



KNAB

Country Profile Denmark

Raising the Institutional and Professional Capacity of the Corruption Prevention
and Combating Bureau

8 June 2006

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1. General information on the national legal system

Denmark is a constitutional monarchy, consisting of Denmark, Greenland and the Faroe Islands. There is no single unified judicial system, and only Denmark proper is a Member of the European Union¹.

The Danish legal system adheres to the civil law tradition. Legal principles are organised into a number of codes – many of which were created as a collaborative Scandinavian effort. This is the case, for instance, for much of the commercial legislation².

According to the Danish tradition of civil law, written legislation is the most important legal source. Court decisions are also considered important sources of law, but courts are not required to follow previous precedence even if it originates from a court placed higher in the judiciary system. The Danish court system is inspired by the traditions of continental Europe, and especially Germany.

The administration of justice in Denmark is mainly regulated by the Administration of Justice Act³. There is a one-instance appeal system in Denmark, i.e., decisions from the county courts may be appealed to the high courts, and decisions from the high courts may be appealed to the Supreme Court. Since a decision, normally, may be appealed only once County court cases rarely reach Supreme Court level, though this may be the case if the independent Board of Appeals grants a leave of appeal.

2. Sale and Lease of public real estate

Generally speaking, most of the land housing governmental agencies and other public buildings or facilities (including a number of castles) are state owned. Large parts of the Danish forests are also state-owned. The same pattern exists on the local level, where the municipalities, typically, own the ground housing the municipal buildings.

The tables below show the distribution of real estate in Denmark, between the public and private sector:

¹ Denmark has been a member of the European Community since 1 January 1973.

² Nordic Council, www.norden.org

³ Bekendtgørelse nr 910 af 27/09/2005 af lov om rettens pleje, http://www.retsinfo.dk/_LINK_0/0&ACCN/A20050091029

Table 1 – the distribution of property between the public and private sector arranged after the size of the given properties

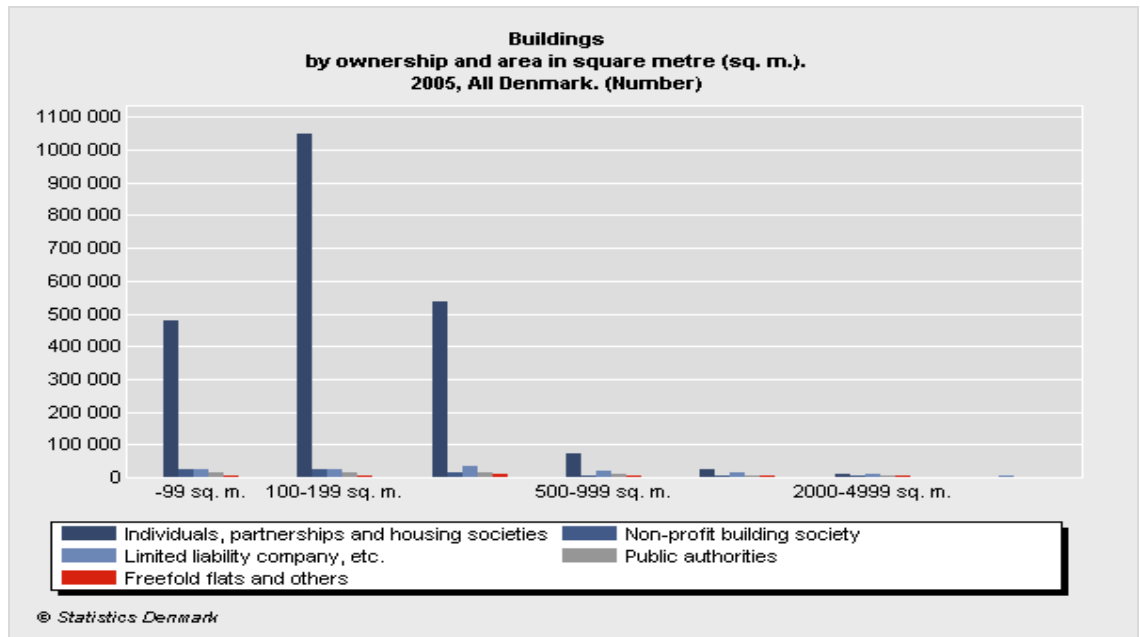
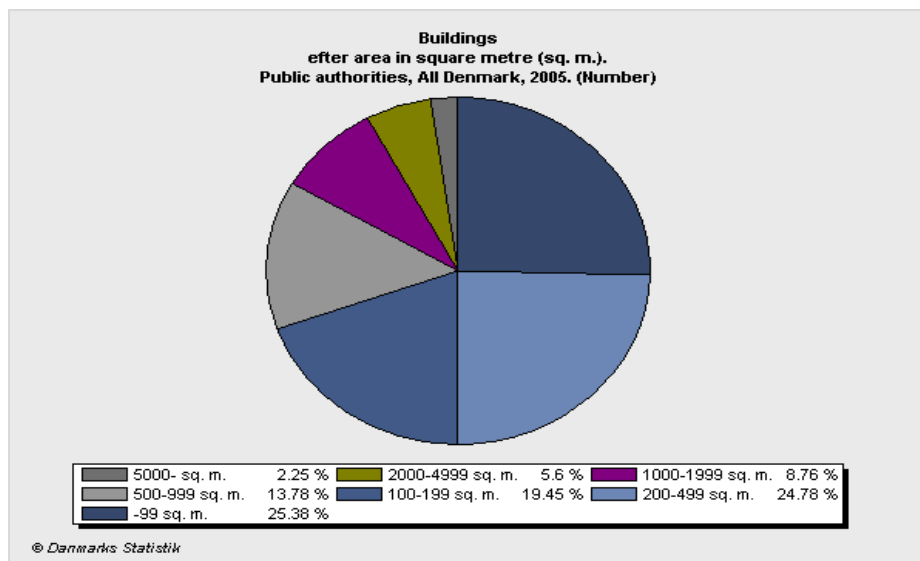


