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COMMISSION STAFF WORKING DOCUMENT

**2021 Rule of Law Report
Country Chapter on the rule of law situation in Denmark**

Accompanying the

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**2021 Rule of Law Report
The rule of law situation in the European Union**

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ABSTRACT

The perception of judicial independence in Denmark remains very high, with a number of initiatives ongoing to further improve the efficiency and quality of the justice system. Several projects by the National Court Administration aim at addressing shortcomings regarding the digitalisation of the justice system already identified in the 2020 Rule of Law Report. The Government is also taking legislative and financial measures to reduce case handling times for criminal cases. However, the courts are still facing some challenges in view of limited resources, and the clearance rate has declined in recent years. The decision-making process for the closure of courts in March 2020 in the context of the COVID-19 pandemic has given rise to questions as regards the respect of judicial independence. In reaction, the Government and National Court Administration have acknowledged the importance of communicating with courts in a way that fully recognises their independence.

Denmark continues to be perceived as one of the least corrupt countries in the European Union and in the world. The anti-corruption system is to a large extent based on general rules on ethics and integrity, social norms and public scrutiny. Challenges identified regarding the implementation of international recommendations regarding the anti-corruption framework remain. While civil servants are subject to comprehensive ethical standards and conflict of interest rules, the framework applicable to ministers and top executives remain narrow in scope. Revolving doors and lobbying activities remain unregulated. A new mechanism to protect whistleblowers in the state administration has been introduced. A new National Investigative Unit for serious crime will be set up in early 2022 and will bring under the same roof prosecutors and investigators aiming to achieve a more efficient and coordinated approach to serious crime.

New tasks have been given to the national media regulatory authority, the Radio and Television Board, as part of the transposition of the revised Audiovisual Media Services Directive. Persisting concerns regarding the exceptions to the Access to Public Administrative Documents Act, which restrict the right to access information in some cases, have been raised by the Parliament, independent researchers, the Parliamentary Ombudsperson and the journalistic community, including in the context of the COVID-19 pandemic. So far the Government has not announced concrete plans to revise the Act. The framework for the protection of journalists remains robust. The Ministry of Justice is working on a legislative proposal to introduce stricter sentences for threats to freedom of expression. The Government has provided state aid to compensate for the media industry's falling advertising revenues during the COVID-19 pandemic.

The role of Parliament in the system of checks and balances has been put into focus during the COVID-19 pandemic. It has handled a higher number of legislative procedures in an expedited manner in 2020 and 2021. A new epidemics law was adopted in February 2021 as a framework for measures related to the COVID-19 pandemic, with reinforced oversight powers for Parliament. This replaces the previous epidemics law of March 2020 under which significant powers had been delegated to the Minister of Health without an equivalent system of parliamentary control. A new system of commissions of scrutiny has been established; a first commission will examine the legality of the Government's actions related to the decision to cull all mink in late 2020 as a step to counter the COVID-19 pandemic. Civil society has received financial support by the Government in the context of the COVID-19 pandemic.

I. JUSTICE SYSTEM

The Danish justice system consists of 24 district courts, two high courts (courts of appeal) and a Supreme Court, as well as two specialised courts¹. The independent National Court Administration is in charge of the administration and development of the courts, which includes allocation of courts' budgets and management of buildings and ICT systems. The independent Judicial Appointments Council² makes non-binding proposals for the appointment of judges to the Ministry of Justice, who then proposes them for formal appointment by the executive (the Queen)³. Only one judge is proposed per vacancy by the Appointments Council. There have been no cases where the executive did not follow the proposal of the Appointments Council⁴. Disciplinary measures can be issued by Court Presidents or the Special Court of Indictment and Revision⁵. The Prosecution Service is an autonomous institution acting under the supervision of the Ministry of Justice and led by a Prosecutor General⁶. The Law and Bar Society is the independent body governing the legal profession and ensuring its independence⁷.

Independence

The level of perceived judicial independence has consistently remained high for the general public and very high for companies. Overall, 74% of the general population and 83% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2021⁸. This high level of perceived judicial independence has overall remained stable between 2016-2020, but has decreased regarding the general public compared to 2020, while the figure regarding companies has slightly increased compared to the past year.

The decision-making process regarding the closure of the courts in March 2020 in the context of the COVID-19 pandemic has been subject to scrutiny as regards the respect of judicial independence. In light of the COVID-19 pandemic, the National Court Administration (NCA) had announced on 12 March 2020 that only the most critical functions

¹ The Maritime and Commercial Court and the Land Registration Court. CEPEJ (2021), Study on the functioning of the judicial systems in the EU Member States.

² Members are appointed by the Minister of Justice and consist of one Supreme Court and one High Court judge proposed by the respective courts, one District Court judge proposed by the Judges Association, one lawyer proposed by the Bar and Law Society and two representatives of the general public proposed by Local Government Denmark and the Danish Adult Education Association.

³ With the exception of the president of the Supreme Court, who is selected and appointed directly by the Supreme Court according to an internal procedure. In addition, as regards members of the Supreme Court, the law sets out a special procedure under which the candidate chosen by the appointments board is vetted by judges of the Supreme Court before the appointment is confirmed.

⁴ For transparency, the Judicial Appointments Council issues a press release when making their proposal.

⁵ 2020 Rule of Law Report, country chapter on the rule of law situation in Denmark, p. 2.

⁶ The Prosecutor General is appointed by the executive (formally the Queen) on recommendation of the Minister of Justice following approval of the Governments' Recruitment Board and can be dismissed on a motivated recommendation of the Minister of Justice (in the latter case the recommendation is submitted directly to the Queen). The Minister of Justice can issue instructions to prosecutors in individual cases, with a number of safeguards applicable (2020 Rule of Law Report, country chapter on the rule of law of situation in Denmark, p. 3.)

