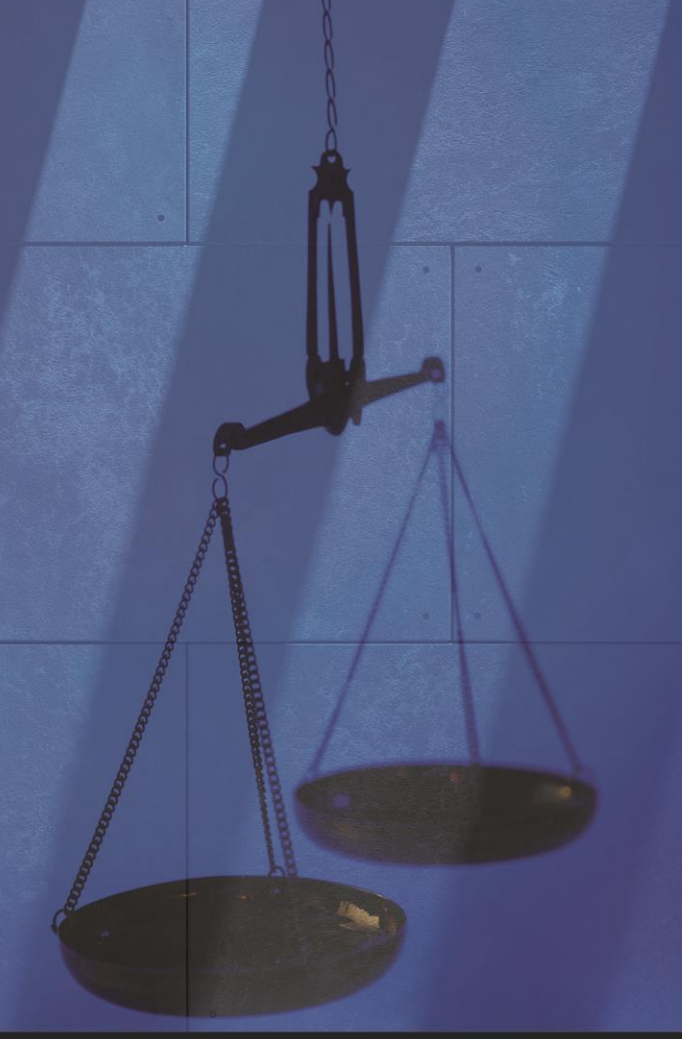

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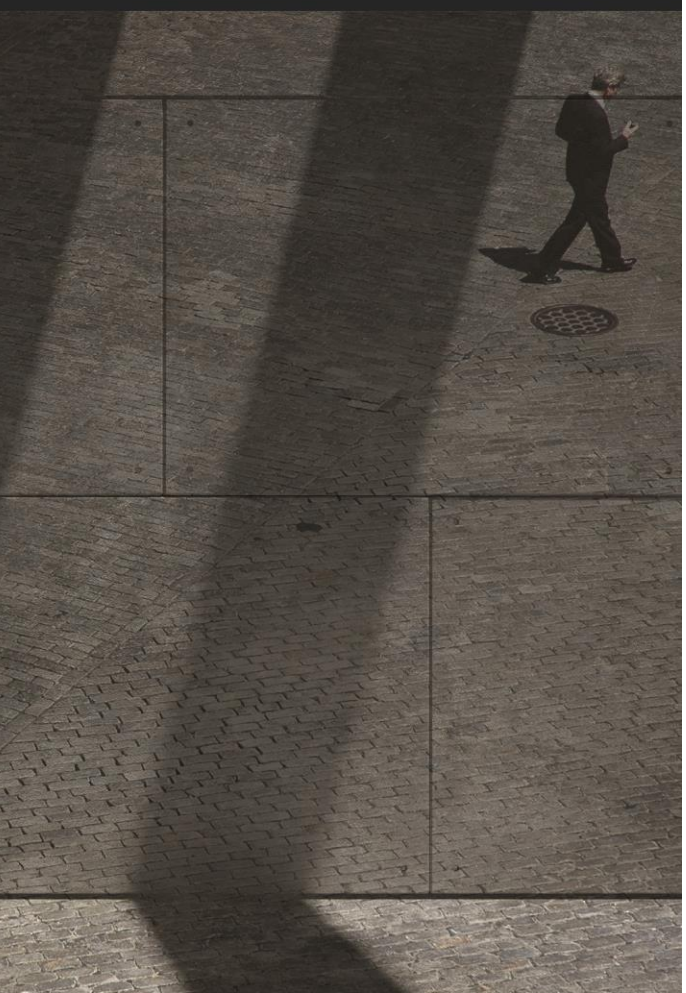

Implementing the OECD Anti-Bribery Convention

Phase 4 Report:

Denmark

This Phase 4 Report on Denmark by the OECD Working Group on Bribery evaluates and makes recommendations on Denmark's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the OECD Working Group on Bribery on 9 March 2023.

The report is part of the OECD Working Group on Bribery's fourth phase of monitoring, launched in 2016. Phase 4 looks at the evaluated country's particular challenges and positive achievements. It also explores issues such as detection, enforcement, corporate liability and international co-operation, as well as covering unresolved issues from prior reports.

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EXECUTIVE SUMMARY

This Phase 4 report by the OECD Working Group on Bribery in International Business Transactions (Working Group) evaluates and makes recommendations on Denmark's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report details Denmark's achievements and challenges, including in enforcing the foreign bribery offence, as well as progress made since its 2013 Phase 3 evaluation.

The Working Group is concerned that overall, Denmark has made limited efforts to prevent, detect, investigate, prosecute, and sanction foreign bribery since Phase 3, and to address the deficiencies identified in its Phase 3 report. Denmark has given a low priority to these objectives. There is no strategy or policy to combat foreign bribery, and, in general, Danish authorities do not show a high level of awareness of the Convention. This is due, to a large extent, to the perception that Denmark faces low risks of corruption. There are, however, clear indications that Denmark is vulnerable to foreign bribery risks. Authorities also recently assessed foreign bribery-related money laundering risks as very significant.

Denmark's legal framework has significant deficiencies, including the lack of a clear and legally-binding definition of its small facilitation payment defence, the absence of clear and transparent non-trial resolution mechanisms and the insufficient sanctions available for false accounting and money laundering in relation to foreign bribery. The Convention has still not been extended to Greenland and the Faroe Islands.

Commendably Denmark achieved its first foreign bribery conviction in 2019, which was imposed against a Danish company through a non-trial resolution. At the time, the fine was the largest ever sought by the State Prosecutor for Serious Economic and International Crimes (SØIK) for economic crimes. Two foreign bribery cases are ongoing. In one case, Denmark is jointly investigating with the passive-side country.

However, the Working Group is concerned about Denmark's overall efforts to enforce the foreign bribery offence. Most potential sources of foreign bribery allegations remain underexploited. Authorities did not thoroughly and proactively assess if the reasonable presumption threshold to open an investigation was met in relation to several credible allegations of foreign bribery. Law enforcement authorities are not using the full range of investigative techniques available or routinely seeking evidence from foreign authorities, and several investigations were terminated prematurely. The corporate liability framework is not being applied comprehensively, in particular in relation to foreign subsidiaries of Danish companies. No financial investigations are conducted in bribery cases, directly impacting Denmark's capacity to confiscate bribes or proceeds of foreign bribery or pursue foreign bribery-related money laundering. It is unclear if foreign bribery sanctions are effective, proportionate, and dissuasive.

The report highlights growing concerns over resources to fight foreign bribery. Danish law enforcement authorities believe resources are only sufficient because foreign bribery cases are mainly self-reported. Authorities say they can decline to open a criminal investigation because of resource considerations and have discontinued one high profile and serious foreign bribery case because of the potential costs involved. Recent structural changes within Denmark's system of investigating and prosecuting foreign bribery could further decrease the priority and resources given to the enforcement of the foreign bribery offence and weaken specialisation.

On a positive note, the Working Group welcomes the steps taken by Denmark to enhance its anti-money laundering regime and reinforce the protections for whistleblowers. Large Danish companies display a high

level of awareness of foreign bribery risks and overall have robust anti-corruption compliance regimes. The Working Group also notes with interest that the Danish government, the private sector, and civil society have engaged in a collective action aiming to discourage small facilitation payments, which, according to Danish businesses has yielded positive results.

The report and its recommendations reflect the conclusions of experts from Finland and Peru and was adopted by the Working Group on 9 March 2023. It is based on legislation, practice data and other materials provided by Denmark, as well as research conducted by the evaluation team. Information was also obtained during an on-site visit to Denmark in September 2022, during which the evaluation team met representatives of Denmark's public and private sectors, prosecutors, judiciary, and civil society. Denmark will provide a written follow-up report in March 2024 on its enforcement efforts, and the implementation of recommendations 1(a), 12(a)(b), 15, 17(b)(c)(d) and 18(a)(c). Denmark will also report to the Working Group in writing in March 2025 on its implementation of all recommendations, on its foreign bribery enforcement actions, and on developments related to the follow-up issues.

INTRODUCTION

1. In March 2023, the Working Group on Bribery in International Business Transactions (Working Group or WGB) completed its fourth evaluation of Denmark's implementation of the OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (Convention), the 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2021 Recommendation), and related anti-bribery instruments.

Previous evaluations of Denmark by the Working Group on Bribery

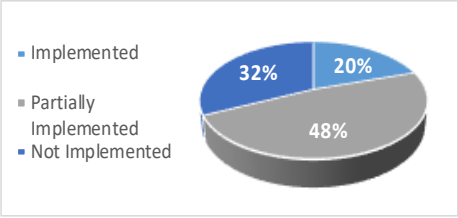
2. The Working Group conducts successive phases of peer-review evaluations to monitor all Parties' implementation and enforcement of the Convention and related instruments. Since Phase 2, evaluations have included an on-site visit to obtain governmental and non-government views in the evaluated country. The evaluated country may comment on but not veto the evaluation report and recommendations. Evaluation reports are published on the OECD website.

3. The last full evaluation of Denmark in Phase 3 dates back to March 2013. In 2015, the Working Group concluded that, of the 25 recommendations resulting from the Phase 3 evaluation, 5 were fully implemented, 12 partially implemented, and 8 not implemented (See Annex 3).

Table 1. Previous WGB evaluations of Denmark

2000 Phase 1 report
2006 Phase 2 report
2008 Phase 2 follow-up report
2013 Phase 3 report
2015 Phase 3 Two-Year follow-up report

Figure 1. Denmark's implementation of Phase 3 recommendations



Phase 4 process and on-site visit

4. The monitoring process is based on principles agreed by the Parties. Phase 4 evaluations focus on the cross-cutting issues of enforcement, detection, and corporate liability. They also address outstanding recommendations from previous evaluations and changes to domestic legislation or the institutional framework. Phase 4 takes a tailored approach, considering each country's unique situation and challenges, and reflecting positive achievements. Issues that were not problematic or were resolved

by the end of Phase 3 may not be reflected in the Phase 4 report, while new issues that have arisen since that time may appear in this report for the first time.

5. The team for the Phase 4 evaluation of Denmark was composed of lead examiners from Finland and Peru and members of the OECD Anti-Corruption Division.[1] After receiving Denmark's responses to the Phase 4 questionnaire and country-specific supplementary questions, the evaluation team conducted an on-site visit to Copenhagen from 26 to 30 September 2022. The team met with government civil servants, law enforcement authorities, the judiciary, the private sector (business associations, companies, lawyers, and external auditors), as well as civil society (non-governmental organisations and academia).[2] While the evaluation team expresses its appreciation to all the participants for their contributions to the open and constructive discussions, it regrets not having been able to meet with parliamentarians or the media. The evaluation team is grateful to Denmark, in particular the Ministry of Justice (MOJ), for the cooperation throughout the evaluation, the organisation of the on-site visit, and the provision of additional information following the visit, although the team noted some delays in obtaining comprehensive information from Denmark at several stages of the evaluation.

Denmark's foreign bribery risk in light of its economic situation and trade profile

6. Denmark has a population of 5.9 million people. It is ranked 27th in terms of GDP amongst the 44 WGB members. Its open economy is highly dependent on international trade in goods and services. Denmark also has an advanced industry with world leading firms in the pharmaceutical, maritime shipping, and renewable energy sectors. Denmark's economy performed solidly in the decade preceding the Covid-19 pandemic. Its policy responses during the pandemic have helped with its subsequent economic recovery. Growth has recently slowed due to factors including dropping consumer and business confidence and rising inflation.

7. In terms of international trade, Denmark was 23rd among WGB members for exports of goods and 22nd for imports in 2021.[3] In 2020, the main exported goods were chemicals and related products (27 %), machinery and transport equipment (25 %), food and live animals (17 %), and miscellaneous manufactured articles (14 %). Denmark's main export partners were Germany (14 %), Sweden (9 %), the Netherlands (6 %), Norway (6 %), the United States (US) (5 %), the United Kingdom (UK) (5 %) and the People's Republic of China (hereafter 'China') (4 %) (see below).[4] Denmark also ranks 15th among WGB members for trade in commercial services, of which more than half are in the transport sector. In 2020, the main destinations were the European Union (EU) (36.5 %), the US (13.1 %), the UK (7 %), Switzerland (4.3 %) and China (3.6 %).[5]

[1] Finland was represented by Katja Jokela, Senior Specialised Prosecutor, National Prosecution Authority, Prosecution District of Southern Finland, and Ari Juottonen, Detective Superintendent, National Bureau of Investigation. Peru was represented by Gisel Vanesa Andia Torres, Coordinator of the Criminal Litigation area of the Ad Hoc Public Prosecutor's Office for the Odebrecht case and others, and Yuriko Maribel Aguirre Chaupin, Advisor to the Secretariat of Public Integrity of the Presidency of the Council of Ministers. The OECD was represented by Solène Philippe, Coordinator of the Phase 4 Evaluation of Denmark, Corinna de Vathaire de Guerchy, Lucia Ondoli and Ben Aldersey, all Legal Analysts from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs.

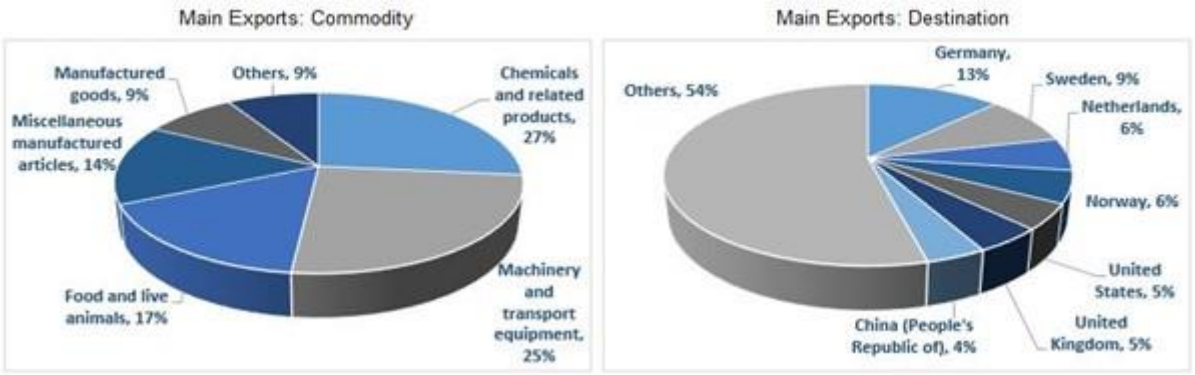
[2] See Annex 4 for the list of participants in the on-site visit discussions.

