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## **COMMISSION STAFF WORKING DOCUMENT**

### **2023 Rule of Law Report Country Chapter on the rule of law situation in Denmark**

*Accompanying the document*

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

### **2023 Rule of Law Report**

#### **The rule of law situation in the European Union**

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## **ABSTRACT**

The level of perceived judicial independence in Denmark continues to be very high. On digitalisation, digital solutions to initiate and follow administrative and criminal proceedings remain very limited, but the Danish courts are rolling out a multi-year project for an IT system to process criminal and probate cases with the first two phases for the probate portal and the handling of uncontested fines having been released. Analyses are ongoing related to ensuring adequate human and financial resources for the justice system in the next multiannual framework. Nevertheless, the resource situation is a concern and increasingly affects the length of proceedings, notably in civil and criminal cases, where the average case handling times for district courts have continued to grow compared to 2022.

The perception among experts and business executives is that Denmark is one of the least corrupt countries in the world. The strategic and institutional framework in the fight against corruption in Denmark continues to be based on general rules on ethics and integrity, social norms and public scrutiny with a high degree of trust in the well-functioning of the public administration. The new law on public financing of political parties was adopted and discussions on a new law on private financing of political parties have started. Nevertheless, there were no steps taken on revolving doors for ministers, lobbying or asset declarations submitted by persons entrusted with top executive functions. The whistleblower protection system is in force and the guidelines addressed to whistleblowers, public authorities and companies are supporting the implementation of the legal framework. The new national investigative unit responsible for serious crimes, including complex corruption-related cases, works well, although general reporting on the handling of corruption-related offences is still lacking.

Ethical rules for the press are currently being reviewed by a working group in Denmark and the committee of media liability appointed by the Government is examining the need to support the Danish Press Council system through the possible creation of a new media ombudsperson. While no steps have been taken to revise the Access to Public Administrative Documents Act, which restricts the right to access information in some cases, the new Government has announced its intention to establish an expert committee to prepare a possible amendment to this Act. The mandate for this committee and the precise date of its establishment have yet to be announced. Budgetary cuts in local and regional papers pose some challenges to journalists who have called for greater support from the Government.

The working procedures of the Parliament continue to be underpinned by a strong consensual culture. The current Government has committed to follow-up on a political agreement to strengthen Parliament's scrutiny of the Government and focus on trust in the political system. The Parliamentary Ombudsman and the Danish Institute for Human Rights have continued to carry out their mission independently and effectively. The civic space in Denmark remains open, with a robust framework for the involvement of civil society organisations, even if the Danish Institute for Human Rights has expressed concern about the impact of advanced surveillance technologies on civic space.

## **RECOMMENDATIONS**

Overall, concerning the recommendations in the 2022 Rule of Law Report, Denmark has made:

- Some progress on ensuring adequate human and financial resources for the justice system in the next multiannual framework.
- Some progress on adopting a new legislation on political party financing that will address the issue of multiple and anonymous donations and introduce sanctions for breaching the rules on the political parties' framework.
- No progress on introducing rules on 'revolving doors' for ministers and on lobbying and ensure adequate control of asset declarations submitted by persons entrusted with top executive functions.
- No further progress on the process to reform the Access to Public Administrative Documents Act in order to strengthen the right to access documents, in particular by limiting the grounds for rejection of disclosure requests, taking into account the European standards on access to official documents.

On this basis, and considering other developments that took place in the period of reference, it is recommended to Denmark to:

- Ensure adequate human and financial resources for the justice system in the next multiannual framework, building on the increases in 2023, taking into account European standards on resources for the justice system.
- Introduce rules on 'revolving doors' for ministers and on lobbying and ensure adequate control of asset declarations submitted by persons entrusted with top executive functions.
- Ensure the collection of data on investigations and prosecutions of corruption-related offences at national and local level.
- Advance with the process to reform the Access to Public Administrative Documents Act in order to strengthen the right to access documents, in particular by limiting the grounds for rejection of disclosure requests, taking into account the European standards on access to official documents.

## I. JUSTICE SYSTEM

The Danish justice system consists of 24 district courts, two high courts (courts of appeal) and a Supreme Court, as well as two specialised courts<sup>1</sup>. The independent National Court Administration is in charge of the administration and development of the courts, which includes allocation of courts' budgets and management of buildings and systems related to information and communications technology. The independent Judicial Appointments Council<sup>2</sup> makes non-binding proposals for the appointment of judges to the Ministry of Justice, who then proposes them for formal appointment by the executive (the Queen)<sup>3</sup>. Only one judge is proposed per vacancy by the Appointments Council. There have been no cases where the executive did not follow the proposal of the Appointments Council<sup>4</sup>. Disciplinary measures for judges can be issued by Court Presidents or the Special Court of Indictment and Revision<sup>5</sup>. The prosecution service is an autonomous institution acting under the supervision of the Ministry of Justice and led by a Prosecutor General<sup>6</sup>. The Bar and Law Society is the independent body governing the legal profession and ensuring its independence<sup>7</sup>.

### Independence

**The level of perceived judicial independence in Denmark continues to be very high among both the general public and companies.** Overall, 86% of the general population and 85% of companies perceived the level of independence of courts and judges to be 'fairly or very good' in 2023<sup>8</sup>. According to data in the 2023 EU Justice Scoreboard, the level remains consistently very high for both the general public and companies since 2016. The level of perceived judicial independence among the general public has increased in comparison with 2022 (84%) but it is lower than in 2016 (88%). The level of perceived judicial independence among companies has decreased in comparison with 2022 (87%) although it is slightly higher than in 2016 (84%).

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<sup>1</sup> The Maritime and Commercial Court and the Land Registration Court. CEPEJ (2021), Study on the functioning of the judicial systems in the EU Member States. Denmark does not have a constitutional court.

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

<sup>3</sup> With the exception of the President of the Supreme Court, who is selected and appointed directly by the Supreme Court according to an internal procedure. In addition, as regards members of the Supreme Court, the law sets out a special procedure under which the candidate chosen by the appointments board is vetted by judges of the Supreme Court before the appointment is confirmed. According to the 2023 EU Justice Scoreboard, the percentage of women in the top judicial positions is below 30%. Figure 36, 2023 EU Justice Scoreboard.

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

<sup>5</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 2.

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

<sup>7</sup> Administration of Justice Act, Chapter 15.

<sup>8</sup> Figures 49 and 51, 2023 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

## Quality

**The Danish courts are rolling out a multi-year project for an IT system to process criminal and probate cases.** Some of the shortcomings as regards digitalisation identified in the 2022 Rule of Law Report<sup>9</sup> have improved as regards civil cases<sup>10</sup>. Digital communication tools for courts and the prosecution service are in place<sup>11</sup>, procedural rules for digital tools are fully in place for civil proceedings, but only partly for administrative and criminal proceedings<sup>12</sup> and digital solutions to initiate and follow administrative and criminal proceedings remain very limited<sup>13</sup>. As already noted in the 2022 Rule of Law Report, the National Courts Administration is developing a new IT system for processing criminal and probate cases, which will be rolled out in successive phases by 2026 and replace the legacy IT systems used by the courts with a more user-friendly, effective, and future-proof solution<sup>14</sup>. As part of that project, the probate portal supporting the registration of claims concerning the administration of the estate of the deceased has been rolled out in November 2022 and the second phase concerning the handling of uncontested fines was released in June 2023<sup>15</sup>.

**There has been some progress towards ensuring adequate human and financial resources for the justice system, yet the impact of the resources issue on the length of proceedings is a concern.** The 2022 Rule of Law Report recommended to Denmark to “ensure adequate human and financial resources for the justice system in the next multiannual framework, taking into account European standards on resources for the justice system”<sup>16</sup>. As noted in the 2022 Rule of Law Report, in recent years the Danish courts have experienced an increase of pending cases and processing times, which may require a longer term increase of resources<sup>17</sup>. In 2022, the budgetary resources allocated to the Danish courts were approximately EUR 261.8 million (DKK 1 948.9 million), a figure that remains stable compared to 2021<sup>18</sup>. However, the

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<sup>9</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 4.

