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8 July 2024

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

Phase 4: One Year Written Follow-Up Report by Denmark

This report was submitted by Denmark for the June 2024 plenary meeting of the Working Group on Bribery in International Business Transactions. It does not reflect the views or opinions of the Working Group on Bribery.

JT03547267

PHASE 4 EVALUATION OF DENMARK: WRITTEN FOLLOW-UP REPORT

Instructions

This document seeks to obtain information on the progress Denmark has made in implementing recommendations 1(a), 11(a)(b), 14, 16(b)(c)(d) and 18(a)(c), as well as in enforcing the foreign bribery offence, since its Phase 4 evaluation report, which was adopted in March 2023.

Denmark should provide comprehensive information, and provide any relevant supporting material (e.g. legislation, statistics...) in attachments.

Further details concerning the written follow-up process is in the [Phase 4 Monitoring Guide](#).

*Denmark should submit the requested information to the Secretariat on or before **10 May 2024**.*

Name of country: DENMARK

Date of approval of Phase 4 evaluation report: March 2023

Date of information: 27 May 2024

PART I: RECOMMENDATIONS FOR ACTION

Regarding Part I, responses to the first question should focus on concrete steps taken since December 2021. Future steps can also be mentioned, for information.

Recommendation 1(a)

1. Regarding prevention and awareness-raising, the Working Group recommends that Denmark: (a) develop a comprehensive national strategy on combating foreign bribery that should (i) encompass prevention, detection, awareness-raising, and enforcement; (ii) incorporate the activities of the public, private and NGO sectors; (iii) be based on an assessment of the foreign-bribery risks faced by Danish companies; (iv) and take into account the other recommendations formulated in this report.

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

The Ministry of Justice has convened a meeting with relevant authorities to discuss recommendation 1(a). However, the Danish National Police is presently carrying out an evaluation of the current split of responsibilities between the police districts and the Special Crime Unit with respect to financial crime. The Danish National Police has previously informed the Ministry that the evaluation is expected to conclude mid-2024 and will be accompanied by a recommendation as to potential adjustments. Since a comprehensive national strategy on combating foreign bribery is contingent on the outcome of this evaluation, the ministry is of the opinion that it is premature to consider implementing recommendation 1(a). The ministry will, however, convene a meeting with relevant authorities once the evaluation has concluded.

If no action has been taken to implement recommendation 1(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:

Recommendation 11(a)

11. Regarding the offence of foreign bribery, 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 Anti-Bribery

Recommendation.

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

The Ministry of Justice has considered recommendation 11(a) carefully and determined that no follow-up action is needed to implement the recommendation.

The Ministry of Justice is still of the opinion that the small facilitation payments defence is consistent with Article 1 of the Convention and the Anti-Bribery Recommendation and the 2009 Recommendation. As previously explained, small facilitation payments in the context of an international business transaction for acts in breach of the foreign public official's duties will be punishable pursuant to Section 122 of the Criminal Code.

The small facilitation payments defence already has force of law as it follows directly from an interpretation of the word "unduly" (in Danish "*uberettiget*") in section 122 of the Danish Criminal Code. The word "unduly" refers to the general principle of "material atypicality" in Danish criminal law. This defence is based on the fact that in a few cases an act or omission is covered by the wording of a statute but not the reasons for criminalizing such acts in general. As such, it has the force of law.

The Ministry of Justice is of the opinion that the small facilitation payments defence is as clearly defined as is beneficial for a criminal defence of material atypicality. The current description of the defence in the *travaux préparatoires* is consistent with Danish legal tradition within the area of criminal law and allows for flexibility in theory and practice. Furthermore, this approach firmly maintains the starting point that there are no special defences for bribery, which helps prevent misunderstandings, e.g., that bribery is always legal when the amount is small enough or when local laws or norms permit it.

Reference is made to the ministry's previous answer to question SQ3.6.1 of the standard and supplemental questionnaire under the phase 3 evaluation of Denmark and recommendation 1(a) of the written follow-up report under the phase 3 evaluation of Denmark.

If no action has been taken to implement recommendation 11(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:

Recommendation 11(b):

11. Regarding the offence of foreign bribery, the Working Group recommends that Denmark: (b) ensure that the relevant authorities (i) send a co-ordinated and consistent message on the small facilitation

payment 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.

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

As mentioned in the answer to recommendation 1(a), the Danish National Police is presently carrying out an evaluation of the current split of responsibilities between the police districts and the Special Crime Unit with respect to financial crime. The Danish National Police has previously informed the Ministry that the evaluation is expected to conclude mid-2024 and will be accompanied by a recommendation as to potential adjustments. Therefore, the ministry is of the opinion that it is premature to consider recommendation 11(b).

Furthermore, reference is made to the ministry's previous answer to recommendation 1(b) of the written follow-up report under the phase 3 evaluation of Denmark.

If no action has been taken to implement recommendation 11(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:

Recommendation 14:

14. Regarding non-trial resolutions, the Working Group recommendation that Denmark adopt a clear and transparent framework for non-trial resolutions, in line with Anti-Bribery Recommendation XVIII(i)(ii)(iii)(iv) and make public, where appropriate and in conformity with the applicable rules, as much information about these resolutions as possible.

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

The Ministry of Justice has considered recommendation 14 and determined that no follow-up action is needed to implement the recommendation. The Director of Public Prosecutions has informed the ministry that the Prosecution Service has no difficulty in assessing whether criminal cases can be closed with non-trial resolutions. Furthermore, the Director of Public Prosecutions has provided clear guidelines and instructions in Notice No. 10268/2022 on quality and legality in criminal proceedings that cover the partition of competences, including for the decision-making authority with respect to non-trial resolutions.