Table 2 – the distribution of public property shown with size and relative percentage



2.1 **Sale and lease of state-owned real estate**

The sale of state-owned real estate is regulated by circular letter⁴ no. 158 of 13 December 2002 from the Ministry of Finance. The circular letter set up a number of mechanisms to ensure that sales of state-owned real estate are conducted with a minimal risk of corruption.

Among other things, it might be noted that the circular letter requires that all state-owned real estate are sold through a public tendering process, where all interested parties are requested to submit their closed bids through advertisement in both national and local papers. Exception to this rule may only be made if it is approved by the Parliamentary Finance Committee, where all parties in the parliament have a representative.

The agency selling the real estate, must write tendering documents containing information about the given real estate and the rules applicable to the sale including the deadline for the submission of the bids. Under the circular letter, all participants in the contest may participate in the opening of the bids and they are entitled to hear the amount of other bids submitted.

It is expressly stated in the circular letter that the EC State-Aid rules must be adhered to.

The selling agency may use a real estate agent to handle the process.

The lease of public real estate is not regulated in a specific act.

2.2 **Sale and lease of municipally owned real estate**

The sale of real estate at the local level is governed by Article 68 of the Local Government Act of 31 May 1968 and administrative order and Administrative Order no. 472 of 20 June 1991 on Sale of Municipal Property, which has been issued by the Ministry of the Interior pursuant to a delegation contained in Article 68.

Article 68 of the Local Government contains the general requirement that municipal real estate may only be sold in public tendering processes. The Administrative Order contains the actual requirements to the sales process including five very limited exceptions to the general requirement of public tendering⁵.

⁴ Circular letters are – in Denmark - binding for other ministries and agencies at state level

⁵ These include, for instance, sales to the state

Generally speaking, the sales process of the administrative order is somewhat less burdensome than the similar process for state-owned real estate. While the deadline for bids must still be fixed, the announcement may be limited to local newspapers and the municipality is free to choose whether it will sell to the best market price or the economically most advantageous bid. However, the most economically advantageous bid may only be chosen if it has been declared in the tender documents by the municipality in the announcement of the sale. This means that the municipalities may include objective municipal "interests" in the assessment of the most advantageous bid.