<sup>10</sup> Figure 45, 2023 EU Justice Scoreboard

<sup>11</sup> Figures 43-44, 2023 EU Justice Scoreboard.

<sup>12</sup> Figure 41, 2023 EU Justice Scoreboard. In this context, it has been possible to use telecommunication via video link for certain court functions since 2016, when the Administration of Justice Act's rules on extension of custody hearing with the use of video link have been changed. It is the general rule that the prosecutor participates in the hearings via video link. In practice, this means that the judge is at the court, the prosecutor at his or her office and the defence attorney at either the prison/detention centre with the detained person or at the court house. Input from Denmark for the 2023 Rule of Law Report, p. 10.

<sup>13</sup> Figures 45-46, 2023 EU Justice Scoreboard.

<sup>14</sup> The budget for the project is approximately EUR 81.2 million (DKK 604.6 million). 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 4, and input from Denmark for the 2023 Rule of Law Report, p. 10.

<sup>15</sup> The project phases will be rolled out progressively until 2026: the probate portal (phase 1), a fine case system for processing uncontested fine cases from the Police Administrative Centre (phase 2), compulsory liquidations (phase 3), death cases, spousal separation and cashiering (phase 4), and criminal cases and for bankruptcy cases, debt relief and reconstruction (phase 5). National Courts Administration (2023) Revised plan for digitisation of criminal and probate areas and information received from the National Courts Administration during the country visit.

<sup>16</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, pp. 4-5.

<sup>17</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 4, and input from Denmark for the 2023 Rule of Law Report, pp. 4-5.

<sup>18</sup> In 2022, the total financial resources for the judiciary have increased to approximately EUR 261.8 million (DKK 1 948.9 million) compared to approximately EUR 259.32 million (DKK 1 930.3 million) in 2021. In 2022, there were 2 079 full-time employees, including 697 judges and other legal advisers, and 1 189 office staff (in 2021, the figures were 686 and 1 179 respectively). Input from Denmark for the 2023 Rule of Law Report, p. 9.

expenditure on the justice system as a percentage of GDP remains very low (at 0.16% of GDP)<sup>19</sup> as does the number of judges per 100 000 inhabitants (at 6.6 per 100 000 inhabitants)<sup>20</sup>. The previous Government proposed to extend the judiciary's budget from 2022 into the 2023 budget proposal<sup>21</sup>. However, in March 2023, the Government made an ad hoc additional allocation of approximately EUR 4.32 million (DKK 32.2 million) to combat the backlog of cases until the adoption of a new multiannual framework on resources<sup>22</sup>. While stakeholders welcomed the additional resources, they emphasised the need for a long-term solution<sup>23</sup>. In the meantime, the Ministry of Finance and the Ministry of Justice, together with the National Courts Administration<sup>24</sup>, are trying to establish the future financial needs for the Danish courts<sup>25</sup>. The negotiations on the financial needs of the Danish courts at political level were planned already in spring 2022<sup>26</sup>, but had subsequently been postponed<sup>27</sup>. Instead, the Ministry of Justice appointed in September 2022 a committee, chaired by a former Supreme Court President, to examine measures that could make the courts more efficient and reduce case processing times<sup>28</sup>. The Government's ambition is to negotiate a new multiannual agreement in 2023 with the political parties that can take effect on 1 January 2024<sup>29</sup>. According to a study

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<sup>19</sup> Figure 33, 2023 EU Justice Scoreboard.

<sup>20</sup> Figure 35, 2023 EU Justice Scoreboard.

<sup>21</sup> According to the Danish authorities, the previous Government proposed to make an extension of the judiciary's budget from 2022 to 2023 in the 2023 budget proposal, which was intended to ensure stability of the judiciary's budget in 2023 and provide sufficient time to gather the necessary knowledge and decision-making basis for a new multi-year agreement. Input from Denmark for the 2023 Rule of Law Report, p. 6.

<sup>22</sup> Ministry of Justice (2023) Government: Extraordinary funding to combat the backlog of cases in the courts in the run-up to new multi-year agreement.

<sup>23</sup> Danish Bar and Law Society considered that the ad hoc allocation was an important first step, while noting that according to its estimates for 2023 DKK 56 million would be needed to start providing the additional judges and staff and the level of capacity to absorb them. Bar and Law Society (2023) Finance law paves the way to reduce court waiting times. In Justitia's view, the allocated amount will not in itself solve the length of proceedings in Danish courts and stresses that the reduction in the length of proceedings must observe legal certainty and right to a fair trial. Altinget (2023), Justitia: More video conferencing and fewer judges can reduce case processing time in courts.

<sup>24</sup> According to the National Courts Administration, last year the Danish courts reported a deficit of almost DKK 10 million of the total budget. In 2022 and 2023, the courts have received additional appropriations targeted at combating backlogs, but this was not enough to solve the structural challenges with case processing times and reverse the trend. The National Courts Administration considered that there was a need for a long-term plan and an ambitious multiannual agreement to provide the courts with the necessary additional resources to be able to hire more judges, assistant judges and clerical staff as well as to increase courtroom capacity and support stable and secure IT operations. National Court Administration (2023), Long processing times continued in 2022.

<sup>25</sup> Information received from the Ministry of Justice in the context of the country visit.

<sup>26</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 5.

<sup>27</sup> According to the Danish Institute for Human Rights, the political negotiations on a new multiannual agreement for the Danish courts were planned for autumn 2022 between the previous Government and the parliamentary parties. However, the negotiations were postponed until 2023 in view of the parliamentary elections held on 1 November 2022. Simultaneously with the postponement of the negotiations, the Ministry of Justice appointed the committee with former Supreme Court President Thomas Rørdam. Contribution from the Danish Human Rights Institute via ENNHRI for the 2023 Rule of Law Report, p. 189-190.

<sup>28</sup> The work of the committee is supposed to support the political debate on the courts by identifying and qualifying actions to address the challenges facing the courts. The committee will not address all elements of the political negotiations, but only those actions that require specific legal and judicial analysis. Ministry of Justice (2022), New committee headed by Thomas Rørdam to support political negotiations on courts. The committee published reports in April, May and June. Danish Parliament (2023), Committee on Legal Affairs, Annexes 147, 185 and 212.

<sup>29</sup> Written contribution received from the Danish Ministry of Justice in the context of the country visit to Denmark.

commissioned by the Danish Bar Council and endorsed by the Judges' Association, approximately EUR 188.08 million (DKK 1.4 billion) in additional funding would be needed to address the long waiting times by 2030, whereby the district and high courts would need 64 additional judges<sup>30</sup>; if no additional resources were to be allocated, the case processing times would presumably at least double by 2030<sup>31</sup>. In its coalition paper, published in December 2022, the Government parties stated that they want to reduce long waiting times in Danish courts by, among others, simplifying legal proceeding; no reference was made to the situation on the lack of resources<sup>32</sup>. Since the last report, the Danish courts have experienced an increase of pending cases and case processing times in 2022, notably for civil and criminal cases<sup>33</sup>. The Copenhagen district court, the largest first instance court, issued a press release in January 2023 stating that in view of its financial<sup>34</sup> and personnel situation as well as the growing case numbers, many cases would have to be re-scheduled to 2024 or later<sup>35</sup>, while the district court in Aarhus in October 2022 needed on average 28 months for civil cases<sup>36</sup>. As the Government has made an ad hoc financial allocation for 2023 while the preparatory work to facilitate a political agreement on human and financial resources in the next multiannual framework for the justice system is ongoing, it is concluded that there has been some progress on the implementation of the recommendation in the 2022 Rule of Law Report.

**The review of the legal aid system commenced in 2020 has been put on hold.** The pre-legislative committee set up in April 2020 to review the existing legal aid system was initially due to present its results by summer 2022, but the expected deadline was subsequently moved to summer 2023 due to the pandemic<sup>37</sup>. As noted in the 2021 Rule of Law Report, this committee had been set up by the Ministry of Justice in response to a number of studies by stakeholders highlighting certain weaknesses in the functioning of the legal aid system and is composed of representatives of different relevant Ministries and authorities, experts and is assisted by a follow-up group providing experience from practitioners<sup>38</sup>. However, the committee had not met since May 2022<sup>39</sup>. While in February 2023, its mandate was to be re-

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<sup>30</sup> The Danish Bar Council, a body within the Bar and Law Society, has commissioned a study to investigate what additional funding would be required if courts were to reduce case processing times to a reasonable level by 2030. Copenhagen Economics (2022), Judiciary at breaking point: What will it cost to reduce case processing times?.