If no action has been taken to implement recommendation 14, 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 16(b):**

16. Regarding the investigative and prosecutorial framework, the Working Group recommends that Denmark: (b) take steps to ensure that local law enforcement authorities refer all foreign bribery cases to the NSK.

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

As mentioned in the answer to recommendation 1(a), the Danish National Police is presently carrying out an evaluation of the current split of responsibilities between the police districts and the Special Crime Unit with respect to financial crime. The Danish National Police has previously informed the Ministry that the evaluation is expected to conclude mid-2024 and will be accompanied by a recommendation as to potential adjustments. Therefore, the ministry is of the opinion that it is premature to consider recommendation 16(b).

If no action has been taken to implement recommendation 16(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:

Recommendation 16(c):

16. Regarding the investigative and prosecutorial framework, the Working Group recommends that Denmark: (c) ensure that all foreign bribery cases involve systematic cooperation between the NSK and SSK and are supervised by prosecutors with sufficient expertise in this offence

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

As mentioned in the answer to recommendation 1(a), the Danish National Police is presently carrying out an evaluation of the current split of responsibilities between the police districts and the Special Crime Unit with respect to financial crime. The Danish National Police has previously informed the Ministry that the evaluation is expected to conclude mid-2024 and will be accompanied by a recommendation as to potential adjustments. Therefore, the ministry is of the opinion that it is premature to consider recommendation 16(c).

If no action has been taken to implement recommendation 16(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:

Recommendation 16(d):

16. Regarding the investigative and prosecutorial framework, the Working Group recommends that Denmark: (d) urgently takes steps to ensure that the NSK and SSK are assigned appropriate financial and human resources to proactively, comprehensively, and effectively investigate and prosecute all foreign bribery cases.

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

As mentioned in the answer to recommendation 1(a), the Danish National Police is presently carrying out an evaluation of the current split of responsibilities between the police districts and the Special Crime Unit with respect to financial crime. The Danish National Police has previously informed the Ministry that the evaluation is expected to conclude mid-2024 and will be accompanied by a recommendation as to potential adjustments. The assessment and decision of appropriate financial and human resources is contingent upon the recommendations from said evaluation. Therefore, the ministry is of the opinion that it is premature to consider recommendation 16(d).

If no action has been taken to implement recommendation 16(d), 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:

Recommendation 18(a):

18. Regarding the related offences, the Working Group recommends that Denmark: (a) promptly raise the maximum sanctions available false accounting offences, to ensure that sanctions for these offences are effective, proportionate and dissuasive.

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

The Ministry of Justice has considered recommendation 18(a) and is still of the opinion that there are no substantive reasons for taking steps to amend the relevant provisions. Reference is made to the ministry's previous answers to question SQ5.3(a) of the standard and supplemental questionnaire under the phase 3 evaluation of Denmark and recommendation 5 of the written follow-up report under the phase 3 evaluation of Denmark, where steps taken to seriously consider to further increase the sanctions for accounting offences is thoroughly described.

If no action has been taken to implement recommendation 18(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:

Recommendation 18(c):

18. Regarding the related offences, the Working Group recommends that Denmark: (c) ensure the sanctions for foreign bribery-related money laundering are effective, proportionate and dissuasive

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

The Ministry of Justice is of the opinion that the sanctions for money laundering are effective, proportionate, and dissuasive. The ministry will, of course, give the recommendation due consideration should any information indicate that this is or may not be the case.

Money laundering is sanctioned with imprisonment for a term not exceeding 1 year and 6 months which may increase to imprisonment for 8 years if the money laundering was of a particularly aggravating nature, namely due to the commercial or professional nature of the offence, or due to the realised or intended gain, or when several offences have been committed. The level of sanctions for money laundering pursuant to section 290 a of the Danish Criminal Code is normally not affected by the predicate offence.

The Director of Public Prosecutions has informed the Ministry of Justice that it is not possible to collect data on the total number of cases on money laundering specifically related to foreign bribery currently being processed across all police districts. The Special Crime Unit has informed the Ministry of Justice that it has no knowledge of Danish money laundering cases, where the predicate offence is foreign bribery.

Furthermore, the Ministry of Justice wishes to underline that self-laundering is covered by section 290 a of the Danish Criminal Code. Where the self-laundering is carried out by concealment or disguise that do not involve the transfer or conversion of the money in question, self-laundering may – depending on the circumstances of the case - be punishable pursuant to section 290 a, cf. sections 21 or 23 of the Danish Criminal Code, which criminalize any attempt at or contribution to the criminal offence in question.

Finally, the Ministry of Justice notes that Denmark is not bound, under international law, to implement the Convention in Greenland and the Faroe Islands. Reference is made to the ministry's previous

answer to recommendation 7 of the written follow-up report under the phase 3 evaluation of Denmark. However, the ministry can inform that self-laundering is criminalised in Greenland and that the relevant provision came into force 1 July 2022.

If no action has been taken to implement recommendation 18(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: ENFORCEMENT OF THE FOREIGN BRIBERY OFFENCE

Please provide information on any steps taken by Denmark to detect, investigate, prosecute or resolve cases of foreign bribery (and related offences).

[The information provided by Denmark on enforcement is omitted from the published version of the report.]