



DENMARK: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

MAY 2015

This report, submitted by Denmark provides information on the progress made by Denmark in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 12 May 2015.

The Phase 3 report evaluated Denmark's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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SUMMARY AND CONCLUSIONS OF THE WORKING GROUP ON BRIBERY

Summary of Findings

1. In March 2015, Denmark presented a Written Follow-Up Report on the Recommendations and Follow-Up Issues described in the Working Group on Bribery's Phase 3 Report dated March 2013. Overall, the Working Group considered that Denmark has partially implemented most of its Phase 3 recommendations. However, concerns remain over Denmark's enforcement of the foreign bribery offence. Of the three investigations on-going at the time of the Phase 3 Report, one has been terminated due to insufficient evidence. A second is under investigation and a third has resulted in charges (i.e. suspects have been notified of the allegations during a police interrogation). The Phase 3 Report identified several cases that the Public Prosecutor for Serious Economic and International Crime (SØIK) had failed to thoroughly investigate. Since Phase 3, SØIK has not re-opened these cases. Of greater concern is that Denmark has yet to investigate widely publicised foreign bribery allegations involving major Danish companies that have surfaced since Phase 3.

2. Regarding the small facilitation payments defence, Denmark's Director of Public Prosecutions (DPP) issued guidelines in February 2014 that bind only prosecutors and police. The 2007 Ministry of Justice (MOJ) Booklet is being revised and pending publication. Furthermore, the guidelines and Booklet (when published) do not have the force of law and cannot override the facilitation payments defence defined in the *travaux préparatoires* of the Criminal Code (CC). Recommendation 1(a) is thus not implemented. The MOJ intends to use the revised Booklet to send a co-ordinated and consistent message on the facilitation payments defence to the private sector. No measures have been taken with regard to other government publications that address facilitation payments. Denmark also has not reviewed its policy on facilitation payments. Recommendation 1(b) is only partially implemented.

3. Regarding corporate liability, the Phase 3 Report raised substantial concerns that prosecutorial guidelines reduced the basis for imposing corporate liability. Denmark plans to issue new guidelines but these have yet to materialise. Since Phase 3, one legal person has been investigated for foreign bribery. Recommendation 2(a) is partially implemented while recommendation 2(b) is not implemented.

4. A positive development is an increase in the maximum sanctions against natural persons for foreign bribery from three to six years. This development also increases the statute of limitations for the offence to ten years, broadens the basis for extraditing Danish nationals, and allows the use of special investigative techniques in foreign bribery investigations. SØIK has hired former accountants, bank employees and IT experts that are available to assist in foreign bribery investigations. However, SØIK has not increased the number of prosecutors or investigators. Denmark has not trained SØIK and other law enforcement officials on investigating foreign bribery, or provided guidance to investigators and prosecutors on the definition of foreign public officials. Recommendations 3(f) and 5(a) are thus fully implemented while recommendation 3(g) is partially implemented.

5. Conversely, Denmark did not increase the maximum sentence for false accounting offences in Sections 296(1)(2) and 302 CC. Denmark raised a new argument that false accounting is covered by two other offences: attempted foreign bribery and hiding proceeds of crime. However, these two offences do not cover all types of misconduct described in Article 8(1) of the Convention (though Denmark disagrees with this view). Recommendation 5(b) is thus not implemented.

6. With regard to investigations and prosecutions, Denmark reviewed its overall approach to enforcement and created a specialised unit for corruption and foreign bribery cases within SØIK. Recommendation 3(a) is fully implemented. DPP guidelines state that factors in Article 5 of the

Convention must not influence foreign bribery cases. Recommendation 3(e) is fully implemented, though additional measures can still be taken to remind the Minister of Justice of Article 5. Denmark has not taken steps to ensure that local law enforcement authorities refer all foreign bribery cases to SØIK. Recommendation 3(b) is thus not implemented. Similarly, no steps have been taken to establish a clear framework for settling cases. As for the transparency of settlements, a 2014 legislative amendment allows the public to request penalty notices issued to a company under a settlement. However, the public is not informed of settlements so as to allow it to request penalty notices. Furthermore, the 2014 amendment only affects settlements with legal and not natural persons. Recommendation 3(c) is only partially implemented.

7. There are additional concerns about actual foreign bribery enforcement despite some positive policy developments. SØIK adopted new policies to pursue mutual legal assistance (MLA) in foreign bribery cases more proactively, and to pursue remaining offenders after a settlement with some offenders. SØIK also made some efforts to advance the foreign bribery investigations that were on-going at the time of the Phase 3 Report and to co-ordinate with foreign law enforcement authorities. However, the media widely reported in 2013 and 2014 three foreign bribery allegations that implicated major Danish companies. The SØIK had no knowledge of these allegations and thus did not open investigations, which causes the Working Group significant concerns. Recommendation 3(d) is only partially implemented.

8. With regard to jurisdiction, the 2014 DPP guidelines state that Sections 8(v) and 9(2) CC provide jurisdiction to prosecute all extraterritorial foreign bribery cases that fall within the Convention. Denmark has not amended its legislation and the DPP guidelines do not bind the courts. Recommendation 4(a) is only partially implemented. Section 8(v) CC, which Denmark raised only after the Phase 3 on-site visit, will need to be further considered in Denmark's Phase 4 evaluation. The DPP guidelines also remind prosecutors and police that the main jurisdictional base for foreign bribery cases is territorial jurisdiction (i.e. Sections 6(i) and 9(4) CC). Recommendation 4(b) is thus fully implemented.

9. Regarding statistics, the Danish Customs and Tax Administration created an Anti-Fraud Department that records statistics on tax offences and the reporting of foreign bribery to law enforcement authorities. That aside, Denmark still does not maintain statistics on seizure, sanctions, MLA and extradition, though data can apparently be extracted if necessary. Recommendation 6 is partially implemented.

10. Denmark still has not extended the Convention to Greenland and the Faroe Islands. Since Phase 3, the Ministry of Justice has written both authorities but did not receive a response. The Ministry indicated that it would follow up. Nonetheless, Denmark's actions so far fall short of a concrete plan with specific goals, concrete steps and deadlines. Recommendation 7 is partially implemented.

11. Recommendation 8 on money laundering is partially implemented. Denmark has raised awareness of foreign bribery as a predicate offence among tax officials but not the Money Laundering Secretariat (MLS) or reporting entities. Denmark has not developed typologies addressing foreign bribery or increased the human resources in MLS for analysing suspicious transaction reports.

12. While Denmark has taken encouraging steps to raise awareness of the foreign bribery offence, more remains to be done. In the public sector, the DPP Guidelines raised awareness among police and prosecutors. However, no measure has been taken to raise awareness in the rest of the public sector. As for the private sector, the MOJ Booklet is still being revised. Relevant government ministries and agencies discussed co-ordination in providing guidance and raising awareness in the private sector during an "Anti-Corruption Forum" in September 2014. But steps have not been taken to actually raise awareness in the private sector, or to promote the use of corporate compliance measures to prevent and detect foreign bribery. Recommendation 10(a) is partially implemented. The Trade Council has not consulted with the MOJ or SØIK prior to giving guidance to companies. Recommendation 10(b) is not implemented.

13. With regard to the reporting of foreign bribery by Danish public officials to law enforcement officials, Denmark has partially implemented recommendation 11(a). The MFA is expected to issue new instructions in spring 2015 requiring mandatory reporting of foreign bribery by overseas Missions to Danish law enforcement. Against this somewhat positive development, the Danish International Investment Funds introduced new reporting obligations that fall short of expressly requiring staff to report foreign bribery involving Danish companies or individuals to Danish authorities. Denmark has not revised the 2007 Code of Conduct for the Public Sector or the 2011 MFA Anti-Corruption Policy; the concerns about these documents identified in Phase 3 remain. Furthermore, although the MFA has consolidated its rules on reporting financial irregularities, these rules deal primarily with reporting to the Auditor General and not law enforcement authorities.

14. Regarding whistleblower protection, legislation enacted in 2013/2014 protects whistleblowers in the financial sector from dismissal (but not other types of reprisals). This partially implements Recommendation 11(b), provided that the legislation covers whistleblowers who report foreign bribery. Apart from this narrow provision, there is still no legislation that protects whistleblowers in the public and private sectors from all forms of reprisals. In the public sector, relevant legislation and the Code of Conduct in the Public Sector have not been amended. A Committee on “Public Employees’ Freedom of Speech and Whistleblower Schemes” was created by the MOJ but has yet to release its report. In the private sector, Denmark continues to refer to unfair dismissal laws that do not protect against other forms of reprisals. It also refers to terms on dismissal in collective agreements and employment contracts, which in effect requires employees themselves to negotiate for protection measures.