<sup>31</sup> Copenhagen Economics (2022), Judiciary at breaking point: What will it cost to reduce case processing times?, p. 11-12.

<sup>32</sup> Danish Government (2022), Responsibility for Denmark, p. 49 and input from Denmark for the 2023 Rule of Law Report, p. 43-44.

<sup>33</sup> See also information in the 'Efficiency' section and National Court Administration (2023), Long processing times continued in 2022.

<sup>34</sup> The situation of the Copenhagen district court was not expected to improve even once the financial bill for 2023 was passed in Parliament. Information received from the Ministry of Justice and the Judges' Association in the context of the country visit to Denmark.

<sup>35</sup> Copenhagen district court (2023), Case processing times at Copenhagen City Court increase and information received from the Ministry of Justice in the context of the country visit to Denmark.

<sup>36</sup> Jyllands Posten (2022), Commentary: Waiting times at courts must be brought down significantly.

<sup>37</sup> Information received from the Ministry of Justice in the context of the country visit to Denmark and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 6. In terms of facilitating access to justice and based on the 2023 EU Justice Scoreboard, further specific arrangements related to access to justice could be introduced for persons at risk of discrimination and elderly persons, and for victims of violence against women/domestic violence. Figures 27 and 28, 2023 EU Justice Scoreboard.

<sup>38</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 4-5.

<sup>39</sup> See also statement of committee chairman in Advokatwatch (2023) Long-awaited legal aid and free legal aid committee is idle: "It's a scandal". In Justitia's view, it is urgent to proceed with the reform work on the Danish

confirmed after the election held in November 2022<sup>40</sup>, in March 2023, its work was put on hold by the Ministry of Justice<sup>41</sup>, which was seen critically by some stakeholders<sup>42</sup>. According to the Danish authorities, once an agreement on the multiannual financial framework for the judiciary has been finalised, it is expected that the framework for the pre-legislative committee will be reviewed and the work continued<sup>43</sup>.

## Efficiency

**The average case handling times for district courts, notably on civil and criminal cases, continues to increase.** The number of incoming civil, commercial, administrative and other cases at first instance in 2021 remained very high (46.3 cases per 100 000 inhabitants compared to 47.5 cases in 2020)<sup>44</sup> with Denmark simultaneously having the second-lowest number of judges as compared to other Member States (6.6 judges per 100 000 inhabitants)<sup>45</sup>. Furthermore, the estimated time needed to resolve litigious civil and commercial cases at first instance has significantly increased from 190 days in 2020 to 238 days in 2021<sup>46</sup>. In addition, the rate of resolving litigious civil and commercial cases has noticeably dropped from 111% in 2020 to 97.6% in 2021<sup>47</sup>. According to the National Courts Administration, the average case processing times in 2022 increased in the district courts for criminal cases, notably in the most serious criminal cases<sup>48</sup>. The increasing case processing times in criminal cases were deemed to have had a knock-on effect on case processing times in civil cases<sup>49</sup>. In February 2023, the Judges' Association and the Bar and Law Society called attention to the increasingly longer processing times by noting that for several courts the hearings calendar was booked for more than two years in advance<sup>50</sup>.

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legal aid model, which was already significantly delayed. Justitia (2023), Status Report: Legal Certainty 2022, p. 17.

<sup>40</sup> Written contribution and information received from the Ministry of Justice in the context of the country visit to Denmark.

<sup>41</sup> According to the Ministry of Justice, no meeting activity in the pre-legislative committee on legal aid was expected until the adoption of a new multiannual framework on resources for the judiciary, which was due to a spike in the workload caused by the ongoing negotiations of that multiannual framework. Written contribution received from the Ministry of Justice in the context of the country visit to Denmark.

<sup>42</sup> Advokatwatch (2023) Minister overhears protests and puts legal aid committee on hold and Justitia (2023) Timeline: Pre-legislative committee on legal aid and free trial has been postponed again.

<sup>43</sup> Written contribution received from the Ministry of Justice in the context of the country visit to Denmark.

<sup>44</sup> Figure 2, 2023 EU Justice Scoreboard. This category includes all civil and commercial litigious and non-litigious cases, non-litigious land and business registry cases, other registry cases, other non-litigious cases, administrative law cases and other non-criminal cases.

<sup>45</sup> Figure 35, 2023 EU Justice Scoreboard.

<sup>46</sup> Figure 6, 2023 EU Justice Scoreboard.

<sup>47</sup> Figure 11, 2023 EU Justice Scoreboard.

<sup>48</sup> The processing times of the courts have increased significantly in recent years, and the processing times were still long in 2022. In serious criminal cases, the processing times have almost doubled since 2018. While the processing times in jury cases decreased marginally, the processing time for cases with lay judges, which are among the most serious criminal cases, increased from 7.3 months in 2021 to 8.4 months in 2022. National Court Administration (2023), Long processing times continued in 2022.

<sup>49</sup> In ordinary civil cases with main hearing, the average length of proceedings in the district courts increased from 20.6 months in 2021 to 22 months in 2022. In 2018, those types of cases took an average of 16.8 months. National Court Administration (2023), Long processing times continued in 2022.

<sup>50</sup> In Aarhus District Court, an average civil case was suggested to take 28 months to be dealt with and that there are several courts that will be dealing with criminal cases in 2024. Berlingske Tidende (2023), Commentary: You can't come before a judge. The calendar system can't set a date that far in the future.



**The Government has introduced a new prioritisation model of criminal cases, aimed at a more uniform prioritisation.** Until February 2023, a prioritisation of certain criminal cases in Danish courts applied to cases related to violence, weapons, and rape (“VVV cases”)<sup>51</sup>. The Parliament agreed to replace the former prioritising of VVV-cases with cases focused on harm to individuals (“PFK cases”), which include more cases than the VVV-definition e.g. homicide, arson, or robbery<sup>52</sup>. In that context, a contemporary priority model for 2023 has been agreed with the Courts of Denmark, which implies that the courts will prioritise the most serious PFK-cases<sup>53</sup>. The VVV-cases prioritisation was considered by the Danish Bar and Law Society as being to the detriment of other – notably civil – cases<sup>54</sup>. In addition, as reported in the 2022 Rule of Law Report, legislative initiatives to streamline and avoid delays in the handling of criminal cases had been proposed and adopted<sup>55</sup>. However the Danish Institute for Human Rights and Justitia voiced the concern that initiatives aimed at reducing courts’ case processing times should not lead to deterioration of rule of law in the justice system<sup>56</sup>.

## **II. ANTI-CORRUPTION FRAMEWORK**

The Danish anti-corruption system is to a large extent based on general rules on ethics and integrity as well as social norms and public scrutiny. Various authorities are involved in preventing corruption, promoting good administrative practice and compliance with the legal framework. This includes amongst others the National Audit Office. The Employee and Competence Agency and the Prime Minister’s Office have responsibilities with regard to the promotion of integrity among civil servants and ministers. The Ministry of Justice ensures cooperation between national authorities in elaborating anti-corruption measures. The National Special Crime Unit (SCU), functional since January 2022, has both investigative and prosecution competences and the State Prosecutor for Special Crime (SPSCU), among others, supervises SCU’s complex criminal proceedings, and conducts legality control and appeals before the high courts.

**The perception among experts and the business community is that Denmark is one of the least corrupt countries in the world.** In the 2022 Corruption Perceptions Index by Transparency International, Denmark scores 90/100 and ranks 1<sup>st</sup> in the European Union and

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<sup>51</sup> The so-called VVV-cases related to violence, weapons and rape have a priority in the judicial system and need to be dealt with within 30 days. Information received from the Judges Association and Justitia in the context of the country visit to Denmark.