⁷ Administration of Justice Act, Chapter 15.

⁸ Figures 48 and 50, 2021 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

of courts would be maintained and urgent and critical cases would be prioritized⁹; it also set up a crisis management group. Subsequently, the process for this decision and in particular whether the way it was communicated to the courts respected constitutional principles of judicial independence has been subject to scrutiny¹⁰ by an independent panel appointed by Parliament. This panel, which was tasked to examine the handling of the COVID-19 pandemic, found in its report presented in January 2021¹¹ that it could be questioned whether the instructions sent to the individual courts by the NCA, which have been made at the request of the Ministry of Justice, were consistent with the constitutional independence of the courts¹². The Government and the NCA consider that their communications to the courts on the matter had taken the form of a recommendation, but acknowledge that the findings of the committee have raised awareness of the need to be particularly careful in recognizing the courts' independence in the communication with them¹³. For the re-opening of courts in April 2020 and all further steps, a more cautious communication style was adopted. Following an internal learning process for future crisis preparedness, in December 2020, a working group set by the NCA further stressed that the crisis management group (composed of the management of the NCA and a number of judges) can only provide instructions within the remit of the NCA's competence and otherwise needs to limit itself to guidelines and recommendations¹⁴.

Quality

The courts are facing challenges regarding resources, in particular in view of anticipated increases in their caseloads. The expenditure on the justice system continues to be very low in Denmark (at 0.16% of GDP)¹⁵ as does the number of judges per 100 000 inhabitants (at 6.5)¹⁶, confirming a longer-term trend¹⁷. Some additional resources have been allocated to the courts in 2020, in particular to address needs related to the COVID-19 pandemic and challenges related to digitalisation¹⁸. Further funding of EUR 1.75 Million (DKK 13 Million) per year has been allocated for the period of 2021-23. Furthermore, on 24 June 2021, the Government announced a further allocation of approximately EUR 3.5 million (DKK 25.0 Million) in 2021 and approximately EUR 6.5 million (DKK 47.5 Million) in 2022 to address the caseload in the courts. However, stakeholders have reiterated that this is insufficient to respond to more structural resource challenges, especially since the creation of new posts for judges would require a more long-term allocation of resources¹⁹. Stakeholders have also expressed concerns that the low competitiveness of judicial salaries with private

⁹ 2020 Rule of Law Report, country chapter on the rule of law situation in Denmark, p. 12.

¹⁰ In particular, in line with the Constitution, only the courts themselves should decide on a closure/reduction of their activities.

¹¹ Report by the Danish Parliament's Committee on Rules of Procedure Group (2021), Tackling COVID-19 in spring 2020.

¹² See chapter 12 on "Legal Aspects" in Tackling COVID-19 in spring 2020. The panel has analysed all emails exchanged between the Ministry of Justice, the NCA and the courts.

¹³ Information received in the context of the country visit to Denmark.

¹⁴ Chapter 12 "Legal Aspects" in Tackling COVID-19 in spring 2020, pp. 314-15.

¹⁵ Figure 30, 2021 EU Justice Scoreboard.

¹⁶ Figure 32, 2021 EU Justice Scoreboard.

¹⁷ 2020 Rule of Law Report, country chapter on the rule of law situation in Denmark, p. 4.

¹⁸ Approx. EUR 4.8 Million (DKK 40 Million) and 9 additional posts for judges were allocated, primarily to deal with backlogs created by the pandemic. Input from Denmark for the 2021 Rule of Law Report, p. 10.

¹⁹ See the Letter of the Danish Association of Judges to the Legal Affairs Committee of 22 March 2021 and Danish Association of Judges (2020), The judges' working conditions, p. 5-8.

sector jobs and other justice professions could affect the ability of courts to recruit new judges²⁰.

Additional resources for police and prosecutors together with legislative amendments aim to reduce the handling time for criminal cases. The new agreement on police and prosecution for 2021-23 introduced additional resources to create 310 full time equivalent posts (for police officers, prosecutors and support staff) specifically for the processing of criminal cases²¹. In this context, concrete targets for processing time within police and prosecution for all criminal cases and specific categories (such as violent crime) have been set. This is part of a broader effort to improve handling times for criminal cases, which also includes a set of legislative amendments that include different measures aimed at streamlining criminal proceedings and eliminating certain superfluous procedural steps²². These amendments were adopted by Parliament in June 2021 and entered into force on 1 July 2021. While these aims have been broadly welcomed, stakeholders have also highlighted that these efforts focus mainly on police and prosecution, but not on the courts, where handling times for criminal cases continue to increase²³.

Initiatives to address a number of outstanding shortcomings regarding the digitalisation of the justice system are under-way. The 2020 Rule of Law Report had already identified some shortcomings as regards digitalisation²⁴. While digital communication tools for courts and prosecution are in place²⁵, a number of gaps regarding digitalisation of the justice system remain. Procedural rules for digital tools are only partly in place for civil, administrative and criminal proceedings²⁶ and digital access to proceedings is very limited for administrative and criminal proceedings, e.g. regarding the possibility to access files of on-going and closed cases online²⁷. While a new electronic filing system for civil cases is in place, the system for criminal cases is out-dated according to stakeholders and though a new system is being prepared, funding still needs to be secured²⁸. The NCA is also developing a new online database for judgments, which will include arrangements for machine-readability, which is intended to be available by the end of 2021 or early 2022 and would improve the current situation regarding access to judgments online²⁹. The NCA has further implemented a new data management system that allows to extract more complex data e.g. to identify the average age of a pending case and therefore to better identify reasons for long disposition times.