15. Denmark is drafting legislation on accounting and auditing as well as on public advantages. Denmark expects to amend its legislation and issue guidelines on the reporting of foreign bribery by external auditors. It also intends to introduce legislation to implement the new EU Directive on procurement. Meanwhile, steps have not been taken to ensure that exclusion from public procurement due to foreign bribery is effectively implemented in practice. Similarly, EKF (Denmark’s officially supported export credits agency) has not adopted new policies relating to foreign bribery. Recommendations 9, 12(a) and 12 (b) are not implemented.

Conclusions of the Working Group

16. The Working Group concludes that out of 25 recommendations, 5 are fully implemented, 12 partially implemented and 8 not implemented. Denmark has satisfactorily implemented recommendations 3(a), 3(e), 3(f), 4(b), 5(a); partially implemented recommendations 1(b), 2(a), 3(c), 3(d), 3(g), 4(a), 6, 7, 8, 10(a), 11(a), 11(b) ; and not implemented recommendations 1(a), 2(b), 3(b), 5(b), 9, 10(b), 12(a) and 12(b). Follow-up Issues 13(a)-(d) remain outstanding. Denmark is invited to report back in six months (i.e. October 2015) in writing on all foreign bribery enforcement actions and the implementation of recommendations 1(a), 1(b), 2(a), 2(b), 3(d), 10(a) and 11(b).

PHASE 3 EVALUATION OF DENMARK: WRITTEN FOLLOW-UP REPORT

Name of country:	Denmark
Date of approval of Phase 3 evaluation report:	15 March 2013
Date of information:	10 February 2015

PART I: RECOMMENDATIONS FOR ACTION

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

Text of recommendation:

1. With respect to the foreign bribery offence, the Working Group recommends that Denmark:

(a) Take immediate and conclusive steps to ensure that its small facilitation payments defence is clearly defined, has the force of law, and is consistent with Article 1 of the Convention and the 2009 Recommendation [Convention Article 1; 2009 Recommendation VI.ii].

Action taken as of the date of the follow-up report to implement this recommendation:

Bribery of public officials, including foreign public officials, is criminalised pursuant to Section 122 of the Criminal Code which reads as follows:

“Any person who unlawfully grants, promises or offers some other person exercising a Danish, foreign or international public office or function a gift or other advantage in order to induce him to act or refrain from acting in relation to his official duties is liable to a fine or imprisonment for up to six years.”

This is in full accordance with Article 1 of the Convention and the 2009 Recommendation, and the Criminal Code makes no mention of a “small facilitation payments defence”.

In view of this, Denmark finds that a legislative amendment of the Criminal Code would not be conducive to implementing the recommendation.

Based on the reasons given for the recommendation in the report, Denmark has instead undertaken the following steps:

On 4 February 2014 the Director of Public Prosecutions issued guidelines to all Danish police districts and state prosecutors on the handling of criminal cases concerning bribery of foreign public officials in international business transactions. The guidelines address in detail the specific issues which are mentioned in, *inter alia*, recommendation 1(a) of the WGB.

These guidelines, which are binding and mandatory for the police and prosecution service when investigating and prosecuting foreign bribery, *inter alia*, describe the criminal content of the active bribery offence in Section 122 of the Criminal Code, including the question of small facilitation payments.

It is clearly stated in the guidelines that small facilitation payments – i.e. payments to induce a public official to carry out his or her duties – will as an absolute main rule be “unlawful” and constitute bribery pursuant to Section 122 of the Criminal Code. Only in very special circumstances would this not be the case.

The guidelines also clearly state that the possibility that a payment aimed at inducing a public official to act contrary to his or her duties will not constitute an “undue” act, does not apply in connection with international business transactions. Payment of an amount in connection with international business in order to induce a public official to act in contravention of his or her duties will always be “undue” and thus constitute a criminal offence.

In February 2015, the Ministry of Justice revised the booklet “How to avoid corruption” in accordance with the DPP guidelines and invited other authorities to do likewise in respect of their guidelines on bribery.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

1. With respect to the foreign bribery offence, the Working Group recommends that Denmark:

(b) Ensure that the relevant authorities (i) send a co-ordinated and consistent message on the facilitation payments defence to the private sector; (ii) encourage companies to prohibit or discourage the use of small facilitation payments in internal controls, ethics and compliance programmes or measures, recognising that such payments must in all cases be accurately accounted for in such companies’ books and financial records; and (iii) periodically review their policies and approach on small facilitation payments in order to effectively combat the phenomenon [2009 Recommendation III.ii, and VI.i and ii].

Action taken as of the date of the follow-up report to implement this recommendation:

It is recalled that section 122 of the Criminal Code in bribery of public officials, including foreign public officials, makes no mention of “a small facilitation payments defence” (see action taken concerning recommendation 1(a) above).

Based on the reasons given for the recommendation in the report, Denmark has undertaken the following steps:

On 4 February 2014 the Director of Public Prosecutions issued guidelines to all Danish police districts and state prosecutors on the handling of criminal cases concerning bribery of foreign public officials in international business transactions. The guidelines address in detail the specific issues which are mentioned in, *inter alia*, recommendation 1(a) of the WGB.

These guidelines, which are binding and mandatory for the police and prosecution service when investigating and prosecuting foreign bribery, *inter alia*, describe the criminal content of the active bribery offence in Section 122 of the Criminal Code, including the question of small facilitation payments.

It is clearly stated in the guidelines that small facilitation payments – i.e. payments to induce a public official to carry out his or her duties – will as an absolute main rule be “unlawful” and constitute bribery pursuant to Section 122 of the Criminal Code. Only in very special circumstances would this not be the case.

The guidelines also clearly state that the possibility that a payment aimed at inducing a public official to act contrary to his or her duties will not constitute an “undue” act, does not apply in connection with international business transactions. Payment of an amount in connection with international business in order to induce a public official to act in contravention of his or her duties will always be “undue” and thus constitute a criminal offence.

In September 2014 the Ministry of Justice launched an “Anti-Corruption Forum” with a view to ensure coordination and information sharing among all relevant authorities in connection with the fight against bribery and corruption. The Anti-

Corruption Forum consists of representatives of the Ministry of Justice, the Director for Public Prosecutions, the State Prosecutor for Serious Economic and International Crime, the Ministry of Employment, the Ministry of Foreign Affairs, the Ministry of Finance (Agency for Modernisation), the Ministry for Taxation, the Ministry of Business and Growth, the Danish Business Authority, the Danish FSA, the Danish Consumer and Competition Authority, Denmark's Export Credit Agency, and the Investment Fund for Developing Countries. At the first meeting of the Anti-Corruption Forum held on 22 September 2014 the issue of strengthened coordination in the area of guidance to the private sector concerning bribery as well as awareness-raising concerning foreign bribery in the public and the private sector was on the agenda. It was decided that the Ministry of Justice would send its revised booklet "How to avoid corruption" to the members of the Anti-Corruption Forum with a view to ensuring that a coordinated and consistent message concerning, *inter alia*, facilitation payments is sent to the private sector in order to effectively combat the phenomenon.

In February 2015, the Ministry of Justice revised the booklet "How to avoid corruption" in accordance with the DPP guidelines and invited other authorities to do likewise in respect of their guidelines on bribery.

The revised Ministry of Justice booklet clearly states that the use of small facilitation payments is generally discouraged, that such payments must in all cases be accurately accounted for in companies' books and financial records, and that small facilitation payments in connection with international business transactions in order to induce a public official to act in contravention of his or her duties will always be undue and thus constitute a criminal offence.