<sup>52</sup> With the political agreement regarding the financing of the Police and the Prosecution Service for the years 2021-2023 the Parliament agreed to replace the former prioritising of VVV-cases. The PFK-definition does not include weapon felonies. To ensure a joint prioritising of PFK-cases across the criminal chain, the Prisons and Probation Service has been prioritising PFK-cases instead of VVV-cases since 2022. Written contribution by the Ministry of Justice in the context of the country visit to Denmark.

<sup>53</sup> Ibid.

<sup>54</sup> Danish judges deal both with civil and criminal cases and thus the prioritisation of specific criminal cases imposed by law had an impact on the handling of civil cases.

<sup>55</sup> For example, by limiting the defendants’ free choice of attorney in criminal cases related to certain types of offences, if their request of attorney would result in a delay of the proceedings. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 6-7 and input from Denmark for the 2023 Rule of Law Report, p. 12.

<sup>56</sup> Contribution from the Danish Human Rights Institute via ENNHRI for the 2023 Rule of Law Report, p. 191 and Justitia (2023), Status Report: Legal Certainty 2022, p. 16.

globally<sup>57</sup>. This perception has been relatively stable over the past five years<sup>58</sup>. The 2023 Special Eurobarometer on Corruption shows that 21% of respondents consider corruption widespread in their country (EU average 70%) and 5% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>59</sup>. As regards businesses, 19% of companies consider that corruption is widespread (EU average 65%) and 7% consider that corruption is a problem when doing business (EU average 35%)<sup>60</sup>. Furthermore, 27% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)<sup>61</sup>, while 51% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)<sup>62</sup>.

**The strategic and institutional framework in the fight against corruption in Denmark remains based mainly on general rules on ethics and integrity.** The Danish authorities consider that the existing anti-corruption system, based on general rules on ethics and integrity, social norms and public scrutiny works well, and does not require a dedicated anti-corruption strategy<sup>63</sup>. Therefore, Denmark still does not have such strategy<sup>64</sup>, nor a specialised agency dealing with anti-corruption issues. Coordination of anti-corruption-related activities is carried out through *ad-hoc* written consultations<sup>65</sup>. While the new Government that took up its duties

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<sup>57</sup> Transparency International, Corruption Perceptions Index 2022, pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>58</sup> In 2018 the score was 88, while, in 2022, the score is 90. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>59</sup> Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

<sup>60</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

<sup>61</sup> Special Eurobarometer 534 on Corruption (2023).

<sup>62</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

<sup>63</sup> Information received in the context of the country visit to Denmark from the Ministry of Justice. As a result, according to the OECD public integrity indicators on the quality of the strategic framework, Denmark is below the OECD average scoring '0' for evidence based, quality of strategy, adequacy of implementation plan, implementation rates, financial sustainability, evaluation practices reaching the OECD average only on consultation in practice. At the same time, the trust in Parliament is above the OECD average (51 out of 100), legislative stability 59 out of 100 and consultation of draft law scores 100 out of 100. OECD (2023), *OECD – Public Integrity Indicators*.

<sup>64</sup> While the existence of a national strategy is not an international legal requirement, specifically in the context of foreign bribery Denmark was recommended to develop a comprehensive national strategy on combating foreign bribery encompassing prevention, detection, awareness-raising, and enforcement, in order to ensure foreign bribery is given appropriate priority. The strategy should incorporate the activities of the public, private and NGO sectors, be based on an assessment of the foreign-bribery risks faced by Danish companies. OECD (2023), *Implementing the OECD Anti-Bribery Convention Phase 4 Report: Denmark*, p. 11.

<sup>65</sup> Information received in the context of the country visit to Denmark from the Ministry of Justice. The Ministry of Justice is responsible for legislation on corruption, guidelines on good behaviour for civil servants and is responsible to answer questions from Parliament in relation to corruption. Also, the Ministry of Justice is to be a focal point in contact with foreign authorities and in general responsible for the enforcement of criminal law legislation, for example bribery and fraud, since the Minister of Justice has the general oversight of the police and prosecutors.

on 15 December 2022 made a political commitment to transparency<sup>66</sup>, no specific new steps in this regard has been taken so far<sup>67</sup>.

**The new national investigative unit responsible for serious crimes is tasked with complex corruption-related cases.** The 2022 reform creating the National Special Crime Unit (SCU)<sup>68</sup> as well as the State Prosecutor for Special Crime Unit (SPSCU) is perceived as being implemented successfully<sup>69</sup>. The law enforcement authorities welcome placing the fight against financial and economic crime structurally closer to services competent to fight organised crime due to tight links between them<sup>70</sup>. Resources available and training for officials are adequate to fulfil the tasks assigned to them<sup>71</sup>.

**General reporting on the handling of corruption-related offences is still lacking.** The authorities underline that the corruption-related cases have remained rare over time<sup>72</sup>. The collected statistics are limited to cases of bribery. The National Special Crime Unit (SCU) and the State Prosecutor for Special Crime Unit (SPSCU), focusing mainly on complex cases and those demanding international co-operation, received one report on bribery in 2022, which is currently being investigated<sup>73</sup>. At the same time, the available data indicate that in 2022 there were 68 judgments on active and passive bribery (a significant increase compared to 8 judgements in 2021)<sup>74</sup>. Concerns were raised on the lack of overall statistics on corruption as, due to the lack of a reporting mechanism, the efficacy of the repressive system remains difficult to evaluate<sup>75</sup>. It is particularly difficult to assess the volume of corruption-related cases handled at the local level as such data is not specifically collected. The issue of monitoring and reporting has also been raised in relation to foreign bribery where the OECD recommended that Denmark put in place proactive media monitoring processes to detect potential cases, as the authorities reportedly did not address the allegations of foreign bribery reported in the media<sup>76</sup>. According to the National Audit Office, risks and challenges related to corruption can potentially derive from lack of transparency and ineffective systems of control<sup>77</sup>.

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<sup>66</sup> Danish Government (2022), Responsibility for Denmark.

<sup>67</sup> Information received in the context of the country visit to Denmark from the Ministry of Justice.

<sup>68</sup> Currently the National Special Crime Unit is composed of 5 investigators, 1 superintendent, 4 prosecutors and 1 administrative assistant. Information received in the context of the country visit to Denmark from SCU and SPSCU.

<sup>69</sup> Information received from Ministry of Justice, SCU and SPSCU in the context of the country visit in Denmark.

<sup>70</sup> Information received in the context of the country visit to Denmark from SCU and SPSCU.

<sup>71</sup> Information received in the context of the country visit to Denmark from the Ministry of Justice.

<sup>72</sup> Information received from the Prosecution Service in the context of the country visit to Denmark.

<sup>73</sup> Information received from the SCU as well as the SPSCU in the context of the country visit to Denmark.

<sup>74</sup> The figures are available only for final judgments regarding bribery cases gathered for complex cases dealt with at the central level. More specifically, there were 33 judgments passed in 2022 (compared to six in 2021) based on the Criminal Code section 122 (active bribery), 35 judgments passed in 2022 (compared to two in 2021) based on Criminal Code section 144 (passive bribery), one judgment passed in 2022 (compared to five in 2021) based on the Criminal Code section 299 (private sector bribery). Input from Denmark for the 2023 Rule of Law Report, p. 16 and written contribution from the Prosecution Service in the context of the country visit to Denmark.

<sup>75</sup> Information received in the context of the country visit to Denmark from Transparency International.

<sup>76</sup> OECD (2023), Implementing the OECD Anti-Bribery Convention Phase 4 Report: Denmark, p. 13.