[3] WTO Stats, Merchandise exports and imports by product group – annual, 2021.

[4] OECD Stats, International Trade by Commodity Statistics, year 2020.

[5] WTO Stats, Commercial services exports by main sector – preliminary annual estimates based on quarterly statistics (2005-2021); WTO, Trade Profiles, Denmark, Trade in Commercial Services, 2020.

Figure 2. Exports by main destinations and main goods



8. In terms of foreign direct investment (FDI), Denmark had USD 270 billion in outward FDI stocks in 2021, ranking 19th among WGB members.[6] The main FDI destinations in 2020 were Sweden (13.6 %), the UK (12.5 %), the US (12 %), Germany (11 %), the Netherlands (6.7 %) and Singapore (6.5 %). Other destinations include countries that may present higher corruption risks, such as China (2 %), Brazil, India, Mexico, and the Russian Federation (all around 0.5 %).[7] Outward FDI stocks are mainly in the services and manufacturing sectors (74 % and 15 %, respectively).

Small, and medium-sized enterprises and state-owned enterprises

9. Micro, small, and medium-sized enterprises (SMEs) have an important role in Denmark's economy, accounting for 99.7 % of all companies, 64 % of employment, and 61.7 % of value-added in the non-financial business sector.[8] Danish SMEs are internationally active, and therefore exposed to the risk of committing foreign bribery. In 2019, medium-size firms generated USD 23.8 billion in exports, ranking 14th among EU countries.[9] In 2017, 84 % of the Danish businesses exporting outside the EU were SMEs, ranking 10th among EU countries for number of exporting SMEs and total value of exports.[10]

10. In 2021, the Danish state had full or majority ownership in 22 enterprises and held shares in 8 other entities.[11] These state-owned and controlled enterprises (SOEs) hold dominant positions in rail, energy, utility, and broadcast media in the Danish market.[12] One SOE is an energy group with significant international activities and features as one of the top 10 largest businesses in Denmark. Overall, Denmark has five SOEs that have exports and/or investments abroad. These SOEs operate in the transport (airlines and airports), renewable energy and gambling sectors, which are vulnerable to foreign bribery risks.

The Faroe Islands and Greenland

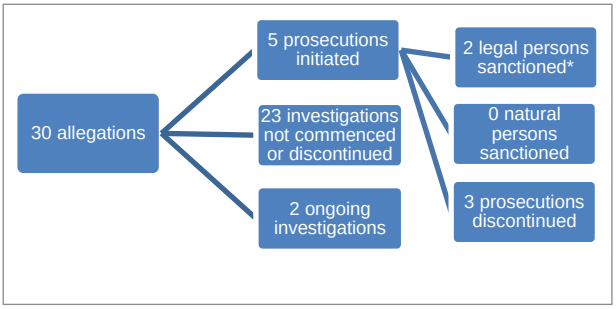
11. The Kingdom of Denmark consists of Denmark, the Faroe Islands, and Greenland. The Faroe Islands and Greenland have extensive self-government arrangements and are not members of the EU.[13] Due to a territorial reservation made by Denmark, the OECD Anti-Bribery Convention does not apply to these territories (see Section B.1.c). The Faroe Islands and Greenland do not have significant economies.

[6] UNCTADSTAT, Bilateral FDI database on flows and stocks.
[7] OECD Stats, FDI statistics by partner country and by industry, year 2020.
[8] European Commission (2022), SME Performance Review 2021/2022 - Denmark country sheet.
[9] OECD Data, Exports by business size, 50-249 employees.
[10] European Commission (May 2020), "The Role of SMEs in Extra-EU Exports: Key Performance Indicators", p.27.
[11] Ministry of Finance, Organisering af statens selskaber.
[12] United States Department of State, 2020 Investment Climate Statements: Denmark.
[13] Ministry of Foreign Affairs of Denmark, Greenland and the Faroe Islands.

However, they do have companies with important exports abroad, which expose them to foreign bribery risks. The vast majority of both territories' exports are fish, seafood, and fish products. Exports amount approximately to USD 1.3 billion per year in each territory.[14] Export destinations include countries that are associated with higher corruption risks. In 2019, the Faroe Islands mainly exported to the Russian Federation (23.4 %), Denmark (11.1 %), the US (10.1 %) and the UK (9.1 %).[15] In 2020, the main export destinations for Greenland were Denmark (52.6 %), China (19.2 %), Japan (5.7 %), Germany (3.4 %), and the Russian Federation (3.9 %).[16] Greenland also has important reserves of rare minerals, which could lead to a significant development of the extractive sector in the future.[17]

Allegations involving bribery of foreign public officials

Figure 3. Denmark's foreign bribery allegations 2000-2022



* Includes a sanction imposed in 2011 on a Danish company on a charge of private corruption for conduct that falls within Article 1 of the Convention.

12. Since the Convention entered into force in Denmark on 4 November 2000, there have been approximately 30 allegations of bribery of foreign public officials implicating Danish companies or citizens. Danish companies have been sanctioned in only two cases. A natural person has never been sanctioned for foreign bribery, and Denmark has never taken a foreign bribery case to trial. Most foreign bribery allegations (23) were either not investigated (8) or Danish authorities terminated the investigation without prosecution (15). Denmark discontinued prosecutions in three cases. Danish authorities are currently investigating two foreign bribery cases.

Enforcement history

13. In Phase 2, there were no formal foreign bribery investigations or prosecutions in Denmark. In 2005, foreign bribery allegations involving a Danish company were not investigated because SØIK determined the Danish parent company was not liable because the alleged acts occurred in a foreign subsidiary. Law enforcement authorities have declined to investigate or discontinued the investigation in several cases since for the same reason (See Sections B.2.b. and C.1.a.).

14. In Phase 3, the WGB expressed serious concerns about the adequacy of enforcement of the foreign bribery offence. Only 13 foreign bribery allegations had been detected, and only one resulted in prosecution and sanctions. In 2011, a Danish pharmaceutical company was sanctioned for bribery on a charge of private corruption, because Danish law enforcement authorities could not prove that the bribed consultants were foreign public officials. Nine of the remaining twelve cases were terminated at the investigative stage. Several were closed without adequate investigation or efforts to secure foreign evidence. Three cases were ongoing at the time of the report. Denmark charged natural and legal persons in the three cases but subsequently withdrew all charges. A review of the cases in Phase 3 identified several issues, including the inadequacy of enquiries made before termination of investigations, the lack

[14] Prime Minister's report on the Danish Realm, Statement no. R 15 (7/4 2022), p.3; The Observatory of Economic Complexity, Trade - Greenland.
[15] United States Department of State, 2020 Investment Climate Statements: Denmark.
[16] The Observatory of Economic Complexity, Trade - Greenland.
[17] The New York Times, The World Wants Greenland's Minerals, but Greenlanders Are Wary, 1 October 2021.

of prosecution of legal persons, over-reliance on investigations by foreign authorities, inadequate efforts to secure foreign evidence and co-operation and the scope of the small facilitation payment defence.

Enforcement in Phase 4

Denmark's first foreign bribery conviction

15. In 2019, Denmark achieved its first foreign bribery conviction through a non-trial resolution in the ***Paint and Coating (Germany & Asia)*** case. A Danish company pleaded guilty to one count of failing to prevent commercial bribery by a German subsidiary and one count of failing to prevent commercial and foreign bribery by several subsidiaries predominantly domiciled in Asian countries. The court imposed a fine (agreed between prosecution and the company) of DKK 197 500 000 (USD 26.5 million). The company admitted it knew of and failed to prevent employees of the German subsidiary from paying DKK 70 million (USD 9.4 million) in "kick-back payments" to ship managers to secure favourable terms. The company also admitted it knew of and failed to prevent employees in the mainly Asian subsidiaries from making similar payments of DKK 26.4 million (USD 3.5 million). As analysed in the report, prosecutors were unable to trace the exact recipients of the payments or quantify the benefits of the bribery schemes. However, the company admitted the subsidiaries made payments to representatives of SOEs. For this reason, the second count was characterised as foreign bribery "in part."

Other foreign bribery allegations

16. In Phase 4, the evaluation team identified 12 new allegations, and Denmark reported 4 additional cases. Of those 16 cases, Denmark did not open an investigation in almost half (7). Two cases were time-barred under the previous five-year statute of limitations. Danish law enforcement authorities were unaware of one case, even though it is under investigation in another WGB country and reported in the WGB media monitoring. In four cases, Danish authorities did not open an investigation because they determined was no reasonable presumption an offence subject to Danish jurisdiction was committed. Of the nine investigations they did commence, six were terminated at the investigative stage. Only the ***Paint and Coating (Germany & Asia)*** resulted in a sanction imposed against a Danish company. In that case, Denmark discontinued the prosecution against two natural persons. Two foreign bribery investigations are ongoing. Annex 1 summarises the Phase 4 cases.

17. As analysed in this report, regrettably, many of the enforcement issues identified in previous evaluations endure. New issues have also arisen. Danish authorities did not thoroughly and proactively assess if the reasonable presumption threshold to open an investigation was met in relation to several credible allegations of foreign bribery. In cases involving foreign subsidiaries of Danish companies, authorities took limited steps to investigate and did not explore all avenues of corporate liability before discontinuing investigations. In one case, an investigation was discontinued because of resource considerations. Only the ***Paint and Coating (Germany & Asia)*** case reached prosecution, and as illustrated above, the resolution relied heavily on admissions made by the company. These, and other specific issues in foreign bribery enforcement, are discussed in Section B.2.b.

Commentary

The lead examiners commend Denmark on its first foreign bribery conviction. However, they note that it comes against a backdrop of decades of inadequate detection and enforcement of the foreign bribery offence by Danish authorities. As discussed in Section B.2.b, they are seriously concerned that most enforcement issues identified in Phase 3 persist and that new issues have arisen.

Strategy for combating foreign bribery

18. Since the adoption of the Phase 3 Two-Year follow-up report in 2015, Denmark has not taken steps to review the adequacy, or to enhance the effectiveness of its approach to preventing, detecting, and combating foreign bribery. Denmark does not have a comprehensive strategy to combat corruption, or foreign bribery encompassing prevention, detection, and enforcement. The Director of Public Prosecution (DPP) has produced Guidelines on "Criminal cases concerning bribery," which were adopted in 2014 (2014 DPP Bribery Guidelines). However, the Guidelines only aim to address some specific issues raised in Phase 3 and cannot be considered as a policy or strategy on enforcing the foreign bribery offence. In any case, these prosecutorial guidelines do not address the prevention of foreign bribery.

19. The absence of a comprehensive policy or strategy on foreign bribery may have contributed to the limited efforts made by Denmark to implement the Convention since Phase 3. As analysed in further detail in this report, overall, steps to detect and enforce the foreign bribery offence have been very limited and lacked coordination. The State Prosecutor for Serious Economic and International Crimes (SØIK), the entity that was principally responsible for investigating and prosecuting foreign bribery cases, was incorporated into a broader entity, the National Special Crime Unit (*National enhed for Særlig Kriminalitet*) (NSK) in 2022. This structural change and absence of a comprehensive strategy may lead to foreign bribery being further de-prioritised and impact specialisation in this area (See Section B.2.a.). Awareness of the Convention appears limited among Danish public officials. The most significant legislative reforms conducted since Phase 3 have been driven by Denmark's obligation to comply with EU legislation or other international standards in areas that are not specifically linked to anti-corruption objectives.

20. As highlighted by a representative of the civil society during the on-site visit, the fact that the risk of corruption is widely perceived as very low in Denmark contributes to the de-prioritisation of anti-corruption policy objectives. This has a direct impact of the authorities' willingness to invest resources in the prevention, detection, and investigation of potential cases. This is concerning because, as shown in the previous sections, Danish companies are vulnerable to foreign bribery. This is illustrated, in particular, by the large number of serious allegations involving Danish companies identified since Phase 3.

Commentary

The lead examiners recommend that Denmark develop a comprehensive national strategy on combating foreign bribery encompassing prevention, detection, awareness-raising, and enforcement, in order to ensure foreign bribery is given appropriate priority. The strategy should incorporate the activities of the public, private and NGO sectors, be based on an assessment of the foreign-bribery risks faced by Danish companies and take into account the other recommendations formulated in this report.

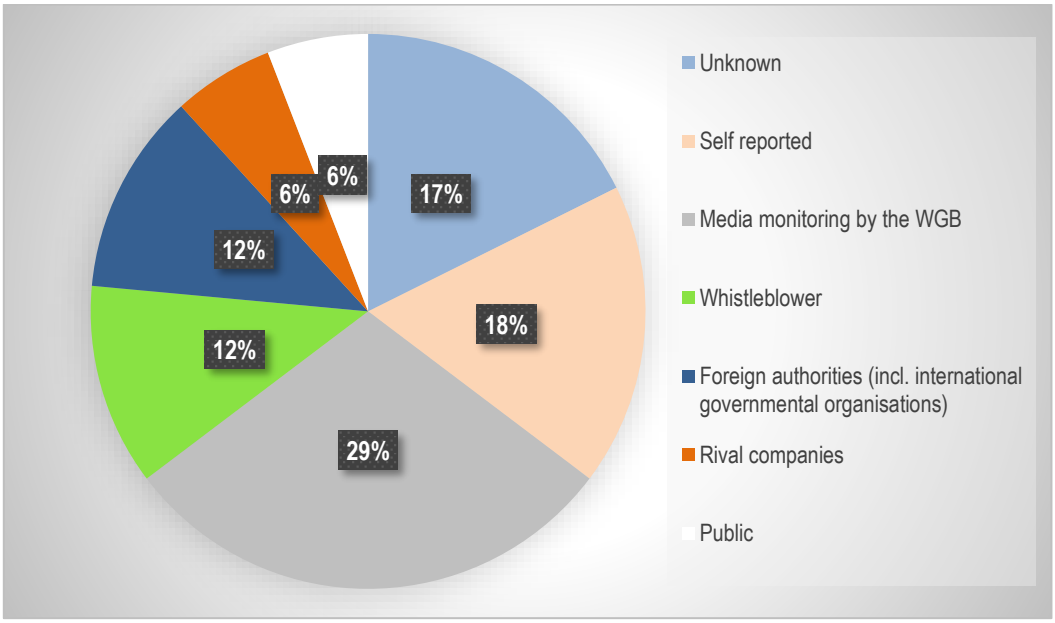
A. DETECTION OF THE FOREIGN BRIBERY OFFENCE

A.1. Sources of detection

21. In Phase 3, the WGB recommended that Denmark proactively gathers information from diverse sources to increase the number of allegations and to enhance investigations (Phase 3 recommendation 3(d)(ii)).