The question of whether an objective municipal "interest" is indeed present in a given sale is subjected to the authority of the so-called supervisory councils set up for each county. Decisions from the supervisory councils are binding for the municipalities. It should be noted that the supervisory councils conducts a very thorough examination of whether a municipal "interest" is present.

Lease of municipal owned real estate (and physical property) may only be done by the municipalities if a valid "municipal interest" exists, which may be checked by the supervisory councils.

It is not expressly stated in the administrative order, but is clear that the EC State-Aid rules must be adhered to.

2.3 **Penal rules pertaining to corruption**

The following list contains the offences under the Danish penal code that will most often be relevant in relation to corruption.

- Participation in specially planned or extensive crime (Article 81 (1) of the Danish penal code (the participation in planned or extensive crime is not a crime in it self under Article 81, but is instead considered an aggravating circumstance for the sentencing under other crimes)
- Payment of bribe in public service or elective office (Article 122 max. punishment 3 years imprisonment)
- Accepting bribe in public service or elective office (Article 144 max punishment 6 years imprisonment)
- Requirement of tax, fees or charges for private gains in public service or elective office not duly owed (Article 145 max punishment 6 years imprisonment)
- Revelation of confidential information (Article 152 max punishment 6 months. The punishment may increase to 2 years imprisonment if the revelation was done for private gain).

- Embezzlement (Article 278 max punishment 1 year and 6 months. The punishment may, however, rise to 8 years in aggravated circumstances)
- Fraud (article 279. max punishment 1 year and 6 months. The punishment may, however, rise to 8 years in aggravated circumstances)
- Criminal breach of trust (Article 280 max. punishment 1 year and 6 months. The punishment may, however, rise to 8 years in aggravated circumstances)⁶.
- Bribe in private legal relationships (Article 299. max punishment 1 year and 6 months imprisonment)
- Fraud with EC funding (Article 289A max. punishment 4 years imprisonment)
- Money laundering (Article 290 max. punishment 6 years imprisonment)

2.4 **Squandering**

The issues of squandering are not addressed by specific provisions in the Danish penal code, or other Danish legislation for that matter. However, misuse or overspending of public funds is a punishable offence in severe cases, normally treated as breach of trust.

The press (and Danish public) has a quite extensive access to public records under the disclosure of public information act. This includes access to enclosures documenting public spending. Most squandering case is revealed through the journalistic efforts of the press. Typically, the offenders will be prosecuted afterwards. These cases vary from harmless overspending (hotels etc.) on professional study tours abroad to more serious and systematic squandering.

In an ongoing case, a (former) Danish mayor of Farum (Danish municipality north of Copenhagen) has been charged with criminal breach of trust for a – as it turns out – quite hefty overspending.

2.5 **Alienation**

Denmark does not have specific laws or articles addressing the question of alienation. Alienation would under Danish law be treated much like squandering, as a criminal offence, if a case was to appear before the courts.

⁶ In an ongoing case, a former mayor of a Danish municipality has been charged with a criminal breach of trust. The case is described under section 3.2 below.

3. Procurement related issues

The procurement Directives have been implemented in Denmark by reference. All, the National Danish law stipulates is that the EC Procurement Directives must be followed by contracting authorities from Denmark.

3.1 Liability for public employees

Denmark does not have a specific code covering criminal nor administrative liability in procurement.

Criminal liability will be applied using the "general" articles of the penal code⁷.

Similarly, administrative liability will be applied using the normal provisions of the public administrative law; sanctions will vary from warnings to summary dismissal the later being used in practice if a public employee shows gross negligence handling a procurement process.

3.2 The complaint mechanisms / enforcement of procurement rules

If a company in Denmark feels wrongfully passed over in a public procurement procedure, the company has the choice to take a complaint either directly to the Complaints Board or to the ordinary courts ("legal proceedings"), or raise the matter in a less formal manner with the Danish Competition Authority ("informal problem solving").