<sup>77</sup> Written contribution received from the National Audit Office in the context of the country visit to Denmark. The Flash Eurobarometer on Businesses' attitudes towards corruption in the EU shows that 15% of companies in Denmark (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years. Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

**Foreign bribery cases are insufficiently investigated and prosecuted.** There are currently two ongoing cases concerning foreign bribery in relation to Danish companies<sup>78</sup>. Overall, the OECD raised concerns about Denmark’s overall efforts to enforce the foreign bribery offence. In particular, it points to a lack of proactive assessment of foreign bribery allegations brought by other sources which are said to be underexploited<sup>79</sup>. According to the OECD, law enforcement authorities are not using the full range of investigative techniques available or routinely seeking evidence from foreign authorities, and several investigations were terminated prematurely<sup>80</sup>. The corporate liability framework is not being applied comprehensively, in particular in relation to foreign subsidiaries of Danish companies. As no financial investigations are conducted in bribery cases, Denmark’s capacity to confiscate bribes or proceeds of foreign bribery or pursue foreign bribery-related money laundering is negatively impacted<sup>81</sup>. Both Transparency International and OECD raise concerns that enforcement bodies do not have sufficient resources to investigate foreign bribery cases<sup>82</sup>, which is especially problematic in view of Danish companies being vulnerable to foreign bribery<sup>83</sup>. Furthermore, recommendations of the Group of States against Corruption (GRECO) in relation to the legislative framework remain unaddressed<sup>84</sup> and, according to OECD, it is unclear if foreign bribery sanctions are effective, proportionate, and dissuasive<sup>85</sup>.

**Some progress has been achieved on political party financing.** The 2022 Rule of Law Report recommended to Denmark to “adopt new legislation on political party financing that will address the issue of multiple and anonymous donations and introduce sanctions for breaching the rules on the political parties framework”<sup>86</sup>. The new law concerning public financing of political parties was adopted on 30 May and it will enter into force on 1 January

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<sup>78</sup> The first foreign bribery conviction in Denmark was in 2019, which was imposed against a Danish company through a non-trial resolution. At the time, the fine sought was the largest ever by the State Prosecutor for Serious Economic and International Crimes (SØIK) for economic crimes. Two foreign bribery cases are ongoing. In one case, Denmark is jointly investigating with the passive-side country. OECD (2023) Working Group on Bribery, Phase 4 evaluation of Denmark, p. 4, 86.

<sup>79</sup> According to OECD, the main sources of detection are the media monitoring, self-reports, foreign authorities, and international organisations which remain beyond the radar of the Danish authorities. Since the Convention entered into force in Denmark on 4 November 2000, there have been approximately 30 allegations of bribery of foreign public officials implicating Danish companies or citizens. Danish companies have been sanctioned in only two cases. A natural person has never been sanctioned for foreign bribery, and Denmark has never taken a foreign bribery case to trial. Most foreign bribery allegations (23) were either not investigated (8) or Danish authorities terminated the investigation without prosecution (15). Denmark discontinued prosecutions in three cases. OECD (2023) Working Group on Bribery, Phase 4 evaluation of Denmark, p. 9, 11-12.

<sup>80</sup> OECD (2023) Working Group on Bribery, Phase 4 evaluation of Denmark, p. 4.

<sup>81</sup> OECD (2023) Working Group on Bribery, Phase 4 evaluation of Denmark, p. 4-5.

<sup>82</sup> Also, Denmark is classified as ‘limited or no enforcement’ for investigations and cases 2018-2021 which is a decrease in relation to the previous classification for years 2016-2019 when referred to as ‘limited’; Transparency International (2022), Exporting Corruption 2022 Report. OECD (2023), Implementing the OECD Anti-Bribery Convention Phase 4 Report: Denmark, p. 11.

<sup>83</sup> According to OECD, Danish companies are internationally active having exports or investments abroad and may be prone to foreign bribery. OECD (2023), Implementing the OECD Anti-Bribery Convention Phase 4 Report: Denmark, p. 8, 9, 11.

<sup>84</sup> As regards foreign bribery, GRECO reiterates its concern that it has not been made clear beyond any doubt that all forms of “undue advantages” are covered by the relevant bribery offences concerning foreign and international public officials. GRECO Third Evaluation Round – Addendum to the second compliance report on Denmark, p. 4.

<sup>85</sup> OECD (2023), Implementing the OECD Anti-Bribery Convention Phase 4 Report: Denmark, p. 11.

<sup>86</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, pp. 10-11.

2024<sup>87</sup>. The main aims of this reform are to ensure that only political parties that were elected or almost elected receive public party funding and to introduce criminal sanctions for political parties that omit to submit their annual accounts<sup>88</sup>. Following the adoption of that law, the authorities plan to progress also on private party financing, highlighted as a priority area by GRECO<sup>89</sup>, the 2022 Rule of Law Report<sup>90</sup> and the Organisation for Security and Co-operation in Europe (OSCE)<sup>91</sup>. Private party financing was discussed in the Parliament and an initial negotiation meeting between the political parties took place in the beginning of June<sup>92</sup>. The exact scope and content of this initiative is not yet determined<sup>93</sup>. As new legislation on public political party financing has been adopted and the preparations of new legislation on private financing of political parties have started, there has been some progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**There has been no progress achieved to introduce rules on revolving doors for ministers, on lobbying and on asset declarations submitted by persons entrusted with top executive functions.** In the 2022 Rule of Law Report, Denmark was recommended to “introduce rules on ‘revolving doors’ for ministers and on lobbying, and ensure adequate control of asset declarations submitted by persons entrusted with top executive functions”<sup>94</sup>. In the previous years, GRECO issued various recommendations to Denmark to enhance the integrity for ministers and top executive functions<sup>95</sup> as well as to address the lack of regulation regarding lobbying<sup>96</sup> and revolving doors<sup>97</sup>. While the Danish authorities consider that the system works

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<sup>87</sup> Written contribution received from the Ministry of Interior in the context of the country visit to Denmark.

<sup>88</sup> Input received from Denmark to the 2023 Rule of Law Report, p. 14.

<sup>89</sup> GRECO remains concerned by the lack of progress in response to a number of recommendations aimed at enhancing the overall transparency of political financing in Denmark, in particular to introduce a ban on anonymous donations to individual election candidates, to require more transparency as to the value of certain donations and to improve the supervision of political financing (which goes beyond the pure auditing of their accounts). GRECO also recommended to ensure independent and substantial monitoring in respect of the funding of political parties and electoral campaigns. GRECO recommended that yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by flexible sanctions, for example of an administrative nature, which are effective, proportionate and dissuasive. GRECO, Third Evaluation Round, Second Addendum to the Second Compliance Report on Denmark. According to GRECO the Parliament plays a passive role in this regard and the State Audit body which is responsible to Parliament has never checked party accounts, and where the Ministry for Economic Affairs and the Interior (which is not independent as such) only checks the accounts with respect to state funding matters. GRECO Third Evaluation Round – Addendum to the second compliance report on Denmark.

<sup>90</sup> This part of the current rules concern issues raised both by GRECO and 2022 Rule of Law Report recommendation as mentioned above.

<sup>91</sup> OSCE observers monitored the Danish general election that took place on 1 November 2022. The recommendations of the report concern, among others, regulating anonymous donations and the sanctioning mechanisms. Office for Democratic Institutions and Human Rights (2023), Denmark Early General Elections, 1 November 2022, ODIHR Election Expert Team Final Report, p. 17.

<sup>92</sup> Input received from Denmark to the 2023 Rule of Law Report.

<sup>93</sup> Information received from the Ministry of Interior in the context of the country visit to Denmark.

<sup>94</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, pp. 9-10.

<sup>95</sup> According to GRECO declarations on assets submitted by persons entrusted with top executive functions need to be subject to substantive control - GRECO Fifth Evaluation Round – Compliance Report, recommendation vii, pp. 9-10.

<sup>96</sup> According to GRECO, introduction of rules and guidance on lobbying is recommended with regard to contacts between persons entrusted with top executive functions and lobbyists. Overall, GRECO also underlined the need to increase the transparency of contacts and subject matters concerning lobbying of persons entrusted with top executive functions. GRECO Fifth Evaluation Round on Denmark – Compliance Report, pp. 7-8.