Through the National Action Plan for Corporate Social Responsibility 2012-2015, the Danish government encourages Danish companies to demonstrate responsible business conduct and to apply internationally recognized guidelines for corporate responsibility such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and ISO 26000 and the social responsibility guidance standard. These principles and guidelines focus to a large extent on anti-corruption including facilitation payments.¹

The government also promotes transparency measures to facilitate responsible business conduct. Thus, since 2009, it has been mandatory for the largest approximately 1100 companies to report on CSR, including on implementation measures and results. An annual survey of the law shows that the vast majority of companies now report on their CSR policies, of these 46% report their policies on anti-corruption.²

In 2012, the Danish Parliament adopted a bill on the creation of the so-called Mediation and Complaints-Handling Institution for Responsible Business Conduct. The institution handles non-compliance of the OECD Guidelines for Multinational Enterprises. The Institution is the OECD's Contact Point in Denmark and is also responsible for raising awareness of what responsible business conduct entails. The institution can deal with cases of potential corruption including facilitation payments.³

The Danish Business Authority also promotes anti-corruption measures specifically through the online guide the CSR Compass. The guide includes substantial information on anti-corruption including a section on facilitation payments.⁴

¹ See <http://csrgov.dk/home/0/2>

² See <http://csrgov.dk/legislation>

³ See <http://www.businessconduct.dk>

⁴ See <http://csrcompass.com>

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

2. Regarding the liability of legal persons, the Working Group recommends that Denmark

(a) Enhance the usage of, and train law enforcement authorities on, the corporate liability provisions in foreign bribery cases [Convention Articles 2, 5; Commentary 27; 2009 Recommendation Annex I.D].

Action taken as of the date of the follow-up report to implement this recommendation:

The Director for Public Prosecution will issue new guidelines on the liability of legal persons. It is expected that the new guidelines will be issued later in February 2015.

If no action has been taken to implement recommendation 2(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

2. Regarding the liability of legal persons, the Working Group recommends that Denmark

(b) Ensure that the application of the DPP Guidelines on the liability of legal persons does not reduce the scope of the jurisdictional rules provided by the Criminal Code, and amend the Guidelines to (i) clarify the circumstances under which a company may be held liable for crimes committed by a subsidiary and joint venture, and for failure to prevent foreign bribery, and (ii) ensure that subordinate employees are not exempted from prosecution in foreign bribery cases [Convention Article 2; 2009 Recommendation Annex I.C].

Action taken as of the date of the follow-up report to implement this recommendation:

The Director for Public Prosecution will issue new guidelines on the liability of legal persons. It is expected that the new guidelines will be issued later in February 2015.

If no action has been taken to implement recommendation 2(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that:

(a) Denmark review its overall approach to enforcement, especially with regard to corporate liability, in order to effectively combat the bribery of foreign public officials [Convention Articles 1, 2, 5; 2009 Recommendation V].

Action taken as of the date of the follow-up report to implement this recommendation:

Following the adoption of the Phase 3 Report in March 2013, the State Prosecutor for Serious Economic and International Crime (SØIK) decided to establish a special team for treatment of cases on corruption, comprising all cases in Denmark concerning bribery of foreign public officials.

The team is composed of 5 persons who are affiliated to the team and ready to take part in investigation processes as they arise. The team is led by a legal specialist and an investigational specialist who through their work with this type of cases are going to build knowledge – and who already have acquired some knowledge – and routine about the specific issues that typically are in evidence in cases concerning foreign bribery.

One of the purposes with the establishment of the team has also been to ensure that all relevant criminals (both natural persons and legal entities) are investigated and prosecuted in so far as it is reasonable.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that:

(b) Denmark take steps to ensure that local law enforcement authorities refer all foreign bribery cases to SØIK [Convention Article 5; Commentary 27; 2009 Recommendation Annex I.D].

Action taken as of the date of the follow-up report to implement this recommendation:

According to the ministerial Order in force, the mandate of the State Prosecutor for Serious Economic and International Crime (SØIK) is to handle cases of economic crime that are complex, are linked to organized crime, or involve the use of special methods to commit the crime. As explained during the on-site visit, this in reality means that SØIK would conduct practically all foreign bribery cases, even though there is no formal obligation to refer all such cases to SØIK. If a local police district – exceptionally – maintains conduct of a foreign bribery cases, SØIK may provide assistance and advice.

Thus, in practice foreign bribery cases are always dealt with by specialized investigators and prosecutors.

The establishment of a special team for treatment of cases on corruption (see action taken concerning recommendation 3(a) above) is included in SØIK's Organisation Chart which is uploaded on the police intranet website and is available to

all police districts. Thus, all police officers have already been made aware of SØIK's specialized team.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that:

(c) Denmark adopt a clear framework for out-of-court settlements and make public, where appropriate and in conformity with the applicable rules, as much information about settlement agreements as possible [Convention Articles 1, 3, 8].

Action taken as of the date of the follow-up report to implement this recommendation:

With a view to implementing, *inter alia*, recommendation 3(c) the Director of Public Prosecutions has on 4 February 2014 issued guidelines to all police districts and state prosecutors about the handling of criminal cases concerning bribery of foreign public officials in international business transactions.

In the guidelines, attention is especially drawn to the new Section 41 g in the Administration of Justice Act. According to this provision, everyone may receive a copy of a "penalty notice" which has been issued to a legal person under Section 832 of the Administration of Justice Act when the legal person has admitted guilt and agreed to pay a fine. In other words, the public is given an opportunity to look into key facts of all criminal cases against legal persons which are resolved out-of-court, as well as the amount of any fine.

The guidelines from the Director of Public Prosecutions also point out that criminal cases which are resolved out-of-court must be handled in accordance with the general rules and principles of the Administration of Justice Act. This, among other things, implies that the prosecution service – in accordance with the principle of objectivity – must ensure in each case that there is sufficient evidence before issuing a "penalty notice".

Furthermore, it follows from the guidelines that the size of the fine in the "penalty notice" must be fixed with regard to factors such as the gravity of the offence and the personal circumstances of the offender in order to secure that comparable cases are sanctioned equally.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that:

(d) SØIK (i) thoroughly investigate and prosecute foreign bribery allegations, (ii) proactively gather information from diverse sources to increase the number of allegations and to enhance investigations; (iii) routinely and promptly coordinate with foreign law enforcement authorities, and make greater efforts to obtain evidence from these authorities, including through Eurojust and formal treaty-based MLA where appropriate; (iv) make greater efforts to investigate and prosecute even in the absence of parallel investigations in foreign jurisdictions; and (v) ensure that both natural and legal persons are prosecuted in a foreign bribery case whenever appropriate, including when a settlement is discussed or reached with a corporate defendant [Convention Articles 5, 9; Commentary 27; 2009 Recommendation Annex I.D].

Action taken as of the date of the follow-up report to implement this recommendation:

The State Prosecutor for Serious Economic and International Crime (SØIK) has established a permanent specialist team that handles cases concerning foreign bribery (see action taken concerning recommendation 3(a) above). The establishment of the team serves, among other things, to strengthen the quality of SØIK's treatment of cases concerning foreign bribery.

The Danish regulations on preventive measures against money laundering require all financial institutions, liberal professions etc. to report suspicious transactions, which may be associated with money laundering of proceeds of crime, to the Money Laundering Secretariat in SØIK (Denmark's FIU). Denmark has thus a Money Laundering Act that includes laundering of proceeds of all crimes, including proceeds of foreign bribery. In this way, a pro-active collection of information is carried out on handling of proceeds from e.g. corruption.

When the Money Laundering Secretariat in SØIK receives reports concerning potential cases of corruption, these will immediately be reported to the appropriate unit in SØIK which conducts investigations in such criminal cases.

Following the adoption of the Phase 3 Report in March 2013, SØIK decided that pending and future investigations in cases concerning foreign bribery may not be closed based on an assumption that it will be impossible or very difficult to obtain the necessary legal assistance in the respective cases.

As a consequence, SØIK has consistently submitted requests for legal assistance in all pending cases where it has been relevant, and even to countries where – based on previous experiences – it is very difficult to obtain legal assistance.

Furthermore, it is emphasized to the investigators and prosecutors of the specialist team that all relevant criminals shall be prosecuted in so far as is reasonable and that out-of-court settlements may not be advanced at the expense of this principle.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that:

(e) Denmark issue guidelines to raise awareness of Article 5 of the Convention and to ensure that the factors enumerated in the Article do not influence foreign bribery investigations and prosecutions [Convention Article 5].

Action taken as of the date of the follow-up report to implement this recommendation:

With a view to implementing, *inter alia*, recommendation 3(e) the Director of Public Prosecutions has on 4 February 2014 issued guidelines to all police districts and state prosecutors on the handling of criminal cases concerning bribery of foreign public officials in international business transactions.

As regards recommendation 3(e), which focuses on awareness of Article 5 of the Convention, the guideline refer to the fundamental principle of objectivity which is set out in Section 96 of the Administration of Justice Act.

