or not required to give financial information. The Danish Bookkeeping Act stipulates that persons who destroy or hide accounting records or books can be fined unless a more severe sentence can be given in accordance with other legislation, for example the Danish Criminal Code.
56. Institutions subject to the Law of State Accounting are compelled to keep accounting records for the running calendar year and the last five closed years⁵. Destroying or hiding accounting records is subject to sanctions by the ministry in question and the National Audit Office in Denmark. Such an offence can be punished by a fine unless a more severe sentence is provided by other legislation.

Role of accountants, auditors and legal professions

57. The Danish Act on measures to prevent money laundering and financing of terrorism provides an obligation to report all suspicious transactions to the Public Prosecutor for Serious Economic Crime. In addition to the obliged entities already mentioned in paragraph 13, this obligation also applies to auditors, tax consultants and lawyers covered by the provision⁶, as well as other persons or undertakings that provide similar services. In addition, these persons shall draw up internal rules on adequate control and communication procedures, as well as training and instruction programmes, for their employees.

b. Analysis

58. There is a variety of different legal persons provided for in Danish legislation. All of these legal persons have full legal capacity and all are subject to registration, which is a prerequisite for establishing a legal person. The central register of legal persons is kept by the Danish Commerce and Companies Agency. The register is accessible to the public, including on the internet. With due respect to restrictions related to personal data and ownership of shares in private companies, the Danish registration system as well as accessibility to the register, is simple, fast and transparent. The GET noted two additional safeguard mechanisms against the possible use of legal persons in criminal activities: first, there are provisions of the Danish Public Companies Act stipulating that anyone holding shares in a public company above a certain amount shall inform the company of such a holding as well as of any significant changes in the ownership of shares; second, there is a register of convicted persons who have been disqualified by the court as managers or directors of legal persons. This register is kept by the Danish Commerce and Companies Agency. Although the GET took note of the fact that there is no register of convicted legal persons that might have been kept by the same institution and used for preventive purposes, it noted that the National Police Commissioner is responsible for the keeping of criminal records and for observing the conditions for registration, disclosure and storage of the data, including those related to legal persons (The Central Criminal Register). The Central Criminal Register itself consists of two sections: A Register of Judgments and a Register of

⁵ No particular legal persons are exempted from the obligation to keep accounting records or books. These rules apply also to municipalities and counties.

⁶ Guidelines concerning the obligation for lawyers to report suspicious transactions have been drawn up by the Danish Bar and Law Society.

Investigation. The purpose of the first mentioned is to hold information on criminal judgments, the purpose of the latter is to hold information of significance to police investigations. In this context, **the GET recommends to consider the possibility of establishing a register of convicted legal persons that would be used for the same (preventive) purposes as the register of convicted natural persons who have been disqualified by the court as managers or directors of legal persons.**

59. The liability of the legal person is not dependent upon the conviction of the physical person. Criminal proceedings against the natural person suspected of the offence and against the legal person may run in parallel. The criminal liability of legal persons covers, among others, active bribery and money laundering. Trading in influence, which is also included in Article 18 of the Criminal Law Convention on Corruption is, however, not a criminal offence under Danish law : Denmark has made a reservation in this regard at the time of ratification. A legal person can also be held liable in cases where the offence is due to a lack of supervision or control by a natural person having a leading position within the legal person. The GET is of the opinion that Danish legislation on corporate liability meets the standards of Article 18 of the Convention.
60. In accordance with the Tax Assessment Act, which stipulates that any expenses that are subject to tax deduction procedures have to be explained and justified, tax deductibility for bribes and any kind of facilitation payments is not allowed.
61. The GET strongly believes that the role of the tax authorities within the anti-corruption operational activities could be strengthened. In particular, the GET noted the lack of appropriate training or guidelines provided for tax officials which might improve interaction and stronger collaboration with the competent law enforcement authorities during their investigations aimed at tracing proceeds of crime, including corruption. Therefore, **the GET recommends to establish special training - and/or provide guidelines - for the tax authorities concerning the detection of corruption offences and their reporting to the competent law enforcement agencies.**
62. The Danish Bookkeeping Act and the Criminal Code cover intentional accounting offences and in the GET's view the system in general meets the standards of Article 14 of the Criminal Law Convention on Corruption.
63. According to Danish law, the only sanction provided for legal persons is imposing a fine. Given the fact that no other sanctions for legal persons exist (for example making the legal person ineligible for the awarding of contracts, exclusion from entitlement to public aid, publication of the judgement in the press), and in the absence of statistics on convictions and sanctions of legal persons, the GET was not convinced that the existing system of fines provided for in Danish law was effective, proportionate and dissuasive. For this reason, **the GET recommends to consider introducing additional sanctions for legal persons.**

V. CONCLUSIONS

64. Denmark has a well-developed system of legislation, law enforcement and judicial authorities to deal with economic crime, including corruption and the confiscation of proceeds of corruption. The Criminal Code and the Administration of Justice Act provide a detailed definition and precise criteria regarding the confiscation of gains from a criminal act. Confiscation of assets from third parties is possible and, under certain conditions, extended confiscation as well. The Public Prosecutor for Serious Economic Crime is the main body responsible for the investigation of corruption and its proceeds. It is supported by a multidisciplinary team composed of prosecutors

and investigators with different professional backgrounds. Auditors permanently employed in the team could complete the range of technical expertise already existing in the staff of the office of the Public Prosecutor for Serious Economic Crime. Further involvement of the tax authorities in detecting corruption offences is indispensable. At all levels of Danish society (public administration, private business, associations, scientific community or the media), the general opinion is that corruption has no chance in Danish society. There is a common conviction that even changes in moral attitudes and the evolution towards a more diversified society with different moral and ethical roots will not be a challenge to traditional Danish values with regard to corruption. The GET hopes that this certainty will not cause a false sense of security, and that people will remain aware of the dangers of corruption. In any case, formulating some more binding rules on the prevention of corruption and on avoiding conflicts of interest will strengthen this stable base.

65. In view of the above, GRECO addresses the following recommendations to Denmark:
- i. **to introduce clear rules/guidelines for situations where civil servants move to the private sector and to consider introducing guidelines with regard to sideline activities / outside employment, in order to avoid conflicts of interest** (paragraph 43);
 - ii. **to adopt the ethical guidelines (Code of Conduct) for public administration which are under preparation as soon as possible** (paragraph 45);
 - iii. **to ensure that civil servants are aware of the possibility to report suspicions of corruption in public administration directly to the competent law enforcement authorities – i.e. even without previously informing their superior -, and to ensure that civil servants who report such suspicions in good faith are adequately protected** (paragraph 47);
 - iv. **to consider the possibility of establishing a register of convicted legal persons that would be used for the same (preventive) purposes as the register of convicted natural persons who have been disqualified by the court as managers or directors of legal persons** (paragraph 58);
 - v. **to establish special training - and/or provide guidelines - for the tax authorities concerning the detection of corruption offences and their reporting to the competent law enforcement agencies** (paragraph 61);
 - vi. **to consider introducing additional sanctions for legal persons** (paragraph 63).
66. Finally, pursuant to Rule 30.2 of the Rules of procedure, GRECO invites the Danish authorities to present a report on the implementation of the above-mentioned recommendations by 30 September 2006.