<sup>97</sup> GRECO Fifth Evaluation Round – Evaluation Report, p. 8.

well and further strengthening of the rules in question is not necessary<sup>98</sup>, there is no verification and monitoring system in place for integrity risks. GRECO's view that the current framework inadequately addresses integrity risks is shared by a stakeholder<sup>99</sup> and the OECD indicators of accountability of public policy making remain very low<sup>100</sup>. As no specific action has been taken in the areas of revolving doors for ministers, lobbying and asset declarations for persons entrusted with top executives functions, it can be concluded that there has been no progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**The new system on the protection of whistleblowers is in force and guidelines support the implementation of the legal framework .** The Whistleblower Act<sup>101</sup> entered into force on 17 December 2021 and the general external reporting channel was established in the Danish Data Protection Agency<sup>102</sup>. In 2021, three sets of guidelines were issued and addressed to whistleblowers, public authorities and companies<sup>103</sup>. The authorities report that the number of complaints is not high and regular guidance is provided as regards the functioning of the system<sup>104</sup>, even if a need for awareness-raising has been noted<sup>105</sup>.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

The Danish Constitution provides the overall framework for the protection of the freedom of expression. The tasks, organisational structure and rules of procedure of the national media regulatory authority, the Danish Radio and Television Board, are enshrined in law<sup>106</sup>. Secondary legislation also provides safeguards for the independence of the public service broadcasters<sup>107</sup>. There are no specific laws pertaining to media concentration, transparency of media ownership, allocation of state advertising, editorial independence or ownership of media companies. Access to documents is regulated in the Access to Public Administrative Documents Act of 2014<sup>108</sup>.

**The ethical rules for the press are being reviewed and the existing media self-regulatory system continues to be assessed in view of possible future updates.** In Denmark, legislation provides that the content and conduct of mass media shall be in accordance with sound press

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<sup>98</sup> Input received from Denmark for the 2023 Rule of Law Report. According to the Ministry of Justice it is sufficient that the declarations of ministers are published on the website of the Prime Minister's Office and thereby subject to scrutiny by Parliament, the press and the public at large, and ministers bear political responsibility for this information.

<sup>99</sup> Contribution from Transparency International for the 2023 Rule of Law Report.

<sup>100</sup> According to the OECD accountability of public policy making indicators, Denmark remains under the OECD average as regards conflict of interest safeguards in practice, lobbying safeguards in practice (score 1 out of 9) while post-employment integrity for ministers and top officials is not tracked.

<sup>101</sup> Law Nr 1436 from 29 June 2021 on the protection of whistleblowers.

<sup>102</sup> Website of the whistleblower channel in the Danish Data Protection Agency available in English, <https://whistleblower.dk/english>.

<sup>103</sup> Information received from the Ministry of Justice in the context of the country visit to Denmark.

<sup>104</sup> Information received from the Ministry of Justice in the context of the country visit to Denmark.

<sup>105</sup> Contribution received from Transparency International in the context of the country visit to Denmark.

<sup>106</sup> The Radio and Television Broadcasting Act, Executive Order on the Radio and Television Board and the Danish Public Administration Act.

<sup>107</sup> The Radio and Television Broadcasting Act and further regulation in connection with the Act; According to European Parliament's Flash Eurobarometer: News & Media Survey 2022, Denmark is among top 6 Member States where citizens demonstrate the highest trust in public TV and radio stations (incl. online).

<sup>108</sup> Denmark ranks 3<sup>rd</sup> in the 2023 Reporters without Borders World Press Freedom Index compared to 2<sup>nd</sup> in the previous year.

ethics and that relevant complaints can be addressed to the independent Press Council established by law<sup>109</sup>. Since June 2022, a working group composed of representatives of the media industry has been working<sup>110</sup> to update the advisory rules of sound press ethics, which were last revised in 2013<sup>111</sup>. The revision should, among other things, take into account technological developments and create more openness about the working methods of editorial media. In line with the political Media Agreement for 2022-2025<sup>112</sup>, a committee has also been set up under the Ministry of Culture and the Ministry of Justice to examine the future role of the Danish Press Council and a possible creation of a new media ombudsperson to support it, as explained in the 2022 Rule of Law Report<sup>113</sup>. The same committee will look at the possibilities to update the current framework for media liability to fit the digital media reality, including liabilities of influencers over the content that they upload online<sup>114</sup>.

**The independence of the national regulatory authority and public service media have remained stable.** Since the 2022 Rule of Law Report, no regulatory changes have been reported regarding the media regulator - the Danish Radio and Television Board - or the two Danish public service broadcasters, Danmarks Radio (DR), TV 2 DANMARK A/S and the eight regional broadcasters<sup>115</sup>. Committee-level work has, however, been initiated with a view to proposing a new composition of the DR's board of directors, ensuring their professional competences and independence<sup>116</sup>. According to the Radio and Television Broadcasting Act and further regulation in connection with the Act, Danish public service media are organised as independent media undertakings and the State cannot interfere with their programme services or administrative and financial management<sup>117</sup>. The MPM 2023 regards the independence of both the media authority and the public service media to carry low risk scores<sup>118</sup>. Since the 2022 Rule of Law Report, no regulatory changes regarding transparency of media ownership or restrictions to media ownership and concentration have been reported. The MPM 2023 considers the plurality of media providers to constitute a high risk due to a lack of media specific rules to prevent or limit concentration in the media sector<sup>119</sup>.

**No further progress has been made regarding the revision of the Access to Public Administrative Documents Act.** The 2022 Rule of Law Report recommended to Denmark to “continue the process geared at reforming the Access to Public Administrative Documents Act in order to strengthen the right to access documents, in particular by limiting the grounds for rejection of disclosure requests, taking into account the European standards on access to official

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<sup>109</sup> Section 34 of the Media Liability Act – Consolidating Act 2018-12-27 no. 1719.

<sup>110</sup> Danske Medier (2022) Media industry sets up working group on updating press ethics rules following the media agreement.

<sup>111</sup> Pressenaevnet, the Press Ethical Rules.

<sup>112</sup> Ministry of Culture (2022), Media Agreement for 2022-2025; following the formation of the new Government, the committee's work has been re-confirmed in the subsequent Media agreement for 2023-2026. Ministry of Culture (2023) Media Agreement for 2023-2026, p. 15.

<sup>113</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 12.

<sup>114</sup> Ministry of Culture (2022) Minister for Culture appoints Media Responsibility Committee.

<sup>115</sup> Written contribution from the Radio and Television Board for the 2023 Rule of Law Report; Input from Denmark for the 2023 Rule of Law Report, pp. 17-18.

<sup>116</sup> Ministry of Culture (2023) Media Agreement for 2023-2026, p. 8.

<sup>117</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 13.

<sup>118</sup> 2023 Media Pluralism Monitor, country report for Denmark, p. 12 and 22.

<sup>119</sup> 2023 Media Pluralism Monitor, country report for Denmark, p. 16.

documents”. As noted in the 2020, 2021 and 2022 Rule of Law Reports<sup>120</sup>, the Access to Public Administrative Documents Act, which establishes a set of rules for all public administration bodies and Ministries on public access to information and documents, continues to be subject to certain restrictions limiting public and journalistic access to specific governmental files, in particular internal working documents of authorities and documents, which are being exchanged at a time when a minister needs the advice and council of his staff<sup>121</sup>. Early elections delayed progress with regard to negotiations that were mandated by a Parliament resolution in 2021<sup>122</sup>. A public consultation was held in summer 2022 and the newly formed Government has announced its intention to establish an expert committee to prepare a proposal<sup>123</sup>, but there is not yet any mandate or timeline publicly available. Heads of associations representing Danish media companies and journalists have called upon politicians to ensure more transparency, as access to information continues to be restricted in relation to the operation of the administration<sup>124</sup>. As no concrete steps have been taken at this stage to reform the Access to Public Administrative Documents Act, no progress can be reported on the implementation of the recommendation made in the 2022 Rule of Law Report. The Parliamentary Ombudsperson notes that there have been a number of complaints from journalists regarding the long processing time of requests for access to documents held particularly by the Ministry of Health<sup>125</sup>.

**The framework for the protection of journalists remains strong.** Stakeholders consider the publication of the Danish national action plan on the safety of journalists mentioned in the 2022 Rule of Law Report<sup>126</sup> to be an important commitment from the state<sup>127</sup>. Since the 2022 Rule of Law Report, the Council of Europe’s Platform to promote the protection of journalism and safety of journalism did not publish any alerts concerning Denmark<sup>128</sup>. No strategic lawsuits against public participation cases have been reported either<sup>129</sup>. Challenges for journalists are particularly linked to budgetary cuts in local and regional papers<sup>130</sup>. To address this, journalists have called for greater support from the Government in the renegotiated Media Agreement<sup>131</sup>.