In that connection, it is emphasized in the guidelines that the factors enumerated in Article 5 must not influence the investigation and prosecution of criminal cases, including cases concerning bribery of foreign public officials in international business transactions.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that:

(f) Denmark (i) take steps to ensure that the statute of limitations for foreign bribery allows adequate time for investigating and prosecuting the offence; and (ii) increase the statute of limitations for providing MLA and broaden the basis for extraditing Danish nationals in foreign bribery cases [Convention Articles 6, 9].

Action taken as of the date of the follow-up report to implement this recommendation:

On 1 July 2013 a number of legislative amendments to the Criminal Code and the Administration of Justice Act entered into force (Act no. 634 of 12 June 2013). These amendments were adopted with the intent to strengthen the prevention, investigation and prosecution of cases regarding economic crime.

As regards bribery the maximum penalty for active bribery in the public sector, pursuant to section 122 of the Criminal Code, was raised from imprisonment for any term not exceeding three years to imprisonment for any term not exceeding six years.

Accordingly the statute of limitations for active bribery in the public sector was raised from 5 years to 10 years pursuant to the Criminal Code Section 93(1).

The statute of limitation applies both as regards prosecution in Denmark and as regards the provision of MLA to other states.

Furthermore, the increased maximum penalty has broadened the basis for extraditing Danish nationals in foreign bribery cases.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that:

(g) Denmark (i) ensure that SØIK has sufficient human resources, including experts in forensic accounting and information technology, to investigate and prosecute foreign bribery cases; (ii) train SØIK and other law enforcement officials specifically on foreign bribery and related issues; (iii) provide guidance to investigators and prosecutors on the definition of foreign public officials, including those of public international organisations; and (iv) allow the use of special investigative techniques in foreign bribery investigations [Convention Article 5; Commentary 27; 2009 Recommendation Annex I.D].

Action taken as of the date of the follow-up report to implement this recommendation:

During recent years, the State Prosecutor for Serious Economic and International Crime (SØIK) has hired a number of persons with special skills, among these former accountants, bank employees and IT-experts.

These persons are attached to ad hoc concrete investigations, including cases concerning foreign bribery. They are involved in all cases where their skills are considered to be necessary.

Moreover, SØIK has updated its Investigation Manual on Procedures and Methods relating to the investigation and prosecution of criminal cases in SØIK.

The manual contains guidelines about the preliminary examination of the cases and preparation of a proper investigation plan. These guidelines are updated on a regular basis. Furthermore, the manual contains rules on the composition of the investigation teams as well as the establishment of the steering group consisting of experienced leaders who on a monthly basis follow up on the cases.

The purpose of this is, among other things, to ensure that the necessary skills in connection with the individual investigations are present, ensure the furtherance of the case and to ensure that all essential investigational and/or legal issues are presented to experienced and chief investigators and prosecutors.

Particularly as regards the question about the understanding of the term “foreign public official”, it is agreed that any problem related to this term shall be presented to the legal specialist who is head of the corruption team, with a view to drawing up an exact definition of this term as it may be of importance for the investigation.

On 1 July 2013 a number of legislative amendments to the Criminal Code and the Administration of Justice Act entered into force (Act no. 634 of 12 June 2013). These amendments were adopted with the intent to strengthen the prevention, investigation and prosecution of cases regarding economic crime.

As regards bribery the maximum penalty for active bribery in the public sector, pursuant to section 122 of the Criminal Code, was raised from imprisonment for any term not exceeding three years to imprisonment for any term not exceeding six years.

This entails that it is now possible to apply special investigative techniques such as interception of communications and making use of agents pursuant to and in accordance with the conditions provided for in the Public Administration of Justice act section 754 a and section 781 in foreign bribery cases.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

4. Regarding jurisdiction, the Working Group recommends that Denmark:

(a) Ensure that it prosecutes all cases where a Danish national commits foreign bribery wholly outside Denmark if both the country of the bribed official and the country where the bribery took place have criminalised domestic bribery [Convention Article 4]

Action taken as of the date of the follow-up report to implement this recommendation:

According to Section 8(v) of the Criminal Code acts committed outside the Danish state are subject to Danish criminal jurisdiction, irrespective of the home country of the offender, where the act falls within an international instrument obliging Denmark to have criminal jurisdiction.

On 4 February 2014 the Director of Public Prosecutions issued guidelines to all police districts and state prosecutors on the handling of criminal cases concerning bribery of foreign public officials in international business transactions. It is mentioned in the guidelines that, as a main rule, Denmark has jurisdiction to prosecute in cases concerning bribery of foreign public officials in international business transactions on the basis of Sections 6, 7 and 9 of the Criminal Code. It is furthermore described in the guidelines that in cases which may not be covered by the provisions mentioned above, a foreign bribery offence under the Convention will, however, be subject to Danish jurisdiction according to Section 8(v) of the Criminal Code.

Denmark has thus taken the necessary measures to establish jurisdiction to prosecute all cases where the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions requires Denmark to do so.

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

4. Regarding jurisdiction, the Working Group recommends that Denmark:

(b) Ensure that its law enforcement authorities thoroughly explore territorial links to Denmark in foreign bribery cases [Convention Article 4].

Action taken as of the date of the follow-up report to implement this recommendation:

With a view to implementing, *inter alia*, recommendation 4(b) the Director of Public Prosecutions has on 4 February 2014 issued guidelines to all police districts and state prosecutors on the handling of criminal cases concerning bribery of foreign public officials in international business transactions.

It is mentioned in the guidelines that, as a main rule, Denmark has jurisdiction to prosecute in cases concerning bribery of foreign public officials in international business transactions on the basis of Sections 6, 7 and 9 of the Criminal Code.

It is furthermore described in the guidelines that in cases which may not be covered by the provisions mentioned above, a foreign bribery offence under the Convention will, however, be subject to Danish jurisdiction according to Section 8(v) of the Criminal Code. Thus, Section 8(v) states that any act committed outside the territory of the Danish state is subject to Danish criminal jurisdiction, irrespective of the nationality of the offender, where the act is covered by an international provision pursuant to which Denmark is obliged to have criminal jurisdiction.

It is also clearly stated in the guidelines that the police and the prosecution service in all cases of foreign bribery must thoroughly explore whether the case has any links to Denmark which may constitute a basis of criminal jurisdiction.

If no action has been taken to implement recommendation 4(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. Regarding sanctions, the Working Group recommends that Denmark promptly increase the maximum penalties for (a) foreign bribery committed by natural persons, and (b) false accounting for the purpose of committing or concealing foreign bribery, to ensure that sanctions for these offences are effective, proportionate and dissuasive [Convention, Articles 3, 8; 2009 Recommendation X.A.iii].

Action taken as of the date of the follow-up report to implement this recommendation:

On 1 July 2013 a number of legislative amendments to the Criminal Code and the Administration of Justice Act entered into force (Act no. 634 of 12 June 2013). These amendments were adopted with the intent to strengthen the prevention, investigation and prosecution of cases regarding economic crime.

As regards bribery the maximum penalty for active bribery in the public sector, pursuant to section 122 of the Criminal Code, was raised from imprisonment for any term not exceeding three years to imprisonment for any term not exceeding six years.

In consequence, the maximum penalty for false accounting for the purpose of committing foreign bribery was also raised from imprisonment for 3 years to imprisonment for 6 years, since this will also constitute an attempt to commit bribery pursuant to Section 21 in conjunction with Section 122 of the Criminal Code

In a similar manner, accounting offences committed for the purpose of concealing foreign bribery will be punishable pursuant to Section 290 of the Criminal Code on fencing. Violation of Section 290 is punishable by a fine or imprisonment for any term not exceeding one year and six months and in aggravating cases the sentence can be increased to imprisonment for any term not exceeding six years.

If no action has been taken to implement recommendation 4(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

6. With respect to statistics, the Working Group recommends that Denmark maintain detailed statistics on (i) asset seizure and restraint; (ii) sanctions including confiscation imposed in practice; (iii) incoming and outgoing MLA and extradition requests, including those to and from Greenland and the Faroe Islands; and (iv) tax offences and reporting by tax officials to law enforcement authorities [Convention Articles 3(3), 5, 9; 2009 Recommendation VIII.i; 2009 Tax Recommendation II].

Action taken as of the date of the follow-up report to implement this recommendation:

In late 2013 the Danish Customs and Tax Administration (SKAT), established a procedure to ensure that all cases of bribery or suspected bribery detected by tax officers have to be reported to a special team in SKAT's Anti Fraud Department (AFD). The team reviews the cases, and if suspicion of bribery is evident the case will be registered in a special file in SKAT's registers and handed over to law enforcement (the State Prosecutor for Serious Economic and International Crime (SØIK)) for further investigation. The procedure has been published in SKAT-Sharepoint.