22. Denmark provided information on the sources of 13 out of 16 foreign bribery allegations detected by Danish law enforcement authorities since Phase 3. As illustrated below, the main sources of detection are the WGB's media monitoring, self-reports, foreign authorities, and international organisations. Of concern, Danish authorities were not aware of several allegations of foreign bribery identified by the WGB or other public sources. As analysed in the following sections, most potential sources of foreign bribery allegations remain underexploited by Denmark.

Figure 4. Sources of foreign bribery allegations detected by Danish law enforcement since Phase 3



Commentary

The lead examiners regret that since Phase 3, Denmark has not taken effective steps to enhance its capacity to detect foreign bribery allegations. They reiterate Phase 3 recommendation 3(d)(ii) that Denmark proactively gathers information from diverse sources to increase the number of

allegations and to enhance investigations and further recommend that Denmark keeps accurate records of detection sources.

A.2. Detection through media reports

23. The Danish police can open an investigation based on a media report where there is a reasonable presumption that a criminal offence liable to public prosecution has been committed. However, the NSK do not monitor the media for information on foreign bribery cases and are yet to detect a foreign bribery allegation from this source.

24. Since Phase 3, Danish law enforcement authorities became aware of five foreign bribery allegations through the WGB's media monitoring. They did not open an investigation in three cases. In the ***Construction (Lithuania)*** and ***Pharmaceutical No.1 and No.2 (China)*** cases, authorities considered the media reports alone too vague to satisfy the reasonable presumption requirement for opening an investigation (See Section B.2.b.). In the ***Charter Contracts (Brazil)*** and ***Shipping Contracts (Brazil)*** cases, Denmark opened an initial investigation in 2015 which was terminated after limited investigative efforts. Danish authorities did not re-open the investigation when additional allegations were reported in the media and to the WGB by another WGB country in 2019. In the ***Fishing (Estonia)*** case, by the time Denmark became aware of the allegations, the statute of limitations had expired. Danish authorities reported they were not aware of an allegation involving a Danish-Greek national in the ***Promotional Funds (EU)*** case, even though this case was identified through the WGB's media monitoring in March 2022 and is being investigated in other WGB countries. These cases raise concerns that Danish authorities do not effectively use the information collected by the WGB. Another alleged foreign bribery case was reported by Transparency International in a public study in 2020,[18] and in more detail by Danish media.[19] Again, the Danish authorities were not aware of this case.

Commentary

The lead examiners are concerned that the Danish authorities are failing to identify foreign bribery cases reported in the media. They recommend that the Danish law enforcement authorities put in place proactive media monitoring processes to detect potential foreign bribery cases and ensure that the Working Group's media monitoring information is properly utilised.

A.3. Detection through foreign authorities and international organisations

25. Denmark detected two foreign bribery cases through information from foreign authorities or international organisations. In April 2016, the World Bank Integrity Vice Presidency (INT) reported the ***Infrastructure Projects (Indonesia & Viet Nam)*** case to the Danish Ministry of Foreign Affairs (MFA), who referred the matter to SØIK. SØIK requested and reviewed evidence from the INT's case file but closed the case without additional investigative steps for reasons including that some acts were time-barred (See Section B.2.b). The second case, ***Oil (Brazil),*** came to the attention of Danish law enforcement through an MLA request received from Brazil. At the time of detection, the case was time-barred in Denmark. A 2022 survey of WGB members on international cooperation with Denmark identified a third potential foreign bribery case brought to the attention of Danish law enforcement authorities in 2016 through an MLA request. It concerned bribes allegedly paid by a Danish company to public officials in the WGB country. Denmark did not report the case in this evaluation. After the on-site visit Denmark stated

[18] Transparency International (2020), Exporting Corruption, p. 55.
[19] See for example Finans (19 February 2020), FLSmidth er involveret i sag om korruption for 225 mio. kr.

that they executed the WGB country's request but determined there was no basis to open an investigation in Denmark.

Commentary

The lead examiners are concerned that Denmark is not proactively investigating cases reported by foreign authorities or international organisations. They recommend that Denmark take measures to ensure that law enforcement authorities proactively and seriously assess all credible foreign bribery allegations detected through information received from foreign authorities or international organisations, including information spontaneously transmitted or obtained through mutual legal assistance requests.

A.4. Awareness-raising and reporting by Danish public officials

26. In Phase 3, the WGB recommended that Denmark continue its foreign bribery awareness-raising efforts in the public sector (Phase 3 recommendation 10(a)(i)). The WGB also noted issues in the reporting obligations for public officials. Neither the 2007 Code of Conduct for the Public Sector nor the MOJ's Booklet "How to Avoid Corruption" contained a clear and legally binding obligation to report foreign bribery. The overall anti-corruption policy of the MFA and the specific anti-corruption policy of the Trade Council of Denmark (TCD - official export and investment promotion agency) did not require the reporting of foreign bribery suspicions on *any* Danish company to *Danish* law enforcement authorities. The WGB thus recommended that Denmark ensure that public servants, including those in the MFA and TCD, are clearly required to report all credible suspicions of foreign bribery involving Danish individuals or companies detected in their work to Danish law enforcement authorities (Phase 3 recommendation 11(a)).

27. During the on-site visit, representatives from the public sector displayed a limited awareness of foreign bribery and the Convention overall. Since Phase 3, awareness-raising efforts for public officials have been limited and mainly directed to MFA staff, including in TCD and foreign missions. The MFA's and TCD's anti-corruption policies were last revised in 2022 and 2020, respectively. Both documents state that the MFA and TCD have "zero tolerance towards corruption in all its forms." While the MFA policy does not specifically mention foreign bribery, the TCD policy mentions "corruption and other types of financial crimes committed by Danish companies and their subsidiaries outside Denmark." Denmark explained that both documents are mandatory reading for all MFA staff (in Copenhagen and foreign missions), that all staff receive mandatory e-learning anti-corruption training, which specifically refers to the Anti-Bribery Convention and covers foreign bribery and that heads of departments in the MFA are performance-assessed on whether staff in their department have completed the course.

28. During the on-site visit, representatives from the MFA stated that Danish foreign missions monitor local media as part of their daily tasks, including with a view to detecting foreign bribery allegations, which is a positive development. However, a deficiency identified in Phase 3 in the reporting obligations contained in the MFA and TCD anti-corruption policies remains. Although the reporting obligation in the MFA Anti-Corruption Policy now extends to suspicions involving *any* Danish company or its subsidiaries, officials may still direct reports to foreign authorities in lieu of Danish law enforcement authorities.

29. At a very late stage of the evaluation process, the MFA stated that, for the period 2021-2022 it reported eight suspicions of "corruption or economic crimes" related to Danish companies operating abroad to the NSK. The NSK confirmed that at least one of these reports had a foreign bribery element. That report had previously been assessed by the NSK, which determined that the reasonable presumption threshold for opening an investigation was not met. At the time of this report, the NSK stated they will reassess the case. The evaluation team could not analyse this case further.

Commentary

The lead examiners note that, since Phase 3, the MFA has reported several suspicions of corruption or economic crimes, including at least one possible suspicion of foreign bribery, to the NSK. While information available on this case is limited, this is a positive development. However, the reporting obligations still need to be clarified. The lead examiners thus recommend that Denmark continue to take steps to raise the awareness of the foreign bribery offence among public officials, particularly public officials from agencies that interact with, or that are exposed to information regarding companies operating abroad, and clarify the obligations for these public officials, including those within the MFA and TCD, 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.

A.5. Whistleblowing and whistleblower protection

30. In Phase 3, the WGB found that Danish law did not provide for comprehensive whistleblower protections in the public and private sectors. Danish companies were increasingly adopting whistleblowing mechanisms, but at that time the effectiveness of these measures was unclear. Furthermore, civil society representatives had reported instances of retaliation against whistleblowers by companies that had whistleblower protection measures in place. For these reasons, the WGB reiterated a Phase 2 recommendation that Denmark 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 (Phase 3 recommendation 11(b)).

31. Since Phase 3, there have been two whistleblower reports of alleged foreign bribery involving Danish companies (see Section A.5.b.).

A.5.a. Legal and institutional framework

32. Since Phase 3, Denmark has adopted the Act on the Protection of Whistleblowers (APW),[20] which applies to both the public and private sectors. The APW transposes the EU Whistleblower Protection Directive of 2019[21] into Danish law but has a broader material scope than the Directive (see below), which sets minimum requirements for EU countries. It entered into force on 17 December 2021. The obligation for private employers with 50-249 employees to establish an internal reporting channel will come into force on 17 December 2023. The APW does not apply to the Faroe Islands and Greenland. The MOJ website contains comprehensive guidance on the new provisions (MOJ Whistleblower Protection Guidance).[22] Detailed guidance for whistleblowers is also available on the Danish Data Protection Agency (DDPA) website (DDPA Whistleblower Protection Guidance). The new framework is an indisputable improvement on the measures in place in Phase 3. However, further improvements are still required.

Scope of the new law

33. While the APW protects a broad range of categories of reporting persons in a work-related context (Sections 3(7) and 8 APW), the scope of misconduct covered by the APW is incomplete and needs clarifying. Firstly, the APW applies to reports that relate to breaches of EU law falling within the scope of the Directive and "reports that otherwise relate to serious offences or other serious matters." Neither category explicitly covers foreign bribery. The MOJ Whistleblower Protection Guidance and DDPA

[20] Act n°1436 of 29 June 2021 on the Protection of Whistleblowers.
[21] Directive (EU) 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union law.
[22] The MOJ Guidance consists of "Guidance for whistleblowers", "Guidance on whistleblower schemes in private workplaces" and "Guidance on whistleblower schemes in public workplaces", all published on 17 December 2021.

Whistleblower Protection Guidance refer to "bribery," but not foreign bribery. Danish authorities stated that information about criminal offences "generally falls within the scope of the APW." However, there is no relevant case to date. Secondly, the exceptions to the material scope of the APW[23] are potentially broad, covering types of information that may be critical in a whistleblower report on a foreign bribery suspicion.

Reporting channels

34. Various reporting channels are available to whistleblowers:

- Private and public employers with 50 or more employees must establish an internal reporting channel, which can be managed by an external third party.
- The APW also establishes an external reporting channel in the DDPA, as well as two special external channels in the MOJ and the Ministry of Defence to receive reports concerning the Danish Security and Intelligence Service and the Danish Defence Intelligence Service, respectively. At least four other Danish public authorities have established special external reporting channels pursuant to sector-specific EU legislation (e.g. the Financial Supervisory Authority). While employers must encourage whistleblowers to report internally, whistleblowers may always report externally.
- A whistleblower may also make their report public if the report was submitted through an internal and/or external reporting channel but did not receive appropriate follow-up, and if the whistleblower "has reasonable grounds to believe that the offence may constitute an imminent or manifest danger to the public's interest"; or if the whistleblower, having used an external reporting channel, has reasonable grounds to fear retaliation or has "a low prospect of the offence being effectively addressed due to the particular circumstances of the case".

Confidentiality

35. Under the APW, internal reporting channels should ensure the confidentiality of the identity of the whistleblower, the person involved in the misconduct reported and any third parties concerned. The MOJ Whistleblower Protection Guidance clarifies that confidentiality extends to the content of the reports. Anonymous reports may be allowed by a company or a public authority. The external reporting channels created by the APW must also ensure the confidentiality of the information reported. During the on-site visit, the authorities stated that anonymous reports would be taken into consideration by external channels. The APW provides that direct or indirect information about the whistleblower's identity may not be disclosed without the whistleblower's consent. This information may thus only be disclosed to another public authority without the whistleblower's consent when the disclosure aims to "address offences" covered by the APW, or "ensure the right of defence of affected persons." (Section 26(2)) In that case, the whistleblower shall be informed prior to disclosure "unless the notification will jeopardise related investigations or legal proceedings." (Section 26(4)).

Protection from retaliation

36. The APW offers various protections and remedies, including compensation, cancellation of dismissal and maintaining the employment relationship (if the employee so requires, unless, in exceptional cases and after balancing the interests of the parties, it is "manifestly unreasonable to require that the employment relationship be maintained or re-established"); absence of liability for breaching a statutory duty of confidentiality provided that the whistleblower has reasonable grounds to believe that the information in the report or publication was necessary to reveal an offence covered by the law; and absence

[23] These exceptions are: breaches of the procurement rules involving defence or security aspects unless they are covered by EU law, classified information, information covered by lawyers' and health professionals' confidentiality obligations, "information on court deliberations covered by professional secrecy" and "criminal procedure cases".

of liability for accessing information, provided that such an act does not constitute an independent criminal offence. It is for the other party (e.g. the employer) to prove that the disadvantage the whistleblower claims they have suffered is not retaliation.

37. There are loopholes and uncertainties in these protections and remedies. The definition of retaliation in the APW is limited to workplace retaliation. Danish authorities stated that some forms of retaliation (e.g. threats or coercion) are punishable under the Criminal Code, but it is unclear whether any form of retaliation against whistleblowers is punishable under Danish law. Hindering whistleblowing is not punishable under Danish law. Any protection or remedy needs to be granted by a court (or through a non-trial resolution) and the government does not ensure that any interim relief is available to whistleblowers pending the resolution of legal proceedings or foresee any form of advice or legal or financial support to whistleblowers. During the on-site visit, the authorities stated that whistleblowers would be encouraged to seek legal advice, and that a "small NGO" may provide interim support.

A.5.b. Whistleblowing in practice

Effectiveness of the new regime

38. Employers are required by law to provide "clear and easily accessible" information to employees on the internal and external procedures for reporting. During the on-site visit, representatives from the private sector emphasised that the introduction of the new regime has effectively raised the awareness of employees about whistleblowing, which they noted is a "widespread" practice in Danish companies. The MOJ and DDPA also published detailed information for whistleblowers on their respective websites. Between December 2021 and September 2022, the DDPA received 83 reports and assessed 70 of these. Seventeen reports were passed on to "other authorities for further follow-up." The DDPA stated it has sufficient resources to promote and handle reports received, with nine persons working part-time on these tasks. No information was provided, however, on training received by the personnel in charge of handling whistleblower reports. None of the reports assessed by the DDPA were related to foreign bribery. Of note, 41 of the assessed reports were related to data protection issues. This suggests that the DDPA may not have been fully effective in raising awareness of the public about the scope of the general external channel.