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<sup>120</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 10; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 10; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 13-14.

<sup>121</sup> Sections 19 to 33 and Section 35 of the Access to Public Administrative Documents Act.

<sup>122</sup> Danish Parliament (2021), Resolution on the convening of negotiations on the Danish Public Access Act; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 10.

<sup>123</sup> Input from Denmark for the 2023 Rule of Law Report, p. 19.

<sup>124</sup> SN (2022) Openness is your only option to keep those in power at bay; Information received from the Danish Media Association and the Danish Union of Journalists in the context of the country visit to Denmark.

<sup>125</sup> Parliamentary Ombudsman (2023), Annual Report 2022, p. 5-6.

<sup>126</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 14.

<sup>127</sup> Only a few reports of harassment and threats were registered since the publication of the action plan. Information received from the Danish Media Association and the Danish Union of Journalists in the context of the country visit to Denmark.

<sup>128</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists.

<sup>129</sup> Input from The European Federation of Journalists for the 2023 Rule of Law Report, p. 23; Information received from the Ministry of Justice, the Danish Union of Journalists, the Danish Press Council and the Danish Media Association in the context of the 2023 country visit to Denmark.

<sup>130</sup> Information received from the Danish Media Association and the Danish Union of Journalists in the context of the country visit to Denmark.

<sup>131</sup> Danish Union of Journalists (2022) Cuts cost many DJ members their jobs.



At the same time, the MPM 2023 notes that journalists benefit from the protection of strong unions and social security net<sup>132</sup>.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Denmark has a unicameral, parliamentary system of government, in which both the Government and members of Parliament can propose legislation, although draft bills are in general presented by the Government. In the absence of a constitutional court, ex-post constitutionality review can be carried out by all courts in concrete cases<sup>133</sup>. The Parliamentary Ombudsperson provides oversight on decisions by public authorities and the Danish Institute for Human Rights monitors the respect of fundamental rights.

**The working procedures of the Parliament continue to be underpinned by a strong consensual culture and the current Government has committed to follow-up on a political agreement to strengthen Parliament's scrutiny of the Government.** While Denmark has a tradition of minority Governments, safeguards exist also for the opposition minority<sup>134</sup>. The Danish political tradition has been based on seeking broad political consensus and the governing coalition has committed to continue doing so and to strengthen Parliament's control of the Government<sup>135</sup>. As noted in the 2021 Rule of Law Report, a report by the Standing Orders Committee from March 2021<sup>136</sup> proposed a number of guidelines for the use of fast-track proceedings and highlighted that draft legislation should contain a sunset clause<sup>137</sup>. For the period from October 2021 until October 2022<sup>138</sup>, 228 proposals were submitted to Parliament, 26 of which were fast-tracked. During the ongoing Parliamentary session 2022-2023, 12 legislative proposals passed through fast-track proceedings, with four of these having a sunset clause and a further three being temporary by their very nature<sup>139</sup>. The Government

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<sup>132</sup> 2023 Media Pluralism Monitor, country report for Denmark, p. 12.

<sup>133</sup> This happens rarely and there has only been one case in which the Supreme Court decided to disapply a law for being incompatible with the Constitution that is the 1999, Tvind case, U 1999.841 H.

<sup>134</sup> The Danish parliamentary system provides the minority with specific safeguards, such as: a) one third of the members of Parliament (i.e. 60 members) can demand a referendum on a passed bill before it can become law, b) 72 members of Parliament can demand the postponement of the third reading of a bill until at least 12 weekdays after the second reading, c) one third of the Parliament's Scrutiny Committee can demand a pre-investigation in that committee, or d) 72 members of Parliament may demand that the Speaker summons Parliament for a sitting. Written contribution from the Danish Parliament Standing Orders Committee in the context of the country visit.

<sup>135</sup> Danish Government (2022), Responsibility for Denmark, p. 48.

<sup>136</sup> Standing Orders Committee (2021), Report concerning urgent consideration of government draft laws.

<sup>137</sup> Fast-track procedures are defined as legislative proposals whose processing time from the day after submission to the third reading in Parliament is less than 30 days. The draft legislation should contain a sunset clause, leading to an act ceasing to apply, unless Parliament before that date has adopted a revision of the relevant provision. Nevertheless, there are exemptions to the use of the sunset clause, for example it is not necessary where the effect of the legislation according to its content is limited or specific well-founded circumstances require an absence of a sunset clause. Furthermore, if there has been no consultation due to extraordinary circumstances, Parliament needs to be provided with an explanation of the relevant circumstances. Input from Denmark for the 2023 Rule of Law Report, p. 21 and the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 15.

<sup>138</sup> The sessional year of the Parliament runs from the first Tuesday of October until the first Tuesday of October the following year.

<sup>139</sup> Situation as on 20 April 2023. According to the Ministry of Justice, the large number of legislative proposals being fast-tracked during the Parliamentary session 2022-2023 was due to the parliamentary situation following the general election of 1 November 2022 and the formation of the new Government on 15 December 2022. Written contribution from the Ministry of Justice in the context of the country visit.

coalition announced in December 2022 that it will provide for fast-track legislative proposals to come with a sunset clause of six months, if it would serve a legitimate aim, so that such proposals would be re-examined under normal conditions if the law was to remain in force<sup>140</sup>. In addition, in October 2022, the previous Government announced an Agreement to strengthen Parliament's scrutiny of the Government and focus on trust in the political system<sup>141</sup>, which also included the setting up of a Democracy Committee<sup>142</sup>. The Democracy Committee should examine the division of responsibilities between ministers, the relationship between ministers and civil servants, the role of special advisers and the framework for the work of the Government and the civil service<sup>143</sup>. Following the elections in November 2022, the new Government coalition committed to follow-up on the Agreement to strengthen Parliament's scrutiny of the Government<sup>144</sup>.

**The Parliamentary Ombudsman and the Danish Institute for Human Rights have continued to carry out their mission independently and with adequate resources.** The Parliamentary Ombudsman and the Institute for Human Rights, accredited with an A-Status<sup>145</sup>, continue to have adequate resources and have not experienced any challenges to their independence<sup>146</sup>. In terms of complaints received by the Parliamentary Ombudsman in 2022<sup>147</sup>,

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<sup>140</sup> Danish Government (2022), Responsibility for Denmark, p. 49 and input from Denmark for the 2023 Rule of Law Report, p. 21.

<sup>141</sup> The agreement foresaw the setting up of a Democracy committee, an obligation for the Government to consult the Parliament on decisions of an extraordinary nature in crisis situations, and a new dialogue with the citizens to restore confidence in the political system. The background have been public debates relating to a ruling by the Court of Impeachment relating to the accountability of a former minister in December 2021, the second report of the so-called Tibet Commission in March 2022 and the findings of the commission of scrutiny on the culling of mink in June 2022. The agreement was concluded between the Government, the Socialist People's Party (Socialistisk Folkeparti), the Unity List party (Enhedslisten), Danish Social Liberal Party (Radikale Venstre), and the Alternative (Alternativet). Ministry of Justice (2022), Agreement on reviewing the political system and strengthening Parliament's scrutiny of the government and the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 16 -17.

<sup>142</sup> The Democracy Committee was one of the measures announced already on 1 July 2022 in a press conference following the findings of the commission of scrutiny on the culling of mink. Prime Minister's Office (2022), Press meeting on Friday, 1 July 2022.

<sup>143</sup> According to a mandate adopted in October 2022, the work would notably include: i) the organisation of the Government and its work in Government committees, ii) organisation and conduct of work across ministries and authorities in central government, iii) practices and framework for the work of the special advisers, iv) participation of special advisers in Government committees and related work, v) framework for the civil service's tasks in advising and assisting ministers, vi) civil service's duty of obedience, in particular in the light of its duties of legality, truthfulness and professionalism, including the duty to inform and the right and duty to speak out, vii) civil service's assistance to ministers' use of social media, or viii) assistance by the civil service to ministers' appearances in political party activities. Ministry of Justice (2022), Mandate for the Committee on the organisation and framework for the work of Government and central administration.