The procedure enables SKAT to make statistics on bribery cases detected and raised in SKAT and transferred to further investigation in SØIK. Since the establishment of the procedure, two cases has been reported to SKAT-AFD. After a review of the cases it was concluded that the suspicion of bribery was not strong enough or in fact was just an ordinary possible tax evasion scheme and the cases was not transferred to SØIK but treated as ordinary tax offence cases.

If no action has been taken to implement recommendation 6, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The State Prosecutor for Serious Economic and International Crime's (SØIK) corruption team registers all pending cases electronically in SØIK's case management system. Furthermore, the team prepares lists of cases for the use of steering group meetings, and decided cases are reported and used with a view to following up on SØIK's target performance and possibly for the use of SØIK's knowledge base.

SØIK does not produce separate statistics on seizure and confiscation in cases concerning foreign bribery. However, information regarding this can be retrieved from the above-mentioned registrations. Also, SØIK's special unit, the Asset Recovery Office, keeps statistics on their cases. The Asset Recovery Office is involved in every case in SØIK where there are issues concerning seizure and confiscation of larger assets.

Cases concerning issuance and enforcement of MLA requests and various questions in this regard are registered, but no additional statistics are compiled dealing solely with bribery cases. Statistics concerning bribery cases will be compiled should a specific need in this regard arise. The need for further statistics concerning bribery cases specifically will, however, be re-examined if the number of MLA and/or extradition requests concerning this type of offence were to increase significantly.

These measures fulfill the present needs, and there are no present plans to introduce further statistical tools.

Text of recommendation:

7. Regarding Greenland and the Faroe Islands, the Working Group recommends that Denmark promptly adopt as a matter of priority a roadmap setting forth specific goals, concrete steps and deadlines for implementing the Convention at the earliest possible date in these territories [Convention Article 1].

Action taken as of the date of the follow-up report to implement this recommendation:

The Kingdom of Denmark consists of three parts: Denmark, the Faroe Islands and Greenland. Due to their special status nationally, historically and geographically, the Faroe Islands and Greenland have an extensive type of self-government.

The Self-Government Arrangements transfer political competence and responsibility from the Danish political authorities to the Faroese and the Greenlandic political authorities. The Faroese and Greenlandic authorities administer the tasks taken over from the State, enact legislation in these specific fields and have the economic responsibility for solving these tasks. The Danish State provides an annual grant to the Faroese and the Greenlandic authorities.

For this reason, a withdrawal of the territorial reservation in respect of the application of the Convention in the Faroe Islands and Greenland depends on the opinion expressed by the Faroese and Greenlandic authorities.

Consequently, on 11 June 2013 the Ministry of Justice sent letters to the Faroese and Greenlandic authorities respectively requesting a statement as to whether they wish to accede to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. As no answer had been received to these requests, reminders were sent on 19 December 2014 to the Faroese and Greenlandic authorities.

To date, the Ministry of Justice has not received a response from the Greenlandic or Faroese authorities concerning this issue. The Ministry of Justice will continue to bring the matter to the attention of the Faroese and Greenlandic authorities until an answer is received.

Furthermore, Denmark notes that, although Denmark is not bound, under international law, to implement the Convention in Greenland and the Faroe Islands, Denmark has in fact implemented, *inter alia*, the foreign bribery offence (Article 1 of the Convention) in both Greenland and the Faroe Islands.

If no action has been taken to implement recommendation 6, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

8. With respect to money laundering, the Working Group recommends that Denmark (i) raise awareness of foreign bribery as a predicate offence to money laundering and develop bribery-related anti-money laundering measures, such as typologies and training for MLS officials and reporting entities; and (ii) take steps to ensure that the MLS is adequately resourced to effectively detect money laundering cases predicated on foreign bribery [Convention, Article 7; 2009 Recommendation III.i].

Action taken as of the date of the follow-up report to implement this recommendation:

All crimes, including foreign bribery, are predicate offences in pursuance of the Danish Money Laundering Act.

The Danish FIU is located in the State Prosecutor for Serious Economic and International Crime (SØIK) and there is a close cooperation between the FIU and the operational departments of SØIK as to the sharing of intelligence information.

In 2014, the Danish FIU began using an electronic reporting system and has thus been able to correlate a wide range of information by means of the GoAML SYSTEM, and this has been a major contribution to strengthening the gathering of information and the systematisation of intelligence information.

Furthermore, in 2013 and 2014, the Danish Customs and Tax Administration (SKAT) has in cooperation with SØIK conducted an educational series for tax employees in order to raise awareness on the opportunity to discover and report suspicious matters concerning foreign bribery to the FIU.

If no action has been taken to implement recommendation 7(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

9. Regarding accounting and auditing, the Working Group recommends that Denmark promptly issue guidance to auditors on the scope of their reporting obligations, and raise awareness of foreign bribery among accountants and auditors, including by providing foreign bribery indicators [Convention, Article 8; 2009 Recommendation III.i].

Action taken as of the date of the follow-up report to implement this recommendation:

The auditors' reporting obligations in accordance with Section 22 of the Danish Act on Approved Auditors and Audit Firms have been discussed with the auditors' professional organization. On the basis of the outcome of the discussions and as a consequence of the new EU audit regulation adopted in the spring of 2014, it is likely that a change of the provision is necessary. The auditors' reporting obligations should be clarified and necessary supplementary guidelines lines will be issued.

The amendment will take place in connection with the implementation of the new EU audit regulation, which the Member States shall adopt not later than 17 June 2016.

If no action has been taken to implement recommendation 7(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

10. Regarding awareness-raising, the Working Group recommends that:

(a) Denmark (i) continue its foreign bribery awareness-raising efforts within the public and private sectors including, where relevant, in co-operation with the private sector; and (ii) encourage companies, especially SMEs, to develop and adopt adequate internal controls, ethics and compliance systems to prevent and detect foreign bribery, including by promoting the OECD Good Practice Guidance [2009 Recommendation III.i, X.C.i and ii, and Annex II].

Action taken as of the date of the follow-up report to implement this recommendation:

It is recalled that section 122 of the Criminal Code in bribery of public officials, including foreign public officials, makes no mention of "a small facilitation payments defence" (see action taken concerning recommendation 1(a) above).

Based on the reasons given for the recommendation in the report, Denmark has undertaken the following steps:

On 4 February 2014 the Director of Public Prosecutions issued guidelines to all Danish police districts and state prosecutors on the handling of criminal cases concerning bribery of foreign public officials in international business transactions. The guidelines address in detail the specific issues which are mentioned in, *inter alia*, recommendation 1(a) of the WGB.

These guidelines, which are binding and mandatory for the police and prosecution service when investigating and prosecuting foreign bribery, *inter alia*, describe the criminal content of the active bribery offence in Section 122 of the Criminal Code, including the question of small facilitation payments.

It is clearly stated in the guidelines that small facilitation payments – i.e. payments to induce a public official to carry out his or her duties – will as an absolute main rule be “unlawful” and constitute bribery pursuant to Section 122 of the Criminal Code. Only in very special circumstances would this not be the case.

The guidelines also clearly state that the possibility that a payment aimed at inducing a public official to act contrary to his or her duties will not constitute an “undue” act, does not apply in connection with international business transactions. Payment of an amount in connection with international business in order to induce a public official to act in contravention of his or her duties will always be “undue” and thus constitute a criminal offence.

In September 2014 the Ministry of Justice launched an “Anti-Corruption Forum” with a view to ensure coordination and information sharing among all relevant authorities in connection with the fight against bribery and corruption. The Anti-Corruption Forum consists of representatives of the Ministry of Justice, the Director for Public Prosecutions, the State Prosecutor for Serious Economic and International Crime, the Ministry of Employment, the Ministry of Foreign Affairs, the Ministry of Finance (Agency for Modernisation), the Ministry for Taxation, the Ministry of Business and Growth, the Danish Business Authority, the Danish FSA, the Danish Consumer and Competition Authority, Denmark’s Export Credit Agency, and the Investment Fund for Developing Countries. At the first meeting of the Anti-Corruption Forum held on 22 September 2014 the issue of strengthened coordination in the area of guidance to the private sector concerning bribery as well as awareness-raising concerning foreign bribery in the public and the private sector was on the agenda. It was decided that the Ministry of Justice would send its revised booklet “How to avoid corruption” to the members of the Anti-Corruption Forum with a view to ensuring that a coordinated and consistent message concerning, *inter alia*, facilitation payments is sent to the private sector in order to effectively combat the phenomenon.

In February 2015, the Ministry of Justice revised the booklet “How to avoid corruption” in accordance with the DPP guidelines and invited other authorities to do likewise in respect of their guidelines on bribery.

The revised Ministry of Justice booklet clearly states that the use of small facilitation payments is generally discouraged, that such payments must in all cases be accurately accounted for in companies’ books and financial records, and that small facilitation payments in connection with international business transactions in order to induce a public official to act in contravention of his or her duties will always be undue and thus constitute a criminal offence.

As part of the efforts to promote CSR and anti-corruption to Danish SME’s the Danish Business Authority has developed the CSR Compass, an online guide which helps SME’s implement due diligence in their own business and in the supply chain.

The CSR Compass was updated in August 2013 in accordance with the UN Guiding Principles on Business and Human Rights and the 2011 version of the OECD Guidelines for Multinational Enterprises.

The guide includes substantial information on anti-corruption including a section on facilitations payments. The tool is very practical and includes useful advice, cases, templates and useful links including a link to the OECD Good Practice Guidance.⁵

If no action has been taken to implement recommendation 8(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

⁵ See <http://www.csrcompass.com>.

Text of recommendation:

10. Regarding awareness-raising, the Working Group recommends that:

(b) TCD consult with the MOJ or SØIK to ensure the soundness of its guidance. [2009 Recommendation III.i].

Action taken as of the date of the follow-up report to implement this recommendation:

It is recalled that the Trade Council (TC) is a policy centre within the Ministry of Foreign Affairs (MFA) and not an agency in its own right.

The MFA acknowledges that the Anti-Corruption Policy for the Trade Council from 2010 could be more unequivocal with respect to how comprehensive the obligation for TC employees is to report credible suspicions of bribery. It also leaves a greater discretion than required with the Trade Council in Copenhagen on whether reports should be transmitted onwards to the law enforcement authorities.

Consequently the MFA will adjust its instruction to the Danish Missions abroad as follows: “The Danish Missions must report all credible suspicions involving Danish individuals or companies detected in the course of their work to the Department of Trade Policy (HPA) of the MFA. The Department will forward the report to Danish law enforcement authorities, principally the State Prosecutor for Serious Economic and International Crime (SØIK).”

The instruction will be issued to the Missions in the spring of 2015 in an amended version of the Policy from 2010 which will be renamed as “Guidelines” to make it clear to employees that the Anti-Corruption Policy of the Ministry is the overriding policy document for the organisation. The Head of the Trade Department at Danish Missions in each country will be responsible for communicating the contents of the new Guidelines to employees. The MFA e-learning course in anti-corruption also contains a section on commercial assistance and a case on mandatory reporting of suspected bribery.

If no action has been taken to implement recommendation 8(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

11. With respect to the reporting of foreign bribery, the Working Group recommends that Denmark:

(a) Ensure that public servants, including those in the MFA, Trade Council, Danida and Danish International Investment Funds, are clearly required to report all credible suspicions of foreign bribery involving Danish individuals or companies detected in the course of their work to Danish law enforcement authorities [2009 Recommendation IX.i and ii]

Action taken as of the date of the follow-up report to implement this recommendation:

The Danish Code of Conduct in the Public Sector includes guidelines on how to handle suspicions of corruption including bribery offences.

The Code of Conduct clearly describes how a public employee should act, if he/she gains knowledge or reasonable suspicion of corruption including bribery involving and affecting the public administration. In such cases the management should immediately be informed. The management must hereafter handle the situation.

Alternatively, the employee may according to the circumstances contact the police or other relevant control or supervisory authorities. The employee is thus free to contact the police directly if the employee prefers to do so.

Furthermore, the Code of Conduct contains a description of the public employees' right to disclose information to external parties in case of illegal administration or other reprehensible circumstances in the public sector. External parties include for instance the media, supervisory authorities and the Parliamentary Ombudsman.

These guidelines apply to any kind of corruption including bribery in or involving the public sector and thus cover both Danish and foreign officials.

In addition to the Code of Conduct, the Danish legislation as well as educational initiatives e.g. e-learning courses for public employees clearly support and endorse that the public employees use their right to disclose information.

The Danish Government Platform from 2011 states that freedom of speech for public employees is an important topic that needs to be focused on.

In October 2013, the Ministry of Justice announced a committee concerning "Public Employees' Freedom of Speech and Whistleblower Schemes" (see action taken concerning recommendation 11(b)).

It is recalled that Danida is the term used for Denmark's development cooperation, which is an area of activity under the Ministry of Foreign Affairs (MFA). Danida is not an agency.

The MFA – which includes the Trade Council and Danish development cooperation – in 2011 adopted an Anti-Corruption Policy which has been made available to all staff.

The Anti-Corruption Policy is found on the intranet of the MFA, and is also publicized on the internet of the MFA.

The policy states that the MFA maintains a policy of zero tolerance towards corruption in all its forms.

All staff members are obliged to report any suspicion or awareness of specific cases of corruption involving other staff members, business partners, partners in programmes and projects, and others with whom staff members cooperate.

In such cases staff shall immediately notify their superiors or the MFA's Controller directly (and in the former case Controller shall be notified subsequently).

The MFA then takes the decision on notification of other Danish or foreign authorities, including possibly reporting to the police. With respect to credible suspicions of bribery involving Danish individuals or companies which Danish Missions detect in the course of their work, please refer to the action taken concerning recommendation 10(b) above.

To ease this process regarding Danish development funds the MFA has established a hotline for the reporting of corruption.

The MFA has also for around a decade organized e-learning courses on anti-corruption which are obligatory for all employees.

All Missions in Danish development cooperation priority countries have established focal points for anti-corruption. Chief financial officers are posted at Missions with a large development portfolio to ensure monitoring and financial management of funds. Prior to contracting with partners in developing countries, the MFA ensures that contracts contain an anti-corruption clause. The clause entails that the cooperation can be stopped if the partner violates the anti-corruption clause. In addition to this, systematic and preventive anti-corruption dialogues and training of partners focusing on the control environment is part of the cooperation with partners in the development partner countries.

The MFA's instructions in different areas on reporting of irregularities including suspicion or awareness of specific cases of corruption to the Auditor General of Denmark were in 2013 compiled into a consolidated instruction to the whole Ministry including Missions abroad on the duty to report all irregularities in the financial administrative area, concerning the administration of funds for development assistance, and related to the Trade Council of Denmark, as well as cases related to the administration of visa, passports and driving licences via Controller to the Auditor General. It must, though, be noticed that the concept of "irregularities" covers a wider range of cases than corruption/bribery.

In order to increase transparency the MFA publishes all cases of corruption regarding development assistance reported to the Auditor General of Denmark on the MFA website on the fight against corruption in international development cooperation.

With respect to employees working at Missions with commercial assistance to Danish companies and their local partners, the Ministry refers to the action taken concerning recommendation 10(b) above.

As regards the Investment Fund for Developing Countries (IFU) and the Investment Fund for Eastern and Central Europe (the term "Danish International Investment Funds" is not used any longer), it is recalled that they are independent legal entities. Although the Minister for Trade and Development Cooperation and the Foreign Minister, respectively, appoint the boards of directors and the managing directors of the two funds, the funds are not under the direct instruction of the MFA. The MFA supervises the activities of the funds and has an observer on the boards of directors.

IFU – which also acts as fund manager for the Investment Fund for Eastern and Central Europe which is being phased out – is a member of Transparency International Denmark and has adopted anti-corruption guidelines for its investments, which are known to all IFU staff and which IFU's partners are contractually bound to follow. The guidelines are based on the UN Convention against Corruption, the OECD Convention Combating Bribery of Foreign Public Officials in International Business Transactions and on the UN Global Compact. According to IFU's guidelines, if IFU receives credible and sufficiently complete information about bribery involving one of IFU's portfolio companies or a business partner of IFU and the alleged bribery is connected to IFU's investment, IFU will immediately pass on this information to local or Danish law enforcement authorities. IFU will inform its Danish project partner before passing on any information.

The MFA as well as IFU take part in the Anti-Corruption Forum established by the Ministry of Justice.

If no action has been taken to implement recommendation 9, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken

Text of recommendation:

11. With respect to the reporting of foreign bribery, the Working Group recommends that Denmark:

(b) Put in place appropriate measures to protect from discriminatory or disciplinary action public and private sector employees who report suspected acts of foreign bribery in good faith and on reasonable grounds to competent authorities [2009 Recommendation IX.iii].

Action taken as of the date of the follow-up report to implement this recommendation:

The Code of Conduct in the Public Sector contains a description of the public employees' right to disclose information to external parties in case of illegal administration or other reprehensible circumstances in the public sector. The Code of Conduct also confirms that public employees shall not be subject to disciplinary or any other sanctions for having reported in good faith corruption or suspicion hereof.

In the event of sanctions against the public employee protection is offered to the employee both by the collective agreements, the act on the Legal relationship between the Employers and Salaried Employees and the Public Administration Act. The latter offers special protection to public employees.

The Public Administration Act ensures a thorough process in the event of a potential disciplinary sanction against a public employee as it gives the employee a right to comment on the employer's intended sanction before it is final. The employee's comments may therefore affect the employer's decision and result in a different or no sanction. If the public employee's employment nevertheless is terminated, the public employee will in most cases have the right to lodge a complaint to a higher authority, often the relevant ministry. If there is no right to lodge a complaint to a higher authority or if the higher authority confirms the termination of the employment, the public employee has a right to also lodge a complaint to the Parliamentary Ombudsman.

In October 2013, the Ministry of Justice announced a committee concerning "Public Employees' Freedom of Speech and Whistleblower Schemes". The committee has been asked by the Ministry of Justice to examine whether special provisions regarding retaliation and protection against harassment should be introduced. Furthermore, the committee has been asked to report about the current whistleblower schemes in the public sector. As part of its terms of reference the committee will describe the advantages and disadvantages of a general whistleblower scheme in the public sector. The committee is expected to finish its work in February or March 2015.

The issue of protection of employees to review possible corruption (whistleblowing) is not separately regulated in Denmark. But the generally increased awareness of whistleblowing has led to an increasing extent of various mechanisms in the companies that will make it possible for employees of reporting on irregularities or illegalities without fear that it will have negative consequences for the end relationship. And in 2013/14 specific provisions in the legislation concerning the financial sector have been adopted. These provisions shall protect employees who want to report on corruption against dismissal. Similar provisions have been introduced in other EU countries as the initiative is an implementation of an EU directive.

In situations where a person (a whistleblower) in public or private sector employment discloses confidential information in the genuine conviction that he or she is protecting an obvious public interest is the employment protection against dismissal of particular relevance, because such conduct - whether or not deemed lawful - in many cases will have consequences for the employment relationship.

Employees on the labour market are protected against dismissal or other employment law penalties, and the rules and

regulation governing private sector employment relationships are found in legislation and in the individual employment contract as well as in many cases also in collective and local agreements.

Fundamental labour law principles, such as for example managerial authority, may also be relevant in determining whether or not a dismissal or other sanction as a consequence of a private sector employee's disclosure of information may be regarded as lawful. Furthermore, internal regulations, guidelines, etc., laying down the framework for speaking on issues relating to the enterprise in which the employee in question is employed may affect the employment law assessment of such speech.

Furthermore the public sector labour market is subject to both a principle of legality and a number of other public law rules and principles which regulate the remedies available against speech made by public sector employees.

Legislation

Several statutes may be relevant in connection with an employment law assessment of speech made by private sector employees. Certain statutes, such as section 19 of the Danish Marketing Practices Act (Consolidation Act No. 1216 of 25 September 2013) restrict freedom of expression in employment relationships, whereas other statutes, such as for example the Danish Act on the Prohibition of Differential Treatment on the Labour Market (Consolidation Act No. 1349 of 16 December 2008), may be said to provide for a certain particular protection of the freedom of speech of employees in certain areas and contain separate provisions for compensation in the event of violation of the statutory rights of an employee. There are also statutes which grant for example union representatives special protection against dismissal, and also legislation such as the Danish Freedom of Association Act (Consolidation Act No. 424 of 8 May 2006) may be regarded as contributing to the protection of employees' right to free speech.

However, section 2b of the Danish Employers and Salaried Employees (Legal Relationship) Act (Consolidation Act No. 81 of 3 February 2009), which provides that a salaried employee who has been continuously employed in the enterprise concerned for at least twelve months may be awarded compensation for unfair dismissal, must in practice be regarded as the most important statutory provision in relation to employment law protection of the freedom of speech of private sector employees. The importance of a prohibition against unfair dismissal in connection with lawful speech made by private sector employees, including whistleblowing, will be explained below.

Collective and local agreements

Many collective agreements and local agreements include a prohibition against unfair dismissal which is similar to the one provided in the Employers and Salaried Employees (Legal Relationship) Act. Also, collective and local agreements may contain more specific provisions of importance for the protection of private sector employees' right to freedom of speech. Collective agreements will usually also include provisions for the involvement of union representatives, etc., in connection with the application of employment law sanctions, for example where a private sector employee is faced with a reaction from his employer due to his speech.

A breach of the provisions of collective or local agreements, such as for example in case of unfair dismissal, may be brought before an industrial tribunal and may be sanctioned by a penalty and possibly also by compensation to the aggrieved employee. It is important to emphasize that each collective agreement must be considered separately and that it may, for example, have been agreed specifically that any breach of the internal rules of an enterprise as to which information employees may disclose and the potential sanctions for breach in that connection must be discussed with, for example, a union representative.

The employment contract, etc.

The individual employment contract will rarely include separate provisions of direct relevance to questions concerning the private sector employee's right to free speech. But a reference to collective and local agreements or to 'salaried employee terms' in the employment contract may mean that a prohibition against unfair dismissal may be implied in the

contract. A claim for compensation, etc. against that background may be brought before the ordinary courts of law.

Assessment of whether or not a dismissal is unfair

It is not possible to define exactly when dismissal on the ground of an employee's speech is lawful or fair. There may be cases where an employee makes comments to his colleagues or customers that are clearly unacceptable and should be sanctioned by the employer, whereas in other cases some kinds of speech are well-founded and a sanction imposed by the employer as a consequence of such speech would be unfair.

If no action has been taken to implement recommendation 10(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

12. Regarding public advantages, the Working Group recommends that:

(a) Denmark (i) issue guidance to its contracting authorities to ensure that exclusion from public procurement due to foreign bribery is effectively implemented in practice; and (ii) specify the maximum period of debarment that can be imposed and ensure that records of criminal convictions are maintained for at least as long as this period [2009 Recommendation XI.i].

Action taken as of the date of the follow-up report to implement this recommendation:

The EU Directives 2004/17/EC and 2004/18/EC were implemented into Danish law by Order no. 937 of 16 September 2004 (now Order no. 712 of 15 June 2011). Accordingly, if a contracting authority is aware that a candidate or tenderer has been convicted of corruption, then the candidate or tenderer shall be excluded from participation in a public contract. The candidates and tenderers can be required to sign a declaration in which they declare that they have not been convicted of corruption. According to this, there is no maximum period of debarment.

Furthermore, the contracting authority can require that the tenderer, who wins the contract, obtain a "serviceattest" (an official certificate from the Danish Business Authority) as proof of the information given in the declaration mentioned above.

The Danish Government is in the process of drawing up regulation in order to implement Directive 2014/24/EU of the European Parliament and the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

For this purpose and as a proposal which will meet the recommendation the Danish Government has established a committee containing representatives of the major stakeholders of public procurement in Denmark. The committee is chaired by the Danish Competition and Consumer Authority and has involved several legal experts in its efforts of implementing the directive on public procurement. The committee has drafted a legislative proposal which has been presented to the Minister of Business and Growth, who will then introduce the proposal to the Danish Parliament with or without changes following deliberation within the government.

As the introduction of the legislative proposal to the Danish Parliament is not scheduled until later in February 2015, it is not possible at this point in time to say what the contents of the final legislative act will be. However, the legislative act

will at a minimum be in agreement with the Directive 2014/24/EU, which requires that contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established or otherwise are aware that the economic operator has been the subject of a conviction by final judgment for corruption. The period of exclusion will not be longer than the maximum of 5 years stated in the directive.

Furthermore, the Danish Competition and Consumer Authority has given it high priority to guide the contracting authorities about the rules of public procurement. Among other things, the Danish Competition and Consumer Authority will guide the contracting authorities about the obligation to debar candidates and tenderers who have been convicted of bribery.

If no action has been taken to implement recommendation 10(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

12. Regarding public advantages, the Working Group recommends that:

(b) EKF (i) conduct enhanced due diligence on agent commission fees of large absolute value, even if such fees are below both EUR 4.5 million and 5% of the contract; and (ii) consider adopting written guidance on factors to be considered when determining whether evidence alleging foreign bribery is credible; and whether to interrupt support if bribery is proven after support has been approved [2009 Recommendation XI.i; 2006 Export Credit Recommendation].

Action taken as of the date of the follow-up report to implement this recommendation:

EKF is in the process of preparing written internal guidance on factors to be considered when determining whether evidence alleging foreign bribery is credible and written internal guidance on whether to interrupt support if bribery is proven after support has been approved. During this process the current thresholds will be reconsidered.

If no action has been taken to implement recommendation 10(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

PART II: FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up:

13. The Working Group will follow up the issues below as case law and practice develops:

(a) Whether in practice legal or procedural obstacles are encountered in proceeding against a legal person where the natural person who bribes a foreign public official has not been or cannot be proceeded against [Convention Article 2; 2009 Recommendation Annex I.B].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There have been no new cases or other development regarding this follow-up issue since the adoption of the Phase 3 Report.

Text of issue for follow-up:

13. The Working Group will follow up the issues below as case law and practice develops:

(b) Sanctions and confiscation imposed in practice for foreign bribery [Convention Article 3].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There have been no new cases or other development regarding this follow-up issue since the adoption of the Phase 3 Report.

Text of issue for follow-up:

13. The Working Group will follow up the issues below as case law and practice develops:

(c) Updates made to anti-money laundering legislation in Greenland and the Faroe Islands [Convention Article 7].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The anti-money laundering legislation (AML) in Greenland and the Faroe Islands has not changed since the adoption of the Phase 3 Report. The update of the AML legislation has been postponed until the implementation of the 4th AML directive which is expected to be completed by the end of 2015.

Text of issue for follow-up:

13. The Working Group will follow up the issues below as case law and practice develops:

(d) The application of the non-tax deductibility of bribes in practice, particularly on whether SØIK promptly informs SKAT of convictions related to foreign bribery, and whether SKAT re-assesses the tax returns of taxpayers convicted of foreign bribery [2009 Recommendation VIII.i; 2009 Tax Recommendation I.i and ii].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There have been no new cases regarding this follow-up issue since the adoption of the Phase 3 Report.

The Danish Customs and Tax Administration (SKAT) has stated that a contact-point between the Anti Fraud Department of the Danish Customs and Tax Administration (SKAT-AFD) and the State Prosecutor for Serious Economic and International Crime (SØIK) would be the natural gateway for the reporting of convictions in bribery-cases from SØIK to SKAT. This would make it possible for SKAT to ensure that tax-returns of tax payers convicted of bribery are re-assessed. SKAT and SØIK expect to discuss this issue in the spring of 2015.

REPORT ON FOREIGN BRIBERY-RELATED ENFORCEMENT ACTIONS

Please provide information on all ongoing investigations and prosecutions of cases of bribery of foreign public officials by Danish nationals and companies, including those referred to in the Phase 3 Report.

Ongoing Cases Referred in the Phase 3 Report

Transport Equipment Case

The Transport Equipment case (referred to at page 11, section 21 in the phase 3 report):

In April 2012 SØIK received an anonymous report, according to which a Danish company during the period from 2007 to 2009 by a named Danish employee supposedly had bribed Iraqi officials in Iraq in connection with the signing of contracts regarding the Iraqi state's purchase of lorries for approx. 7 million euro.

SØIK has in that connection in July 2012 conducted a search at the company's premises in Denmark.

Furthermore, SØIK has in November 2012 charged and questioned the named Danish employee who has confirmed that in connection with the trades a reduction on the price has been given. According to the person in question there was no case of bribery. The reason for the reductions was that the company due to the security situation in Iraq did not want to undertake a number of subsequent service obligations regarding the lorries – obligations that the company usually undertakes.

According to the named Danish employee, the agreements were supposedly communicated by a named Iraqi citizen, who in that period of time worked for the company in Iraq.

In February and June 2013 SØIK questioned the management (the CEO, the former CEO and the CFO) of the company, who all denied having any knowledge of the matter. Nor have any exhibits been found that clarify the case any further.

SØIK has been considering submitting an MLA request to Iraq with a view to conducting a questioning of the mentioned Iraqi citizen, but has so far refrained from doing that, because the Ministry of Foreign Affairs of Denmark has informed SØIK that the Ministry cannot exclude that the person in question might be at risk if the authorities in Iraq become aware of the matter.

Because of this and because the anonymous informer could not be identified with certainty, and the investigation into the money trail of the company did not provide any evidence of bribery, SØIK terminated the case on 1 April 2014.

Medical Equipment Case

The Medical Equipment case (referred to at page 11, section 22 in the phase 3 report):

In September 2011 a Danish law firm representing a US listed company in Denmark filed a report, according to which its Danish subsidiary had had a practice for several years, according to which the company in connection with the signing of contracts in the Russian market had charged and received a prearranged overcharge for the delivered goods. Subsequently, an amount corresponding to the charged overprice was transferred to an account indicated by the Russian distributor. The indicated accounts typically belonged to small companies located in countries in Asia.

The case was initially handled as a money laundering case, but as SØIK received more information from the law firm and the US authorities (the SEC) it was in September 2012 decided to investigate the case as a case of possible bribery.

In March 2013 SØIK conducted a search in the company (the Danish subsidiary) and managed to secure various pieces of documentation of the signed trades as well as the bookkeeping of the company. This material has subsequently been reviewed, and SØIK has been successful in documenting at least 80 instances of such payments as stated above.

As mentioned the Danish company is a subsidiary of a US listed company. There is an ongoing independent investigation of the present circumstances in the US.

In late November 2013 SØIK questioned, along with representatives from the FBI and SEC, 10 of the company's current and former employees. The company as well as 6 persons were charged and 4 persons were questioned as witnesses. Among the charged persons are the former and present CEO, the CFO, a bookkeeper and 2 other lower ranking employees who have been involved in the practice.

The questioned persons have largely confirmed the actual and documented sequence of events, but have not been further able to or wished to explain as to whom in Denmark has taken the initiative of using the procedure and/or what the purpose has been with the over-invoicing and the following transfers to Asia.

Subsequently, SØIK has supplied the American authorities with material that they have requested for their case against the American parent company.

In November 2014 the case has been submitted to the Danish court in order to obtain approval to submit a MLA request to the Russian authorities with a view to conducting a search and questioning of the Russian distributor.

Intermediary Case

The Intermediary case (referred to at page 11, section 23 in the phase 3 report):

In July 2011 SØIK received information through the British authorities, according to which sizable amounts of money (in total approx. DKK 200 millions) had been transferred from a number of large foreign companies to a Danish company.

The amounts deducted with 1.5 per cent were subsequently wire transferred from the Danish company to various accounts abroad, among these in particular to accounts in Cyprus. All amounts were wire transferred to accounts controlled by a Hungarian citizen. There is a suspicion that the transferred amounts are used to bribe Hungarian officials in connection with the signing of contracts regarding various public building projects in Hungary.

SØIK has in August 2011 conducted a search at the Danish company and charged and questioned the management of the company. The management of the company has confirmed the documented wire transfers and the sequence of events. The management has further explained that the procedure was used at the request of the Hungarian citizen who in this context had informed that the procedure was used in terms of tax.

The investigation of the case is to a certain extent carried out in cooperation with the British and Austrian authorities. The British authorities have been granted access to the accounts in Cyprus. All amounts received in these accounts have been withdrawn in cash by the Hungarian citizen and therefore it has not been possible to trace the money any further.

The Danish authorities have in cooperation with, among others, England in September 2013 submitted a MLA request to Hungary with a view to conducting a questioning of the Hungarian citizen, who has received the money.

In early December 2013, SØIK was with the British police in Hungary with a view to conducting the questioning. However, the Hungarian citizen failed to appear and the Hungarian police did not succeed in finding him, for which reason the questioning could not be conducted.

In November 2014 the British Serious Fraud Office has informed SØIK that the last known address of the Hungarian citizen has been searched, and they have among others found documents regarding the Danish company which will be forwarded to SØIK as soon as possible. They have also informed SØIK that they are going to conduct some interviews with the persons charged in the British case, and that these interviews may reveal information on the Danish company. For that reason, at the moment the case in Denmark awaits the results of the British investigation.

New Cases after the Adoption of the Phase 3 Report or Not Referred to in the Report

Note to Denmark: This section should include (but not necessarily be limited to) cases in the Working Group Matrix

Case Name

There have been no new cases of foreign bribery since the adoption of the Phase 3 Report.