The legal aid system is under review. In response to a number of studies by stakeholders highlighting certain weaknesses in the functioning of the legal aid system³⁰, in April 2020 the Ministry of Justice has set up a pre-legislative committee to review the existing legal aid system. It is composed of representatives of different relevant Ministries and authorities (such

²⁰ Information received in the context of the country visit to Denmark.

²¹ Input from Denmark for the 2021 Rule of Law report, pp. 13-14 and information received by the Ministry of Justice in the context of the country visit to Denmark.

²² Proposal to the Act amending the Administration of Justice Act and various other Acts and repealing of the Law on mortgages and on attachment without a judgment or settlement.

²³ Letter from the Danish Association of Judges of 10 December 2020 to Minister of Justice Nick Hækkerup about the courts' current situation and information received in the context of the country visit to Denmark.

²⁴ 2020 Rule of Law Report, country chapter on the rule of law situation in Denmark, p. 4.

²⁵ Figures 42-43, 2021 EU Justice Scoreboard.

²⁶ Figure 40, 2021 EU Justice Scoreboard.

²⁷ Figures 44-45, 2021 EU Justice Scoreboard.

²⁸ Information received in the context of the country visit to Denmark.

²⁹ Figure 46, 2021 EU Justice Scoreboard.

³⁰ See e.g. Justitia (2019), The Danish legal aid model.

as the NCA and the Institute for Human Rights), as well as experts (including a former judge and an academic) and assisted by a follow-up group providing experience from practitioners³¹. While the committee was initially expected to present its results by summer 2022, this is likely to be postponed due to the context of the COVID-19 pandemic³². Criticism of the current system raised by the Bar Association³³ and Justitia, a think tank working on judicial issues, who in October 2020 published a set of recommendations for the reform of the legal aid system³⁴, relates in particular to the access to legal aid offices (including regional disparities), legal aid in administrative matters as well as the need to clarify the legal insurance scheme³⁵. Stakeholders have generally welcomed the review process set up by the Government, but regretted that it has been stalled due to COVID-19 pandemic³⁶.

Efficiency

The justice system overall remains efficient, but is experiencing some challenges as regards the clearance rate. The estimated time to resolve litigious civil and commercial cases has slightly increased on average at all instances in 2019 compared to 2018 (from 207 to 222 days for first instance cases)³⁷. Moreover, the clearance rate for litigious civil and commercial cases has continued to decrease, dropping from 95% in 2018 to 91.8% in 2019. Still, the number of pending cases remains overall very low, in particular for litigious civil and commercial cases³⁸. The National Courts Administration has reported that in 2020, there has been a significant increase in incoming cases, with courts having received 20% more cases in 2020 than in 2017. However, courts have treated 97% of the total number of cases, one percentage point more than in 2019³⁹.

II. ANTI-CORRUPTION FRAMEWORK

Denmark does not have a dedicated anti-corruption strategy nor a specialized agency dealing with corruption issues. The anti-corruption system is to a large extent based on general rules on ethics and integrity as well as social norms and public scrutiny. Several authorities are involved in preventing corruption, promoting good administrative practice and compliance with the legal framework. This includes amongst others the Financial Supervisory Authority, the Parliamentary Ombudsperson and the Auditor General. The Employee and Competence Agency and the Prime Minister's Office have responsibilities with regard to the promotion of integrity among civil servants and Ministers. The Ministry of Justice ensures cooperation

³¹ Composed of representatives of the Bar and Law Society, the Association of the think-tank Justitia, from the legal aid of office and from Insurance and Pension Denmark. Written contribution received by the Ministry of Justice in the context of the country visit to Denmark.

³² Information received by the Ministry of Justice in the context of the country visit to Denmark.

³³ See e.g. Report on legal aid prepared by a working group set up by Danish Lawyers and the Danish Bar Association in 2016.

³⁴ Justitia (2020), Justitia's recommendations for reform of the Danish legal aid model.

³⁵ In this context, it can be noted that stakeholders generally do not see concerns with the thresholds for access to legal aid; this is also confirmed by Figure 23, 2021 EU Justice Scoreboard.

³⁶ Information received in the context of the country visit to Denmark.

³⁷ No separate data on administrative cases is available.

³⁸ Figures 11, 12 and 15, 2021 EU Justice Scoreboard.

³⁹ National Court Administration, Key figures for the Danish Courts.

between national authorities in elaborating anti-corruption measures⁴⁰. Rules to prevent conflict of interests are broadly in place for civil servants.

The perception among experts and business executives is that Denmark is one of the least corrupt countries in the world. In the 2020 Corruption Perceptions Index by Transparency International, Denmark scores 88/100 and ranks 1st both in the European Union and worldwide⁴¹. This perception has been relatively stable⁴² over the past five years⁴³.

A reform to set up a new national investigative unit responsible for serious crimes is being implemented⁴⁴. The new unit will build on the tasks that are now assigned to the State Prosecutor for Serious Economic and International Crime (SØIK) while also incorporating other parts of the police involved in serious crime cases. It will bring under the same roof investigators and prosecutors, who will be better able to follow serious crime cases all the way from district level to appeal, with the aim of ensuring a more efficient and coordinated approach regarding serious crime, including complex cases of corruption. The aim is for the new unit to be organisationally established by early 2022.

According to the prosecution services' data, the majority of corruption related cases are handled in the regional prosecution offices. More complex cases, including foreign bribery cases, are investigated and prosecuted at national level by the special prosecution for serious economic and international crime (SØIK)⁴⁵. Authorities reported that resources available and training for officials are adequate to fulfill the tasks assigned to the office. Cooperation between the Prosecution service and companies is regarded as working well as information on possible misconducts is often shared with law enforcement shortly after internal investigations⁴⁶.

Comprehensive rules of behaviour and ethical standards are in place for civil servants, while Codes of Ethics for ministers, parliamentarians and top executives remain undeveloped. Danish public servants⁴⁷ are subject to a Code of Good Conduct in the Public Sector⁴⁸. The Codes are enforceable and make direct reference to provisions contained in the

⁴⁰ While the Ministry of Justice has set up an anti-corruption forum for internal coordination, it has not met since 2015 and coordination is carried out through ad-hoc written consultations.

⁴¹ Transparency International, Corruption Perceptions Index 2020 (2021), pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

⁴² In 2015 the score was 91, while, in 2020, the score is 88. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

⁴³ The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

⁴⁴ Government Reflection Paper for an Agreement on the finances of the Police and Prosecutor's Office 2021-2024 Ministry of Justice, page 17-21. Information received by the Prosecution Service in the context of the country visit to Denmark.

⁴⁵ An ongoing investigation refers to possible bribery in a tender for a power plant in Mauritius, while charges on a case involving misuse of EU funds by a high level politician have been forwarded to Court. Finally, a case of abuse of office was finalised last year and the responsible was convicted.

⁴⁶ Information received by the Prosecution Service in the context of the country visit to Denmark.

⁴⁷ Public Servants in Denmark include special advisers and top level civil servants.

⁴⁸ 2020 Rule of Law Report, country chapter on the rule of law situation in Denmark, p. 6. Agency for modernisation (2017), Code of conduct in the public sector.

Danish Criminal Code and in the Public Administration Act. The non-compliance with these codes may lead to disciplinary sanctions⁴⁹. As also highlighted by the Group of States against Corruption (GRECO)⁵⁰, Denmark has still not developed a Code of Ethics for Ministers⁵¹ nor for members of Parliament and top executive functions. However, Ministers have legal and political responsibility towards the Parliament including duties on truthfulness, confidentiality, disqualification or conflicts of interest.⁵² The disregard of these rules can be sanctioned in some instances as stated in Section 5 of the Ministerial Accountability Act of 1964⁵³.

Rules on conflicts of interest apply to all public employees; however, for Ministers, these remain narrow in scope and limited guidance is available. Public employees and authorities are subjected to rules on impartiality, legal incapacity and reporting of conflicts of interest as stated in the Public Administration Act⁵⁴. As described in the “Code of conduct in the public sector”, the provisions of the Public Administration Act are supplemented by a general fundamental legal principle of impartiality, which covers areas where the Public Administration Act does not apply⁵⁵. Provisions on conflicts of interest under this Act also apply to members of the government who need to report to the Prime Minister, in charge of transferring responsibilities among ministers⁵⁶. The shortcomings highlighted in the 2020 Rule of Law Report⁵⁷ concerning the discretion left to Ministers when reporting conflicts of interest remain, as little guidance is available⁵⁸ and the scope of application has not been extended⁵⁹. Ministers have the practice of voluntarily declaring their assets; the system of asset declarations is still not regulated, lacks control measures and is not mandatory, contrary to GRECO’s advice⁶⁰. As for parliamentarians, shortcomings persist as regards the lack of a clear definition of conflicts of interest and the need for mechanisms to report them⁶¹.

Contacts between decision-makers and lobbyists aiming to influence policy-making remain unregulated. Apart from general rules on confidentiality and conflicts of interest, Ministers and special advisers are not subjected to any rules on lobbying. Also, interest

⁴⁹ GRECO Fifth Evaluation Round – Evaluation Report, paragraph, p. 15.

⁵⁰ GRECO Fifth Evaluation Round – Evaluation Report, recommendation 44.

⁵¹ New Ministers are given a ministerial handbook which is updated regularly and contains the main applicable rules and guidelines on integrity-related matters regarding governmental work including rules on secondary employment, gifts and other benefits and conflicts of interests. 2020 Rule of Law Report, country chapter on the rule of law situation in Denmark, p. 6.

⁵² These responsibilities are endorsed by the Ministerial Accountability Act.

⁵³ Application of this provision is very rare. Ministerial Accountability Act.

⁵⁴ Public Administration Act (Retsinformation) Chapter 2, Sections 3-6. For the areas not covered by the public administration act, a general fundamental legal principle of impartiality applies; Agency for modernisation (2017), Code of conduct in the public sector.

⁵⁵ Agency for modernisation (2017), Code of conduct in the public sector, p. 25.

⁵⁶ GRECO Fifth Evaluation Round – Evaluation Report, para. 66, p.24

⁵⁷ 2020 Rule of law report country chapter on the rule of law situation in Denmark, p. 7.

⁵⁸ Section 5 Chapter 2 Public Administration Act (Retsinformation) says “After consulting with the Minister for Justice, the minister concerned may lay down more detailed rules by order on the scope of Sections 3 and 4 for specific sectors of the administration”.

⁵⁹ As stated in the 2020 Rule of Law report, conflicts of interest for ministers do not cover self-employment, financial interests, honorary occupations or those associated to a minister’s political party, p. 7.

⁶⁰ GRECO Fifth Evaluation Round – Evaluation Report, paragraph, paragraph 84, p. 30.

⁶¹ 2020 Rule of law report, country chapter on the rule of law situation in Denmark, p. 7.

representatives have no duty to report on their activities⁶². As stressed by GRECO, increasing influence of lobbying in decision-making requires further guidance and transparency⁶³.

The absence of post-employment rules and cooling-off periods for Ministers remains unaddressed despite cases on revolving doors being reported⁶⁴. According to GRECO, regulating the revolving door phenomenon could prevent potential risks of conflicts of interest and misuse of information linked to this practice⁶⁵. Ministers can move directly into a new position after leaving public office, without any restrictions other than the duty of declaring the financial agreement with the new employer and they remain bound by general rules of confidentiality⁶⁶. Stakeholders report a number of cases of revolving doors in recent years that could raise potential concerns regarding conflict of interest⁶⁷.

Shortcomings are still present in the transparency of political party financing rules⁶⁸. Rules on party funding present transparency gaps with little restrictions on foreign sources and a threshold to report private donations set above the amount of DKK 20 000 (EUR 2 700)⁶⁹. After introducing changes to increase transparency of party financing in 2017, the Ministry of the Interior and Housing established, in June 2020, a guide explaining when various forms of contributions to political parties are subject to the existing regulation⁷⁰. These guidelines addresses inter alia the issue of in-kind donations⁷¹ and clarify that the political parties accounts shall be audited by an auditor who is not member of the party controlled⁷². Nevertheless, international recommendations to address other specific issues, such as anonymous donation to political parties, the obligation to report the total amount of donations received, and the establishment of sanctions for not complying with the rules are not fully resolved⁷³ and the Government has not so far announced any additional measures⁷⁴.

Denmark is reviewing its rules on whistleblower protection and has developed new mechanisms to protect whistleblowers at ministerial level. As of 1 November 2020, the Government has established internal whistleblower channels in each ministry and in all subordinate authorities with 50 employees or more⁷⁵. In June 2020, the whistleblower-scheme under the Business Authority was broadened to include the business-oriented

⁶² 2020 Rule of Law Report, country chapter on the rule of law situation in Denmark, pp.7-8.

⁶³ Recommendation CM/Rec(2017)2 of the Committee of Ministers on the legal regulation of lobbying activities in the context of public decision-making.

⁶⁴ 2020 Rule of Law Report, country chapter on the rule of law situation in Denmark, p. 8.

⁶⁵ GRECO Fifth Evaluation Round – Evaluation Report, paragraph 81, p. 29

⁶⁶ Special advisers are employed as (non-permanent) civil servants, with their employment coinciding with the term of office of their ministers. When a minister leaves the public office or when an election is called, special advisers are dismissed but will still get paid for the following 6 months. GRECO Fifth Evaluation Round – Evaluation Report, paragraph, paragraph 80, p. 29.

⁶⁷ Information received in the context of the Country visit to Denmark. Information on specific cases: News magasin Altinget, 3 July 2019, <https://www.altinget.dk/navnenyt/eks-minister-faar-bestyrelsespost>; Altinget, editor, 27 December 2020, <https://www.altinget.dk/navnenyt/fhv-forsvarschef-ny-lobbyist-hos-rud-pedersen>.

⁶⁸ 2020 Rule of Law Report, country chapter on the rule of law situation in Denmark, p. 8.

⁶⁹ GRECO Third Evaluation Round – Addendum to the second compliance report on Denmark, p. 5.

⁷⁰ Input from Denmark for the 2021 Rule of Law Report, p. 15.

⁷¹ Ministry of Social Affairs and the Interior (2020), the guidelines on political party funding, point 6.

⁷² Ministry of Social Affairs and the Interior (2020), The guidelines on political party funding, point 9.3.1.

⁷³ GRECO Third Evaluation Round – Addendum to the second compliance report on Denmark.

⁷⁴ Input from Denmark for the 2021 Rule of Law Report, p. 15.

⁷⁵ Input from Denmark for the 2021 Rule of Law Report, p. 16.

COVID-19 compensation schemes and to include a special duty of confidentiality⁷⁶. New legislation on whistleblower protection was adopted by the Parliament on the 24 June 2021⁷⁷. A new reporting IT system is expected to be developed by the end of the year.

While no specific measures were introduced to prevent corruption in the context of the COVID-19 pandemic, the sanctions for corruption offences committed in relation to the pandemic have been toughened. As regards criminal sanctions, a new provision has been added to the Criminal Code in April 2020, doubling the penalty for a number of crimes related to the COVID-19 pandemic⁷⁸. Bribery was initially not included in this list, but was added after attention was raised to this by stakeholders⁷⁹.

III. MEDIA PLURALISM AND MEDIA FREEDOM

The Constitution provides the overall framework for the protection of the freedom of expression. The tasks, organisational structure and rules of procedure of the national media regulatory authority, the Danish Radio and Television Board, are prescribed in law⁸⁰. There are no specific laws pertaining to transparency of media ownership or allocation of state advertising. Access to documents is regulated in the Access to Public Administrative Documents Act of 2014⁸¹. Several laws have been adopted to transpose the Audiovisual Media Services Directive⁸².

The Radio and Television Board has been given new tasks with the implementation of the revised Audiovisual Media Services Directive. The new tasks relate to obligations concerning supervising video-sharing platforms and safeguarding accessibility of media content for persons with disabilities. The Danish authorities have clarified that the Board now consists of nine instead of eight constant members, including the chair and vice-chair, each appointed by the Minister for a duration of four years⁸³. The change reflects the increased competences of the Board and allows the appointment of two members with particular expertise in working with media. One of these appointments is based on nominations from the Danish Media Association, and one appointment is based on nominations from the Danish Union of Journalists⁸⁴. The media regulator considers their means to be generally sufficient, and the secretariat has recently been expanded by one employee⁸⁵. The Media Pluralism

⁷⁶ Whistleblower protection rules already apply in the context of potential violations of financial regulations and of market abuse as well as in audit legislation or structural funds areas. 2020 Rule of Law Report, country chapter on the rule of law situation in Denmark, p. 8.

⁷⁷ Input from Denmark for the 2021 Rule of Law Report, pp. 16-17. See Danish Parliament (2021), Law on the protection of whistleblowers.

⁷⁸ Input from Denmark for the 2021 Rule of Law Report, p. 18. It should be noted that stakeholders such as the Judges' Association have criticized this as it removes discretion for judges to consider individual circumstances of a case.

⁷⁹ Information received in the context of the country visit to Denmark.

⁸⁰ The Radio and Television Broadcasting Act, Executive Order on the Radio and Television Board and the Danish Public Administration Act.

⁸¹ The Reporters Without Borders' annual World Press Freedom Index continuously ranks Denmark among the best performing countries, currently in fourth place and third among the EU Member States.

⁸² Complete transposition of the AVMSD was notified to the Commission on 18 September 2020.

⁸³ Amendments to the Radio and Television Broadcasting Act, Consolidation Act No 1350 of 4 September 2020.

⁸⁴ Input from Denmark for the 2021 Rule of Law report, p. 20.

⁸⁵ Written contribution from the Radio and Television Board for the 2021 Rule of Law Report, pp. 1-2.

Monitor (MPM) 2021 finds a very low risk on the independence and effectiveness of the media authority⁸⁶.

The Government has introduced measures to compensate for the media industry's falling advertising revenues during the COVID-19 pandemic. The calculation of the compensation has been based on losses of advertising revenues with a maximum amount specified per entity. So far, private media entities, irrespective of the type of media outlet, indicating an inclusive approach, have benefitted from the support package worth approximately EUR 32 million (DKK 240 million)⁸⁷. This has enabled the media companies to continue their activities. Specific support was also made available for freelancers and self-employed journalists whose working conditions have particularly suffered, every fourth of them having lost at least 80 percent of their income⁸⁸. A new support package of approximately EUR 5.4 million (DKK 40 million) was prepared in 2021 for weekly local newspapers, which have been particularly hard-hit by the COVID-19 pandemic⁸⁹. Negotiations are also expected to begin for a new financial support framework for Danish media with a plan to give increased support for local news media and innovation, in addition to finding new ways to support quality journalism, and enhance trust in news media⁹⁰. News media concentration is reported to be high in Denmark⁹¹.

Restrictions to the right to access public information are being debated. As noted in the 2020 Rule of Law Report⁹², the Access to Public Administrative Documents Act, which provides the rules for all public administration bodies and Ministries on public access to information and documents, is subject to certain restrictions limiting public and journalistic access to specific governmental files. Although the Danish Government notes that there are currently no plans to reopen and revise the Act, following debates concerning the Act and its exceptions in Parliament in April 2021, Parliament adopted a resolution on 4 May 2021, instructing the Government to initiate political negotiations on the Act in 2021⁹³. Negotiations on this basis are expected to begin in the summer⁹⁴. One of the driving forces was the publication of an independent report on the government's handling of the COVID-19 pandemic, which reflected on the need to strengthen the right to access documents⁹⁵. The Parliamentary Ombudsperson reports that they have handled one pandemic-related own-initiative case and two investigations based on complaints regarding access to documents, highlighting concerns in each case⁹⁶. The fact that Denmark has neither signed nor ratified

⁸⁶ 2021 Media Pluralism Monitor, country report for Denmark, p. 10.

⁸⁷ Information received in the context of the country visit to Denmark; European Commission (2020), coronavirus response – state aid cases – Denmark.

⁸⁸ 2021 Media Pluralism Monitor, country report for Denmark, p. 7 and 10.

⁸⁹ European Commission (2020), State aid: Commission approves €5.4 billion Danish scheme to compensate companies particularly affected by the coronavirus outbreak; Information received in the context of the country visit

⁹⁰ Information received by the Ministry of Culture in the context of the country visit.

⁹¹ Public service media dominates the audio-visual media market and is concentrated in few media companies of which the largest are owned by the state. See 2021 Media Pluralism Monitor, country report for Denmark, pp. 8 and 11.

⁹² 2020 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 11.

⁹³ Danish Parliament (2021), Resolution on the convening of negotiations on the Danish Public Access Act.

⁹⁴ Information received in the context of the country visit.

⁹⁵ Danish Parliament's Committee on Rules of Procedure Group (2021), Tackling COVID-19 in spring 2020, pp. 116-120.

⁹⁶ Parliamentary Ombudsman (2021) 2020 Annual Report. The own-initiative case concerned long waiting times for replies by health authorities. The other cases relate to access to information about the health sector's preparedness and information from the Ministry of Health.

the Council of Europe Convention on Access to Official Documents has also been criticised by the journalistic community⁹⁷. As regards transparency of information related to the pandemic in particular, provisions have been included in the new Epidemics Law adopted in February 2021 to ensure a more transparent processes by making recommendations made by the newly created Epidemics Committee (composed of independent experts) to relevant ministries publicly available⁹⁸.

The framework for the protection of journalists remains strong. Stakeholders have not provided any indications concerning a potential weakening of the framework for the protection of journalists. No new alerts have been published for Denmark on the Council of Europe's Platform to promote the protection of journalism and safety of journalists⁹⁹. However, one incident has been noted concerning one of the main Danish TV channels. Namely, it posed restrictions on the coverage of particular issues related to sexism by media professionals who had publicly expressed their opinion on it¹⁰⁰. The MPM 2021 considers that in Denmark, there is a low risk as regards the protection of freedom of expression. Journalists are not subjected to smear campaigns carried out by the Government or other actors, there are no attacks on independent media and lawsuits against the media are uncommon in Denmark¹⁰¹.

The Government plans to submit legislation to introduce more severe sentences for threats to freedom of expression. Stakeholders report that there is increasing recognition of the challenges faced by journalists and other public figures on social media platforms, and the need to introduce legislation to address these issues in the public debate in Denmark¹⁰². A survey carried out by the Union of Journalists at the end of 2020 reveals that digital harassment can be an important factor in journalists' working environment, leading potentially to situations where journalists may avoid writing about specific issues¹⁰³. The Ministry of Justice is working on a legislative proposal to introduce stricter sentences for such cases. It is expected to be presented in autumn 2021¹⁰⁴.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Denmark has a unicameral, parliamentary system of government, in which both the Government and members of Parliament can propose legislation, although draft bills are in general presented by the Government. In the absence of a constitutional court, ex-post

⁹⁷ Louise Brincker (Danish Media Association), Tine Johansen (Danish Journalists' Association) and Oluf Jørgensen (Danish School of Media and Journalism) (26 January 2021), "If we include all the rules, the Danish Public Access to Information Act may soon be placed as one of the most closed in Europe".

⁹⁸ The Epidemics Act, Law Nr. 285 of 27 February 2021, section 11.

⁹⁹ Council of Europe, Platform to promote the protection of journalism and safety of journalists, Denmark.

¹⁰⁰ Journalisten (11 September 2020), *Hvis du har underskrevet Sofie Linde-brevet, er du inhabil*; An alert has been registered in this regard in the Media Freedom Rapid Response platform; Six TV 2 employees authored an open letter raising awareness of sexism that they have experiences and/or are aware of within the Danish media industry, which was signed by over 700 women. As a result, TV 2 disqualified any media professional who had signed the letter from writing a feature or doing live interviews on the case.

¹⁰¹ 2021 Media Pluralism Monitor, country report for Denmark, pp. 9-10.

¹⁰² Information received in the context of the country visit to Denmark.

¹⁰³ Journalistforbundet (2020), Digital harassment survey.

¹⁰⁴ Input from Denmark for the 2021 Rule of Law report, p. 22 and information received in the context of the country visit.

constitutionality review can be carried out by all courts in concrete cases¹⁰⁵. The Parliamentary Ombudsperson provides oversight on decisions by public authorities and the Danish Institute for Human Rights monitors the respect of fundamental rights.

Parliament has made increased use of expedited procedures and consultation periods have been shortened, also for proposals unrelated to the COVID-19 pandemic. In situations of urgency, at the request of the Government, Parliament can decide to handle legislative proposals in an expedited manner, on a decision of three quarters of its members¹⁰⁶. In 2020 and 2021, regular recourse has been made of this possibility, with 19% of laws adopted in 2020 and 31% of those adopted until February 2021 having been handled in fast-track procedure, in particular for measures related to the COVID-19 pandemic¹⁰⁷. A report by the Standing Orders Committee adopted in March 2021¹⁰⁸ proposes a number of guidelines for the use of fast-track proceedings, *inter alia* suggesting that laws adopted in this manner should always include a sunset clause and to differentiate between different degrees of urgency¹⁰⁹. It also highlights the importance of submitting all proposals, including urgent ones, to a public consultation. While the general framework for stakeholder consultation is considered to be robust¹¹⁰, stakeholders have noted a tendency of shortened consultation periods in practice, not limited to proposals related to the COVID-19 pandemic¹¹¹.

A new framework was adopted to strengthen parliamentary oversight on measures related to the COVID-19 pandemic. Measures in the context of the COVID-19 pandemic have been based on the Epidemics Act, which was amended in a fast-track procedure in March 2020 to grant additional powers to the Minister of Health to take restrictive measures by ordinance. A sunset clause set on 1 March 2021 was introduced at the same time¹¹². To replace this framework, preparations for a new Epidemics Act started in autumn 2020. Following criticism of the initial Government proposal¹¹³, in December 2020, a revised proposal foreseeing strengthened parliamentary oversight was introduced based on an agreement between all main political parties and adopted in February 2021¹¹⁴. The new law provides in particular that a special parliamentary committee will review executive orders proposed by the Government in a number of key areas and can reject them by vote of the majority of its members¹¹⁵. In addition, a national advisory Epidemics Commission has been set up, which must deliver an opinion on the proposed Government ordinances. The opinion

¹⁰⁵ This happens rarely and there has only been one case in which the Supreme Court decided to disapply a law for being incompatible with the Constitution, in the 1999, Tvind case, U 1999.841 H.

¹⁰⁶ Normally, the third and final reading can take place at the earliest 30 days after submission of the proposal to Parliament. Section 42 of the Standing Orders of the Parliament.

¹⁰⁷ Input from Denmark for the 2021 Rule of Law Report, p. 24.

¹⁰⁸ Standing Orders Committee (2021), Report concerning urgent consideration of government draft laws.

¹⁰⁹ Concretely the committee suggests that depending on the degree of urgency, a scale for the time for consideration in Parliament should apply (i.e. less than the standard 30 days, but still more than 15 days for proposals that are “mildly urgent” and 8-14 days for those which are “moderately urgent”).

¹¹⁰ 2020 Rule of Law Report, country chapter on the rule of law situation in Denmark, p. 11.

¹¹¹ Contribution from European Civic Forum for the 2021 Rule of Law Report, p. 22 and information received in the context of the country visit to Denmark.

¹¹² Act no. 133 of 12 March 2020 amending the Danish Law on Measures against Infectious and Other Communicable Diseases

¹¹³ See e.g. the position by the Danish Institute for Human Rights (2020), DEBATE: The Epidemic Act must give the Folketing control over far-reaching measures.

¹¹⁴ The Epidemics Act, Law Nr. 285 of 27 February 2021.

¹¹⁵ The Committee, which is set up as a sub-committee of the Standing Orders, has 21 members. In urgent cases, the Minister may adopt ordinances directly, but must then immediately submit them to the committee, who can repeal them within a week. §9-11 Epidemics Act.

is made public and must be submitted to the parliamentary committee as well¹¹⁶. An independent expert panel set up by Parliament, which reviewed the handling of the COVID-19 pandemic by the Government in spring 2020, has highlighted the very strong centralisation of powers in the hand of the executive at the start of the pandemic and stressed the need for adequate parliamentary control¹¹⁷, which this new framework also aims to address. The Parliamentary Ombudsperson has received around 200 complaints related to measures taken in the context of the COVID-19 pandemic¹¹⁸.

A new system of commissions of scrutiny to investigate specific matters of general importance has been introduced. On 19 April 2021, Parliament passed legislation introducing a new system of commissions of scrutiny¹¹⁹. These new commissions will be able to carry out focussed investigations on specific matters of general importance. In comparison with the already existing commissions of inquiry, their scope will be more narrowly defined and their results are expected to be delivered within a year of their establishment¹²⁰. Furthermore, the commissions are set up under the control of Parliament¹²¹, which draws up the terms of reference, appoints the members, and receives its reports. The establishment of this system was agreed following the debate regarding the government measures to cull all the farmed mink of the country after the identification of a mutated coronavirus strain¹²². As part of this agreement, the first such commission of scrutiny has been set up on 23 April 2021 to examine the Government's actions related to the minks' culling, including whether there was a sufficient legal basis for the decision¹²³.

The overall framework for civil society organisations remains robust and support has been allocated to help them cope with the impact of the COVID-19 pandemic. Civil society space in Denmark is considered to be open¹²⁴ and robust mechanisms for the involvement of civil society exist¹²⁵. In September 2020, a compensation fund of approximately EUR 6.7 Million (DKK 50 Million) for civil society organisations negatively affected by the COVID-19 pandemic working with vulnerable groups was set up¹²⁶. Nevertheless, the National Institute for Human Rights¹²⁷ and stakeholders¹²⁸ have raised some concerns about a trend that certain legislative proposals related to security measures

¹¹⁶ §7-8 Epidemics Act.

¹¹⁷ Executive Summary, Tackling COVID-19 in spring 2020.

¹¹⁸ Information received by the Parliamentary Ombudsperson in the context of the country visit to Denmark.

¹¹⁹ Act amending the Act on Commissions of Inquiry and the Code of Judicial Procedure.

¹²⁰ Commissions of inquiry usually take 2-3 years to deliver their results.

¹²¹ Instead of the relevant Ministry, as is the case for commissions of inquiry. Input from Denmark for the 2021 Rule of Law Report, p. 28.

¹²² Danish Parliament (2020), Report about the establishment of a form of inquiry with special parliamentary anchoring.

¹²³ Danish Parliament (2021), Terms of reference for a Commission of Inquiry into the matter of killing of mink. On this issue, see e.g. the contribution from ENNHRI for the 2021 Rule of Law Report, p. 117.

¹²⁴ Rating given by CIVICUS, ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

¹²⁵ 2020 Rule of Law Report, country chapter on the rule of law situation in Denmark, pp. 11-12; see also Contribution from the European Civic Forum for the 2021 Rule of Law Report, p. 22.

¹²⁶ Ministry of Social Affairs and Interior, Act nr. 318, 24 September 2020:

¹²⁷ Contribution from ENNHRI for the 2021 Rule of Law Report, pp. 114-115.

¹²⁸ Contribution from European Civic Forum for the 2021 Rule of Law Report, p. 22; see also European Centre for Non-Profit Law (2021), Security for all Danes – a serious threat to freedom of assembly.

could negatively impact civic space due to a risk of arbitrariness in their scope of application and have asked that such proposals should be more targeted¹²⁹.

¹²⁹ See footnotes 122 and 123. These concerns have been raised in relation to Act no. 414 of 13 March 2021 on the prohibition of receiving donations from certain physical persons and legal entities and the draft law on introducing the possibility of police ordering persons to stay away from public places.

Annex I: List of sources in alphabetical order*

* The list of contributions received in the context of the consultation for the 2021 Rule of Law report can be found at <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation>.

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Louise Brincker (Danish Media Association), Tine Johansen (Danish Journalists' Association) and Oluf Jørgensen (Danish School of Media and Journalism) (26 January 2021) *If we include all the rules, the Danish Public Access to Information Act may soon be placed as one of the most closed in Europe (Tager vi alle regler med, kan den danske offentlighedslov snart være placeret som en af de mest lukkede i Europa)* (<https://politiken.dk/debat/art8077777/%C2%BBTager-vi-alle-regler-med-kan-den-danske-offentlighedslov-snart-v%C3%A6re-placeret-som-en-af-de-mest-lukkede-i-Europa%C2%AB>).

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Annex II: Country visit to Denmark

The Commission services held virtual meetings in April 2021 with:

- Bar Association
- Danish Institute for Human Rights
- Danske Medier
- Employee and Competence Agency
- Financial Supervisory Authority
- Journalists' Union
- Judges Association
- Justitia
- Ministry of Business
- Ministry of Culture
- Ministry of Justice
- National Audit Office
- National Court Administration
- Parliamentary Ombudsman
- Pressenævnet
- Prosecution Service
- Standing Orders Committee of the Parliament
- Supreme Court
- Transparency International Denmark

In addition, the Media Authority provided written answers to questions.

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Center for Reproductive Rights
- CIVICUS
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute
- Netherlands Helsinki Committee

- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International
- Reporters without Borders
- Transparency International EU