The Complaints Board for Public Procurement is a specialised administrative board, which has been set up by law to act as review body as required by the two Remedies Directives. It functions as a quasi-judicial administrative body. Its function is to hear complaints and settle disputes arising from alleged violations of EU rules on public procurement.

Appeal of decisions made by the Complaints Board lies to the ordinary courts.

Bringing a complaint about an alleged violation of EU procurement rules before the Complaints Board is an option. Alternatively, such a complaint can be taken directly before the ordinary courts or since 1996 also before the Danish Competition Authority. Whilst there is no precedent for using the first alternative the second alternative is used fairly often.

A few decisions by the Board, however, have subsequently been brought before the courts

The Complaints Board is an independent administrative board for the hearing of complaints concerning violation of the EU rules for the award of public contracts. The competence of the Board relates both to the public procurement directives and the relevant rules of the Treaty on non-discrimination and the free movement of goods and services.

⁷ See section 2.3 above

The Complaints Board only acts upon the submission of a complaint, i.e. a concrete case. The Board is thus not empowered to give legal opinions on an abstract basis.

A complaint is submitted to the Complaints Board for hearing of the case at a charge of DKK 4,000 (corresponding to around € 500).

In practice, the Complaints Board deals with a case in much the same way as a court of law does. The Board may, however, address problems even though they have not been included in a complaint. In fact, more often than not, the Complaint Board finds and addresses a number of errors not lodged in the complaint.

It takes on average a period of 5 to 6 months for the Complaints Board to decide on a complaint brought before it.

According to the Danish legislation implementing the two Remedies Directives, the power of the Complaints Board are the following: the Board can either reject a case, e.g. if it falls outside its competence, or go into the merits of it, in part or in whole. In the latter case, the Board can 1) annul unlawful decisions, 2) impose interim measures, in which case the contract award procedures will be suspended, or 3) impose upon the contracting authority/entity to comply with the rules (legalise its actions). However, the Complaints Board does not have the power to repudiate a contract that has been concluded.

Contracting authorities/entities are liable to punishment if the procurement rules are violated. Moreover, failure on their part to comply with a prohibition or enforcement notice, wilfully or by gross negligence, issued by the Complaints Board is punishable by a fine. For criminal sanctions to be initiated the contracting entity must be notified to the prosecution service. Criminal proceedings have never been instituted by the prosecution against a public contracting authority or entity for violation of the procurement rules.

The Complaints Board can also deal with a subsequent claim for damages against a contracting entity by the company incurring a loss as a consequence of a violation of the procurement rules by a contracting authority/entity. In several cases the Board has imposed contracting authorities to pay substantially damages to companies which have suffered a loss.

Though possible, complaints regarding violations of the procurement rules have, as mentioned above, not been brought before the ordinary courts instead of the Complaints Board for first trial as far as we know.

3.3 **Thresholds for application of procurement rules**

The Danish procurement legislation stipulates that the EC Procurement Directives must be followed by the contracting authorities in Denmark. This means, naturally, that the Danish thresholds are the same as the thresholds of the Directives. The Ministry of Finance has, however, issued a circular letter of 1 March 1994 that requires state intuitions to follow the procurement Directives for purchases above DKK 500.000 (app. 67000 €).

Beneath the thresholds, contracting authorities are obliged to follow the general procurement principles of the Directives (namely to ensure adequate competition, transparency and equal treatment).

The Danish Competition agency has issued a quite voluminous guideline on the interpretation of the new procurement Directives. The guideline specifically states that the general principles of the Directives must be followed by contracting authorities, even for purchases beneath the thresholds.

It is, in our experience, generally accepted among Danish contracting authorities that the procurement principles must be adhered to in all procurement.

3.4 **Framework contracts in procurement**

Framework contracts are quite extensively used in Demark. The use of framework contracts are, including the award under a specific contract is subject to the authority of the Complaint Board.

There is a central public procurement body, SKI which arranges framework contracts, which can be used by all public authorities in Denmark. However, the individual public authority is free to arrange individual framework agreements.

The total procurement through national framework contracts (SKI) is approximately 0.5 billion Euro per year. Figures for regional and local level are unknown.