<sup>144</sup> Danish Government (2022), Responsibility for Denmark, p. 49.

<sup>145</sup> The Danish Institute for Human Rights is the independent National Human Rights Institution accredited with A-Status by the Global Alliance of National Human Rights Institutions (GANHRI). Contribution from the Danish Human Rights Institute via ENNHRI for the 2023 Rule of Law Report, p. 191.

<sup>146</sup> The Parliament allocated approximately EUR 12.8 million (DKK 95.3 million) in annual funding of the Ombudsman institution in 2022. Input from Denmark for the 2023 Rule of Law report, p. 23. Information received from the Parliamentary Ombudsman and the Danish Human Rights Institute in the context of the country visit.

<sup>147</sup> According to the Ombudsman's data for 2022, the institution handled a total of 5 258 cases of which about 15% led to an investigation (787 cases, of which 217 full investigations and 570 shortened investigations). Out of the 217 full investigations, 126 have led to criticism or recommendations. In 2022, the Parliamentary Ombudsman opened 5 072 cases, which is lower by comparison to 5 643 cases in 2021. Parliamentary

most complaints concerned measures related to children and family matters, social benefits and social services, environment and construction, and access to documents held by public authorities<sup>148</sup>. The Parliamentary Ombudsman's office and the Danish Institute for Human Rights operate without experiencing any obstruction or refusal to cooperate by public authorities and their recommendations are being regularly followed-up on<sup>149</sup>.

**The civic space in Denmark remains open with a robust framework for the involvement of civil society organisations.** The civic space in Denmark continues to be considered as open<sup>150</sup> and provides for robust mechanisms for the involvement of civil society organisations<sup>151</sup>. As a general rule, the operating space for civil society organisations is considered safe and threats linked to the activities of civil society organisations are rarely observed<sup>152</sup>. Nevertheless, the Danish Institute for Human Rights has made numerous recommendations focused on the risks to the civic space posed by advanced surveillance technologies used for police investigations or for intelligence services, possibly deterring civil society actors from fully using their freedom of expression<sup>153</sup>. Some civil society umbrella organisations have observed administrative obstacles in accessing financial services<sup>154</sup> and, in September 2022, the Ministry of Culture published a survey report based on a mapping exercise of bureaucratic burdens on voluntary organisations<sup>155</sup>. While the overall framework for stakeholder consultation is generally considered as strong, the fact of occasionally having short consultation periods<sup>156</sup> was raised by some stakeholders<sup>157</sup>. The Government coalition

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Ombudsman (2023), Annual report 2022, p. 15 and 78, and information received from the Parliamentary Ombudsman in the context of the country visit.

<sup>148</sup> Parliamentary Ombudsman (2023), Annual report 2022, p. 13-19.

<sup>149</sup> Information received from the Parliamentary Ombudsman and the Danish Human Rights Institute in the context of the country visit to Denmark.

<sup>150</sup> Rating given by CIVICUS, ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>151</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark, p. 16.

<sup>152</sup> Information received from the Danish Human Rights Institute, Nyt Europa, Globalt Fokus and Dansk Ungdoms Faellesraad in the context of the country visit.

<sup>153</sup> Contribution from the Danish Human Rights Institute via ENNHRI for the 2023 Rule of Law Report, p. 193-195.

<sup>154</sup> This relates to requirements for associations in opening and operating bank accounts due to the fight against financial crime, money laundering and terrorist financing, which had led to increased and stricter requirements in recent years. Information received from the Dansk Ungdoms Faellesraad in the context of the country visit. See also Various Danish umbrella associations (2021), Proposals to facilitate burdens on associations.

<sup>155</sup> The objective of the survey (2 470 respondents replying to the entire questionnaire) was to map how volunteers and association workers experience regulations, procedures and other types of requirements that taking up time and effort in the daily life of the association. The survey was designed in cooperation with a number of main organisations of associations (The Danish Sports Federation, DGI, Danish Corporate Sport, Danish Youth Council and Danish Folkeoplysnings Samråd). Ministry of Culture (2022), Report - Summary of results from questionnaire survey on Bureaucratic Burdens of Associations.

<sup>156</sup> In the period 13 July 2022 to 13 April 2023, there were 105 public consultations on bills. Out of those 105 public consultations, 54 were shorter than four weeks. Out of these 54 bills, 40 legislative proposals were subject to a consultation period shorter than 21 days, and 25 proposals were subject to a consultation period shorter than 14 days. Written contribution received from the Ministry of Justice in the context of the country visit to Denmark.

<sup>157</sup> The frequency of shorter consultation periods experienced by stakeholders may also vary depending on the specific area in which they are active. Information received from the Danish Human Rights Institute, Nyt Europa, Globalt Fokus and Dansk Ungdoms Faellesraad in the context of the country visit.

announced that they will focus on ensuring the observance of the indicative consultation period of four weeks<sup>158</sup>.

**On 1 January 2023, Denmark had three leading judgments of the European Court of Human Rights pending implementation, the same number as the previous year<sup>159</sup>.** At that time, Denmark's rate of leading judgments from the past 10 years that remained pending was at 60% (the same as the previous year) and the average time that the judgments had been pending implementation was 1 year and 6 months (compared to 6 months in 2022)<sup>160</sup>. On 15 June 2023, the number of leading judgments pending implementation remains three<sup>161</sup>.

**The awareness of a rule of law culture is actively being promoted.** The Danish Court Administration operates a learning website with digital teaching courses<sup>162</sup>. The website features a mixture of interactive content aimed to be of relevance to young people's everyday life<sup>163</sup>. While it is primarily aimed at pupils, students, and teachers, it is available for all citizens to explore and learn more about the court system<sup>164</sup>. In addition, the rule of law is regularly debated at the annual Democratic Festival of Denmark, a platform for democratic dialogue between civil society, politicians, business, media, universities, and citizens<sup>165</sup>. At that festival, the National Court Administration prepared a broad debate and interaction between members of the public, decision makers and judges, including a mock trial and debates on data ethics and the protection of the citizens' data<sup>166</sup>.

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<sup>158</sup> Danish Government (2022), Responsibility for Denmark, p. 48.

<sup>159</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>160</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 3.

<sup>161</sup> Data according to the online database of the Council of Europe (HUDOC-EXEC).

<sup>162</sup> [www.kenddinret.dk](http://www.kenddinret.dk).

<sup>163</sup> Input from Denmark for the 2023 Rule of Law Report, p. 28.

<sup>164</sup> Input from Denmark for the 2023 Rule of Law Report, p. 28.

<sup>165</sup> The *Folkemødet* festival features more than 2 000 political events by 650 different organisations. It is considered an important democratic event in Denmark for informal meetings and dialogue between decision makers and citizens. More than 50 000 citizens, parliamentarians, NGOs, business representatives and grassroots organisations met up and exchanged view on the Danish society during the four-day festival in June 2022. At that festival, the National Court Administration prepared a broad debate and interaction between members of the public, decision makers and judges, including a mock trial and debates on data ethics and the protection of the citizens' data. Input from Denmark for the 2023 Rule of Law Report, p. 28-29.

<sup>166</sup> Input from Denmark for the 2023 Rule of Law Report, p. 28-29.

## Annex I: List of sources in alphabetical order\*

\* The list of contributions received in the context of the consultation for the 2023 Rule of Law report can be found at [https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation\\_en](https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation_en).

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## **Annex II: Country visit to Denmark**

The Commission services held virtual meetings in February 2023 with:

- Danish Bar and Law Society
- Danish Media Association
- Danish Union of Journalists
- Danish Press Council
- Danish Institute for Human Rights
- Dansk Ungdoms Fællesraad
- Employee and Competence Agency
- Globalt Fokus
- Judges Association
- Justitia
- Ministry of Business
- Ministry of Culture
- Ministry of Justice
- National Audit Office
- National Court Administration
- Nyt Europa
- Parliamentary Ombudsman
- Prosecution Service, including the National Special Crime Unit and the State Prosecutor for Special Crime Unit
- Standing Orders Committee of the Parliament
- Supreme Court
- Transparency International Denmark

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

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Planned Parenthood Federation European Network

- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU