Regulatory Reform in Denmark

Enhancing Market Openness through Regulatory Reform

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Enhancing Market Openness through Regulatory Reform* analyses the institutional set-up and use of policy instruments in Denmark. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Denmark* published in 2000. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was principally prepared by Akira Kawamoto, Principal Administrator, of the Trade Directorate of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Denmark. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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Executive Summary

Background Report on Enhancing Market Openness through Regulatory Reform

Does the national regulatory system allow enterprises to take full advantage of competitive global markets? Reducing regulatory barriers to trade and investment enables countries to benefit more fully from comparative advantage and innovation. The benefits that regulatory reform can create are widely shared by consumers and domestic firms as well as by trading partners. This report assesses regulations and the regulatory process in Denmark in terms of their impact on international competition through trade and investment, as well as the extent to which trade perspectives are incorporated into the general policy framework for regulations. The assessment is based on six efficient regulation principles developed by the OECD, namely transparency, non-discrimination, avoidance of unnecessary trade restrictiveness, use of internationally harmonised standards, recognition of equivalence of foreign measures, and competition principles.

The policy stance and administrative culture of Denmark, as well as its business environment, is generally positive for trade and investment. Trading partners consider that market principles are well embedded in Danish policies and that the Danish market is relatively less heavily regulated. The contribution of Denmark to international policy co-ordination such as harmonisation of standards is commendable. Denmark has also well co-ordinated policies with the EU, as reflected in its implementation rate of EU Directives. As for regulatory reform, the current programme launched in 1993 is backed by a high level of political support and has steadily expanded to cover a wide range of issues.

Against this overall positive picture, this report identifies two major policy areas where regulatory reform from market openness perspectives can produce further benefits. First, there is substantial economic potential that can be promoted by introducing more vigorous competition in markets, including international competition. This potential has been pointed out by a number of economic studies comparing Danish performance with that of other countries, especially on price differentials. The current major approach of regulatory reform, i.e. focusing on legal aspects and streamlining administrative burdens, can be expanded to incorporate an overall pro-competitive stance. In this regard, it is useful to integrate market openness perspectives that are represented by the six efficient regulation principles, so that benefits of the reform can be maximised and shared widely. Second, a policy challenge lies in the impact on trade of relatively vigorous regulatory initiatives that stem from a high level of social concerns in Denmark. Though their reasons are understandable, it is also true that these regulatory initiatives have either affected trade or raised some concern among foreign trading partners in several cases, while in other cases the Danish took into account trade-related considerations. It will be useful to consider regulatory reform in this area, and try to establish a way to pursue a social goal in a less restrictive manner in terms of trade and investment. Denmark can offer examples and lessons for other countries in search of guidelines to resolve potential tensions in this field.

1. MARKET OPENNESS AND POLICY ENVIRONMENT IN DENMARK

1.1. Overview of market openness of Denmark's economy

The economic benefits of open markets are easily visible in Denmark, which, as a small country surrounded by sea, has long been exposed to external factors. The importance of international economic links in Denmark was consolidated by its entry to the European Communities in 1973. It has been further reinforced by its location as a "hub" between Scandinavian countries and other European countries, such as Germany. (For figures on trade and investment, see Tables 1 and 2, and Figures 1 and 2).

The general policy stance of the Danish government emphasises the importance of free trade for Denmark's economy. In explaining how important the WTO system is for its own economy, the Minister for Foreign Affairs pointed out: "The WTO (World Trade Organisation) is a new abbreviation that we will have to get used to. It is an organisation dealing with the rules of world trade. Few countries are more dependent on such rules than Denmark. The Danish standard of living is based upon the fact that we are able to sell what we produce"(Government of Denmark, 1997*b*). Trading partners consider that market principles are well embedded in Denmark's policies, and that the Danish market is relatively less heavily regulated (for example, see Government of the United States of America, 1998). A long-time tradition of trade with foreign countries and of foreign investment, underpinned by a well-educated population with a very high level of proficiency in English, has undoubtedly contributed to Denmark's involvement in international business today.

A recent extensive survey of foreign expatriates living in Denmark[1] illustrates this trade-and-investment-friendly environment. A third of expatiates surveyed named Denmark as the most attractive nation to live and work in. 76% of those surveyed felt that they had no problems in communicating with the public authorities in English. While 50% of them disagreed with the statement that it is "easy to get a general overview of the relevant rules and regulations", 40% consider civil servants in Denmark as helpful and service-minded. Denmark has almost always been rated highly among European nations as a competitive and attractive place for investment as well.[2] On the other hand, foreign firms generally feel that the cost of living in Denmark and tax burdens are substantially high.

Membership in the European Union increasingly influences policies in Denmark, and the government of Denmark has worked to co-ordinate its decision making process with the European decision making process (see Box 1). Multi-layered committees, from expert to political levels, are in place to identify potential issues for Denmark as soon as possible. They formulate national positions that should be ready when discussion takes place at the European level. This co-ordination helps to build confidence among those concerned when policy enters into force. It can serve to promote the Danish position on European policy matters effectively as well as to secure solid implementation once a decision is made at the European level, as reflected in the high implementation rate of EU Directives in Denmark (see Figure 3).

Box 1. **How to work better with Europe – Danish decision-making process for EU policies**

The ***special committees*** represent the lowest level of the decision-making process. The purpose of the special committees is to identify the substance of Denmark's position relative to specific EU issues. There are 32 special committees covering all aspects of EU policies. Special Committee members are civil servants from relevant ministries and governmental agencies. Various interest groups are also invited to participate in these meetings on an *ad hoc* basis.

At the next level of the decision making procedure is the ***EC Committee***. Members are senior civil servants responsible for the co-ordination of EU matters in their respective ministries. The EC Committee is chaired by the Ministry of Foreign Affairs. The primary task of the EC Committee is to prepare the ground for deliberations of the Government's Foreign Affairs Committee. The EC Committee holds main responsibility for ensuring the implementation of Danish EU policies in a co-ordinated and consistent manner and in compliance with the overall policy objectives.

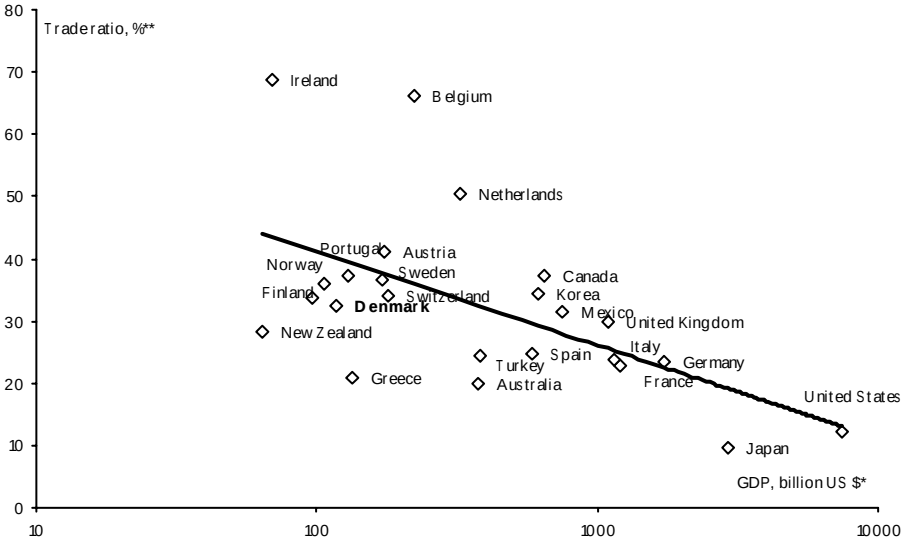
Political co-ordination is ensured in the government's ***Foreign Affairs Committees***, in which most ministers have a seat. They mainly concentrate on cases expected to arise at forthcoming Council meetings in Brussels. Concrete cases of political significance to Denmark, or wider cross-sectoral issues, are also discussed with a view to formulating the Danish position or general guidelines.

The parliament (*Folketing*)'s ***Europeans Affairs Committee***. To avoid a situation whereby the government binds Denmark to implement an EU decision, for which no majority can subsequently be mustered in the *Folketing*, the European Affairs Committee is consulted prior to meetings in the European Council. All political parties are represented in the Committee where they have voting rights proportionate to the number of their votes at the plenary sessions of the *Folketing*.

In a broader context, Denmark's inherent interests in global trade have been reflected in its relatively numerous initiatives, considering its size, to encourage harmonisation or other type of co-operation among countries. As for the domestic impact of European policy making, the business community has also welcomed European "pressures" as valuable sources of promotion of reform, especially regulatory reform. Some concerns have been voiced, however, that the European dimension may sometimes have reduced the flexibility of Danish regulations, for example in the field of labour market regulations where Danish regulations *e.g.* on hiring and firing are relatively light. While recognising that the Danish economy is highly exposed to international competition (the ratio of aggregate imports to GDP exceeds the OECD average by a large margin), the OECD's 1993 Survey pointed out that "if differences in the size of countries and in transportation costs are taken into account, Denmark appears to be a low rather than a high-import country" (OECD, 1993, Chapter 4). Figure 1 shows that Denmark's trade ratio was in 1996 still substantially lower than expected for a small economy, relative to other OECD countries, although more recent data show that the trade ratio is increasing. Inward and outward investment, too, are less than for other small OECD economies.

Denmark's public authorities have been keen to promote foreign investment. In 1985, they set up "Invest in Denmark", a body currently under the responsibility of the Ministry of Foreign Affairs, specifically assigned to helping foreign firms to establish a business presence in Denmark. Linked with other bodies, including Danish Embassies overseas, it offers assistance to foreign firms, in particular help to solve regulatory problems. It also carries out analytical work, and disseminates information to make the Danish market better known to foreign business. A strong focus has been made on four sectors for which Denmark can offer a particularly competitive investment environment: information technology, telecommunications and electronics, food, distribution and call centres, pharmaceuticals and medical products.

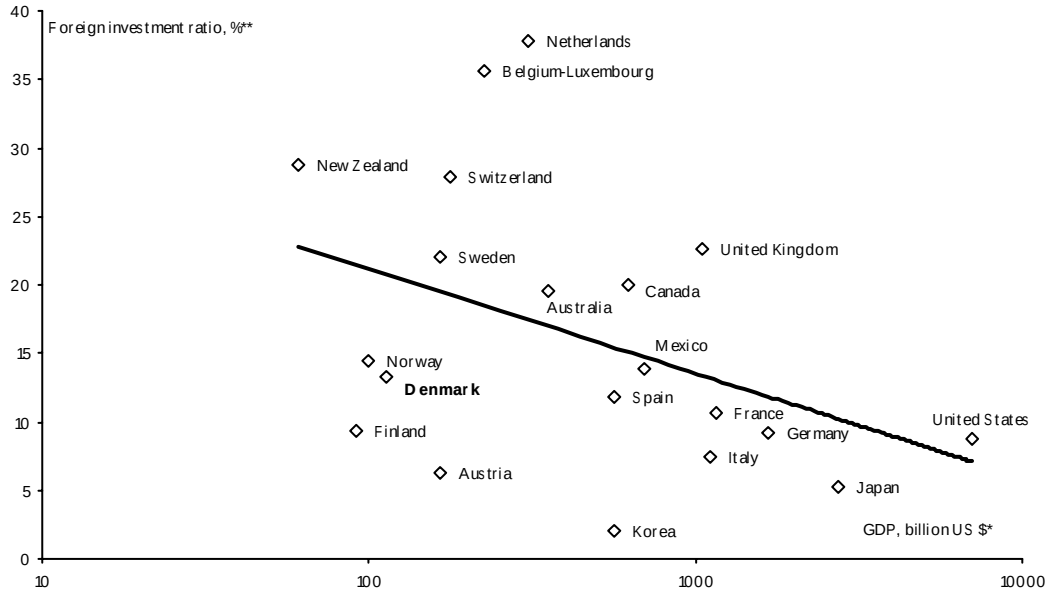
Figure 1. **Share of trade in selected OECD member countries' economies, 1996**



* GDP measured at current prices and current PPPs in billion US$.
** Average of exports and imports of goods and services relative to GDP.

Source: OECD.

Figure 2. **Share of stocks of inward and outward direct investment in GDP in 1995**



* GDP measured at current prices and current PPPs in billion US dollars.
** Average of inward and outward investment relative to GDP (except for Mexico, inward only).

Source: OECD.

Table 1. **Foreign direct investment in Denmark**

In billions of Danish krones

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Inflows	7.9	7.5	9.3	6.1	10.8	31.2	23.4	4.4	18.5	42.3
Outflows	16.0	10.0	13.1	13.5	8.2	25.2	17.2	14.6	27.8	25.6

Source: Danmarks Nationalbank.

Table 2. **Major trading partners of Denmark in 1997**

Imports (CIF)		**Exports (FOB)**	
US$ 45 843 million 26.1% of GDP		US$ 47 655 million 28.6% of GDP	
1. Germany	21.5%	1. Germany	21.2%
2. Sweden	12.7%	2. Sweden	11.3%
3. Netherlands	7.7%	3. United Kingdom	9.7%
4. United Kingdom	7.5%	4. Norway	6.3%
5. Norway	5.3%	5. France	5.3%
Total Nordic countries	21%	Total Nordic countries	21%
Total EU	70%	Total EU	65%
Total OECD	88%	Total OECD	86%

Source: OECD.

1.2. Overview of regulatory reform to date

In Denmark, high-level political initiatives for regulatory reform were taken in the early 1980s. From an initial focus on greater responsibility of regional and local governments, the campaign came to raise a broader range of regulatory issues, including the review of environmental protection and health and safety labour regulation. The objective was to reduce administrative burdens that were considered as having affected Danish business competitiveness. These early initiatives lost momentum in the mid-1980s for various reasons, including a lack of strong business support and reluctance from some officials to implement the reform. However, some progress was made in deregulating some areas such as capital markets (Christensen, 1989).

The current regulatory reform policy started in 1993, with the underlying intention of learning from the lessons of the 1980s. Basically, the focus has shifted from deregulation to regulatory quality. This approach has steadily broadened the scope of reform, which has been promoted by a number of government ministries. Improving regulatory quality has been announced as a high priority by the government coalition agreement reached in March 1998. Reform has benefited from a high level of support among major political parties.

Recent policy reform has included the creation of the Regulation Committee in 1998, comprised of Permanent Secretaries of the Ministries of Finance, Business and Industry, Justice and Economic Affairs, as well as the Prime Minister's Department. The Committee aims to ensure regulatory quality of new legislation, by providing oversight and management of the government's legislative proposals based on the following criteria (see Background report to Chapter 2 for more details):

– Identification of the policy issue being addressed and description of the purpose of the bill.

– Preliminary assessment of the likely impacts on business, industry, citizens, the environment and public authorities.[3]

– Consideration of alternatives to "command and control" regulation.

The current regulatory reform programme has built a broad policy framework supported by an effective central mechanism of reform. A number of innovative schemes are under way, including the use of business test panels as well as alternative measures to regulations. A pragmatic and co-operative administrative culture in Denmark has led to step-by-step progress and steady expansion of the scope of reform.

1.3. Areas for further policy attention

Against this overall positive picture, it is possible to point out several policy areas that need further attention in order to achieve an optimal level of market openness of Denmark economy.

1.3.1. Potential economic gains from more vigorous competition, including international competition

Increased competition in markets, including increased international competition, can bring about substantial economic benefits. The 1993 OECD Economic Survey pointed out that aggregate retail prices in Denmark were much higher than the EU average. Among OECD countries, Denmark had the highest price for a number of products and services. The aggregate price level was found to be high, even net of indirect tax, in areas such as medical products, footwear, foodstuff and some services. More recent economic researches have confirmed these price differentials (see Table 3). They have shown that significant price differentials exist between Denmark and other developed economies, including other Nordic countries, in many sectors. Examples can be found in consumer products in general, financial services (as seen in wide interest margins and expensive insurance rates), or pharmaceutical products and medical services. These differentials are consistent with the view of foreign expatriates that the cost of living in Denmark is generally very high. Lack of competition and high prices often result from regulatory measures. "There is no doubt that public regulations lead to high prices and inefficiencies in some sectors", the 1993 OECD Survey observed, mentioning examples in pharmaceuticals, health services, liberal professions, transportation services and rental housing services. Public procurement, which has a significant impact on the economy due to the large scale of the public sector, was also mentioned as contributing to weak competition and high prices.

Table 3. **International comparisons for Danish sectoral performance**[4]

Area of survey	**Name of research body, time of publication.**	**Specific products and services covered**	**Period surveyed**	**Danish performance (prices, quality etc.)**	**Countries compared to Denmark**	**Reasons suggested for the performance (is it related to regulations?)**
Consumer goods in general	Danish Competition Authority.	Consumer goods.	1996	Aggregated price level in Denmark is the third highest among EU nine countries. Goods prices of which are higher than the European average by more than 10% include: non-alcoholic beverages; fruits and vegetables; health care; bread.	Sweden, Germany, France, Finland, Belgium, Netherlands, Italy, and UK.	Lack of competition.
Banking services	World Competitiveness Yearbook, 1998 (International Institute for Management Development).	Interest margins (differences in rates between saving accounts and consumer loans).	1997	Danish figure is the second highest, higher than the average by more than 30%.	Germany, Sweden, Netherlands, Norway, UK, Japan, and US.	A low level of competition for consumer segment (explanation offered by the Consumer Council).
Insurance services	Stifung Warentest, in cooperation with the European Consumers' Organization, 1997.	Guaranteed annual premium for an insurance sum of 100 000 ECU (non-smoker).	1997	Average insurance premiums by Danish firms are the third most expensive in Europe, after Portugal and Austria.	13 European countries.	Not given.
Insurance services	Nordic Council of Ministers.	Life insurance and household insurance.	1996	Denmark's premiums have been found two or three times more expensive than those in other Nordic countries, while content of insurance products are	Sweden, Norway, Finland and Iceland.	Not given.

Area of survey	Name of research body, time of publication.	Specific products and services covered	Period surveyed	Danish performance (prices, quality etc.)	Countries compared to Denmark	Reasons suggested for the performance (is it related to regulations?)
				difficult to compare.		
Dental services	Danish Consumer Council's magazine article, 1994.	Dental (technical) services. Crowns and bridges (not covered by list prices).	1994	Very high prices in Denmark (+70% to +190%) compared with Sweden.	Sweden.	Collegiate agreements eliminating competition (and partly regulations).
Medicine market	Ministry of Health in Denmark.	Comparing prices on medicine per medical treatment.	1997	Prices on medicine are generally high compared to rest of Europe.	EU countries but Sweden and Luxembourg.	No price control in Denmark while it exists in many of the countries compared with.

Source: Danish Consumer Council.

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A high level of horizontal concentration has been seen as a threat to competition, especially in closed sectors such as building materials where several products are dominated by one or two producers. Vertical integration and agreement often go hand in hand with horizontal concentration. In addition, horizontal cartel agreements are often established by trade and professional associations that seek to reduce competition among their members. Many sectors in Denmark have been "sheltered" by traditional private co-operative arrangements and cartels (see Background report to Chapter 3 for more details). These traditional business practices are likely to have suppressed potential business opportunities for foreign firms as well, although these opportunities may not have been explicitly recognised by them. In 1999, the European Commission pointed out that competition problems such as high prices, high concentration ratios, high margins, and low degree of foreign penetration are noticeable in some sectors in Denmark, and called for regulatory reform and competitive tendering of public services (Commission of the European Communities, 1999*a*).

Regulatory reform has so far focused on rationalising regulatory decision-making procedures, especially in reaction to the inflation of social regulations. The major thrust of reform has been to assure the quality of new regulations, in particular at the level of primary legislation. The fact that current reform policy has an essentially "legal" rather than "economic" focus may, however, limit the prospects that reform brings about concrete benefits for business and consumers. Some additional benefits could be reaped by reviewing the whole set of regulatory framework in place from an economic perspective and going beyond the current emphasis on administrative burdens.

Economic reform to date has also tended to concentrate on sectors covered by European Directives, such as telecommunications. Refocusing regulatory reform on a broader basis to introduce competition across the economy could generate substantial benefits for both consumers and firms. These initiatives can be greatly enhanced by taking explicitly into account market openness, since foreign firms and trade already play a substantial role in the Danish economy. They can be readily available source of new competition in many cases, considering Denmark's location and size. Recent reform in competition policy can signal such a necessary change of focus, and could be extended to a government-wide pro-competitive policy. Such a new orientation of policy could be supported by the Danish consumers' increased interests in lower prices.

Denmark's socio-political tradition of resolving conflicts through negotiations has naturally favoured a practical approach to reform and resulted in step-by-step improvement. However, this overall approach may be detrimental when in-depth re-orientation of policy is needed. In addition, the size of the Danish market may not have generated enough interest among trading partners so that they call for the introduction of more international competition through reform. However, more openness and international competition can benefit domestic consumers and firms as prices fall, quality improves and more innovation is introduced. These benefits have been already felt in some export sectors such as food, where international competition has helped upgrade the competitiveness of Danish agro-industries, but have not been made explicit in a wider context.

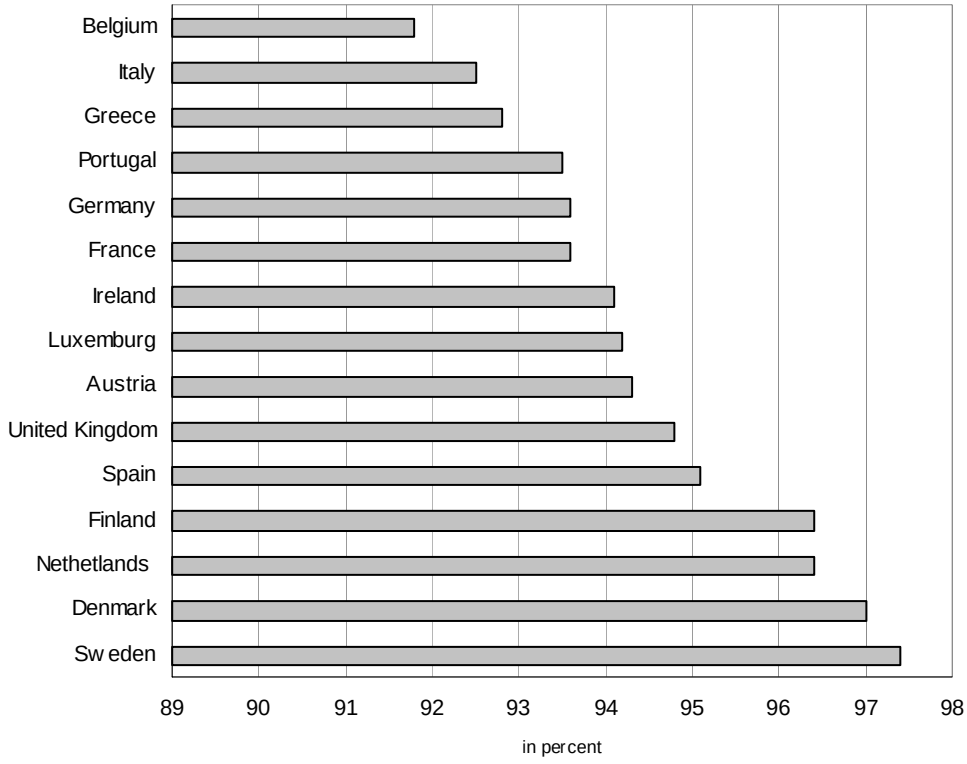
1.3.2. Environmental and social regulatory initiatives

Another policy challenge for Denmark stems from the impact on trade of the relatively numerous social and environmental regulations. The Danish population enjoys a high quality of life that is not only due to its high GDP per capita. A comprehensive social survey that measured the ability of nations to meet the basic social and material needs of their citizens and analysed social and political conditions, as well as economic development, named Denmark as the best place to live among 160 countries in the world (Estes, 1999). The high concern for social values in the Danish society is reflected in the large range of social provisions, traditionally referred to as welfare state. It is also the background of vigorous regulatory

initiatives in the field of environment. The fact that Denmark is a small and well-organised country may have contributed to the regulatory activities, since it is generally easier to reach social consensus on regulations in Denmark than in some other countries. However, though the reasons for those regulations are funded and the Danish authorities have taken account of their impact on trade in a number of cases, it is also true that, as analysed in later sections in this report, some of these initiatives have either affected trade or raised concerns among foreign trading partners.

It will thus be useful to consider regulatory reform in this area. In a sense, the current regulatory reform, with its emphasis on good quality regulations, can be seen as a policy response to the overburdening of Parliament and the administration resulting from an ever-increasing public demand for social regulations. When rationalising regulatory decision making, it would be useful to incorporate market openness perspectives more explicitly. The aim of such reform is not to "exchange" a high level of social protection in Denmark with more trade, but rather to find a way to pursue a social objective, such as the protection of the environment, in a less restrictive manner in terms of trade. Best practices in that context have not been clearly identified yet, but Denmark can offer examples and lessons to other countries in search of guidelines to resolve potential tension in this field.

Figure 3. **Rate of transposition of EU Directives by member states**



Source: *Better Lawmaking, A Shared Responsibility*, Report of the European Commission to the European Council, 1998.

2. THE POLICY FRAMEWORK FOR MARKET OPENNESS: THE SIX EFFICIENT REGULATION PRINCIPLES

An important step in ensuring that regulations do not unnecessarily reduce market openness is to build the "efficient regulation principles" into the domestic regulatory process for social and economic regulations, as well as for administrative practices. "Market openness" here refers to the ability of foreign suppliers to compete in a national market without encountering discriminatory, excessively burdensome or restrictive conditions. These principles, which were described in the 1997 OECD *Report on Regulatory Reform* and developed further in the Trade Committee (OECD, 1997*b*), are:

- Transparency and openness of decision-making.
- Non-discrimination.
- Avoidance of unnecessary trade restrictiveness.
- Use of internationally harmonised measures.
- Recognition of equivalence of other countries' regulatory measures.
- Application of competition principles.

They have been identified by trade policy makers as key to market-oriented and trade and investment-friendly regulation. They reflect the basic principles underpinning the multilateral trading system, concerning which many countries have undertaken certain obligations in the WTO and other contexts. The intention in this report is not to judge the extent to which Denmark may have undertaken and lived up to international commitments relating directly or indirectly to these principles, but rather to assess whether and how domestic instruments, procedures and practices give effect to the principles and successfully contribute to market openness. Similarly, the report is not concerned with an assessment of trade policies and practices.

2.1. Transparency and openness of decision-making

Transparency in regulatory procedures is important for the efficiency of regulations as it gives authorities the opportunity to receive feedbacks from potentially affected parties. At the stage of implementation, transparent regulations can minimise information costs, facilitate market access and enhance confidence for regulations among the public. Transparency can be ensured by providing full opportunities for comments on draft regulations, giving the general public full access to detailed and updated information concerning regulations, as well as providing appeal procedures. Transparency and openness of regulatory procedures are particularly important for foreign parties since they are often newcomers and can easily be disadvantaged by the different administrative tradition and the difficulty of access to informal consultation processes.

2.1.1. Transparency in the elaboration of regulations

In Denmark, the preparatory stage of regulations, whether for primary legislation or for lower level administrative rules, does not include any legally-binding standardised procedures of consultation with affected parties. In principle, each ministry is responsible for organising the consultation process. In

fact, the political system and tradition in Denmark, which put high value on consensus and participation, have nurtured long-time practices of consultation. Thus a **wide range of consultation** take place before proposals for regulations are finalised. In general, ministries invite interested parties, including those affected by regulation and those involved in its enforcement, as well as academics, to working groups or committees that are charged with preparing the bills. The choice of participants in this early process is at the discretion of the ministry concerned. Business interests are represented by industry associations, and individual firms are usually not invited. Nor are foreign parties usually represented at this stage. Some businesses raised that the selection can be used strategically by the ministry concerned. According to the established practices, draft bills are also sent to affected parties for comments. NGOs are often involved at this stage of the consultation. Recently, the Internet has also been used to consult on a broader basis, which can facilitate the participation of foreign firms.

Informal consultation between concerned ministries also takes place very frequently in the elaboration process of bills. In particular, the Ministry of Justice is responsible for ensuring the legal quality of regulatory proposals, both in terms of technical and substantive requirements, including for checking consistency with international laws. The ministry has been active in promoting "plain language" legislation in this context. On the other hand, the potential impact on trade of draft regulations are in general not included in this process.

These practices have, in general, contributed to the quality of regulations in Denmark and have resulted in a fairly high level confidence in regulations among the public. Foreign trading partners have not raised many concerns about the Danish system of consultation, despite the absence of mandatory standardised consultation procedures, as can be seen in some other OECD countries. However, several reservations have been registered. The number of **"emergency" procedures** is said to have increased in response to strong political pressures for more regulatory actions. Such a tendency may affect the overall quality of consultation. In addition, some NGOs have complained that the time given for comments is too short.

When considering the process for **administrative rules** delegated from the primary legislation, the picture is less clear. Generally speaking, there is no similar intensive consultation process to the one that exists for primary legislation. However, a similar process can be applied when the government agencies recognise that administrative rules have substantial importance. The Ministry of Justice issued a guide for making administrative regulations in 1986, but the government regulatory reform programme has not included a comprehensive review of administrative rules. This may be worthwhile for further consideration, since, as observed in other countries, in some cases, these rules may have a more significant economic impact than primary legislation, including in respect with market openness.

i) International trade agreements that contribute to transparency, especially in relation to the European Union

European Union rules have contributed to increasing transparency of regulations in EU countries, especially from the perspective of market openness. In the area of **technical regulations and standards**, the notification procedure set by the Directive 98/34/EC provides opportunities for comments on measures proposed by EU member states. The effectiveness of this mechanism is backed by an explicit standstill rule,[5] and ultimately by infringement procedures (for details, see Box 2). Similar notification procedures, though less intensive, exist under the WTO Agreement on Technical Barriers to Trade (TBT) and on the Application of Sanitary and Phytosanitary Measures (SPS). In Denmark, the Agency of Trade and Industry, established within the Ministry of Business and Industry, is responsible for notifying draft technical regulations to the European Commission and the WTO, as well as for receiving and dispatching foreign comments.

Box 2. **Notification obligations of prospective technical regulations and standards under Directive 98/34/EC (formerly Directive 83/189)**

In order to avoid erecting new barriers to the free movement of goods which could arise from the adoption of technical regulations at the national level, European Union member states are required by Directive 98/34 (which codified Directive 83/189) to notify all draft technical regulations on products, to the extent that these are not a transposition of European harmonised Directives. This notification obligation covers all regulations at the national or regional level, which introduce technical specifications, the observance of which is compulsory in the case of marketing or use; but also fiscal and financial measures to encourage compliance with such specifications, and voluntary agreements to which a public authority is a party. Directive 98/48/EC recently extended the scope of the notification obligation to rules on information-society services. Notified texts are further communicated by the Commission to the other member states and are in principle not regarded as confidential, unless explicitly designated as such.

Following the notification, the concerned member state must refrain from adopting the draft regulations for a period of three months during which the effects of these regulations on the Single Market are vetted by the Commission and the other member states. If the Commission or a member state emit a detailed opinion arguing that the proposed regulation constitutes a barrier to trade, the standstill period is extended for another three months. Furthermore, if the preparation of new legislation in the same area is undertaken at the European Union level, the Commission can extend the standstill for another 12 months. An infringement procedure may be engaged in case of failure to notify or if the member state concerned ignores a detailed opinion.

Similarly, as far as standards are concerned, Directive 83/189 provides for an exchange of information concerning the initiatives of the national standardisation organisations (NSOs) and, upon request, the working programmes, thus enhancing transparency and promoting co-operation among NSOs. The direct beneficiaries of the notification obligation of draft standards are the European Union member states, their NSOs and the European Standardisation Bodies (CEN, CENELEC and ETSI). Private parties can indirectly become part of the standardisation procedures in countries other than their own, through their country's NSOs, which are ensured the possibility of taking an active or passive role in the standardisation work of other NSOs.

The incentive of countries to notify, and thus the efficiency of the system, has been strongly reinforced by the 1996 "CIA security" decision by the European Court of Justice.[6] The decision established the principle that failure to comply with the notification obligation results in the technical regulations concerned being inapplicable, so that they are unenforceable against individuals.

In the EU the notification procedure has recently been complemented with a new procedure[7] which requires that member states notify the Commission of national measures derogating from the principle of free movement of goods within the EU. The procedure has come in response to the persistence of obstacles to the free movement of goods within the Single Market. Member states must notify any measure, other than a judicial decision, which prevents the free movement of products lawfully manufactured or marketed in another member state for reasons relating in particular to safety, health or protection of the environment. For example member states must notify a measure which imposes a general ban, or requires to modify the product or withdraw it from the market. Whereas the notification procedure for draft standards mentioned above acts on the period preceding the adoption of technical regulations, this procedure deals with measures taken after the adoption of technical regulations. So far the new procedure has produced limited results. The general level of notifications remains very low (33 in 1997, 68 between 1/1/98 and 15/10/98) which, according to the European Commission, may indicate that the mechanism is under-used (Commission of the European Communities, 1998*a*).

The EU notification rule has enhanced the level of transparency in Denmark in the sense that its European trading partners, as well as the Commission, have opportunities to comment on proposed regulatory measures in the area of technical regulations and standards. This system, however, is basically an inter-governmental procedure and in general, the role played by the **private sector** is not paramount. The title and a brief explanation in multiple languages of proposed measures are published in the Official Journal of European Communities, which is accessible to all, Europeans and non-Europeans alike. All drafts are normally translated into the eleven Community languages, although for some long texts, translation into some of the eleven languages may only be done if requested. The European Commission recently decided to put this publication its website.

However, there is no obligation for EU member governments to make the draft text of proposed technical regulations available to the public. Member state governments may, and often do, solicit market players such as local firms when formulating their position on technical regulations proposed by other member states, but this consultation is at the discretion of the government. In the case of Denmark, the notification procedure provides for draft technical regulations to be sent to those private organisations considered to be relevant by the ministry. Via the publication of the titles and brief explanations, non-European foreign trading partners are ensured to have the chance to know, in frequently used languages, that certain regulations are forthcoming in future. However, they are not ensured to have access to the draft text of regulations in general, neither are they given opportunities for comments. In addition, the transparency requirement is only applied to a specific area of regulation, namely technical regulations and standards. In other areas, there is no general requirement at the EU level for transparent regulatory procedures. Therefore, in areas other than technical regulations and standards, there are no additional opportunities for foreign trading partners to access and comment on proposed regulations in Denmark.

ii) Potential problems for foreign parties in the consultation process

In recent years, several **Danish regulatory initiatives** have attracted the attention of trading partners. One example is the currently draft regulation on the prohibition of use of plant protection products in private homes and gardens. Resulting from the political negotiations concerning the 1998 Finance Act, it was proposed as an amendment to the Act on Chemical Substances and Products. The objective of the regulation is to prevent environmental contamination caused by the overdosing of pesticides by private users, who are often unaware of the harmful effect. In the process of the notification procedure of technical regulations, a number of EU member states and the European Commission sent detailed opinions. The government of Denmark is currently considering its reactions. Some trading partners raised that such prohibition may affect the current trade on plant protection products. Their concerns have included a number of substantive points, including:

- Whether the proposed measure will produce sufficient benefits for the environment. According to the Danish government, the quantity of pesticide used by private users accounts for 3% of the total use.

- Whether there is a less restrictive way to achieve the intended goal than the proposed total ban on the use of plant protection products; such as more appropriate instruction of use or educational campaign for private users.

- Whether the ban can be effectively enforced; it may need to assess how easy it is for private users to use pesticides on sale for agricultural purpose.

- Whether a proposed measure can run in counter to the aim of the EU Directive 91/414/EEC, which governs the use and marketing of plant protection products.

A similar situation has arisen with a proposed regulation to prohibit the import, sale, and manufacture of lead and products containing lead. It is proposed as an administrative order under the Act on Chemical Substances and Products. Its objective is to reduce the environmental and health-related problems that result from targeted use of lead in products. A number of opinions have been sent to Denmark through the EU notification system and reaction is under consideration.

Although these examples show that the **EU notification system** can provide strong scrutiny and additional input that the Danish authorities can use to make efficient regulation, they also suggest possible problems in Danish regulatory procedures. More particularly, potential problems could arise from the

tendency to use emergency procedures to skip established intensive consultation procedures and from the relatively low priority given to reviewing the quality of administrative rules. The objective of transparency is to ensure that forthcoming regulatory rules take account of the maximum information input from various sources, including those affected by such rules. This information, if obtained and processed at an early stage of elaboration, could have avoided some issues raised by trading partners and contributed to a higher quality of regulations in the above examples.

One question is to know how far the EU notification procedure can help ensure high quality of Danish regulatory procedures. The scope of the procedure is limited to the area of technical regulations and standards. In addition, given the inter-governmental nature of the process, comments from those who can be affected by regulations such as firms and consumers, and especially firms in non-European countries, may be limited. Furthermore, in light of the increasing number of notifications of national regulations (see Tables 4 and 5), the procedure can become overburdened and there is a risk that it does not provide for effective scrutiny. This concern was raised by the European Commission itself in 1996 (Commission of the European Communities, 1996*b*). Therefore, while the EU procedure will continue to be useful in helping Denmark, like other EU member states, to achieve efficient regulation, it is necessary to **strengthen transparency in regulatory procedures at the national level**. This can enhance the quality of regulation in Denmark and avoid potential trade disputes. It can also help reduce the increasing burdens put on the European notification system.

Table 4. **Notifications of technical regulations by EU countries under the EU system**

	Total number of drafts notified	Total number of detailed opinions relating to drafts notified	Number of drafts notified in the field of telecommunications equipment
1995	439	155	119
1996	523	242	76
1997	900*	241	146

* This includes the one-off notification of 230 regulations by the Dutch administration in the wake of the 1996 *Securitel* ECJ ruling.
Source: European Commission.

Table 5. **Notification of technical regulations by Denmark under the EU system**

	Number of notification of technical regulations by Denmark	Number of notification in environmental area	Number of comments received on Danish proposed regulations
1996	28	5	21
1997	40	5	5
1998	55	9	30

Source: Danish Agency of Trade and Industry.

2.1.2. Dissemination of information

According to the Danish constitution, legislation must be published in order to be enforced. The same principle applies to administrative rules at lower levels. Legislation and regulations are normally published in the official Danish media, the **Legal Gazette**, which is also available on **electronic media**, for instance on the website of the Parliament. Besides publishing legislation and regulations in accordance with the constitution, the Danish government is active in making relevant legislation known to the public in an easily accessible manner. Important rules and principles affecting the general public (*e.g.* concerning welfare and education) are often communicated by means of booklets and pamphlets etc. and spots in the electronic media.

Danish regulations are translated into English on an *ad-hoc* basis, when it is considered relevant to foreign parties. It is up to the ministry concerned to decide whether translation is necessary. In the area of technical regulations and standards, Dansk Standards, the Danish standardisation body, has been designated as an enquiry point for Denmark both in the EU and WTO notification systems. It provides information on technical barriers to trade, including through the use of the Internet. The titles of notified draft regulations are accessible at Dansk Standards' Home Page. It also provides a brief explanation in English of proposed regulations notified under the WTO. Recent communication efforts by the European Commission to promote a better understanding of the Single Market have also strengthened information dissemination in this area (see Box 3).

Box 3. **Promoting transparency: recent initiatives of the European Commission**

The European Commission has recently taken further initiatives to promote transparency and facilitate the understanding by market participants of the rules governing the Single Market. In a 1998 report the Commission thus called for further efforts to bring standardisation and standards to the attention of market participants, in particular SMEs (Commission of the European Communities, 1998*b*).

The Commission has created new information points, notably on its Internet website. A one-stop Internet shop for business recently opened on the European Commission Internet website under the name "Dialogue with Business".[8] It provides business with general information on Single Market rules and some key issues, such as technical standards or public procurement. The site is linked to "Euro Info Centres" which are set up all over the European Union and specialise in technical standards. They can provide business with information on the application of standards, conformity procedures, CE-marking or quality initiatives in Europe. The European Commission has also very recently opened a new website in co-operation with the European standardisation bodies which gives information on European New Approach Directives and harmonised standards.[9]

2.1.3. Openness of appeal procedures

Several measures of recourse are available in Denmark against regulatory decisions. As a foundation for such appeals, a number of procedural rules concerning the access to government administrative documents are laid down in the **Administrative Procedures Act**. These rules aim to ensure that administrative procedures and practices are transparent to the affected parties, enabling them, *e.g.*, to check the facts upon which the administration will base its decision at any stage of the procedure. In most cases, decisions made by an administrative authority can be appealed against to a higher office within the administration (administrative recourse). Normally, a higher authority in charge of such recourse is entitled and obliged to perform a full and intensive scrutiny of the decision in question.

Where administrative recourse does not exist, there are other remedies. Thus, according to Section 63 of the Danish constitution, any action taken by the administration may be brought to the courts of justice for review on the initiative of the affected party. Furthermore, a number of provisions in Danish legislation give the affected party a right to simply demand that the administrative authority having taken the action must, at its own initiative and cost, bring the case before the courts. There are frequent cases in which the courts of justice annul decisions made by the administration. Another method of contesting administrative action is to bring a complaint to the Parliamentary Commissioner (the *Ombudsman*), established in 1955 on the basis of the constitution. This procedure is free of charge and most complaints are decided quickly. In principle, the Ombudsman only has the competence to express his opinion and cannot make decisions that are legally binding. However, as a very general rule, the administration complies with its conclusions. The Ombudsman receives about 3 000 complaints each year and is often considered the most effective and easily accessible remedy for parties wishing to contest an act of the

administration. These administrative procedures also apply to foreign parties. Regulatory procedures have been generally considered as meeting high standards of transparency, and there are no reports by foreign firms of discrimination in those procedures.

2.1.4. Danish activities to improve transparency in other countries

The Agency of Trade and Industry is active in assisting Danish firms to overcome regulatory barriers in other countries. A committee for trade barriers with the participation of Danish industries is charged with identifying problems that Danish firms face in accessing markets of other European countries. It contacts the relevant authorities of those countries as well as the European Commission in order to clarify the issues. According to the Agency, most complaints brought to it concentrate on technical barriers, including technical requirements and testing in other countries. Danish firms can also seek assistance from the Danish Competition Authority when they are confronted with anti-competitive behaviour in foreign markets.

2.2. Measures to ensure non-discrimination

Application of the non-discrimination principle aims at providing equal opportunities for market competition, irrespective of the origin of goods and services. In general, Denmark, like many other countries, is committed to the non-discrimination principle (Most Favoured Nation –MFN-- and national treatment) in regulations, while maintaining certain exceptions to the principle, *e.g.* existing in EU commitments undertaken in the GATS framework and other agreements at the WTO. These exceptions range from those held by EU member states uniformly (*e.g.* in **audio-visual services**) to those held specifically by Denmark, such as several limitations in **professional services** (exception to national treatment) and measures taken to promote **Nordic co-operation** (exception to MFN).[10] Denmark has entered into a number of bilateral agreements on the promotion and reciprocal protection of investments, which all contain a MFN clause. Each ministry is responsible for ensuring non-discrimination in its legislation, as required by Denmark's obligation under trade agreements. While no central body exists in Denmark to monitor and to supervise the implementation of the principle by government ministries in a formal way, trading partners have not raised any serious criticisms about discriminatory treatment encountered by firms, apart from explicitly made exceptions.

As mentioned, Denmark maintains several limitations to non-discrimination in some **professional services**, though it is not unique in doing so. According to some foreign trading partners, these restrictions create substantial barriers to access to Danish markets (Government of the United States of America, 1999). The **legal profession** is the most frequently raised example. Restrictions cited include: 1) it is required to be a member of the Danish Law Society in order to practice; 2) advertisement by foreign legal consultants is prohibited; 4) non-European lawyers or law firms cannot own a Danish firm, nor can they form a partnership with the Danish counterpart; and 5) qualification outside the EU is not recognised in licensing lawyers.

In general on the above points, the **EU** framework provides for the application of non-discrimination as far as EU citizens are concerned. Thus the restrictions of points 2, 3 and 4 do not apply to EU citizens. In addition, concerning point 5, the EU has promoted a system of **mutual recognition of qualification** between member states in a number of professional services through various Directives. The EU monitors the implementation of the measures through *e.g.* publication of statistical reports submitted by individual member states on recognition of professionals from other members. According to an expert, Denmark has in general shown a good record in recognising qualifications of other member states. However, these measures only apply to EU member states and foreign lawyers from third-countries do not benefit from them.

Concerns about barriers to market access in professional services are not only raised by trading partners. The domestic business community feels that the costs of using those services are generally expensive in Denmark (see Section 1). The Danish **Competition Authority and Competition Council** have also expressed concerns about the lack of competition in professional services (see Background report to Chapter 3). As for the legal profession, agreements to control fees have been challenged, with some success. The Competition Appeal Tribunal lifted the ban on advertising by lawyers (point 3 above), but lawyers still do not advertise their fees. The Council also recommended that the Ministry of Justice reforms the rules on compulsory membership to the local bar association (point 1 above) and on partnerships (point 4), but the Minister of Justice rejected these recommendations. These domestic issues indicate that the benefits for trading partners of further promoting the non-discrimination principle are consistent with and mutually supportive of benefits for consumers and domestic business.

2.3. Measures to avoid unnecessary trade restrictiveness

Even when regulations are applied in a non-discriminatory manner, market openness can still deviate from its optimal level if regulatory measures are more restrictive for trade and investment than necessary to achieve intended policy goals. In such cases, there is room for improvement by resorting to less restrictive regulatory instruments without reducing the level of fulfilment of policy goals. Less restrictive instruments can include alternative measures to regulations, for example taxation, as well as the use of voluntary arrangements. Improvement is more likely if the impact on trade and investment by regulations, either existing or forthcoming, is assessed and the assessment is used to help choose policy options.

2.3.1. Current policy efforts to avoid unnecessary trade restrictiveness

i) Efforts for promoting RIAs

In general, there is an increasing use of **Regulatory Impact Analysis (RIA)** in OECD countries, even though the style, coverage and depth of the RIA substantially differ among them. The ongoing OECD country review process has put in light that unnecessary trade restrictiveness can be best avoided by incorporating **explicit consideration of the impact of regulations on trade and investment** into the RIA process. In most countries, there is no specific trade-and-investment impact analysis and hence no best examples have been identified so far. However, RIA is a promising policy tool to achieve optimal level of market openness while reaching legitimate policy goals such as environment and health protection.

In Denmark, there have been recent initiatives to promote RIA (for more, see Background report to Chapter 2). A circular by the Prime Minister's Office in spring 1998 requested ministries to use RIA and document their reflections in the explanatory notes of the proposed laws. A partial RIA is required for the following aspects of draft law:

- Financial impacts (central and local government).
- Administrative impacts (central and local government).
- Economic and administrative impacts for business and industry.
- Administrative impacts for citizens.

– Environmental impacts.

– Impacts regarding the relation to EU legislation.

The RIA is performed by the ministries responsible for drafting the bills. Detailed **guidelines** have been issued regarding how to perform environmental impact analysis and business and industry impact analysis. Once the handbook for regulators on high quality regulation is issued, the guidelines are planned to be revised and guidelines for all other aspects of the RIA will be issued. In assessing the **impact on business and industry**, ministries have the opportunity to use a **business test panel** whose purpose is to collect information on administrative impacts for businesses before a bill is finalised. Usually the ministries include the result of the test panel in the explanatory notes to the bills. Since 1995, the Ministry of Business and Industry has also prepared an assessment report on the impact on business of laws adopted in the previous year. The report is sent to the business community and the parliament for discussion.

As for the use of alternatives to traditional regulation, Denmark has had a relatively large amount of experience, for example with green taxes programmes. In the 1990s administrative measures and public subsidies used for pollution activities were supplemented with green taxes on emissions, consumption or production of polluting substances. The program was carefully designed so that rebate and subsidies giving incentive to energy savings would compensate the tax burden on industry. Its effect on trade and industry, as well as on the environment, has been systematically assessed with the use of the business test panel.

These wide-ranging initiatives have created a foundation for an effective RIA system. Even if it is still early to assess their results, their impact on actual regulatory quality appears weak and several policy gaps have been pointed out. Regulators are not yet convinced of the benefits of RIA. In general, administrative rules and existing regulations are not covered by current RIA requirements. RIA is not well integrated into the public consultation process. And responsibilities to promote RIA among government ministries may be too fragmented. However the **impact on trade and investment** of draft regulations has been included in the Danish system of RIA. First, as explained above, the impact of draft regulations regarding the relation to EU legislation is included in the RIA process. Second, in principle, the assessment of the impact on business and industry can include an impact on foreign business, but it is not clear whether explicit consideration has been given to that particular aspect in the RIA process. The optimal scope of the assessment of the impact on trade and investment needs further clarification.

ii) Invest in Denmark

In addressing administrative burdens caused by regulations, especially those falling upon foreign firms, Danish authorities have taken some measures to attract foreign investment. *Invest in Denmark*, a project initiated by the Agency of Trade and Industry, has been active in resolving issues raised by foreign firms in Denmark. It helps foreign firms to collect information on regulations, and can request other ministries to review regulatory measures with a view to eliminating unnecessary restrictions. Similar activities exist in other OECD countries. These efforts have had a positive impact on Danish regulations and have contributed to the appreciation of the Danish business environment by foreign firms. For example, Invest in Denmark successfully helped resolve an issue relating to a regulation on pollution control, which was faced by a Japanese firm dealing with specific food processing and exporting its products from Denmark to Japan. The underlying objective of such a review is to address regulatory issues as regard the non-discrimination principle and not to grant foreign firms exceptions or special treatment. In practice, this mechanism appears to work well in correcting unnecessary trade restrictiveness. However, Invest in Denmark intervenes only on existing regulations and may have little efficiency in preventing unnecessary trade restrictiveness.

2.3.2. Some examples of Danish policies to avoid unnecessary trade restrictiveness

Systematic effort to avoid unnecessary trade restrictiveness is still at an early stage, including in Denmark. To date, efforts to avoid unnecessary trade restrictiveness in Denmark have depended on whether Danish governmental agencies that handle the impact assessment of regulations pay particular attention to the impact on trade and investment. It is useful at this juncture, therefore, to examine some administrative practices that can potentially have restrictive effects on trade.

i) Public procurement in general

In Denmark, because of the relatively large size of the public sector, structural economic reform has focused on promoting the tendering of public services. A number of public services have been put out for tender, ranging from bus services, waste disposal services to health care services. Implementation has been difficult, though, partly because many of these services are provided by local municipalities that are numerous and generally oriented towards traditional management of public services. Although the share of government expenditure in GDP in Denmark (55.7%) was the second highest in the 15 EU countries in 1987, the ratio of public procurement value to GDP (11.6%) in the same year was lower than the average. Recent figures are said to largely confirm this tendency. This suggests further room to expand the scope of public tendering (Commission of the European Communities, 1996*a*).

Not only the scope of public tendering, but also the efficiency of public procurement has attracted the attention of Danish policy makers. Opening public procurement to increased competition creates benefits for the administration as well as for the economy as a whole. An efficient procurement mechanism requires non-discrimination among bidders and the use of efficient and transparent tendering procedures, including the use of objective specification/criteria, publication of tendering notice and of the results, and impartial and effective appeal procedures. The benefits drawn from efficient procurement can be further expanded and shared by trading partners when bidding is open to foreign parties.

In Denmark, the opportunities for foreign firms to apply for public tendering with a significant economic impact stem from **EU measures** transposed directly into Danish legislation. Between 1988 and 1993, the European Council of Ministers adopted a series of EU Directives in the context of the European Single Market. These rules provide for an efficient procurement mechanism by ensuring the participation in bids of a wide range of firms, national and non-national alike (see Box 4). By virtue of the EU commitment to the **1994 WTO Agreement on Government Procurement** (GPA) and in particular to its non-discrimination principle, non-EU countries that are parties to the GPA such as the US, Canada, Norway, Switzerland, Japan, Korea, and Australia can also benefit from these EU measures. However, some of them request the EU to eliminate specific remaining discrimination against third-country firms (Government of the United States of America, 1999; Government of Japan, 1999).

According to the Danish Competition Authority, the EU Directives contribute to enhancing competition and efficiency of public procurement procedures. A decision of the **European Court of Justice in 1993** on a case brought by the European Commission has strongly reinforced the awareness of public authorities on the need for open tendering procedures for public procurement. The case dealt with the construction contract for Storebaelt Bridge ("the **Western Bridge**") tendered by a Danish public authority. The European Court judged that one of the conditions of the tendering that required "the use of the greatest possible extent of national materials, consumer goods, labour and equipment" and other exclusive practices failed to fulfil obligations under the Treaty of Rome and the EU Directive concerning public procurement.[11] Evidence shows that the implementation of the EU Directives has had a positive impact on the openness of procurement procedures in Denmark. The number of complaints received by the **Danish Complaints Board for Public Procurement** has steadily increased since 1992 (see Table 6). In

addition, the reported value of procurement subject to the Directives has substantially increased. Between 1994 and 1996, the value for goods increased by 13.4% and the value for services increased by 36.5%.[12] While more efforts are needed, the efficiency of tendering procedures has already improved. Overall, despite initial difficulties, the Danish authorities have steadily adopted the principles for efficient public procurement, including avoidance of unnecessary trade restrictiveness, with the help of trade agreements and EU measures.

Table 6. **Complaint cases on public procurement in Denmark**

Year	1992	1993	1994	1995	1996	1997	1997
Complaints brought to the Board during the year	15	8	13	30	19	22	27
Settled cases during the year	1	2	8	9	18	33	22

Source: Danish Complaints Board for Public Procurement.

Box 4. **EU Directives on public procurement and Denmark**

The Danish legal framework on government procurement procedures is the "direct" transposition into administrative orders of the six substantive EU Directives.[13] Rather than creating its own legal terms, Danish rules refer to the terms used in the EU Directives. The substantive EU Directives provide for the principles of efficient procurement such as transparency, non-discrimination and avoidance of unnecessary trade restrictiveness, which altogether confer for enhanced competition.

The transparency principle takes concrete applications through various requirements. Contracting authorities must prepare an annual indicative notice of total procurement by product areas and exceeding an annual minimum threshold, which they envisage awarding during the subsequent 12-month period. The annual indicative list and any contract whose estimated value exceeds specific thresholds must be published in the Official Journal of the European Communities. Contracts must indicate which of the permissible award procedures is chosen (open, restricted, or negotiated procedures) and they must use objective criteria in selecting candidates and tenders, which must be known beforehand. Contracting authorities are also obliged to make known the result of contract procedures through a notice in the Official Journal of the European Communities.

Member states are also obliged to provide appropriate juridical review procedures of decisions taken by contracting authorities that infringe Community laws or national implementing laws. In particular, they have to provide for the possibilities to implement interim measures, including the suspension of procedures for the award of public contracts, the setting aside of decisions taken unlawfully and for awarding damages to persons harmed by an infringement. The EU Directives require that these procedures be effectively and rapidly enforced. The appreciation of these qualitative criteria is likely to be a difficult task in practice due to the diversity of culture and juridical systems among EU member states.

With respect to the principles of avoidance of unnecessary trade restrictiveness, the main requirements include the use of minimum periods for the bidding process and the use of recognised technical standards, with European standards taking precedent over national standards.

On 8 March 1999, a draft law was published in the Official Journal modifying certain provisions of the Law 13/1995 to incorporate recent amendments to EU Directives that implement the WTO Government Procurement Agreement (97/52). The draft law also provides for a set of tighter rules to better protect contracting authorities against requests by contractors for additional fees on top of the agreed terms spelled out in the contract.

ii) Green procurement

Since the early 1990s, Denmark has taken a number of initiatives to "green" its public procurement. The implications of these initiatives for trade have raised the attention of trade policy makers (OECD, 1997*a*).

- In 1991, the **Ministry of Environment** issued a "Strategy for the Promotion of Sustainable Product Procurement Policy." Based on the experience accumulated in carrying out the programme, in 1994, the Ministry of Environment and Energy prepared an "Action Plan for Sustainable Public Procurement Policy." The action plan was based on section 6 of the Environmental Protection Act and the "Action Plan Energy 2000." The action plan described a number of actions to be taken. Following the plan, a circular on environment and energy was issued, which required all governmental bodies to formulate an environmentally sound procurement policy by February 1996.

- The Ministry of Environment and Energy has also developed a number of **environmental recommendations** for public procurement based on a life cycle approach for selected products such as office equipment. In the year 2000 about 50 such guidelines will have been drawn up.

- **Eco-labelling** has played an increasing role in recent years. In 1997, Denmark joined the Nordic Eco-label movement. **Eco-auditing**[14] is also said to be used as a criteria for qualification of suppliers.

- Recently the Ministry of Environment and Energy made an **agreement with municipalities** on green procurement. It was motivated by public concerns that efforts for greening procurement had not been sufficient. Only 14% of local municipalities were reported to have documented procurement action plans. The agreement laid out a schedule for reviewing progress made.

In general, trade concerns on green procurement revolve around three types of issues: (i) technical specifications, (ii) qualification of specifications, and (iii) award criteria. Concerning technical specifications, trading partners have raised some concerns about the use by Denmark of eco-labelling. Concerning the qualification of suppliers, other concerns were raised about the use of eco-auditing (Government of the United States of America, 1999). What has attracted the attention of trading partners is the potential impact on trade of the increasing use of those environmental measures in procurement as well as the transparency of the decision process. However, they point out that they have not received to date any concrete claims from the firms that participate in tendering. It also appears that the relevant office in the Danish administration has made good-faith efforts to avoid contradiction with Denmark's international obligations on this particular question. In any case, transparency of the decision making process concerning technical specifications, qualification of suppliers and award criteria will continue to be crucial in ensuring avoidance of unnecessary trade restrictiveness. It should be noted that in the course of drawing up specific product guidelines, the process of consultation has not been fully open to foreign interested parties, especially outside Europe.

iii) Custom procedures

The EU Common Customs Code, including the use of a Single Administrative Document[15] and application of simplified procedures for registered importers, is applicable in Denmark. In general, customs procedures in Denmark appear to be handled in an efficient way. According to some trading partners, the

Danish customs administration operates in an effective, modern and swift way (Government of the United States of America, 1998). Recently, Denmark has engaged a programme to rationalise customs operation throughout the country. A **new EDI (electronic data interchange) system** will be introduced in July 2000. The programme also includes the reduction of the current 38 offices to eight. The major goal of the new system is to establish an immediate clearance procedure, as one of the two procedures available for importers. Just-in-time custom clearance should be possible if relevant electronic information is received two hours before the imports arrive. It will be supplemented with optimal risk assessment so that fraud and mistakes can be prevented and controlled at the maximum level.

This plan is based on a report by a working group in which the business community participated (Told Skat, 1997). The Customs and Tax Administration has been keen to consult extensively with business with the underlying assumption that consultation would enhance the level of compliance. Intensive consultation with those affected by regulatory aspects of custom procedures may provide useful information on how to minimise administrative burdens for importers while achieving a required level of custom control. This practice may help avoid unnecessary trade restrictiveness arising from custom procedures.

For the future, further efforts are necessary in order to facilitate border crossing of imports by rationalising other procedures at the border, such as quarantine protection and import licensing. Currently the Danish policy is to encourage concerned regulatory agencies to agree upon the written contracts with the custom office on the task that the office must carry out. Further improvement will be possible if those other regulatory procedures can be computerised under a compatible system.

iv) Food regulation

The Danish authorities have adopted a similar approach to regulate food products for safety reasons, an area where there is a strong public demand for regulation. Danish regulation on food safety emphasises control through **internal safety management** of firms, rather than control of end-line food products. The government considers that the role of the authorities is to approve and supervise self-regulatory instruments in food-processing companies (Government of Denmark, 1998*b*). This regulatory approach can reduce the administrative burdens for firms, since they can choose what they consider the most efficient way of complying with food safety requirements. Foreign business, which often operates in different management styles, can also greatly benefit from such an approach.

In the area of **food additives**, three major Directives have been adopted at the EU level, and member countries are not allowed to implement additional substantive regulations. In implementing the Directives, the Danish authorities have emphasised an "**horizontal**" approach. They have set requirements on food additives across all food products, rather than creating specific requirements for each food product, as has been done in a number of other EU member countries. This horizontal approach creates less restriction on food product firms, national and non-national alike.

Denmark has responded to increased public concerns for animal welfare in food production by introducing a **voluntary quality marking system**. In 1998, detailed inspection criteria on animal welfare were adopted for beef, veal and pork, after clearance by the EU system of notification. Inspection rules have been drawn up and carried out by the Ministry of Food, Agriculture and Fisheries. Since there are no practical ways to inspect foreign production to ensure the observance of these animal welfare criteria, it appears to be very difficult for foreign producers to obtain quality marking for their products. While marking system is not unique to Denmark, this case may suggest the need to consider more intensively alternative ways to achieve the policy objectives.

v) Packaging regulation: the beverage container case

In Denmark, packaging for beverages, especially beer and soft drinks, has been subject to regulation aiming at protecting the environment. Since 1981 domestic producers may only make beer and carbonated soft drinks in **refillable packaging** approved by the minister of environment and energy. Metal cans for those beverages have been prohibited. A deposit and return system has been in place, that has resulted in an effective return rate of bottles close to 99% (Government of Denmark, 1998*a*). In the mid-1980s, the European Commission questioned the impact of this regulation on trade in the European market and brought the case to the European Court of Justice. The legitimacy of the purpose of protecting the environment has never been questioned throughout the dispute, although a number of aspects relating to avoidance of unnecessary trade restrictiveness in regulation have been debated.

The **1988 judgement of the Court**[16] said that protection of the environment is a mandatory requirement which may limit the application of Article 30 of the EEC Treaty on the free movement of goods, but that quantitative restrictions on imports from other member states in bottles not approved by the Danish government were against the provision. Denmark has adjusted its system since the 1988 court decision, while maintaining the fundamental elements of the regulation. The use of **metal cans** is still prohibited, imported bottles must be covered by a **deposit and return system** ensuring that packaging is either refilled or that the material is recycled. The marketing party must notify the types of packaging used and the deposit and return system that it intends to use to the Danish Environment Protection Agency. Since the early 1990s, the bottle return system has been extended to PET bottles (Government of Denmark, 1998*a*).

At the European level, a **Directive on packaging and packaging waste** (94/62/EC) was adopted that aimed at protecting the environment and ensuring the functioning of the internal market. In light of the "essential requirements" of the Directive, the Commission has expressed the view that Denmark cannot ban marketing drinks in cans, neither can it continue to impose the current mandatory requirement of refillable packaging for domestic producers. It has decided to bring the case before the European Court of Justice. The Danish government contends that the current regulation is the most environmentally sound packaging system for beer and soft drinks and that neither the Directive nor the Treaty is an obstacle to the regulation. In 1995, in support of the current regulation, the Danish authorities conducted a **life-cycle assessment (LCA)** of different types of packaging to measure their impact on the environment. Those types included refillable glass bottles, one-way glass bottles, aluminium cans, steel cans, refillable PET bottles and one-way PET bottles (see the results for beer in Table 7) (Government of Denmark, 1998*a*).

Table 7. **Life cycle assessment of different types of beverage packaging**

Environmental impact	Refillable glass bottles	One way glass bottles	Aluminium cans	Steel cans
Global warming	1-2	2-4	1-3	3-4
Photochemical ozone formation	1-2	2-4	1-3	3-4
Acidification	1-2	3-4	1-2	3-4
Nutrient enrichment	1-2	3-4	1-2	3-4

Note: The impact is ranked from 1-4, 1 signifying the lowest contribution.
Source: Danish Environment Protection Agency, Ministry of Environment and Energy.

The business community has also expressed views on this issue and contributed to the debate on how to achieve an environmental objective while avoiding unnecessary trade restrictiveness. **Retail business** engaged in the return and deposit system of bottle containers has been supportive of lifting the

ban on the use of cans. It has held that the use of cans, especially aluminium cans, will not downgrade environmental protection under the deposit and return system as there are no serious difficulties to effective recycling. At the same time, cans can be easier than bottles in terms of working conditions (bottles are heavier than cans to handle). They can better serve consumer interests as well. There can be more price competition if foreign breweries selling drinks in cans have access to the market. In addition, consumer convenience will be improved by making it easier to carry beverages and the overall consumption will be increased.

2.3.3. Ways to better assess the impact of regulations on trade

The picture emerging from the above examples is mixed. In general, the Danish administration has often shown good-faith efforts to consider trade and investment in performing impact analysis. Established practices appear to have been effective at avoiding outright violation of international legal obligation, while ensuring flexible and speedy government actions. However, the question arises as to whether there is room for increasing the capacity of government to foresee and resolve potential trade-related problems arising from proposed regulatory measures at an early stage. Such preventive measures within the government are useful both for foreign trading partners and Denmark. The concerns raised by trade partners from time to time also suggest the need for a more systematic approach in assessing the impact of regulations on trade and investment.

One obvious solution is to strengthen the **explicit assessment of the impact on trade and investment in RIAs** carried out by regulatory authorities, whether for primary legislation or administrative rules at lower levels. Participation of foreign parties in the consultation process would reinforce this particular angle of assessment. The trade-friendliness of domestic regulations can be improved by including, in intra-governmental procedures, the expertise of trade agencies. In Denmark, during preparation of regulations, trade policy authorities are consulted on future regulations, unless it is considered irrelevant.

2.4. Measures to encourage use of internationally harmonised standards

The use of internationally harmonised standards can be a way to reduce barriers to trade created by regulations, when these standards are perceived as a high quality response to public concerns at national levels. The use of internationally harmonised standards has gained prominence in the world trading system with the entry into force of the WTO TBT and SPS Agreements that encourage it. The EU Single Market Programme has also set the use of internationally harmonised standards as a high priority. It considers it as a major tool to reduce barriers to trade within the EU. That objective is reflected in the so-called “New Approach”. Under the **New Approach**, Directives are adopted for a particular product area, which prescribe mandatory “essential requirements” in order to achieve a certain general objective such as safety. These requirements are defined in generic terms and do not include any technical specifications. Manufacturers are in principle free to choose the technical specifications that comply with the essential requirements. However, the use of European harmonised standards creates a clear advantage for firms as it gives presumption of conformity to the essential requirements. For products where the New Approach Directives are adopted, the Commission mandates European standardisation bodies (CEN, CENELEC, ETSI) to draw up European standards (for more on the New Approach, see Box 5).

Under this system, national regulators are encouraged to use harmonised standards. At the same time, rather than the creation of specific national standards, the work of national standardisation bodies is increasingly geared toward the transposition of international or regional standards to the national level, information dissemination as well as formulation of national position in European standardisation bodies.

The European mechanism provides for a "standstill" period, meaning that national standardisation work has to stop when work at the European level is found appropriate. In the areas that are not covered by the New Approach Directives, technical specifications adopted at the European level are also widely referred to in national regulations, such as in the automobile sector (see Section 3.3).

Encouragement to use harmonised standards in the EU context provides a general framework for the Danish policy in a number of areas of regulation. In addition, Danish rules concerning **public procurement** state explicitly that European and international standards take preference over purely national standards. Outside the areas mentioned above, however, there is no general provision to encourage regulators to use harmonised standards. Denmark's activities in the field of harmonisation of standards have been vigorous nevertheless. **Dansk Standards** is the sole official standardisation body. This is a private body approved under the Act of Technological Services Institutes.[17] Almost all national standards published by Dansk Standards are either international or European standards. During the period 1996-1997, it published only 36 purely national standards out of a total of 2 812 standards. This means that 98.7% of Danish standards published during the period were harmonised standards.

Denmark's interest in standards harmonisation is also reflected in its external contribution to harmonisation work, which is based on the recognition that harmonisation benefits Denmark's position in international trade. A recent example of such contribution is a report on European standardisation published by the Agency of Trade and Industry in 1997 (Government of Denmark, 1997*a*). The report was welcomed by the European Commission, as it indicated where further progress in European standardisation can be made (Commission of the European Communities, 1998*b*). The **Danish report** recognised the large backlog of work. By May 1999, the Commission had mandated 2 816 harmonised standards in areas under the New Approach 99, excluding construction products where the standardisation programme is still being developed. Of these mandated standards, 1 136 (40%) had been ratified, 878 (31%) were under approval and 802 (29%) were under development.[18] The report also underlined a wide variety of performance in different sectors. Whereas all standards relating to toy safety had been approved, not a single harmonised standard relating to the Construction Product Directive (CPD) had been completed. And in the field of machinery, only about 20% of the standards had been ratified. The report further recommended a number of measures to improve the efficiency of European standardisation. They included a more extensive use of information technology, the use of voting as an actual possibility, restructuring of CEN and CENELEC, and a strong priority to work relating to the Single Market in standardisation bodies.

The strong performance of the Danish **food** industry has helped reinforce the contribution of Denmark to international harmonisation in this sector. Denmark has participated in Codex Alimentarius since its foundation in 1966. Standards adopted by Codex Alimentarius are basically not binding, but their role has grown with the recent entry into force of the WTO SPS Agreement. In this area, however, there has been a recent move in some countries, including Denmark, to introduce voluntary quality marking system. Trading partners have also mentioned some regulatory initiatives in other areas in Denmark as running in counter to harmonisation policy at European level (as the policy on packaging mentioned earlier).

Construction offers an example where more intensive efforts should be made at the European level to use of harmonised standards, and stronger competition should be enforced at the national level in Denmark. The Construction Product Directive (CPD) that was adopted in 1989 covers all types of construction products. Although the CPD is in accordance with the New Approach, its essential requirements need to be supplemented by interpretative documents in order for construction products to circulate effectively freely in the Single Market. Therefore, unlike other areas covered by New Approach Directives, detailed mandatory harmonisation work has to take place. Otherwise, manufacturers cannot benefit from the adoption of the CPD. Harmonisation work at the European level has met great difficulties to date and not a single harmonised standard has been produced yet in this area. Lack of common methods

of testing products and general reluctance by many Member states have been pointed out as the reason. The failure to implement the CPD has left the construction product market in Europe segmented nationally. Denmark's performance in this sector is also weak, signified by high costs of housing construction. A number of traditional obstacles for competition in the construction sector have been identified. They include frequent bid-rigging practices, sometimes encouraged by legal provisions on construction contracts, highly segmented job specification and craftsmanship tradition that lead to higher service prices, high level of concentration in construction product market. Some of these problems have been fruitfully addressed by the Competition Authority, such as cartel enforcement (see Background report to Chapter 2), but more efforts are needed in order for benefits of European harmonisation in product market to be shared by consumers in Denmark. As for **professional services**, the European mechanism so far has not created the harmonisation process of professional qualification as the one seen in the product areas covered by the New Approach.

Box 5. **Harmonisation and conformity assessment in the European Union**

The New Approach and the Global Approach

The need to harmonise technical regulations when diverging rules from Member states impair the operation of the common market was recognised by the Treaty of Rome in Articles 100 to 102 on the approximation of laws. By 1985 it had become clear that relying only on the traditional harmonisation approach would not allow the achievement of the Single Market. As a matter of fact, this approach was encumbered by very detailed specifications which were difficult and time consuming to adopt at the political level, burdensome to control at the implementation level, and requiring frequent updates to adapt to technical progress. The adoption of a new policy towards technical harmonisation and standardisation was thus necessary to actually ensure the free movement of goods instituted by the Single Market. The way to achieve this was opened by the European Court of Justice, which in its celebrated ruling on *Cassis de Dijon*[19] interpreted Article 30 of the EC Treaty as requiring that goods lawfully marketed in one member state be accepted in other member states, unless their national rules required a higher level of protection on one or more of a short list of overriding objectives. This opened the door to a policy based on mutual recognition of required levels of protection and to harmonisation focusing only on those levels, not the technical solution for meeting the level of protection.

In 1985 the Council adopted the "New Approach", according to which harmonisation would no longer result in detailed technical rules, but would be limited to defining the essential health, safety and other[20] requirements which industrial products must meet before they can be marketed. This "New Approach" to harmonisation was supplemented in 1989 by the "Global Approach" which established conformity assessment procedures, criteria relating to the independence and quality of certification bodies, mutual recognition and accreditation. Since the New Approach calls for essential requirements to be harmonised and made mandatory by directives, this approach is appropriate only where it is genuinely possible to distinguish between essential requirements and technical specifications; where a wide range of products is sufficiently homogenous or a horizontal risk identifiable to allow common essential requirements; and where the product area or risk concerned is suitable for standardisation. Furthermore, the New Approach has not been applied to sectors where Community legislation was well advanced prior to 1985.

On the basis of the New Approach manufacturers are only bound by essential requirements, which are written with a view to being generic, not requiring updating and not implying a unique technical solution. They are free to use any technical specification they deem appropriate to meet these requirements. Products which conform are allowed free circulation in the European market.

For the New Approach, detailed harmonised standards are not indispensable. However, they do offer a privileged route for demonstrating compliance with the essential requirements. The elaboration at European level of technical specifications which meet those requirements is no longer the responsibility of the EU government bodies but has been entrusted to three European standardisation bodies mandated by the Commission on the basis of General Orientations agreed between them and the Commission. The CEN (European Committee for Standardisation), CENELEC (European Committee for Electrotechnical Standards) and ETSI (European Telecommunications Standards Institute) are all signatories to the WTO TBT Code of Good Practice. When harmonised standards produced by the CEN, CENELEC, or ETSI are identified by the Commission as corresponding to a specific set of essential requirements, the references are published in the Official Journal and they become effective as soon as one member state has transposed them at the national level and retracted any conflicting national standards. These standards are not mandatory. However conformity with them confers a presumption of conformity with the essential requirements set by the New Approach Directives in all member states.

The manufacturer can always choose to demonstrate conformity with the essential requirements by other means. This is clearly necessary where harmonised European standards are not (or not yet) available. Each New Approach directive specifies the conformity assessment procedures to be used. These are chosen among the list of equivalent procedures established by the Global Approach (the so-called "modules"), and respond to different needs in specific situations. They range from the supplier's declaration of conformity, through third party type examination, to full product quality assurance. National public authorities are responsible for identifying and notifying competent bodies, entitled to perform the conformity assessment, but do not themselves intervene in the conformity assessment. When third party intervention is required, suppliers may address any of the notified bodies within the European Union. Products which have successfully undergone the appropriate assessment procedures are then affixed the CE marking, which grants free circulation in all Member States, but also implies that the producer accepts full liability for the product.[21]

The strength of the New Approach and the Global Approach lies in limiting legal requirements to what is essential and leaving to the producer the choice of the technical solution to meet this requirement. At the same time, by introduction EU-wide competition between notified bodies and by building confidence in their competence through accreditation, conformity assessment is distanced from national control. The standards system, rather than being a means of imposing government-decided requirements, is put at the service of industry to offer viable solutions to the need to meet essential requirements, which however are not in principle binding. The success of the New and Global Approaches in creating a more flexible and efficient harmonised standardisation process in the European Union heavily depends on the reliability of the European standardisation and certification bodies and on the actual efficiency of control by member states. First European standardisation and certification bodies need to have a high degree of technical competence, impartiality and independence from vested interests, as well as to be able to elaborate the standards necessary for giving concrete expression to the essential requirements in an expeditious manner. Second each member state has the responsibility to ensure that the CE marking is respected and that only products conforming with the essential requirements are sold on its market. If tests carried out by a notified body are cast in doubt, this should be followed up by the supervisory authorities of the member state concerned.

Source: Swann (1995), Commission of the European Communities (1994, 1996*c*, 1997), and the special website on the New Approach developed by the European Commission, EFTA, CEN, CENELEC and ETSI (Commission of the European Communities, 1999*b*).

2.5. Recognition of equivalence of foreign regulatory measures and conformity assessment

The recognition of equivalence of foreign regulatory measures, such as technical requirements defined by foreign authorities or conformity assessment procedures performed by foreign bodies is increasingly seen as a significant step towards the promotion of market openness in regulatory reform. These measures can reduce the administrative burdens on firms engaged in trade. Firms can be subject to duplicative regulatory requirements in multiple countries. They can save substantial costs if the assessment made in one country is recognised as equivalent in another country. Recognition of equivalence can contribute to market openness when harmonisation of standards of a particular product is not feasible between trading countries, although it can be and often is mutually supportive to harmonisation efforts. As regulatory authorities in each country are responsible for the effective implementation of regulations in their territories, the authorities in different countries must make sure equivalence is indeed enforced. This means that recognition of equivalence requires close co-operation between authorities across the borders.

2.5.1. Mutual recognition in the EU: the Global Approach and MRAs

Within the EU, this co-operation is ensured through the arrangement set under the **Global Approach** (see Box 5). In the product areas where New Approach Directives are adopted, the **principle of mutual recognition**, which was made explicit by the ruling of the European Court of Justice on *Cassis de Dijon* in 1977, is enforced in ways specified under the Global Approach. Where conformity assessment by third-party is required, it can be performed by any body that has been notified by a member state. Each EU member state is responsible for maintaining the technical competence of these "notified bodies". This is the foundation of mutual recognition of *e.g*. third-party product certification in the European market. Under this European arrangement, Denmark accepts the equivalence of measures taken by other European member states.

Concerning non-EU countries, the EU agreed and is also currently negotiating **Mutual Recognition Agreements** (MRAs) (see Table 8). So far these MRAs have covered only the area of conformity assessment, namely certification, testing data and marks of conformity. The Agreements specify the conditions under which each party will accept or recognise the results of the conformity assessment procedures performed by conformity assessment authorities of the other party. They are particularly beneficial to small-and- medium sized enterprises that can use less costly local testing facilities for performing the certification of products for export. As a result, Denmark also recognises the equivalence of conformity assessment performed in countries such as the US,[22] Canada, Australia and New Zealand for a certain number of products such as telecommunications equipment and low-voltage electrical equipment. The scope of recognition of equivalence of foreign measures in Denmark can be expanded, therefore, by further development of New Approach Directives in Europe to product areas not covered by the current Directives as well as by further external MRAs (with new countries and/or on new products) with non-European countries.

While policy on recognition of equivalence has so far focused on products, the EU has developed and managed a system of **mutual recognition of professional qualifications** between member states through a number of service-specific Directives. It is now considering to extend it to non EU countries. In its communication on the **New Transatlantic Marketplace** to the Council and European Parliament, the Commission touched upon mutual recognition as a way to reduce barriers to trade in services, particularly in professional services, educational and training services, as well as financial services (Commission of the European Communities, 1998*d*).

2.5.2. Accreditation

Accreditation is a procedure by which a third party gives formal recognition that a body or person is competent to carry out specific tasks.[23] Accreditation bodies audit laboratories, certification and inspection bodies at regular intervals to assess their technical competence against published criteria. Accreditation provides confidence on competence of conformity assessment bodies, which is essential for mutual recognition in the Single Market. It is the **infrastructure of conformity assessment**, both in regulatory and non-regulatory spheres. The European Commission has made it clear that accreditation systems, in the context of the Global Approach, can be used to assess bodies seeking to be notified. However, it also considers that accreditation does not replace the responsibility of member state of notifying certification bodies under a New Approach Directive, but can be used as a technical support by authorities to make decisions on notified bodies (Commission of the European Communities, 1997*b*). Within that clearly defined function, international co-operation on accreditation is seen as an important tool of promotion of recognition of equivalence in regulatory systems.

DANAK, the Danish Accreditation Scheme (DANSK AKKREDITERING), though part of the Danish Agency of Trade and Industry, is independent from the Agency. It is indeed self-financed and its decisions can be appealed against to an independent Appeals Board. Although there is no general legal provision to encourage the use of accreditation by regulators, there has been a steady move in Denmark to expand the use of accreditation in regulations. In such cases, regulators use certificate of products or test samples produced by certification bodies or laboratories accredited by DANAK. DANAK also participates in an international co-operation agreement sponsored by the European Co-operation for Accreditation (EA), and accepts its peer evaluation. The perception is growing that accreditation will provide crucial technical basis for ensuring mutual recognition inside and outside the EU (Commission of the European Communities, 1997*b*). It is thus necessary for Denmark to sustain its efforts to build a solid capacity for accreditation.

Box 6. **Accreditation in the European Union**

Accreditation is a procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks.[24] An accreditation body requires that laboratories, certification and inspection bodies, both in regulatory and non-regulatory spheres, are regularly assessed and audited by a third party as to their technical competence against published criteria. There may be more than one national accreditation body as long as there exists a clear distribution of tasks.

The European Commission has mandated harmonised standards in the EN 45000 series which lay down, *inter alia*, criteria concerning the technical competence, impartiality and integrity of accreditation bodies. Most are equal to international standards and the remainder are based on them.[25] Accreditation to the relevant EN 45000 standard gives a presumption that a body is competent to carry out conformity assessment according to the global approach.

The European Co-operation for Accreditation (EA)[26] came into being in 1997. EA aims to promote the international acceptance of certificates and reports issued by organisations accredited by its members. Nationally recognised accreditation bodies in EU and EFTA countries and the EU candidate countries can apply for full membership. Members of EA must fulfil criteria as specified in the relevant European standards published in the EN 45000 series.

EA has established multilateral agreements (MLAs) among its members in the fields of calibration, testing and the certification of respectively products, quality systems, personnel and environmental management systems. EA has also signed bilateral agreements with accreditation bodies in Hong Kong China, Australia, New Zealand, and South Africa. Signatories to the MLAs and to bilateral agreements are subjected to regular peer evaluations.

International co-operation on accreditation is seen as an important supporting measure to promote mutual acceptance of certificates and reports issued by accredited conformity assessment bodies. The International Accreditation Forum (IAF) with members from Europe, Asia, and America has established a MLA in the field of quality systems certification and has signatories from 19 countries as of December 1998. The next step may be to expand this MLA to include certification bodies for personnel and environmental management systems.

A corresponding development in the field of laboratory accreditation is underway within the International Laboratory Accreditation Co-operation (ILAC).[27] ILAC was formalised as a co-operation in 1996 when 44 national bodies signed a Memorandum of Understanding (MOU). This MOU provides the basis for the eventual establishment of a multilateral agreement between ILAC member bodies. Such an agreement will further enhance and facilitate the international acceptance of test data, and the elimination of technical barriers to trade.

Table 8. **Mutual Recognition Agreements concluded or under negotiation by the European Union**

	Mutual Recognition Agreements							**Protocols on European Conformity Assessments** [d]			
	Australia	New Zealand	United States	Canada	Israel	Japan	Switz-erland	Czech Republic	Hungary	Estonia	Latvia
Construction plant & equipment							✓				N
Chemical GLP[a]			N	N							
Pharmaceutical GMP[b]	✓	✓	✓	✓		N	✓			N	N
Pharmaceutical GLP[a]					✓		✓			N	N
Medical devices	✓	✓	✓	✓		N	✓		N		
Veterinary medicinal products			N								
Low voltage electrical equipment	✓	✓	✓	✓			✓	N	N	N	N
Electromagnetic compatibility	✓	✓	✓	✓		N	✓	N	N	N	N
Telecommunications terminal equipment	✓	✓	✓	✓		N	✓			N	
Pressure equipment	✓N[c]	✓N[c]				N	✓	N			
Equipment & systems used in explosive atmosphere							✓	N			
Fasteners			N								
Gas appliances & boilers							✓	N			
Machinery	✓	✓				N	✓	N	N	N	N
Measuring instruments							✓				
Aircraft	N	N									
Agricultural & forestry tractors							✓				
Motor vehicles	✓						✓				
Personal protective equipment							✓	N	N		
Recreational craft			✓	✓							
Toys							✓				
Foodstuffs										N	N

✓ Concluded N Under negotiation.

a Good Laboratory Practices.

b Good Manufacturing Practices.

c The agreement covers simple pressure equipment. Extension to other pressure equipment is considered.

d In February 1997 the European Commission signed an agreement with Poland regarding preparatory steps on conformity assessment, precursor for a real PECA.

Source: European Commission.

2.6. Application of competition principles in an international perspective

The benefits of market access may be reduced by regulatory action condoning anti-competitive conduct or by failure to correct anti-competitive private actions that have the same effect. It is therefore important that regulatory institutions make it possible for both domestic and foreign firms affected by anti-competitive practices to present their positions effectively. The existence of procedures for hearing and deciding complaints about regulatory or private actions that impair market access and effective competition by foreign firms, the nature of the institutions that hear such complaints, and adherence to deadlines (if they exist) are thus key issues from an international market openness perspective. This section examines competition principles in Denmark from such particular angles, while Background report to Chapter 3 analyses Danish competition policy from more general perspectives.

In Denmark, the basic decisions and actions under the Competition Act are taken by the **Competition Council** that has the power to issue orders against infringements, to grant and revoke individual exemptions, and to certify that notified conduct is not covered by the prohibition on restrictive agreements. The Council may issue orders to terminate or correct agreements, decisions, and trading conditions, to limit, for up to one year, prices or profits (or specify rules for calculating them), to require a business to deal with another, or to require an essential infrastructure facility to grant access. The Council has 19 members, nine of whom (including the chair) are to be independent of commercial or consumer interests. The **Competition Authority**, in the Ministry of Business and Industry, is the Council's secretariat. It has delegated authority from the Council to deal with cases that are similar to ones where the Council has reached a decision. In acting on cases, the Authority is formally independent from the ministry, as is the Council. However, there might be a slight conflict between the role of the Authority as part of the Ministry of Business and Industry, which generally promotes business interests and concerns, and its responsibility for the "prosecution" function against business and industry.

The **Competition Appeals Tribunal**, is the first avenue of appeal from decisions of the Council. It is headed by a lawyer, from the Danish Supreme Court. It is also responsible for hearing appeals from other councils about utility pricing decisions. The Tribunal is an administrative institution, not a court. The Competition Act does not state a criterion for appeals or standards for the Tribunal's decisions. The Council cannot appeal the Tribunal's decisions. The appeal process generally does not involve a hearing. A party's right to insist on administrative relief is limited. If the Council rejects a complaint, the complainant cannot appeal that decision to the Appeals Tribunal. However, if the Authority decides not to take action about a complaint, that decision must be accompanied by an explanation, because the Public Administration Act requires agencies to state their reasons for rejecting complaints.

Neither the Council nor the Authority has power to impose fines themselves. These sanctions can only be imposed by the courts. Private lawsuits are now possible under the Civil Code, for damages caused by conduct prohibited by the Competition Act. It is not necessary to base such an action on a prior, final decision by the Authority or the Council. There have been no civil cases yet to recover Competition Act damages, though. The City Courts have general jurisdiction; a party can bring a case initially in the High Court if the claim exceeds DKr 500 000. Appeals go to the Supreme Court.

It appears that formal **national treatment** applies in the application of the procedures described above so foreign firms may have "effective" means of seeking redress for perceived anti-competitive problems. That being said, firms from EU member states facing barriers to trade due to regulatory action may obtain help from the Danish Agency for Trade and Industry under the Ministry of Business and Industry. The Agency investigates the complaint, and may refer the matter to the European Commission. The service is concentrated on EU member states, but also covers problems in Norway and CEEC. Firms from other non-EU member states do not have access to this facility. However, if firms encounter regulatory provisions or private actions that impair market access and are anti-competitive, they have direct access to private action, which is not conditioned upon prior intervention by the Competition Authority. Foreign firms may also complain to the Competition Authority.

Of course, the fact that a foreign firm and a domestic firm are treated in a like manner, does not necessarily mean that the burdens of a complex administrative process might not hamper market access to foreign firms or new entry by domestic firms. In that regard it is worth noting that co-operation in marketing and pricing is permitted under a **special block exemption** from the Competition Act, which applies to agreements among co-operative retail chains.[28] These agreements are widespread in the Danish market. The exemption is subject to market-share thresholds. Regulations affecting operation and entry also inhibit competition, to some extent. These limitations on opening new large scale stores, and regulation of opening hours may impede the efficient distribution of products offered by new entrants, particularly foreign entrants, which might require economies of scale in order to access the retail distribution system.

With that in mind, it is worth noting that a particular setting for concern is the exertion or extension of market power by a regulated or protected monopolist into another market. The substantive problem, sometimes called "regulatory abuse," is not addressed by laws about monopolisation, or by regulatory laws applied to particular markets. Foreign firms and trade could be implicated in two ways. First, an incumbent domestic regulated monopolist might gain an unfair advantage over foreign products or firms in an unregulated domestic market. Or, an incumbent foreign regulated monopolist might use the resources afforded by its protection at home to gain an unfair advantage in another country.

In this regard, there may be cause for concern that recent privatisation and deregulation initiatives have created or strengthened the position of incumbent local monopolists who are able to impose strategic barriers to entry that raise the cost of entry to foreign and domestic rivals. For instance in the **telecommunications sector**, although the dominant firm, Tele Danmark has a U.S. parent, Ameritech, its control over the local loop may deter competition from new foreign and domestic firms. In that regard some concerns have been expressed about interconnection policies followed by Tele Danmark. (For more, see section on telecommunications services below.)

This review of the application of competition principles from a market openness perspective indicates that Denmark is a relatively strong performer. As a formal matter, the competition principles apply in a non-discriminatory manner. If there is a cause for concern, it is with the actual administration of the procedures due to some regulatory overlap and the complexity of the enforcement system. Nonetheless, the relatively open nature of the Danish economy to foreign firms is reflected in the application of the competition principles.

3. SELECTED SECTORS

3.1. Telecommunications services

The telecommunications services market in Denmark was opened to full competition in July 1997, after a series of gradual steps to introduce competition (see Background report to Chapter 6). There is now **complete openness in market access**, meaning that no individual license or registration is required to enter the market. In addition, due to the absence of line-of-business restrictions, users benefit from wide-ranging services offered by operators. The Danish government has also made significant efforts to enhance efficient competition in the market by implementing **essential safeguards** in areas including interconnection and carrier pre-selection. All these efforts have been directed by the underlying political objective to have the "best and cheapest telecommunications services before the year 2000" and have resulted in the development of competition, especially in the mobile market and the international market.

The openness of the market has also been ensured internationally. There are no discriminatory provisions in regulations in Denmark in this sector, including no restrictions on foreign ownership, which are common in other OECD countries. A unique character of the Danish telecommunications market is its **high degree of foreign penetration**. The majority share of Tele Danmark, still by far the most dominant operator, is owned by a US company (Ameritech). Competitors of Tele Danmark are also foreign-owned companies. Telia and Tele 2 are fully owned by Swedish enterprises and the majority of Mobilix is owned by France Télécom. This contrasts with many OECD countries in which governments, during the privatisation process, have maintained a partial ownership of the former monopolies and ensured that shares be widespread between shareholders. Unrestricted market access, with no restrictions on foreign ownership, has resulted in entry by a number of international carriers such as Global One, Unisource, AT&T and Tele8 that are providing advanced international services such as IVPN services. Openness of the Danish market has been reflected in Denmark's record in relation to its international commitment and

implementation of trade agreements. Denmark's full market liberalisation in July 1996 was 18 months earlier than the deadline of 1 January 1998 set by the EU Directive. Denmark has provided no exemptions in the European Union's commitment for the WTO agreement on basic telecommunications.

Denmark has had, in general, one of the **lowest end-user prices for telecommunications services** among OECD countries. Although other countries are now rapidly catching up and have even passed Denmark in some areas since the introduction of competition, Denmark continues to have one of the lowest prices in many service areas. This has benefited industry and consumers in Denmark. Competition in the market has also resulted in various innovative services by providers.

However, despite past development of competition, the former monopoly **Tele Danmark** continues to be dominant in a number of key market areas. Infrastructure competition in the local loop has been inhibited by the dominant position of Tele Danmark in infrastructures, such as cable television, that can be used to offer voice services. This, together with some **weakness in the regulatory framework** in implementing competition safeguarding measures, poses concerns for the future and will be the challenge for policy-makers in Denmark. The authority of the regulator, National Telecom Agency, *vis-à-vis* the dominant carrier, seems to have weakened. The dominant carrier has not been subject to adequate asymmetric regulation. The resolution of interconnection disputes has often been delayed in the interest of Tele Danmark. The interconnection issue has been pointed out by trading partners too (Government of the United States of America, 1999). Even though the policy record as to market openness in telecommunications has been positive in Denmark, ensuring the application of competition principle in the market will further benefit users and market players, including foreign firms that already have substantial stakes in the Danish market.

3.2. Telecommunications equipment

Developments in the telecommunications equipment sector have reflected fast-moving technology and rapid progress towards liberalisation and more vigorous competition in the services market. This is an interesting area to see how the regulatory framework can take account of market openness, since trade flows in this area are growing especially between developed economies.

In the EU, the **Technical Terminals Equipment (TTE) Directive** (91/263/EEC) has played a central role in setting a general regulatory framework. Although it takes the form of a New Approach Directive in setting essential requirements for the equipment, it provides for the adoption of a delegated procedure of **Common Technical Regulations (CTRs)** that must be applied in the public telecommunication network across the EU. This means that, where necessary, a detailed level of harmonisation is mandatory throughout the EU. Such technical regulations specify, *inter alia*, user safety requirements, electromagnetic compatibility requirements and requirements for protection of the public telecommunications network from harm.

For categories of equipment for which the European Commission has adopted CTRs, the Danish technical regulations refer directly to these CTRs. A system has been established to co-ordinate initiatives and decisions taken at the European level and those at the national level. At the European level, several groups participate in the harmonisation process. The **ACTE** (Approvals Committee for Terminal Equipment) of the European Commission takes the initiative of harmonisation on a specific type of equipment by defining the scope of harmonisation. It requests ETSI (European Telecommunications Standardization Institute) to develop harmonised standards. Two-thirds of the participants of ETSI are manufacturers, so that harmonisation proceeds as far as possible in a market-driven way. An independent committee called **TRAC** (Technical Regulations Applications Committee), a group of regulators and network operators around Europe, is called upon to give advice to the Commission. Beyond the European

level, **ITU** (International Telecommunication Union) is the international standardisation body in the field of telecommunications. It promotes harmonisation at a global level. ETSI participates in its standardisation activities and represents European perspectives. In order to formulate the Danish position on harmonisation work, the **National Telecommunication Agency (NTA)** has organised a national committee with the participation of network operators, manufacturers, as well as laboratories located in Denmark. This organisation facilitates the smooth implementation of harmonised technical regulations.

Despite intensive efforts of harmonisation, the European Commission has expressed some concerns on the slow progress in adopting CTRs and on the large number of new national specifications (see Table 4) (Commission of the European Communities, 1996*b*). It is understandable to some extent, considering the rapid technological developments and the proliferation of new products in this sector. In Denmark, the transposition of CTRs has been generally smooth, and for products not covered by CTRs, efforts have been made to adopt standards developed by ETSI.

In addition to harmonisation, the TTE Directive also provides for conformity assessment procedures. Equipment must be labelled with the **"CE" mark** to indicate that it complies with all relevant Directives. Products covered by CTRs are mutually recognised throughout the EU area. The Directive requires each member state to notify to the Commission the bodies appointed to carry out conformity assessment procedures. The notified bodies supervise assessment with the technical standards underlying the Directive. The notified bodies can either perform the required tests themselves or can select additional laboratories to perform tests. As a general rule, notified bodies must be of a high standard throughout Europe and meet the minimum criteria of competence, impartiality, and financial independence from clients. This means that certificates issued by the NTA, the **Notified Body in Denmark**, are accepted in other Member States while certificates by other Member States are accepted as meeting legal requirements for marketing in Denmark. **Type approval** is used for mass production products under the EU system. With this procedure a notified body ascertains and attests that a representative (design) specimen meets the provisions of necessary directives. Under this procedure, the manufacturer must submit the documentation and a product sample, representative of actual production, to a notified body. The notified body tests the specimen and upon determining that the equipment type meets the provisions of the Directive, issues a certificate.

The present type approval system has been criticised for being cumbersome and expensive for manufacturers. The criticisms have led to demands for an updated Directive. The European Parliament is currently considering a proposal for a new Directive (Commission of the European Communities, 1998*c*). The proposal includes the introduction of the **manufacturers' declaration of conformity** to technical requirements for testing and certification, with clear liability of the manufacturer in case of non-compliance. This reform, if implemented, will allow manufacturers more flexibility to use a more cost-efficient way of conforming to requirements and enhance trade opportunities as well.

The telecommunication equipment sector, as mentioned, has been covered by several bilateral MRAs such as the MRA between the EU and the US. The results of conformity assessment by non-European countries that have concluded a MRA with the EU are recognised in Denmark as equivalent, hence allowed free circulation in the Single Market.

3.3. Automobiles and components

Harmonised EU safety technical requirements for motor vehicles and, more recently, the framework of the **EU-wide type approval system** have also been instrumental in the integration process in the European automotive market. Within the EU, technical requirements for motor vehicles have been fully harmonised since 1993. Unlike the areas covered by the New Approach Directives, detailed technical requirements are specified in various EU Directives and applicable throughout the EU and EFTA countries.

The certification of these requirements is done through a system of type-approval under which a national regulatory body certifies that a type of vehicle or separate technical units satisfy technical requirements as specified in relevant EU Directives. Each vehicle type, whether domestically produced or imported, must be tested and certified that it meets relevant technical regulations. Each member state grants the type-approval to any vehicle that meets the technical requirements of the 54 separate basic Directives for passenger cars. In 1996, it was decided that the type-approval certificate delivered for a passenger vehicle in one member state is valid in all other member states and the vehicle can be registered or permitted for sale in all EU states. In 1998, the system was extended to most categories of vehicles. In its Framework Directive (70/156/EEC) as amended, the EU deemed several UN-ECE Regulations to be equivalent to relevant EU technical Directives. Thus 35 UN-ECE regulations are recognised as equivalent as well as those listed in Annex 2 of Directive 97/386.

As a country with little car manufacturing capacity, Denmark has greatly benefited from the use of harmonised technical requirements and the EU-wide type approval system. However**, vehicle registration tax rates** are very high in Denmark and have constrained purchases of vehicles, including imports.

3.4. Electricity

The Danish electric power sector has undergone a process of substantial regulatory reform (for details, see Background report to Chapter 5). This section highlights the international aspects of the reform.

Key features of the Danish electricity industry are as follows (OECD, 1998*a*):

- A large part of the sector is vertically integrated and owned by local co-operatives and municipalities.

- The electricity sector in Denmark is divided into **two independent areas** and there are no connections between them. While each of the two regional associations, called ELSAM and ELKRAFT, traditionally used to be responsible for planning, load dispatching and operation of the transmission grid, structural change is taking place in each area (see Figure 4, reproduced from the IEA 1998 review). Grid Operators in each respective region are responsible for international connections: the ELSAM area is connected with Germany, Norway, and Sweden; the ELKRAFT area is connected with Sweden and Germany.

- About 78% of electricity is generated by **imported coal**, but the government banned new coal-fired capacity in 1997. On the other hand, the government has established a number of regulatory, financial and taxation measures to **promote the use of gas and renewable energies** including wind-power generation. It is strongly committed to achieve a number of environmental goals such as the target set under Kyoto protocols on CO_2 emission.

- There are extensive public service obligations.

- **CHP** (combined heat and power) is promoted to stabilise CO_2 emission, through, *inter alia*, mandating connection to district heating networks.

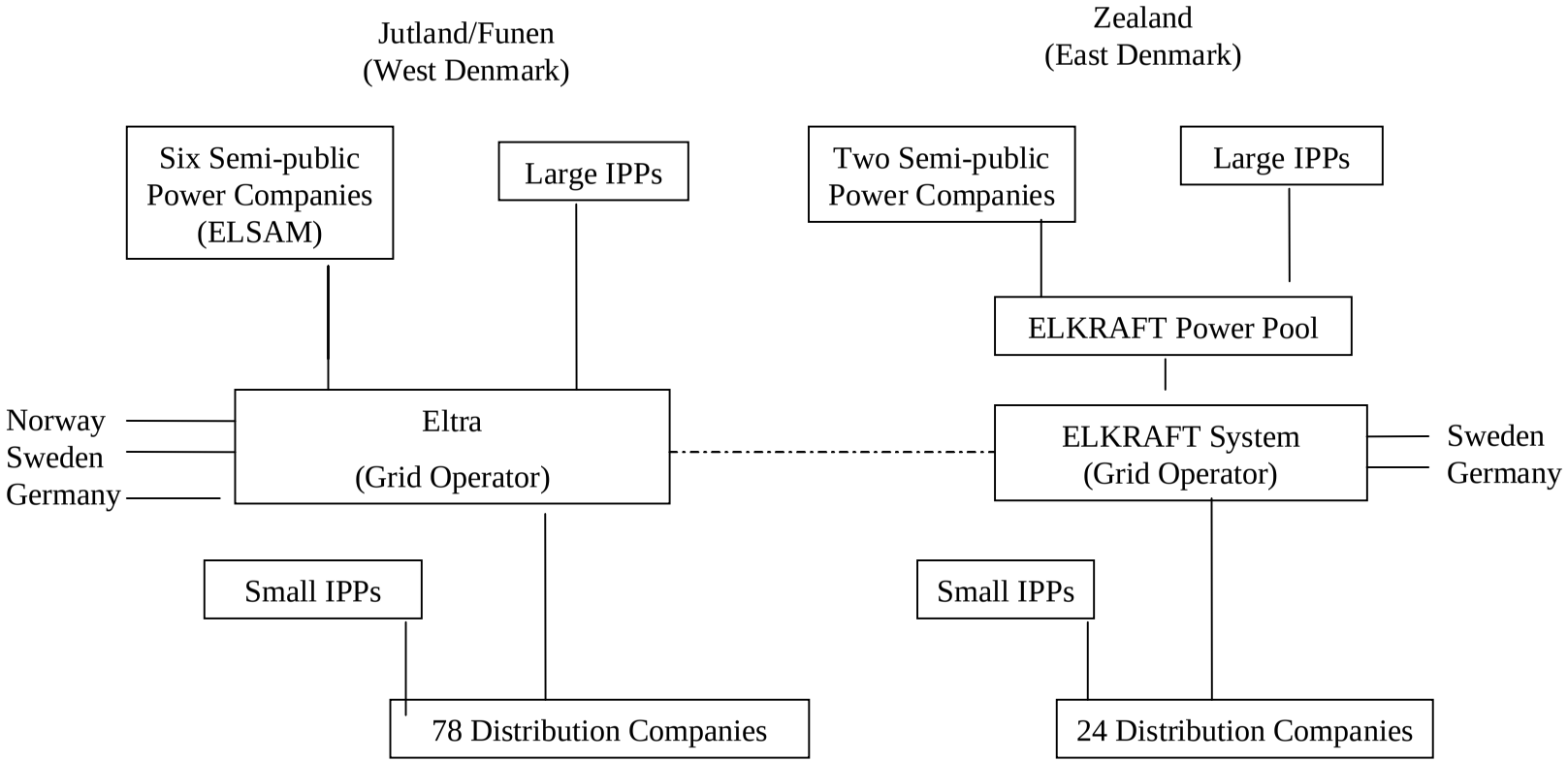
- The **price of electricity** in Denmark, before taxes, is relatively low. Before-tax prices for both for households and industry are lower in Denmark than the median for OECD countries, as well as for OECD Europe countries. The after tax price of electricity sold to households in Denmark is very high, exceeded, among OECD countries, only by prices in Japan

– The electricity sector is regulated by the Danish Energy Agency, an agency within the Ministry of Environment and Energy. Prices are regulated by the Electric Price Commission whose members are appointed by the Minister for Environment and Energy.

Partly in response to the **liberalisation** process undertaken at the EU level, Denmark has begun to liberalise its electricity market. The EU Directive on electricity set out the rights of access for electricity and distribution grids to allow free trade of electricity in Europe. Denmark amended its Electricity Supply Act to allow certain distribution and other companies to have **third party access to the grid**, but the scope of users who can benefit may be limited. These measures took effect in **January 1998**. Achieving effective competition in the sector, while maintaining other policy goals such as environment, is a great challenge for policy-makers in Denmark.

Figure 4

Structure of the Electricity Supply Industry



Notes:
1. The system is in transition and changes to the structure will occur in the near future.
2. It is mainly the distribution companies which supply customers with power. However, large power consumers with a power consumption that exceeds 100 Gwh per year are free to choose their supplier. Distribution companies with power sales that exceed 100 Gwh per year are free to choose their supplier. Choice of supplier can only be exercised through the Nord Pool since there is no internal market allowing bilateral arrangements between individual suppliers and consumers.
IPP = Independent Power Producer.

Trade of electricity is substantial in Denmark. The Nordic countries, including Denmark, have traded electricity for many years mainly because their electricity supply sectors are based on different production means. The Danish electricity production, mainly based on coal, complements the Norwegian production that is based entirely on hydro and the Swedish production that is based equally on hydro and nuclear powers. Danish exports can vary a lot from year to year depending largely on the capacity of the hydro powered plants in other countries. Denmark exports a large quantity when the weather is dry and imports when it is wet, taking advantage of the low cost of hydro power. In 1996 electricity exports accounted for almost 40% of domestic consumption, whereas in 1989, imports amounted to 34% of Danish electricity supply.

In the 1990s the electricity market in northern Europe has gone through major changes. Nordic countries have restructured and liberalised their electricity sector. This deregulation has led to the development of Nord Pool (Nordic power exchange, see Box 7), an independent electricity exchange market created as a joint project between Norway and Sweden in 1996. Finland joined in 1998 and Western Denmark joined in 1999. International trade has played a key role in creating a momentum for regulatory reform of the electricity sector in the Nordic region, as reflected in the establishment of Nord Pool. Foreign suppliers are a readily available source of competition thanks to the long tradition of trade in this region and at least in the short run, they are the only one in practice. Business could benefit substantial cost-saving from increased competition.

Box 7. **Nord Pool, the world's first power exchange created in the Nordic Market**

Before the Nordic countries launched Nord Pool, trading of electricity was possible through Nordel, an organisation set up in the 1960s to promote co-operation among the largest electricity producers in each country.

Norway's reform to introduce competition in electricity started in 1991. Transmission activities of Stakraft, the largest integrated utility company, were spun off to a new national grid company, Stanett SF. All transmission networks were opened to third party access. Sweden corporatised Vattenfall, the largest integrated company in 1991, but took time to move to a competitive market.

Norway opened a spot market in 1992, but suffered from volatility due to its dependence on hydropower. The Swedish reform met problems of continued market concentration with the two largest firms dominating 75% of the market. A combined Norwegian and Swedish market would address the problems of both countries. Finland joined the power exchange in 1998.

The spot market in Nord Pool trades in hourly contracts for the following day. It is open to all companies that have signed the necessary agreements with Nord Pool, a company owned by grid operators in each country. Presently 200 players trade on the exchange. In addition to the spot market, Nord Pool also offers futures contracts, purely financial instruments used to price hedging.

This world's first international power exchange system has functioned quite well to date, though a question remains on investment decisions on connecting capacity of grids. In addition, despite the successful performance of Nord Pool, most of the trading between players still take place under bilateral contracts for physical delivery that were signed before the reform.

Source: Lennart Carlsson, *International Power Trade – The Nordic Power Tool*, Viewpoint January 1999, World Bank.

Furthermore, the **environmental goal** in this sector can be achieved better under freer trade, given the presence of a suitable international framework and environmental agreements. As for electricity, global warming and reduction of CO_2 emission is a paramount issue for government and industry across countries that participated in Kyoto Protocols. Trade generally enhances efficiency, which means less CO_2 emission in general, by encouraging the use of the most efficient power plants. However, achieving the target set by each country may prevent it from generating power at its most efficient level. In this context,

the introduction of emission permits trading would further allow such a country to export electricity while ensuring that the emission target for the trading countries as a whole is met. The idea of emission trading is generally considered in policy discussions from long-term perspectives, because more intensive international discussion and co-ordination is clearly needed to realise the system. On the other hand, the benefits from such a scheme are particularly clear for Denmark as it exports CO_2 intensive coal-fired powers in variable quantity depending on the year.

As liberalisation and competition in electricity accelerates across Europe, the **role of trade** in contributing to efficiency in Denmark and optimal resource allocation across countries while achieving shared environmental goal will be even more significant. Regulations should be designed to maintain the principle of non-discrimination and avoidance of unnecessary trade restrictiveness. Where trade is significant and the market becomes more open, it is crucial to ensure the application of competition principles and to prevent abuse of monopoly power throughout the area. Competition principles should be ensured by international co-operation between relevant authorities across the borders. In light of the tradition of electricity trade in Nordic countries and ongoing policy efforts to increase competition, market openness perspectives in the electricity sector will play an even more significant role.

4. CONCLUSIONS AND POLICY OPTIONS FOR FUTURE

4.1. General assessment of current strength and weakness

4.1.1. Strength

In Denmark, the current regulatory reform programme has benefited from a high level of political support. Therefore, a necessary condition of in-depth reform has been met. In addition, the programme is broadly based and the government has set up mechanisms to implement the reform and monitor progress. Regulatory reform has gained its own momentum. It is obvious that these are positive elements when undertaking further reform.

In general the Danish administrative culture is efficient, practical and open, and these qualities are appreciated by foreign parties, too. Officials tend to seek reasonable solutions to problems. There is solid confidence in public administration among the public. These are favourable conditions when promoting reform because reform efforts tend to be taken seriously and smoothly implemented. While in other countries reform can be distracted or resisted by unpredictable factors such as a large administrative discretion, Denmark is better placed to plan for regulatory reform.

The business environment in Denmark is in general trade-and-investment-friendly. The government and the public alike are aware that trade and investment are in a significant interest for the domestic economy. Trading partners hold positive views about Denmark, particularly concerning its record at addressing concerns in a reasonable manner and its willingness to contribute to international solutions such as harmonisation of standards. Market openness perspectives appear to be well taken into account in policy making.

All the above sets a promising ground for further reform with a wider scope. In addition, current economic conditions in terms of growth and price stability are favourable in Denmark and can provide a chance to take a deep strategic thinking on the next step, which is likely to be more fundamental than the current reform. From a relatively secured place, the Danish reform can aim at an even higher level of achievement, in order ultimately to prepare better for the ageing society.

4.1.2. Weakness

The current system of Danish government is basically decentralised, leaving each Ministry broad responsibility for managing policies. Record to date has shown that the system has worked relatively well, allowing flexibility and efficiency in the elaboration and implementation of decisions. It will continue to be beneficial in that respect in the future. However, this system may make it more difficult to refocus the overall government strategy. Strong leadership is likely to be needed at the centre of government, in order for reform to have a real impact throughout the economy.

Traditional decision making process that places very high value on consensus and is based on broad and in-depth consultation with variety of social groups, may put too much emphasis on step-by-step improvement in reform policies and may favour making compromise among incumbent interests and/or result in postponing hard decisions. On the other hand, the system may not have fully taken account of the relatively new consumer concerns for lower prices, for example.

Already high achievement by Denmark both in terms of economy as well as quality of life may have produced some "complacency" elements. For example, despite vigorous reform efforts on improving regulatory quality, administrative rules have been absent from the scope of reform. Lack of competition in many sectors, that had been already identified for several years, were not dealt with by active policy actions until recently.

4.1.3. Trade friendly index

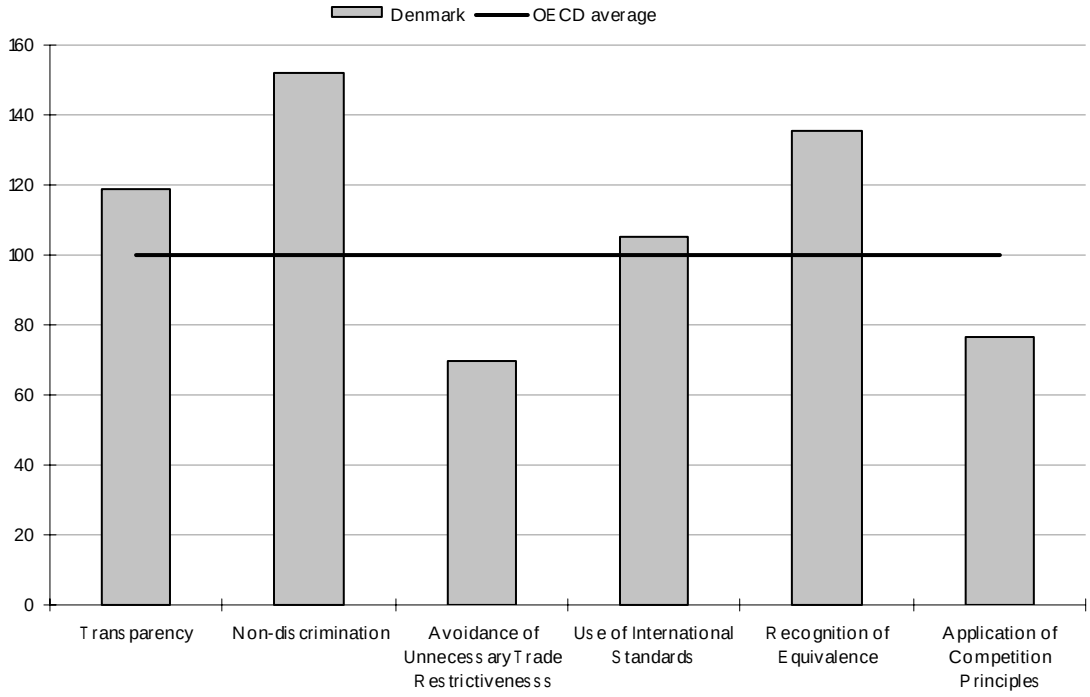
In general, the above mentioned strength and weakness of Denmark in promoting regulatory reform are largely consistent with the index produced by the OECD secretariat, based on an indicator questionnaire sent to national governments. Caution is however necessary in interpreting the index, due to some problems of reliability for some questions (Figure 5).

4.2. The dynamic view: the pace and direction of reform

Against generally favourable current economic conditions of Denmark, it may not be always easy to press fundamental regulatory reform, which can mean putting onus on the political system in redistributing income and power between different domestic constituencies. However, the current reform should be accelerated and broadened. Regulatory reform, when properly managed, creates net gains for the economy, as observed in other OECD countries. By enhancing vigorous competition in a large number of sectors, reform contributes to increasing efficiency as well as consumer welfare and business competitiveness. By upgrading regulatory quality, it can help eliminate unnecessary costs while achieving social objectives such as safety and environment.

These efficiency gains will be essential for Denmark to sustain its emphasis on high-quality public services. As the ageing society approaches Denmark, it may be more difficult to afford them unless concrete gains are achieved through regulatory reform and shared by the society as a whole. These gains are likely to be larger if market openness is pursued at the same time as reform. As seen in many sectors in Denmark, trade has contributed to efficiency in the economy and there is still potential for further trade and investment. Foreign firms have contributed to employment and brought in innovative services for the benefits of Danish users, such as vividly seen in telecommunications services.

Figure 5. **Denmark's trade friendly index by principle**



Source: Responses to the Indicators Questionnaire on Regulatory Reform, OECD, 1998.

4.3. Potential benefits and costs of reform

The analysis made in Section 1 and elsewhere in other chapters that overviewed price and other differentials between Denmark and other countries for a number of sectors identified substantial benefits that can be explored by regulatory reform, including market openness perspectives. Such benefits are shared by both consumers and business, as well as Denmark's trading partners. When properly managed, the costs of regulatory reform, including from market openness perspectives, are economic adjustment costs, for example on employment. As in other OECD countries, these potential costs, or prospects of costs, can create the risks that reforms are blocked by vested interests under the current regulatory framework.

On the other hand, the objective of reform is not to make a trade-off between trade and legitimate public policy objectives such as the environment. It is rather to review the efficiency of regulations without undermining the objectives. The issue of whether and how inward trade and investment *in fact* affect the fulfilment of legitimate policy objectives reflected in social regulation has been extensively debated within and beyond the OECD from a range of policy perspectives, although it is beyond the scope of this report. To date, however, OECD deliberations have found no evidence to suggest that trade and investment *per se* impact negatively on the pursuit and attainment of domestic policy goals through regulation or other means.[29]

4.4. Policy options

- *Expand perspectives of regulatory reform programme from the current legal focus to an economic approach, addressing the whole set of constraints to competition in a broad range of sectors. Incorporate market openness perspective into such an expanded programme.*

The current regulatory reform programme of the Danish government has, though taking a broad approach and generating various initiatives, tended to focus on legal aspects and streamlining administrative burdens caused by regulations on business sector. In order to produce concrete and tangible benefits that can be widely shared by consumers and business, reform should be strengthened to deal with wide-ranging regulatory issues that have constrained full functioning of market.

Recent reform in competition policy can signal such a needed change of focus. This pro-competitive policy reform can be further extended to government-wide review of current regulations, including public procurement, construction, financial and professional services, and other consumer products. Refocusing the reform programme can help better respond to growing demand for efficiency by consumers and business and be beneficial in generating wider and more vigorous support for regulatory reform.

In such a case, market openness perspectives, especially as reflected in the six efficient regulation principles, should be incorporated into the expanded programme. It would ensure that, as currently realised in telecommunications services in Denmark, benefits from regulatory reform be maximised by foreign trade and investment, while Danish reform offers greater opportunities for global business community.

These perspectives may be more accessible for Denmark than for some other OECD countries, due to its general trade and investment friendly policy stance and market environment. Such an approach is already creating clear benefits in telecommunications services and electricity sector.

- *Strengthen competition policy, enforcement and institution.*

Although concerns for weak market competition are growing, as reflected in recent reform on competition policy, current set-up in Denmark has been less than optimal as suggested by the background report on Chapter 3. Strengthening competition policy, in terms of enforcement and institution, will be important for market openness perspectives as well. It is promising too, in light of the solid application of the national treatment principles in competition policy by the Danish authorities.

- *Expand regulatory reform programme to explicitly cover administrative rules.*

Current reform efforts concentrate on regulatory measures by primary legislation. Much less policy attention has been paid to lower level rules such as administrative orders. The quality problem for those rules can be nonetheless crucial for economic efficiency as well as for market openness, even more crucial than that for primary legislation in some cases. On the other hand, current regulatory procedures are generally based on sound consultation practices and can be readily applicable for administrative rules. Therefore these rules should be covered by future reform efforts described below.

- *Strengthen transparency in regulatory procedures especially for foreign partners, by widening their opportunities to provide input to the decision making process.*

In the preparatory stage of regulations, Denmark has established practices for wide-ranging consultation with various interests. These practices have produced a high level of confidence in government administration. However, the application of these practices and the subsequent monitoring have not been as vigorous for administrative rules at lower levels than for primary legislation. In addition possibility is given to skip the system in case of emergency.

In some cases, these gaps have resulted in problems for those potentially affected by forthcoming regulations, particularly foreign trading partners. Traditionally, these concerns are considered to be dealt with at the EU level, notably through the EU system of notification of technical regulations and standards. Given the risks that the scrutiny provided by the EU system might not be always sufficient, transparency at the Danish level needs to be further strengthened. Reform on transparency should include measures for foreign parties to have access to and provide comments on draft regulations at as an early stage as possible.

- *Actively promote Regulatory Impact Analysis (RIA) for all range of regulations, including administrative rules. In assessing the impact of regulations on business and industry, explicitly incorporate the impact assessment on trade and investment.*

- *Integrate RIA into the consultation process by e.g. using the Internet for collecting input for decision making. When business is consulted in the RIA process through* e.g. *business test panel, pay explicit attention to participation of foreign firms.*

- *More intensively seek alternative ways to proposed regulations, including non-regulatory approach, recognising such alternatives often greatly enhance market openness.*

Quality of regulations, especially with respect to its impact on market openness, has varied in various cases in Denmark, while it can be generally observed that the Danish Administration often makes good-faith efforts to consider the impact on trade and investment. A more systematic approach to assess this impact would ensure the quality of regulations in this aspect.

Current efforts by Danish government for implementing RIAs provide a valuable and indispensable opportunity to strengthen market openness perspectives in regulatory practices in Denmark. RIAs carried out by respective regulatory agency, whether for primary legislation or administrative rules at lower levels, should incorporate explicitly the assessment of the impact on trade and investment. When the RIA is strengthened by being more extensively used in consultation process, participation of foreign parties can reinforce these particular angles of assessment.

Current practices of Denmark have been reasonable in avoiding outright violation of international legal obligations and in contributing to flexible and speedy government actions. However, the reform mentioned above can enhance the capacity of government in foreseeing and resolving at an early stage potential problems for trade arising from proposed regulatory measures. Such preventive measures within the government are useful both for foreign trading partners and Denmark.

- *Continue to make active contribution to harmonisation of standards.*

Denmark's position in international trade has naturally favoured harmonisation of standards. Accordingly, Denmark has made substantial contributions to the work done at international level, such as seen in the recent initiatives to enhance efficiency in European standardisation, while transposing harmonised standards relatively smoothly into domestic regulatory systems. It is commendable for

Denmark to continue its efforts to work with other countries to achieve higher level of harmonisation wherever it is desirable and feasible. Particular focus should be made on construction materials, food and other areas that have posed difficulties for standardisation to date or have not been covered by standardisation.

- *Continue to ensure recognition of equivalence of foreign measures through participating in EU wide-measures as well as strengthening its efforts to expand the use of accreditation.*

As an EU member, recognition of equivalence of foreign measures in Denmark has been expanded by the Single Market measures as well as by external MRAs. These efforts should continue and can be further intensified. In order to support such efforts, ensuring competence of conformity assessment bodies through a modern system of accreditation will be even more important in future. Some practical steps to strengthen the accreditation system are possible and recommended. They include encouraging domestic regulators to use more vigorously accreditation as a tool to ensure quality of supervision, and ensuring the competence of DANAK, the Danish accreditation body, through objective evaluation process under the appropriate international framework.

- *Participate vigorously in streamlining conformity assessment procedures by the EU, including in the area of telecommunications equipment.*

Conformity assessment procedures are a crucial part of quality of regulations and need to be regularly reviewed as recommended by the OECD Report on Regulatory Reform in 1997. This review includes the examination of the balance between the level of safety required and conformity assessment measures, as well as industry's capacity based on the technological progress. Current streamlining efforts at the EU level on telecommunications equipment to introduce manufactures' declaration of conformity to technical requirement is a promising example. The reform should be expanded to other areas and Denmark's participation in it would be beneficial.

NOTES

1. Expat-Survey ’98 sponsored in part by “Invest in Denmark”, Ministry of Business and Industry. 400 foreign expatriates were surveyed in the questionnaire.

2. According to the World Competitive Scoreboard (International Institute for Management Development), Denmark was rated as the fifth among European countries after Finland, Luxembourg, the Netherlands, and Switzerland. It was rated second to the Netherlands among eight European countries by the Expat-Survey ’98 mentioned above in terms of competitiveness of location for expatriation.

3. Preliminary assessments of the likely impacts of legislated regulation have been made since 1995.

4. This table was prepared with substantial help from Mr. Lars Christensen and Mr. Ole Just of the Danish Consumer Council.

5. When detailed comments are provided by other member states and/or the Commission, the standstill is extended.

6. “CIA Security International *vs.* Signalson SA and Securitel SPRL”, Decision of the European Court of Justice of 30 April 1996 (Case C-194/94).

7. The procedure was established by a December 1995 Decision of the EU’s Council of Ministers and the European Parliament (3052/95) and came into effect on 1 January 1997.

8. http://europa.eu.int/business/en/index.html.

9. http://www.newapproach.org.

10. GATS commitment by European Community.

11. Judgement of the Court of 22 June 1993, Commission of the European Communities *vs.* Kingdom of Denmark, Case C-243/89, European Court Reports 1993, page I-3353.

12. Based on a statistical report of the government of Denmark to the European Commission (Government of Denmark, 1998*c*). Figures are in nominal value. The same report mentioned that in 1996, services from a non-domestic origin occupied 10.0% in total procurement under the EU requirement. The same figure for goods was 3.1%.

13. The Public Supplies Directive (93/36/EEC); the Public Works Directive (93/37/EEC); the Public Services Directive (92/50/EEC); the Public Remedies Directive (89/665/EEC); the Utilities Directive (93/38/EEC); and the Remedies Utilities Directive (92/13/EEC).

14. Use of environmental management standards, such as ISO 14000 or EMAS, for the purpose of qualifying providers for procurement.

15. Single Administrative Document (SAD) is a set of documents, replacing the various national forms for customs declaration within the European Community. It is designed to cover all movements of goods (importation, exportation and transit). It was implemented on 1 January 1988, a use of SAD for intra EC trade was terminated at the full realisation of single market in 1993.

16. Judgement of the Court of 20 September, 1988, Commission of the European Communities *vs.* Kingdom of Denmark, Case 302/86, ECJ.

17. Dansk Standards was the result of merging three formerly separate standards bodies. Aware of increasing competition between national standardisation bodies in Europe, it makes efforts to improve its management efficiency and transparency. A major attempt for that purpose was to draw up and publish a two-year strategy plan for its activities.

18. Communication from the European Commission to the OECD, July 1999.

19. Decision of 20 February 1979, Cassis de Dijon, Case 120/78, ECR p.649.

20. Energy-efficiency, labelling, environment, noise.

21. Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations, and administrative provisions of the member states concerning the liability for defective products.

22. The US-EU Agreement entered into force on 1 December 1998. It is currently in a 24 month transitional period, at the end of which all parties should be prepared for full recognition of product certifications and registrations.

23 ISO/IEC Guide 2, EN45020.

24. EN 45020 (1998) Standardisation and Related Activities - General Vocabulary Corrected 1998-02-26 = ISO/IEC Guide 2:1996.

25. EN 45003, EN 45010, EN 45011, EN 45012, EN 45014, EN 45020 are transpositions of ISO Guides; EN 45001, EN 45002, EN 45004 are based to various degrees on ISO Guides.

26. http://www.european-accreditation.org/.

27. http://www.ilac.org/.

28 For more on this special block exemption, see Background Report on the Role of Competition Policy in Regulatory Reform.

29. See, in particular OECD (1998*a*).

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