Foreign bribery cases detected through whistleblowing since Phase 3

39. Since Phase 3, and before the new regime was in place, at least two allegations of foreign bribery involving a Danish company were initially reported by a whistleblower. In 2018, in the ***Power Plant (Mauritius)*** case, an internal whistleblower report prompted a Danish company to order an external investigation, report two persons to the Danish police and self-report to the AfDB and other relevant stakeholders. The case is ongoing. In the ***Transport (China)*** case, a whistleblower report on allegations of foreign bribery committed by a Danish company was submitted directly to SØIK. After an "initial assessment of the quality and reliability of the information," and "having regard to the issue of jurisdiction," SØIK considered there were no grounds for continuing the criminal investigation. As noted in Section B.2., SØIK did not take any independent step or sought cooperation with the company before closing the case. During the on-site visit, prosecutors stressed that whistleblower reports are always carefully considered. They added, however, that these reports may be difficult to act upon, since, in the Danish system, law enforcement authorities cannot communicate with whistleblowers, if the whistleblowers wish to stay anonymous. Some private sector representatives met during the on-site visit doubted that whistleblower reports would always be proactively acted upon by the Danish law enforcement authorities and noted that internal reporting offers better prospects of effective follow-up for whistleblowers.

Commentary

The lead examiners commend Denmark for adopting a general legal framework on whistleblower protection that applies to both the public and private sectors. While this new framework is a clear

improvement on the situation in Phase 3, loopholes and uncertainties may, however, negatively affect the capacity of the new regime to encourage whistleblowers to report allegations of foreign bribery. They recommend that Denmark take the necessary steps to: (i) clarify that the new framework applies to foreign bribery allegations; (ii) ensure that whistleblower reports on foreign bribery allegations are subject to appropriate protections and remedies, in line with Anti-Bribery Recommendation XXII; (iii) ensure that effective, proportionate, and dissuasive sanctions are applicable to those who retaliate against reporting persons; and (iv) enhance awareness-raising efforts in the public sector on the available reporting channels, protections, confidentiality guarantees, and the scope of misconduct that can be reported. Finally, the lead examiners recommend that the Working Group follow up on whether whistleblower reports concerning foreign bribery allegations are effectively acted upon by law enforcement.

A.6. Self-reporting by companies

40. Self-reporting can be considered a mitigating circumstance under Section 82 (1)(ix) and (x) CC. This was the case in the ***Paint and Coating (Germany & Asia)*** resolution. This provision does not amount to a policy to incentivise self-reporting in Denmark, however. The DPP Corporate Liability Guidelines do not provide guidance to prosecutors on the conduct of cases reported by companies. There is no guidance on how self-reporting is assessed in the exercise of discretion to prosecute or waive prosecution or the degree to which it may mitigate sanctions. Moreover, Denmark's existing provisions on non-trial resolutions do not clearly incentivise self-reporting. Self-reporting is not required for the application of these measures but may be considered by the prosecutor when deciding whether to offer or consent to a non-trial resolution. There is no clear framework or criteria for this.

41. Despite the absence of a policy to incentivise self-reporting, voluntary self-disclosures by companies have been the second most important source of detection of foreign bribery allegations by the Danish authorities since Phase 3 (four allegations). During the on-site visit, a prosecutor acknowledged the importance of this source, noting that the Danish law enforcement authorities do not have the capacities to conduct "full investigations" without a self-report a starting point. However, not all these self-reports have yielded concrete enforcement results. In the ***Infrastructure (Slovak Republic)*** and ***Permits and Licences (India)*** cases, investigations were not initiated or terminated, respectively, after limited efforts to act upon the allegations. In the ***Paint and Coating (Germany & Asia)*** case, the company pleaded guilty to failure to prevent foreign bribery and commercial bribery and received a USD 26.5 million fine. The resolution relied heavily on the admissions made by the company. In the ***Power Plant (Mauritius)*** case, the investigation is ongoing.

42. During the on-site visit, prosecutors suggested that fear of media reports is an important driver of self-reporting. By reaching out to the authorities before allegations become public, Danish companies hope to "control the narrative" with a view to protecting their reputation. Prosecutors and representatives from the private sector met during the on-site visit would welcome the introduction of a clear framework on self-reporting, specifying, in particular, the impact of self-reporting on sanctions to be expected as part of court and non-trial resolutions.

Commentary

The lead examiners recommend that Denmark consider measures to encourage persons who participated in, or have been associated with, the commission of foreign bribery, to supply information useful to authorities for investigating and prosecuting foreign bribery, as per Anti-Bribery Recommendation X.iii. These measures should also be considered as part of Denmark's efforts to adopt a clear and transparent framework for non-trial resolutions (see Section B.4.).

A.7. Detecting foreign bribery through anti-money laundering measures

43. The money laundering offence is discussed in Section B.5.b.

44. In Phase 3, no suspicious transaction report (STR) had triggered any domestic or foreign bribery investigations. The WGB recommended that Denmark raise awareness of foreign bribery as a predicate offence to money laundering and develop foreign bribery-related anti-money laundering (AML) measures, such as typologies and training for Denmark's financial intelligence unit (Money Laundering Secretariat – MLS) officials and reporting entities and take steps to ensure that the MLS is adequately resourced to effectively detect money laundering cases predicated on foreign bribery (Phase 3 recommendation 8).

45. Denmark is a member of the FATF and underwent its latest FATF Mutual Evaluation in 2017.[24] Overall, the evaluation concluded that while Denmark had the foundations for a sound regime to tackle money laundering, it needed to improve the implementation of measures to mitigate the risks, including through better assessing those risks and enhancing national policy coordination. Specific findings that are more directly relevant to the detection of foreign bribery are discussed below.

46. Since 2017, Denmark has allocated more resources to the supervisory authorities and the MLS and enhanced several AML policies and processes. Despite these improvements, there has still not been any cases where foreign bribery has been detected through AML measures.

A.7.a. Understanding of foreign bribery-related money laundering risks

47. Denmark produced its first Money Laundering National Risk Assessment (NRA) in 2015 and published a second version in 2018. None of these NRAs identified foreign bribery-related money laundering as a risk in Denmark. These risks, however, are assessed in the latest NRA, which was published in January 2023.[25] While Denmark did not share details on the methodology used to assess its foreign bribery-related money laundering risks, the NRA concludes that these risks are "very significant" in the country. Authorities suggested that the perception of low levels of public sector corruption in Denmark make it an attractive country for criminals to place the proceeds of foreign bribery. They suggested that typologies of foreign bribery-related money laundering include trade-based money laundering[26] and may involve public officials with central functions in major purchases and in construction. Representatives of the civil society and the MLS also noted that Denmark's vulnerability to foreign bribery-related money laundering may also be linked to the relative ease with which companies may be set up in the country, and Denmark's limited capacity to detect corruption.

48. Given the significance of foreign bribery-related money laundering risks identified in Denmark, the MLS is planning to take measures to understand better and mitigate this phenomenon, including by putting in place ongoing and systematic data collection processes with a view to informing the updating of indicators, the publication of annual thematic reports and awareness-raising initiatives on these risks.

A.7.b. Suspicious activity reporting

49. The most recent version of the Danish Act on Measures to Prevent Money Laundering and Terrorist Financing (AML Act) was promulgated on 10 May 2022.[27] It requires financial and non-financial obliged entities to file STRs to the MLS. The MLS does not record the number of specific foreign bribery-

[24] FATF (2017), Mutual Evaluation Report of Denmark

[25] Denmark's 2022 Money Laundering National Risk Assessment

[26] See FATF (2006), Trade-Based Money Laundering, which defines trade-based money laundering as "the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illicit origins." This includes methods such as false invoicing, multiple invoicing and over or under shipping.

[27] LBK no. 570 of 10/05/2022, Act on Preventive Measures Against Money Laundering and the Financing of Terrorism.

related reports it receives; these are included under the broader category of corruption. Since 2015, the MLS has received 696 corruption-related STRs from the private sector, mainly from banks. The MLS also received 4 reports from foreign FIUs and 49 from other sources during this period. Based on the information provided by the MLS, none of these STRs appeared to relate specifically to foreign bribery.

50. Since Phase 3, Denmark has taken steps to enhance suspicious transaction reporting by obliged entities, including enhanced guidance and feedback from the MLS and the Danish Financial Supervisory Authorities (DFSA), and reinforced inspections by the latter. However, at this stage, neither the MLS nor the AML supervisors, including the DFSA, have taken specific measures to raise awareness of corruption- or foreign bribery-related money laundering among obliged entities, including through guidance, typologies, or training. As noted above, the MLS is in the process of developing a list of indicators on foreign bribery-related money laundering. These indicators are expected to be in place by June 2023, and processes for monitoring against these indicators are also being developed. Awareness-raising activities based on these indicators are also planned by the MLS. These will be welcome developments.

51. Since Phase 3, Denmark has enhanced the analytical capacity of the MLS, including in relation to corruption. Overall, the personnel of the MLS increased from 16 employees in 2016 to 41 employees in 2022. The MLS now comprises an Intelligence Division consisting of 4 to 5 persons, which is dedicated to STR analysis. All STRs must be reported electronically, and the MLS has developed a more data driven approach to analysing these reports. During the on-site visit, the MLS explained that STRs are screened for corruption, based on two indicators: STRs related to countries presenting higher risks of corruption and politically exposed persons (PEPs – see below). While these indicators appear limited at this stage, as noted above, the MLS is working on developing more detailed foreign bribery indicators, which is also expected to support its screening and analysis capacities in this area.

A.7.c. Politically exposed persons

52. In 2017, the FATF had noted a series of deficiencies in Denmark's customer due diligence obligations, including in relation to PEPs. These were largely addressed by revisions to the AML Act introduced in 2017.[28] Section 18 of the Act requires obliged entities to carry out enhanced due diligence and monitoring in relation to PEPs. Denmark has a public list of domestic PEPs. This list aims to help obliged entities identify PEPs. The MLS checks STRs against the PEP list on a daily basis. The Danish authorities are also working on the possibilities of replacing the PEP list with a "PEP solution" that can be accessed both online and through integration with obliged entities' IT systems.

A.7.d. The Faroe Islands and Greenland

53. In Phase 3, the WGB noted that Greenland and the Faroe Islands had adopted some, but not all, aspects of Denmark's AML law. The WGB decided to follow up on updates made to AML legislation in both territories. In Phase 4, Denmark stated that the Faroe Islands and Greenland have amended their AML legislation since Phase 3. However, AML legislation for both territories is not yet fully aligned with Denmark's regime. In particular, while Greenland has criminalised self-laundering, this remains to be done in the Faroe Islands. Danish authorities stated that the most recent amendments to Denmark's AML regime will be introduced in the Faroe Islands in 2023.

Commentary

The lead examiners welcome the MLS's commendable efforts to assess Denmark's foreign bribery related money laundering risks, and to plan measures to better understand and mitigate these "very significant" risks. They also recognise that, more generally, Denmark has reinforced its anti-money laundering regime in recent years, in particular by enhancing the MLS's analytical

[28] FATF (2018), 1st Enhanced Follow-up Report & Technical Compliance Re-Rating, Denmark

capacities. However, at this stage, Denmark does not collect data on foreign bribery-related STRs or MLS reports to law enforcement. This makes it difficult to assess in detail the impact of these efforts on the detection of foreign bribery-related money laundering by the Danish AML regime. As in Phase 3, there have been no foreign bribery investigations resulting from STRs.

The lead examiners recommend that Denmark produce statistics on STRs and MLS reports to law enforcement that relate to foreign bribery. They also reiterate Phase 3 recommendation 8(i) that Denmark raise awareness of foreign bribery as a predicate offence to money laundering and develop foreign bribery-related AML measures, such as typologies and training for MLS officials and obliged entities.

A.8. Detection through accounting and auditing

54. No foreign bribery case has been detected by accounting or auditing professionals since Phase 3.

A.8.a. Accounting and external audit standards

55. Accounting standards are mainly set out in the Danish Financial Statements Act.[29] Denmark has adopted the International Financial Reporting Standards (IFRS), in line with EU requirements.[30] Listed companies are required to apply IFRS. Non-listed companies may choose to apply IFRS or the Danish Accounting Standards developed by Danske Revisorer (FSR), the auditors' professional association.[31] At the time of Phase 3, the application of IFRS standards to SMEs was being discussed, but did not lead to any substantive outcome.

56. The main legislative act regulating external auditing is the Act on Approved Auditors and Audit Firms (Audit Act). The Audit Act has been amended several times since Phase 3, including to transpose the 2014 EU audit reform,[32] and was amended most recently in 2022.[33] It regulates the conditions for the approval and registration of auditors and audit firms, the conditions for the performance of auditing tasks, as well as public oversight of approved auditors and audit firms. It also establishes general principles on the independence of external auditors. The Danish Business Authority (DBA) is the main governmental entity in charge of supervising auditors and audit companies. Since 2010, Denmark has adopted the International Standards on Auditing (ISAs). The ISAs are translated into Danish by the FSR.[34] In particular, ISA 240 requires external auditors to detect material misstatements in a company's financial statements that are caused by fraud. ISA 250 requires external auditors to detect non-compliance with laws and regulations that could lead to material misstatements in a company's financial statements. During the on-site visit, auditors expressed the view that ISA 240 does not clearly cover foreign bribery, but ISA 250 would apply where foreign bribery impacts financial statements.

57. Companies are required to submit to audits, which must be performed by at least one state-authorised public accountant (Sections 7 and 135 of the Financial Statements Act). These generally include all public and private limited companies that are required to file an annual report, with the exception

[29] LBK n°838 of 8 August 2019, Financial Statements Act.
[30] Regulation (EC) No 1606/2002 on the application of international accounting standards.
[31] International Federation of Accountants (IFAC), Denmark.
[32] Regulation (EU) No 537/2014 of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC and Directive 2014/56/EU of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.
[33] LBK n°1219 of 31 August 2022, Act on Approved Auditors and Audit Firms.
[34] International Federation of Accountants (IFAC), Denmark.

of small enterprises that meet certain criteria.[35] In practice, this excludes a significant proportion of Danish businesses. However, during the on-site visit, auditors stated that, in practice, many companies resort to external audit, even if they are not required to, because they need their expertise to comply with their reporting obligations.

A.8.b. Reporting of foreign bribery by accountants and auditors

58. In Phase 3, the WGB reiterated concerns raised in Phase 2 about several ambiguities in the provisions of the Audit Act on the external auditors' obligations to report suspicions of crime. The WGB thus recommended that Denmark promptly issue guidance to auditors on the scope of their reporting obligations (Phase 3 recommendation 9).

59. Since Phase 3, the provisions on internal reporting have not been amended[36] or otherwise clarified by guidance or case law. As in Phase 3, external auditors must report suspected financial crimes to management if they (i) were committed by the company's management, and (ii) concerned "significant sums" or was otherwise of a "serious nature" (Section 22(1) Audit Act). This provision can be interpreted as not requiring that crimes committed by a company's employees and agents be reported. In addition, the terms "significant sums" and "serious nature" are unclear. As regards external reporting, external auditors have to report to SØIK if reporting to company management is not "a suitable measure for the prevention of continued crime" and if, after an auditor's report, management fails to provide documentary proof within 14 days that it has "taken the necessary steps to stop any on-going crime and to remedy the damage" (Section 22(1) Audit Act). There is no clear definition of the "necessary steps" to be taken by management. How a company could "remedy the damage" in a case of foreign bribery is not clear.

60. Auditors who report to law enforcement pursuant to Section 22 the Audit Act or the AML legislation are expressly shielded from legal action by Section 30 of the Audit Act, as well as EU Regulation No. 537/2014 on specific requirements for audits of public-interest entities.

61. During the on-site visit, auditors explained that, in practice, Section 22(1) Audit Act is in many cases overridden by their AML obligation to file an STR to the MLS without delay, without the conditions for external reporting under Section 22(1) having to be met. However, it is unlikely that all suspicion of foreign bribery would be captured by the AML reporting requirement. In addition, there may be some legal uncertainty in the articulation between auditors' AML reporting requirement, which requires auditors not to disclose the fact that an STR has been filed, and their internal reporting requirements under the Audit Act. The DBA has published a FAQ which states that AML legislation does not prevent the auditor from reporting on violations of AML legislation to management, but the auditor must not disclose that a STR has been filed to the FIU. Notwithstanding this, if violations of AML legislation are highlighted in the audit report, it is likely that the recipients of the report would assume that the auditor may have submitted a STR in line with their AML reporting requirements.

62. Auditors met during the onsite explained that most reports submitted to the FIU relate to companies issuing loans to themselves for the purpose of manipulation of balance sheets and none had submitted reports on foreign bribery.

A.8.c. Awareness raising of foreign bribery among accountants and auditors

63. In Phase 3, the WGB reiterated a Phase 2 recommendation that Denmark raise awareness of foreign bribery among accountants and auditors (Phase 3 recommendation 9). This recommendation

[35] Companies that "[do] not exceed two of the following amounts in two consecutive financial years at the balance sheet date: 1) A balance sheet of DKK 4 million. DKK, 2) a net turnover of DKK 8 million. DKK and 3) an average number of full-time employees during the financial year of 12." (Sections 135 of the Financial Statements Act)

[36] Marginal amendments have been introduced to the law, which do not address recommendation 9, however.

remains unaddressed. The Danish authorities have not provided specific training or guidance on foreign bribery to accountants and auditors. Large audit firms met-onsite do provide training on foreign bribery, among other economic and financial crimes, to their employees. However, these initiatives largely refer to foreign, not Danish, relevant legislation. When asked about initiatives to encourage the detection and reporting of foreign bribery, representatives from the government and private sector cited AML guidance and training, which does not specifically cover foreign bribery.

64. During the on-site visit, the participants from the private sector noted that, in general, Danish auditors pay little attention to potential signs of bribery, compared to the foreign auditors they work with. This may be explained by the fact that Danish auditors perceive corruption risks as low in Denmark.

Commentary

The lead examiners regret that Denmark has not taken any concrete steps to clarify the internal and external reporting obligations defined in the Audit Act and reiterate Phase 3 recommendation 9 that Denmark promptly issue guidance to auditors on the scope of these reporting obligations. They also note that, while auditors show a high level of awareness of their anti-money laundering obligations, they do not appear to be aware of their specific role in the detection of foreign bribery. The lead examiners thus also recommend that Denmark take additional measures to raise awareness of foreign bribery among accountants and auditors.

A.9. Detecting foreign bribery through tax authorities

65. The Danish Tax Agency (DTA) do not keep statistics on tax offences reported to law enforcement. However, the DTA reported that, since Phase 3, it has not detected potential foreign bribery cases as part of its tax audit activities.

66. During the on-site visit, the DTA described a procedure by which it meets with the police and prosecutors to discuss suspicions of crime detected during tax audits. This happens in relation to 8 to 10 cases per year. The DTA has no recollection of any such meetings being organised in relation to a suspicion of foreign bribery, but noted it would in case a foreign bribery allegation was to be detected by the DTA.

67. In general, all tax officers receive training on tax processes and legislation. The DTA issues guidelines for tax officers to consult on an ongoing basis. The guidelines number over 20 000 pages and provide a comprehensive information on all auditing activities. The guidelines are updated twice a year to incorporate legislative amendments and case judgements. The DTA held an information campaign on corruption for officials in 2015 and is planning a further campaign on this topic in 2023 in partnership with the Nordic Agenda. However, tax auditors are not provided with any specific guidance or training on foreign bribery and there have been no specific measures to promote the OECD Bribery Awareness Handbook for Tax Examiners. Officials met during the onsite believe that the key elements of the Handbook are captured within the guidelines for tax officers, but this was not substantiated.

68. During the on-site visit, the representatives of the DTA stressed that detecting foreign bribery is not part of their “main business,” and that bribery is “not high” in the list of factors taken into account in the DTA risk assessment.

Commentary

The lead examiners are concerned that tax auditors show limited awareness of their role in detecting foreign bribery. They recommend that Denmark provide clear guidance and/or training to tax auditors on detecting and reporting foreign bribery suspicions to law enforcement. They also reiterate Phase 3 recommendation 6(iv) that Denmark maintain detailed statistics on tax offences and reporting by tax officials to law enforcement authorities.

A.10. Preventing and detecting foreign bribery through export credits

69. Eksportkreditfonden (EKF) is Denmark's officially supported export credit and insurance agency. EKF supports Danish businesses expand overseas by providing export credit guarantees and insurance to help Danish companies by limiting the risk of selling goods and services in overseas markets. EKF also provides credit to overseas businesses seeking to purchase goods and services from Danish entities. EKF is an independent public company, owned and guaranteed by the Danish state, but run as a financial company. EKF also supports exporters in Greenland and the Faroe Islands.

70. In Phase 3, the WGB raised concerns about EKF's inadequate application of enhanced due diligence (EDD) measures in relation to agents. They were also concerned by the lack of guidance on reporting credible allegations of foreign bribery to law enforcement and on follow-up steps to be taken when companies are found to be listed on a relevant debarment list. The WGB therefore recommended that 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 (Phase 3 recommendation 12(b)).

71. Since Phase 3, the 2019 Recommendation of the Council on Bribery and Officially Supported Export Credits (2019 Recommendation) was adopted to replace the previous 2006 version against which Denmark was assessed in Phase 3. The main provisions have not substantially changed. A few new elements were introduced, such as more details on possible EDD measures and conditions for support, and the extension of the scope of the screening to formal investigations for bribery.

A.10.a. General measures, screening and enhanced due diligence

72. In May 2022, EKF published a "Policy Paper on the Prevention of bribery in EKF and in EKF's business transactions". The Policy Paper states that EKF implements the 2019 Recommendation. It also states that EKF has established an internal process preventing bribery, developed anti-bribery rules and regulations for all its employees, and introduced an internal risk management system for the screening and due diligence of all relevant parties. In September 2022, EKF also introduced a new risk methodology. This methodology combines all types of "integrity" risk assessments, to support its due diligence processes. EKF provides its staff with training on its anti-bribery management control systems.

73. EKF complies with the main requirements of the 2019 Recommendations on general measures, screening and enhanced due diligence. EKF informs exporters and applicants about the legal consequences of foreign bribery in Denmark and encourages exporters and guarantee holders to have anti-bribery internal controls. EKF also requires applicants and exporters to declare that neither they, nor their agents, have engaged or will engage in bribery, and that any agent fee will be for legitimate services only. Exporters and other relevant parties are required to declare if any relevant party is investigated or prosecuted or has been convicted or subject to equivalent measures for bribery in any country or is listed on the publicly-available debarment lists of one of the multilateral financial institutions. EKF systematically verifies whether exporters, applicants, or their bank are listed on the debarment lists of these institutions. Finally, EKF systematically requires the disclosure of (and verifies) the involvement of any agents and asks for detailed information concerning such involvement. Information provided by the applicants is cross-checked by a risk management system hosted by a large international risk management agency.

74. After the on-site, EKF explained that their new internal policy requires the application of EDD all transactions involving agents, which addresses the deficiency identified in Phase 3.

A.10.b. Reporting foreign bribery to law enforcement authorities

75. EKF stated that any credible allegation of foreign bribery would "always" be reported to law enforcement authorities. There is no clear obligation to do so. EKF staff are not public officials, so are not subject to the Danish Code of Conduct in the Public Sector, nor are they legally obliged to report credible allegations to law enforcement agencies. During the on-site visit, a representative from EKF stated EKF has internal guidelines on reporting suspicions of crime, including foreign bribery and shared extracts of this with the lead examiners. EKF's Legal Department determines whether an allegation is credible and should be forwarded to law enforcement. It takes such decision on a case-by-case basis, considering "various factors" but does not refer to more precise criteria. EKF has never detected any case of foreign bribery or reported any credible allegation of foreign bribery to Danish law enforcement. In 2019-2020, EKF became aware of bribery allegations in the media against a Danish export company, but did not report these to law enforcement, since EKF was aware that they were already being handled by law enforcement.

A.10.c. Bribery discovered in a supported transaction

76. EKF stated the new anti-corruption internal policy describes measures to be taken when they become aware or have reasons to believe that bribery may be involved in a transaction. There appears to be limited guidance on the application of these measures.

77. The policy provides indications on the type of measures available in cases of suspicions of foreign bribery, but not the criteria for applying these. As noted above, EKF stated that the matter would be reported to law enforcement or lead to the application of EDD. In addition, during the on-site visit, representatives from EKF mentioned one instance "many years ago" where EKF became aware of a criminal investigation for bribery into one of its partners. EKF said the case was investigated, and it determined there was no connection to the transactions benefitting from its support. No further information was provided on this investigation.

78. A broad range of measures may be taken by EKF where a party that already receives support is convicted of foreign bribery. EKF stated that, in such circumstances, loan disbursements are interrupted "if possible" EKF may also invalidate cover, refuse to indemnify claims, and deny access to support for a specified period. As noted above, EKF's rules are constructed so that if the exporter, or anyone acting on their behalf, has engaged in illegal bribery, the exporter is under an obligation to refund any indemnification with interest and reimburse EKF for any other loss. What specific measures should be implemented is determined on a case-by-case basis, focusing on whether the party has implemented measures to avoid future bribery cases.

A.10.d. Denial of support as a consequence of foreign bribery

79. EKF stated that the denial of support can be decided by EKF where the screening, due diligence and/or EDD concludes that bribery was involved in a transaction. During the on-site visit, representatives from EKF explained that there were no objective criteria on what would lead to a suspension, and they would assess incidences on a case-by-case basis taking into account the risk assessment and the information gathered in the screening, standard and enhanced due diligence process. As in Phase 3, there appears to be limited guidance for making such decisions.

80. EKF stated it has never denied support in relation to foreign bribery.

Commentary

The lead examiners note that EKF has been reinforcing the application of its enhanced due diligence measures in relation to agent's fees, as recommended in Phase 3. They regret, however, that EKF has not fully addressed the other deficiencies identified in Phase 3 in relation to its reporting obligation and policy to deny support in relation to foreign bribery. They recommend that

EKF ensure that guidance available on measures to be taken if it becomes aware or has reasons to believe that bribery may be involved in a transaction, or where a party that already receives support from EKF is convicted of foreign bribery, is sufficient.

A.11. Official Development Assistance (ODA)

81. The MFA administers Denmark's ODA. The Danish International Development Agency (Danida) defines the MFA's activities in this area. In 2021, Denmark's ODA totalled USD 2.9 billion. Denmark is one of the five OECD Development Assistance Committee countries to meet the target of 0.7 % of their gross national income spent on ODA. In 2020, around 60 % of Denmark's gross ODA was distributed through multilateral organisations. The remainder was bilateral ODA through the public sector, NGOs or, marginally (USD 35.8 million), the private sector or PPP. Denmark's ODA focuses on fragile states. In 2020, Uganda, Kenya, Somalia, Ethiopia, and Afghanistan were the top five recipients of Danish bilateral ODA.[37]

82. The Investment Fund for Developing Countries (IFU) is a government-owned fund that provides risk capital to businesses in developing countries and emerging markets. The IFU operates on a commercial basis and acts as funds manager of other investment funds. As at the end of 2020, the IFU had 192 ongoing projects.[38] In 2020, IFU and IFU-managed funds contracted 31 investments totalling DKK 2 bn (USD 247 million). The same year, 50 % of investments were made in Africa and 23 % in Latin America.[39]

83. In Phase 3, the WGB identified deficiencies in the MFA's and the IFU's respective frameworks for reporting foreign bribery allegations to law enforcement. The WGB recommended that the MFA, including Danida, and the IFU are clearly required to report all credible suspicions of foreign bribery involving *any* Danish individuals or companies detected in the course of their work to *Danish* law enforcement authorities (Phase 3 recommendation 11(a)) (See also Section A.4.).

A.11.a. Danida

84. The *Guidelines for Country Strategic Frameworks, Programmes & Projects* (last updated in February 2022) and the MFA's Anti-Corruption Policy (last revised in 2018) contain the main measures for preventing, detecting, reporting and sanctioning corruption in relation to Danida-funded projects.

Measures to prevent and detect corruption in ODA contracts

85. The preparation of any Danida-funded project involves an assessment of risks, including corruption risks. Denmark stated that implementing partners' anti-corruption policy and procedures are considered as part of this assessment. In addition, the MFA's Standard Grant Agreement form contains an anti-corruption clause that prohibits corruption in relation to activities funded under the agreement and that covers all implementing partners and their sub-contractors. Denmark stated that standard MFA agreements also stipulate that implementing partners should immediately report any corruption case to the MFA. However, Danida does not require grant applicants to declare that they have not been convicted of corruption, or screen applicants against publicly available debarment lists of national and multilateral financial institutions. While Danida did become aware of one of its partners' listing on two international debarment lists (see below), it is unclear whether and how Danida systematically verifies that partners have not been convicted of corruption.

[37] OECD (2022), "Denmark", in Development Co-operation Profiles, OECD Publishing, Paris.
[38] IFU (2021), IFU Project Portfolio 2020.
[39] IFU (2021), Annual Report 2020.

Reporting and whistleblower mechanisms

86. As noted in Section A.4., the MFA's Anti-Corruption Policy has been revised since Phase 3, but all the deficiencies identified at the time have not been addressed. While the reporting obligation now extends to allegations involving any Danish companies, it is unclear when allegations may be reported to foreign authorities in lieu of Danish law enforcement.

87. The MFA established an electronic reporting channel in 2005, which is open to anyone, including MFA officials and partners, and allows anonymity for reporting "knowledge of corruption within Danida Projects or among staff or Danida partners". The reporting channel is accessible on the MFA website.

88. Denmark states that all MFA employees receive mandatory anti-corruption e-training. MFA employees who manage larger ODA programmes are provided regular training on handling corruption cases. In embassies implementing Danish ODA projects, an Anti-Corruption Focal Point is designated as resource on matters related to corruption and Danida invites partners to participate in training on anti-corruption and shares training materials on an ad-hoc basis. Denmark stated these initiatives specifically address the detection and reporting of foreign bribery.

89. The MFA was unable to confirm if any foreign bribery allegations have been detected by Danida.

Sanctions

90. If corruption is detected in relation to Danida projects, the project agreement (and project) may be terminated and additional civil and/or criminal action pursued as per the standard anti-corruption clause in the MFA grant agreements. During the on-site visit, representatives of Danida stated that, in relation to ***Infrastructure Projects (Indonesia & Viet Nam)***, where a Danish company was placed on the African Development Bank and World Bank debarment lists in 2017, they had determined that a debarment listing was not a sufficient ground to terminate support, and this could only occur following a final conviction for corruption that is recognised in Denmark. Denmark applied enhanced monitoring to the Danish company as a consequence of these listing decisions.

91. The *Guidelines for Country Strategic Frameworks, Programmes & Projects* state that any reasonable suspicion of corruption "must lead to an immediate reaction." The Guidelines do not elaborate on what constitutes a reasonable suspicion. Denmark explains that, in case of a reasonable suspicion, the MFA would normally task external audit companies to conduct an investigation into potential misconduct, in close cooperation with the implementing partner. The Guidelines mention a range of other possible responses, including sanctions: increased controls on partner's management of funds, freezing the transfer of funds to the partner, demanding refunds, and requiring the partner to report the case to the police.

92. Danida cannot confirm if it has imposed sanctions in relation to foreign bribery.

Commentary

The lead examiners regret that Danida has not addressed all the deficiencies identified in its reporting obligation in Phase 3. They recommend that Denmark clarify the obligation for public servants in Danida, and implementing partners, to report all credible suspicions of foreign bribery involving Danish individuals or companies to Danish law enforcement authorities.

The lead examiners further recommend that the MFA (i) take all necessary steps to require persons applying for ODA contracts be required to declare if they have been convicted of corruption offences; (ii) verify publicly available debarment lists of national and multilateral financial institutions during the applicant's selection process and on an ongoing basis as a due diligence measure; and (iii) include such lists as a possible basis of exclusion from application to ODA funded contract.

A.11.b. The Investment Fund for Developing Countries

93. The IFU reviewed its overall anti-corruption measures following the discovery of foreign bribery allegations involving a Danish company in several projects in West Africa, including a project supported by the IFU in Mali since 2017. In 2018, the company self-reported the misconduct to the IFU. The AfDB debarred the company in 2020 in relation to the misconduct in Mauritius. Denmark has been taking part in a joint investigation team with Mauritius in relation to the foreign bribery allegations in this country (***Power Plant (Mauritius)***). Danish authorities stated that the allegations in Mali are not investigated.

94. Denmark has not shared the findings of the review of the IFU's anti-corruption measures. However, the outcome of the review was an action plan aimed to strengthen the IFU's anti-corruption measures, which suggests that these may have been found insufficient at the time of the approval and implementation of the project in Mali. The IFU's anti-corruption policy was revised in order to include an internal list of higher corruption risk partners and companies, a whistleblower scheme, and an obligation for the IFU staff to report suspicions of irregularities, "including corruption and bribery" to the Danish National Audit Office. In addition, the IFU states that it carries out a specific anti-corruption appraisal in relation to every project and provides annual anti-corruption training to its employees. The IFU also stated that a revised business integrity due diligence process was to be formally launched in the first quarter of 2023.

95. These measures are positive. However, the IFU does not fully comply with all the elements of the 2016 ODA Recommendation.

Measures to prevent and detect corruption in ODA contracts

96. The IFU's anti-corruption policy, and IFU contracts, require that companies adopt anti-corruption measures, including "taking a clear, written stand against corruption"; assessing its corruption risks; providing anti-corruption training to employees; and mitigating the risks posed by small facilitation payments. During the on-site visit, a representative from the IFU stated that the institution follows a cooperative approach with its partners, helping them to adopt effective anti-corruption measures. In December 2019, the IFU published "Good anti-corruption practices, guidelines on how to adopt good anti-corruption practices" to support businesses' anti-corruption efforts. In its 2021 Annual report, the IFU states that "a written stand against and/or an anti-corruption policy" had been adopted in 76% of the IFU-supported projects.

97. The IFU does not require applicants to declare if they have been convicted of corruption offences, but the IFU has informed that such requirement would be included in the revised business integrity due diligence process. The IFU's ODA contracts do not specifically prohibit implementing partners and their possible sub-contractors from engaging in corruption. The IFU stated it is considering introducing such a measure. During the on-site visit, a representative from the IFU stated that the institution checks multilateral financial institutions' debarment lists. The IFU stated it is considering extending these checks to national debarment lists. A positive hit is not a sufficient ground for denying support, which the IFU stated it is reconsidering. The IFU did not provide any examples of such decisions. However, the IFU stated that the new due diligence processes would include such searches in background checks, as well as a self-declaration by the applicants for the IFU investment loans or guarantees.

Reporting and whistleblower mechanisms

98. The IFU's anti-corruption policy states that, if there is sufficient information about bribery allegations involving and IFU's partner or investment, the case is immediately reported to local or Danish law enforcement authorities. As with Danida, this obligation does not clearly require that reports be always submitted to Danish law enforcement. In addition, the obligation to inform the company before an allegation is reported to law enforcement may hinder the effectiveness of a potential investigation. The IFU stated it will review this obligation. In the abovementioned alleged foreign bribery case in Mali, the Danish company

self-reported the misconduct to various authorities, including the IFU. The IFU did not report the case to the Danish law enforcement authorities on the basis that the company had already done this at the time it reported to the IFU.

99. The IFU established a whistleblower scheme in 2020, in cooperation with an external law firm. This scheme enables employees and other stakeholders to anonymously raise a concern of corruption or submit other complaints related to any of IFU's investments. Denmark states that such reported concerns or complaints are processed by IFU's Grievances and Complaints Committee. The general whistleblower protection regime also applies in relation to the IFU's ODA programmes.

100. The IFU provides annual anti-corruption training to its employees. The IFU stated that this training specifically covers detection and reporting of foreign bribery.

101. No foreign bribery allegation has been detected by IFU staff.

Sanctions

102. The IFU's anti-corruption policy states that it "responds immediately to any allegations of corruption, implementing corrective and preventive measures." In the event of an allegation, the IFU would normally react by "cooperation in good faith with our partners in determining whether a violation has occurred, and which actions should be taken." The IFU would require an investigation and then recommended measures "for continuous operations within the law." "As a last resort," the IFU may request the repayment of a loan or sell its shares in accordance with its standard legal agreements. The IFU does not have clear criteria and processes in place for deciding when formulating recommendations and/or applying sanctions and specific measures are decided by the IFU's management depending on the details of the case. During the on-site, a representative from the IFU stressed that the institution favours encouraging companies to be vigilant and report corruption suspicions and finding constructive remedies in order to ensure the continuation of projects. Sanctions may deter companies to self-report and improve their anti-corruption systems.

103. The IFU took several steps following the self-report on potential foreign bribery committed in Mali. These included: evaluating if the company had taken its own necessary remedial measures; reviewing policy and procedures and the actions taken in the specific case and the IFU Board of Directors adopting an action plan to strengthen anti-corruption measures. The IFU appears to have been satisfied with the remedial steps taken by the company, which included an internal investigation and the dismissal of employees and continued to support the project.

Commentary

The lead examiners acknowledge the measures taken by the IFU to draw the lessons from the discovery, through a partner's self-report, of a foreign bribery allegation in relation to one of its programmes and enhance its anti-corruption measures. As with Danida, this has not, however, translated into detection of allegations of foreign bribery by the IFU. The reporting requirement present weaknesses.

The lead examiners note that the IFU is considering several measures to enhance its capacity to detect and sanction foreign bribery in its activities. As these measures remain to be adopted, the lead examiners recommend that the obligation for IFU employees and implementing partners to report all credible suspicions of foreign bribery involving Danish individuals or companies to Danish law enforcement authorities should be clarified. The lead examiners recommend that the WGB follow up on whether the obligation to inform the relevant implementing partners before reporting a foreign bribery allegation to law enforcement, if it remains in force, does not hinder later investigations.

The lead examiners also recommend that the IFU ensure that: (i) ODA contracts specifically prohibit implementing partners and their possible sub-contractors from engaging in corruption; (ii) persons applying for ODA contracts be required to declare that they have not been convicted of corruption offences; (iii) it systematically verifies publicly available debarment lists of national and multilateral financial institutions during the applicant's selection process and on ongoing basis, and clearly includes such lists as a possible basis of exclusion from application to ODA funded contracts. Finally, the IFU should adopt clear criteria and processes for sanctioning cases of corruption, in particular for terminating support and requiring the repayment of a loan.

B. ENFORCEMENT OF THE FOREIGN BRIBERY AND RELATED OFFENCES

B.1. The foreign bribery offence

104. Denmark's foreign bribery offence is set out in Section 122 CC: "Any person who unjustifiably grants, promises or offers someone exercising a Danish, foreign or international public office or function a gift or other benefit in order to induce him to do or fail to do anything in relation to his official duties shall be liable to a fine or imprisonment for a term not exceeding six years." In previous evaluations, the WGB found Denmark's foreign bribery offence to be largely compliant with the Convention. The Phase 3 report highlighted two outstanding issues related to the small facilitation payment defence and the definition of foreign public officials, respectively.

B.1.a. The small facilitation payment defence

105. As noted in previous WGB evaluations, Danish criminal law is generally concise. The *travaux préparatoires* (preparatory works) on bills provide explanations and details. The preparatory works must be considered by courts when interpreting legislation – however, courts are not bound by them. Courts also normally interpret Danish law in accordance with Denmark's obligations under international law.

106. According to the preparatory works, the term "unjustifiably" (also translated as "unduly" or "unlawfully") in Section 122 CC is the basis for several exceptions to the offence, including in relation to small facilitation payments. The preparatory works provide that the granting of "certain token gratuities" to foreign public officials may be lawful depending on "the situation in the country in which the public official exercises his office and the purpose of such grant." This may be the case in "some countries" with "very special conditions." Whether a token gratuity granted to a foreign public official is lawful must be assessed on a case-by-case basis.

107. In Phase 3, the WGB recommended that Denmark 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 the Convention and the 2009 Recommendation (Phase 3 recommendation 1(a)). The WGB also recommended that the authorities send a co-ordinated and consistent message on the defence to the private sector; 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 periodically review their policies and approach on small facilitation payments in order to effectively combat the phenomenon (Phase 3 recommendation 1(b)). These recommendations aimed to address a broad range of issues, recalled below, which remain unaddressed in Phase 4.

Inconsistencies with the Convention and the Anti-Bribery Recommendation

108. Previous evaluations identified a series of inconsistencies between the Danish small facilitation payment defence and the Convention and Anti-Bribery Recommendation. First, under the preparatory works, a facilitation payment may be considered lawful even when the payment induces a breach of duty by the foreign public official, which is not permitted under Commentary 9 of the Convention. Second, the preparatory works do not explicitly provide that the exception applies only when the payment is made to facilitate a routine government action and is not made to obtain or retain business, in line with Commentary 9 of the Convention. Third, companies are not obliged to record small facilitation payments in their books and financial records, as required by Anti-Bribery Recommendation VI(ii). Finally, as noted above, the preparatory works provide that the exception should be determined taking into account the "situation in the country in which the public official exercises his office." Commentary 7 of the Convention, however, prohibits the restriction of the definition of the foreign bribery offence in reference to "perceptions of local custom, the tolerance of such payments by local authorities, or the alleged necessity of the payment in order to obtain or retain business or other improper advantage." Finally, the WGB noted that the prosecution bears the onus of disproving the existence of such conditions in the country beyond a reasonable doubt, which could be challenging in practice.

109. In Phase 3, Denmark argued that some of these issues were addressed in guidance. In 2007, the MOJ issued a Booklet entitled "How to Avoid Corruption", which was revised in 2015 (2015 MOJ Booklet). Denmark stated that the document is to be used as interpretative aid only where the preparatory works are unclear. The document discourages Danish companies to pay facilitation payments; provides that payments made in connection with international business transactions to induce a breach of duties is always an offence; and requires that, in any case, such payments be recorded in businesses' books. In 2014, the DPP issued guidelines on "Criminal cases concerning bribery" (2014 DPP Bribery Guidelines) to address various issues identified in the Phase 3 report. As with the MOJ Booklet, this document provides that payments to officials to breach duties in connection with international business are always an offence. Neither the 2015 MOJ Booklet or the 2014 DPP Bribery Guidelines address all the abovementioned issues. They also do not have the force of law and cannot override the preparatory works.

110. In Phase 4, Denmark has not revised the relevant sections of the Criminal Code to address any of the above issues, and there has been no relevant case law. The inconsistencies of the small facilitation payment exception with the Convention and Anti-Bribery Recommendation remain unaddressed. During the on-site visit, the MOJ stated that, since Phase 3, Denmark has considered whether the law needs to be revised but concluded that was not the case since Section 122 CC is in line with the Anti-Bribery Convention. Denmark did not provide more details on how this review was carried out in practice.

Absence of a clear, legally binding definition of small facilitation payments

111. More fundamentally, the Phase 3 report criticised the absence of a clear definition of small facilitation payments in Danish law. Such definition relied on several instruments carrying different legal weight – the Criminal Code, the preparatory works and guidance. In addition, there were inconsistencies across the various guidance documents available at the time of Phase 3. The lack of clarity of the exception was found to generate significant confusion in the private sector.

112. The legal basis for the small facilitation payment exception has not been revised since Phase 3, and there is still no clear, self-contained legal definition of the exception, and guidance available on the small facilitation has not been harmonised. The 2015 MOJ Booklet and the 2014 DPP Bribery Guidelines have not been revised and inconsistencies between the two documents remain. In particular, the definition of exception is not harmonised, and the 2014 DPP Bribery Guidelines do not mention the obligation to record facilitation payments. As noted in Section A.11, in 2019, the IFU published guidelines for the private sector on good anti-corruption practices. The small facilitation is briefly addressed in the document. However, the definition of the exception is incomplete and does not specify, in particular, that payments

inducing a breach of duty are always unlawful in international business. The guidelines do not clearly discourage companies to make such payments.

113. During the on-site visit, the MOJ stated that guidance provided to authorities and the private sector is adequate. However, none of the participants from the private and the public sector, or the civil society, was able to give a definition of a small facilitation payments as allowed under Danish law. In particular, businesses did not display any specific knowledge of the Danish framework on small facilitation payments. They stated that they do not take the national framework into account in their operations abroad and apply instead the relevant legislation and guidance from other WGB members. This is particularly concerning, since the Danish businesses met during the on-site visit acknowledged that this phenomenon is widespread in their activities abroad.

Efforts to discourage small facilitation payments

114. On a more positive note, since Phase 3, the Danish authorities have taken part in an interesting initiative aiming to discourage small facilitation payments. In 2018, the MFA participated in the development of a collective action against this phenomenon jointly with the Confederation of Danish Industry, Danish companies, and non-governmental organisations (NGOs) (Fight Against Facilitation Payments Initiative, or FAFPI). The initiative consists in facilitating the exchange of corporate experience and best practices in fighting facilitation payments, as well as a collective action as part of which members report instances of demands for facilitation payments through a dedicated reporting tool. Based on the data collected, FAFPI can approach governments and encourage them to take action against the demand of facilitation payments. A business organisation met during the on-site visit praised this initiative, which it stated has effectively contributed to reducing the phenomenon.

115. Rules governing gifts, hospitality, entertainment, and expenses for domestic public officials are included in the Code of Conduct for public officials and are published on a publicly available website in Danish and English.[40]

Commentary

The lead examiners are seriously concerned that, since Phase 3, Denmark has not taken any steps to adopt a clear and legally binding definition of small facilitation payments in line with the Convention and Anti-Bribery Recommendation. It is also concerning that Danish businesses do not have regard to the Danish framework on small facilitation payments in their operations abroad, even though they are exposed to this phenomenon. While the lead examiners note that the authorities took part in a collective action against small facilitation payments, overall, there have been insufficient efforts by authorities to provide a clear message about small facilitation payments to the private sector.

The lead examiners thus reiterate Phase 3 recommendations 1(a) and (b) that Denmark 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; and ensure that the relevant authorities (i) send a co-ordinated and consistent message on the 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.

[40] https://www.medst.dk/arbejdsomraader/hr/retningslinjer-for-embedsmaend/god-adfaerd-i-det-offentlige/

B.1.b. The definition of foreign public officials

116. Danish law does not define a "*person exercising a Danish, foreign or international public office or function.*" As noted in Phase 1, the preparatory works contain an open interpretation, which appears to capture all the categories of foreign public officials contained in the Convention.

117. At the time of the Phase 3 report, a case involving bribery of private sector consultants hired by the United Nations to conduct procurement for the United Nations, which fell under Article 1 of the Convention, had been resolved on charges of private bribery because Danish authorities stated they could not prove that the recipients of the bribes were foreign public officials under Danish law.[41] The WGB thus recommended that guidance be provided to investigators and prosecutors on the definition of foreign public officials, including those of public international organisations (recommendation 3(g)(iii)).

118. During the on-site visit, prosecutors and judges stated that proving this element of the offence in reference to Danish law is not a challenge. Lawyers concurred, noting that establishing that a person is a foreign public official is not a problem in practice, including in more complex cases involving SOEs.

119. However, this could not be confirmed by practice, and no guidance was provided to investigators and prosecutors as recommended in Phase 3.

Commentary

In the absence of relevant steps taken by Denmark or other developments since Phase 3, the lead examiners reiterate Phase 3 recommendation 3(g)(iii) that guidance be provided to investigators and prosecutors on the definition of foreign public officials, including those of public international organisations.

B.1.c. Applying the Convention to the Faroe Islands and Greenland

120. Under the self-government arrangements of the Faroe Islands and Greenland, the authorities of these territories must be consulted prior to the ratification of international agreements that are particularly important to them. They can also decide whether they wish to accede to certain international agreements concluded by Denmark. When Denmark ratified the OECD Anti-Bribery Convention in 2000, it made a reservation that the Convention would not apply to the Faroe Islands and Greenland until further notice. Similar reservations have excluded these territories from the application of the United Nations Convention against Corruption (UNCAC) and the Council of Europe Criminal Law Convention against Corruption (CoE Convention). The withdrawal of these territorial reservations requires these territories' consent.

121. At the time of Phase 3, the territorial reservation concerning the OECD Anti-Bribery Convention was still in force. The WGB expressed disappointment because Denmark had abandoned the intention, expressed in previous evaluations, to extend the Convention to its overseas territories. The Faroese and Greenlandic authorities considered that there was no urgency to do so since both territories had enacted foreign bribery offences similar to the offence in Denmark. The WGB noted, however, that there was no information on these territories' compliance with other aspects of the Convention. The WGB therefore recommended 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 the Faroe Islands and Greenland (Phase 3 recommendation 7). In 2013 and 2014, Denmark sent letters to the Faroese and Greenlandic authorities inquiring on their willingness to accede. No response was received,

[41] As noted at the time, "the company employing the bribed consultants was responsible for preparing the terms of reference for a procurement of drugs that would be delivered by UNDP as development aid. The company also evaluated the tenders received and gave advice on the selection of the winning bid. The company thus performed functions of a public nature that were core to UNDP's mission as a public international organisation."

but Denmark intended to follow up. At the time of the Phase 3 Two-Year follow-up report, the WGB thus deemed recommendation 7 partially implemented.

122. Since Phase 3, Denmark has not taken further steps to extend the Convention to the Faroe Islands and Greenland, including by developing a roadmap for this purpose. During the on-site visit, representatives from the MOJ stated that applying the Convention is not a priority for the overseas territories' authorities, and Denmark cannot take further step to encourage them to do so. They stressed, however, that Denmark stands ready to provide support to both territories when they express interest in applying the Convention. Representatives from the Faroe Islands and Greenland confirmed that these territories do not perceive waiving this territorial reservation as a priority. In their view, this is because "bribery" is clearly prohibited in these territories. This suggests that the governments of these territories may not be familiar with the specific scope of the OECD Anti-Bribery Convention. This is hardly surprising given the absence of engagement from Denmark about the Convention since 2014. In addition, as in Phase 3, while both territories have foreign bribery offences that are similar to Denmark's, very limited information is available on compliance of these territories with other key aspects of the Convention. Finally, a representative from Greenland highlighted that going through the process of consenting to the extension of the Convention, and then ensuring its implementation, would require investing significant time and resources from the Faroese and Greenlandic governments.

123. On a less negative note, the representatives from the Faroe Islands and Greenland met during the on-site visit did not exclude that the Convention might eventually be extended to their territories. A representative from Greenland also stressed that applying international conventions on corruption may contribute to its government's efforts to promote the attractiveness of the territory to investors. The Greenlandic Parliament has been considering a proposal by one of its members, submitted on 13 August 2022, that the Greenlandic government work towards the implementation of the UNCAC. This proposal aims to provide Greenland with tools to address corruption risks associated with some the territories' industries. The Parliament was to discuss this proposal in November 2022 and Spring 2023.

Commentary

As in Phase 3, the lead examiners are very disappointed that Denmark has not extended the Convention to Greenland and the Faroe Islands. The lead examiners strongly regret that the Danish authorities have taken no step for this purpose since 2014 and consider that they have done everything they could in light of the fact that the Convention is not a priority for either overseas territory. The Faroe Islands and Greenland do have exporting companies and are therefore exposed to foreign bribery risks. In addition, at least in Greenland, the authorities appear to be aware of the benefits of implementing international conventions on corruption for the attractiveness of the Greenlandic economy. This is an opportunity for the Danish authorities to raise awareness of the benefits of the OECD Anti-Bribery Convention for its overseas territories. Finally, the lead examiners note that the issue of resources has been an obstacle to the Faroese and Greenlandic governments considering applying the Convention. This suggests that Denmark could have been more proactive in offering assistance to these authorities if they engaged in such process.

For these reasons, the lead examiners recommend that Denmark take proactive steps to extend the Convention to the Faroese Islands and Greenland. This includes (i) raising awareness of the Convention and its benefits in the Faroese and Greenlandic authorities; and (ii) assuring the Faroese and Greenlandic authorities that Denmark will provide them with support when they engage in the process of applying the Convention.

B.2. Foreign bribery investigation and prosecution

B.2.a. Investigative and prosecutorial framework

Bodies responsible for foreign bribery enforcement

124. Denmark has one unified police force divided into 12 local police units under the authority of the National Commissioner of Police. At the local level, police and public prosecutors work together and are supervised by the same Commissioner. Until recently, the Danish Prosecution Service comprised the Director of Public Prosecutions (DPP), two Regional State Prosecutors, and the specialised State Prosecutor for Serious Economic and International Crimes (SØIK). On 1 January 2022, SØIK was replaced by the National Special Crime Unit (*National enhed for Særlig Kriminalitet*) (NSK) and the State Prosecutor for Special Crime Unit (*Statsadvokaten for Særlig Kriminalitet*) (SSK).

125. Denmark's Administration of Justice Act (AJA) creates a hierarchy of prosecutors. The DPP, under the authority of the Minister of Justice, conducts criminal cases before the Supreme Court (final appeal court), supervises the State Prosecutors and is responsible for international cooperation through the International Affairs Unit. State Prosecutors conduct criminal cases before Denmark's two High Courts (appeal courts), supervise the Commissioners' handling of criminal cases and respond to complaints against police. The Police Commissioners and the Public Prosecutors in the police districts conduct criminal cases before Denmark's 24 District Courts (first instance courts).

Specialisation

126. In Phase 3, SØIK was the body principally responsible for foreign bribery cases. SØIK consisted of State Prosecutors, police officers, and financial and accounting experts. Its mandate was to investigate and prosecute international and economic crimes that are complex, linked to organised crime, or involve the use of special methods. In May 2015, Denmark reported that after adopting the Phase 3 report, which made several recommendations regarding the investigation and prosecution of foreign bribery, SØIK established a special team for corruption cases, including all of Denmark's foreign bribery cases. The corruption team had five people and was led by legal and investigative specialists dedicated to building knowledge and specialisation in foreign bribery. The establishment of a specialised team led the WGB to conclude that Denmark had reviewed its overall approach to enforcement.

127. In January 2022, the NSK and the SSK replaced SØIK. The new arrangement aims to establish a powerful national unit that brings together specialised police and prosecutorial competencies to combat complex and organised crime.[42] The NSK amalgamates SØIK, and several other specialised centres within the Danish police. According to Danish authorities, the rationale for the change is to improve cooperation between specialised centres, merge resources and strengthen investigations into organised and economic crimes, which often overlap.

128. The new arrangement differs from SØIK because the State Prosecutors and police are no longer part of a fused unit. They now operate as two separate but related entities. The NSK, headed by a police commissioner, is established as a police unit with its own prosecution authority that conducts criminal proceedings in the District Courts. It has both investigative and prosecution competence for serious and organised crimes and those that involve complex cooperation with foreign law enforcement authorities, are carried out using special methods, or are otherwise of a particularly qualified nature (Section 110a AJA). The MOJ can stipulate the crimes within the NSK's competence (Section 110a (3) AJA).

[42] Ministry of Justice Press Release, 17 August 2021. See also the draft bill, 17 August 2021 (link in the press release) and amending legislation ACT no. 2601 of 28/12/2021.

129. The SSK is a prosecution authority comprised of state prosecutors and administrative staff that report to the DPP. The SSK is managed by a State Prosecutor and two deputies (one for organised crime and one for economic crime). Its role is to supervise the NSK's case processing, do legality checks, help manage and curtail the NSK's cases and conduct complex cases in cooperation with the investigative unit (Section 101(3) AJA). SSK's State Prosecutors conduct appeals before the High Courts and, where designated by the DPP, proceedings in the District Court. Two State Prosecutors are specialised in economic crimes, but not specifically foreign bribery.

130. The International Group (SIG) part of the NSK's Centre for Economic Crime (CEC) handles the NSK's foreign bribery cases. Denmark states SIG consists of highly specialised investigators and prosecutors with experience in international investigations, mutual legal assistance (MLA), and insight into the challenges of cross-border criminality. However, SIG is not a dedicated corruption team. It handles not only foreign bribery but a range of international crimes, as well as violations of EU sanctions, EU fraud and piracy. During the on-site visit, SIG representatives said they believe the new unit would enable better cooperation with other specialised groups within the NSK. However, they said it is too early to tell if the reforms will enhance foreign bribery investigations.

Commentary

The lead examiners consider it is too early to tell what impact the new institutional arrangements will have on foreign bribery enforcement. They are concerned, however, that the dedicated corruption team set up within SØIK in 2015 no longer exists and fear foreign bribery specialisation may be lost. They recommend that Denmark ensure that foreign bribery specialisation is developed and fostered within the NSK and SSK.

Case assignment and co-ordination

Referral of foreign bribery cases to the NSK

131. In Phase 3, SØIK did not have exclusive conduct of foreign bribery cases. The local police units could investigate and prosecute foreign bribery. Local authorities could, but were not obliged to, refer foreign bribery cases to SØIK and had not been instructed to do so. Given the complexity of foreign bribery cases and that Denmark had a specialised prosecution authority for international and economic crimes, the WBG recommended that Denmark take steps to ensure that local law enforcement authorities refer all foreign bribery cases to SØIK (Phase 3 recommendation 3(b)).

132. The NSK does not have exclusive competence over foreign bribery cases either. Local police or the NSK may receive an initial report of foreign bribery. Cases that fulfil the criteria in Section 110a AJA may be referred to the NSK by local police, but referral is not mandatory and there is currently no formal procedure. The NSK state, the most severe or complicated cases will be handled by them. The NSK could not account for all foreign bribery cases ongoing or terminated since Phase 3, as they do not have access to data from the police units and could not exclude the possibility of cases being conducted by local police.

133. After the on-site visit, Denmark stated it is developing a new procedure to assess which cases will be handled by the NSK. The main criteria are whether the case is complex and extensive; has international dimensions (e.g., MLA, extradition); has broad public significance (e.g. extensive losses by the State, involvement of companies listed on the stock exchange, corruption in Denmark or abroad etc.); involves professionals or complex legal structures; involves fundamental or special legal issues; or relates to organised crime. The new procedure became effective on 1 January 2023. Whilst a positive step, it does not explicitly guarantee that all foreign bribery cases will be referred to the NSK. Therefore, Phase 3 recommendation 3(b) remains unimplemented.

Commentary

The lead examiners are concerned that there is still no systematic co-ordination of foreign bribery cases in Denmark. They believe Denmark missed an opportunity when it created the NSK and SSK to implement Phase 3 recommendation 3(b). The proposed new referral procedure does not explicitly require police units to refer all foreign bribery cases to the NSK. The lead examiners therefore reiterate Phase 3 recommendation 3(b) that Denmark take steps to ensure that local law enforcement authorities refer all foreign bribery cases to the NSK.

Co-ordination between the NSK and SSK

134. SIG's police and public prosecutors will handle foreign bribery cases that are referred to the NSK. As previously outlined, SIG is a division of the NSK, a police unit under the authority of a police commissioner. Although a national unit, the NSK structure and hierarchy is the same as the local police units. Therefore, complex foreign bribery cases will not necessarily attract the supervision or involvement of experienced state prosecutors as was previously the case in SØIK, which was a dedicated and specialised economic prosecution authority.

135. The NSK and SSK have a special category of "cooperation cases" where the two bodies work collaboratively. Guidelines on cooperation cases provide that the most complex and resource-intensive criminal cases are managed jointly from the start of the investigation to the conduct of a possible appeal before the High Court, to achieve a higher quality investigation and better resource management. The onus is on the NSK to identify potential cooperation cases. Cases will be selected having regard to several factors, including the expected number of defendants; the size of a realised or potential financial loss; connection to an organised criminal network; the number of companies involved; and whether the case has an international element and necessitates international cooperation. During the on-site visit, representatives of the NSK and the SSK said that not all foreign bribery cases would be cooperation cases. Cases are assessed on a case-by-case basis. SIG is investigating two foreign bribery cases. One case, ***Power Plant (Mauritius)***, is a cooperation case.

Commentary

The lead examiners are concerned that foreign bribery cases will not always involve or be closely and systematically supervised by State Prosecutors from the start of an investigation, as was the case under the previous institutional arrangements for cases handled by SØIK. The adoption of a model for cooperation between the NSK and SSK signifies an awareness by Danish law enforcement authorities that complex and resource-intensive cases, like foreign bribery, warrant focused and specific investigative and legal cooperation from the outset of an investigation through to appeal. The high rate of discontinuance of foreign bribery cases in Denmark, especially at the investigative stage for technical legal reasons, such as identifying Danish jurisdiction, demonstrates that the legal and evidentiary complexity of foreign bribery cases necessitates such a level of cooperation and co-ordination to improve enforcement outcomes. As such, the lead examiners recommend that Denmark 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.

Prioritisation, resources, and expertise

136. The Phase 3 report expressed reservations about the priority and resources given to foreign bribery enforcement and the foreign bribery-specific expertise of Danish law enforcement officials. The WGB recommended that Denmark ensure that SØIK has sufficient human resources, including forensic accounting and information technology experts, to investigate and prosecute foreign bribery cases, and Denmark train SØIK and other law enforcement officials specifically on foreign bribery and related issues.

(Phase 3 recommendation 3(g)(i)(ii)). At the time of the Phase 3 Two-Year follow-up report, SØIK had hired former accountants, bank employees and IT experts. However, SØIK had not increased the number of prosecutors or investigators or trained SØIK and other law enforcement officials on foreign bribery.

Prioritisation

137. Approximately every four years, the Danish Government sets out the general areas of priority for the Police and the Prosecution Service in a multi-annual financial agreement. The 2021-2023 agreement does not identify foreign bribery as a priority. It refers to the creation of the NSK and details its competence over specific complex crime areas such as gang crime, economic crime, organised drug trafficking, illegal arms trade, money laundering, tax evasion and human trafficking; but does not mention foreign bribery or corruption. During the on-site visit, a representative of the MOJ stated that foreign bribery is not identified as a priority in the agreement *per se,* but economic crimes are. Prosecutors noted that foreign bribery cases are not specifically prioritised within the NSK. A civil society representative said foreign bribery enforcement is not a priority in Denmark. He speculated that the absence of prioritisation could be tied to the public perception of corruption. Lawyers and academics had similar views, also postulating that the perception that corruption does not exist in Denmark correlates with low prioritisation. They noted that the perception is inaccurate; many Danish companies operate internationally and face foreign bribery risks.

Resources

138. Denmark does not assign specific funds to foreign bribery enforcement. Denmark states that if a case requires special resources, the NSK can quickly and flexibly allocate the necessary resources required for individual cases. In terms of human resources, the NSK employs 800 to 1 000 people, including 78 prosecutors. The SIG, however, has only thirteen staff: one superintendent, five investigators, four prosecutors and three administrative assistants. Foreign bribery is not handled by any specific staff within the SIG. Since the NSK became operational, SIG have worked on 23 cases, including two foreign bribery cases (as of October 2022). SSK has 18 prosecutors, including the State Prosecutor and two Vice State Prosecutors.

139. The exact number and complexity of cases handled by each investigator and prosecutor in the SIG at any one time is not clear from the data provided by Denmark, however current human resources available to investigate and prosecute foreign bribery seem lower than in Phase 3. At the time, SØIK had 25 prosecutors, 55 police officers and 25 other employees. Each prosecutor was in charge of four to five cases at any time. SØIK usually assigned just one lead prosecutor and one police officer to each foreign bribery case, which the WGB considered insufficient. The SIG stated during the on-site visit it believes its current resources are adequate, and it can request extra resources if necessary. However, when asked about foreign bribery resources in specific cases, investigators and prosecutors revealed that resources were only sufficient because foreign bribery cases are mainly self-reported. They said that if cases come from other detection sources, then resources may be insufficient because they would need to do complete investigations. Representatives from civil society questioned whether resources were adequate, and lawyers opined that low enforcement outcomes were probably the result of inadequate resources. After the on-site visit, prosecutors said that whether adequate resources will be allocated by the NSK to future foreign bribery cases remains to be seen.[43]

140. Specialised resources are available for use in foreign bribery cases. The NSK employs accountants and IT and asset recovery specialists. However, none are experts in corruption or foreign bribery. They are also a shared resource within the NSK and therefore needed to work on a more diverse range of cases than previously in SØIK, diminishing their ability to build up foreign bribery expertise. The

[43] More generally, Denmark ranked 25th among the 27 European Union countries in terms of the number of police officers per inhabitants in 2018-2020 (Source Eurostat).

SIG did not express difficulty in accessing these resources. However, neither did they demonstrate that these resources are actively being used in foreign bribery investigations (see Section B.2.b).

Commentary

The lead examiners are concerned that foreign bribery enforcement is not given sufficient priority in Denmark and that the resources allocated to investigating and prosecuting foreign bribery are seriously inadequate. The statement by law enforcement officials themselves that resources are only adequate when cases are self-reported by companies is telling. The lead examiners recommend that Denmark 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.

Training

141. Denmark has not trained SØIK and other law enforcement officials specifically on foreign bribery and related issues. Denmark reports one investigator and two prosecutors have completed a certificate course in Anti-Corruption at the International Centre for Parliamentary Studies, London. The course, however, appears to be more policy-related than targeted at law enforcement officials. Two investigators have also recently attended a course on investigating corruption offered by Cepol. Of the 60 continuing legal education (CLE) courses offered by the DPP per year, none of the courses is foreign bribery specific.

142. The Phase 3 report raised substantial concerns that prosecutorial guidelines reduced the basis for imposing corporate liability. This prompted the WGB to recommend that Denmark enhance the usage of, and train law enforcement authorities on, the corporate liability provisions in foreign bribery cases (Phase 3 recommendation 2(a)). The DPP issued new corporate liability guidelines in April 2015. Danish law enforcement officials have not received training on the corporate liability law or guidelines and the DPP's CLE programme does not include a course on corporate liability. Corporate liability and the guidelines are discussed in more detail in Section C.

Commentary

The lead examiners reiterate Phase 3 recommendation 3(g)(ii) that Denmark train NSK, SSK and other law enforcement officials specifically on the foreign bribery offence and related issues. Phase 3 recommendation 2(a) is discussed further in Section C.

B.2.b. Conduct of foreign bribery investigations and prosecutions

Rules and time limits for investigations

143. The main rules on investigation and prosecution are in the AJA. These rules apply to investigating and prosecuting all criminal offences against natural and legal persons. Danish criminal procedure is based on the principle of discretionary prosecution. Danish police initiate criminal investigations either from a report from a member of the public or on their own initiative, where there is a reasonable presumption that a criminal offence liable to public prosecution has been committed (Section 742 (2) AJA). The police can reject a report if there is no basis for starting a criminal investigation (Section 749 AJA).

Reasonable presumption

144. Denmark states that reasonable presumption (or supposition) is not defined in the AJA and Danish authorities did not provide any case law defining the term. When asked how reasonable presumption is interpreted, the NSK stated: "The term reasonable supposition [sic] covers the fact that the police are given a certain discretion to assess when the police are obligated to launch an investigation. Thus, the concept in practice implies that the police must prioritise its resources and that not all established criminal offences

give rise to an investigation. This may relate to trivial matters which turn out not to lead to prosecution or where the circumstances clearly prove to be unfounded. The concept thus covers a lower limit for when there is an obligation to initiate an investigation." During the on-site visit, NSK representatives said whilst there is no formal system of pre-investigation in Denmark, if authorities are made aware of potential criminal activity from the media or another source, they can conduct open-source searches and make other enquiries prior to formally opening an investigation. After the on-site visit, prosecutors clarified that resources are not a factor that influences the opening of an investigation, but are a factor taken into account at later stages of the investigation or prosecution and gave the example of an accused pleading guilty.

145. In the context of a serious criminal offence like foreign bribery, these statements by Danish law enforcement authorities are perplexing. They are focused on the discretion to open an investigation including considerations of the seriousness of an alleged offence and the prioritisation of resources rather than an objective assessment of facts or information to determine whether there is a reasonable presumption that a criminal offence may have been committed. This is particularly concerning because in practice, as discussed in Section B.2.b, Danish authorities did not open an investigation in three alleged foreign bribery cases detected through the WGB's media monitoring. Authorities also considered a self-report from a Danish company in another case was not sufficient to give rise to a reasonable presumption, determining there was no Danish jurisdiction because the alleged acts took place in an another WGB country.

146. Danish authorities' interpretation and application of the reasonable presumption requirement in foreign bribery cases may conflict with the Anti-Bribery Recommendation. Recommendation VI requires that law enforcement officials take a proactive approach to the investigation and prosecution of foreign bribery. All complaints must be seriously investigated, and all credible allegations assessed. In addition, Annex I.D requires countries to ensure […] that the evidentiary threshold or any other standard necessary for initiating investigations is not applied in a way that prevents the effective investigation and prosecution of foreign bribery. Countries must also ensure that investigations are not constrained by inadequate resources (Anti-Bribery Recommendation VII).

Discontinuing an investigation or prosecution

147. Danish police can discontinue an investigation where no charges have been laid if there is no basis for continuing (Section 749(2) AJA). A prosecution may be fully or partly withdrawn if the charge is unfounded or if further prosecution cannot be expected to lead to a finding of guilt (Section 721(1) AJA). The prosecution also has the discretion to waive prosecution wholly or partly in a broad range of circumstances, including if the costs of prosecution are disproportionate to the case's importance or the expected punishment; if the offence is minor and punishable by a fine only; or where an accused has already been sentenced abroad (Section 722 AJA). Prosecutors can waive prosecution only if justified by particularly mitigating circumstances, and where the prosecution is not in the public interest (Section 722(2) AJA). If a foreign bribery report is not investigated, an investigation is terminated, or a prosecution is discontinued by the NSK, the victim or complainant must be notified. A decision of the NSK can be appealed to the SSK by the victim, or if the victim is deceased their next of kin. Other interested parties can only lodge complaints if they have a special interest in the outcome of the case e.g., if there are grounds for seeking compensation against the offender in connection with the criminal case. The State Prosecutor's decision is final and not subject to administrative appeal (Sections 724 and 749(3) AJA).

148. Since Phase 3, Danish police have discontinued the investigation in six foreign bribery cases. In one case, ***Infrastructure Projects (Indonesia & Viet Nam)*****,** the investigation was discontinued because the anticipated cost and duration of proceedings was considered disproportionate to the seriousness of the offence. Danish prosecutors withdrew foreign bribery charges against natural or legal persons in all three cases that were ongoing in Phase 3, and against the natural persons charged in the ***Paint and Coating (Germany & Asia)*** case due to insufficiency of evidence. See discussion in Section B.2.b

Commentary

The lead examiners are concerned that Danish law enforcement authorities' interpretation of reasonable presumption in Section 742 AJA and reluctance to proactively assess if the threshold is met in foreign bribery cases may conflict with the standards prescribed by the Anti-Bribery Recommendation and result in foreign bribery cases not being effectively investigated. The lead examiners recommend that Denmark takes steps to ensure Danish law enforcement authorities act promptly and proactively so that complaints or reports of bribery of foreign public officials are seriously investigated, and all credible allegations are thoroughly assessed to evaluate if there is a reasonable presumption that a criminal offence has been committed.

Time limits for investigations and proceedings

149. There is no specific timeline for completing a foreign bribery investigation in Denmark. Natural and legal persons are notified of the preliminary charge in writing by the police. For natural persons this must occur before interrogation (Section 752 AJA). Prosecutors are obliged to expedite every case with the speed that the nature of the case allows, ensuring that the guilty are brought to justice and the innocent are not prosecuted (Section 96(2) AJA). A decision to discontinue the investigation, withdraw charges, or commence formal prosecution by filing an indictment must be made within a reasonable time after an accused is preliminary charged (Section 718a AJA). During the on-site visit, prosecutors and judges confirmed that strict procedural timelines do not restrict investigations and criminal proceedings. Prosecutors said they could continue to investigate after filing an indictment.

Investigative techniques

150. Denmark has an expansive range of investigative techniques available for use in foreign bribery cases. Denmark has broad search and seizure powers (Chapters 73 and 74 AJA) and following the 2013 reform that increased the maximum penalty for foreign bribery to six years imprisonment, special investigative techniques such as covert operations, surveillance and intercepting communications are available in foreign bribery cases (Sections 754a and 780-781 AJA). Denmark has not used these special techniques in a foreign bribery investigation. SIG states it can use the same investigative measures in foreign bribery cases as in other investigations. Additionally, it can request assistance from other specialist units within the NSK, including the National Centres for Cybercrime, Organised Crime, and Intelligence and Analysis. Since 2015 SØIK has employed forensic accountants and IT specialists. The SIG also has access to forensic accountants, information technology and asset recovery specialists within the NSK.

151. Denmark provided information on the investigative techniques used in ten foreign bribery investigations after Phase 3. As demonstrated by the information in Table 2 below, Danish authorities are not fully exploiting the broad range of investigative techniques and resources available to investigate foreign bribery. Denmark requested MLA in two cases and assistance from the World Bank in one case. In those cases, Danish authorities relied solely on the information provided by foreign authorities and made no efforts to investigate locally. Similarly, in self-reported cases, Denmark reported little or no independent investigative steps to test the veracity of material disclosed by the company. In two recent cases, Denmark dismissed a report or closed the investigation without making any enquiries other than reviewing the complaint and, in one case requesting a witness contact SØIK.

152. Denmark does not report using standard investigative techniques or resources in foreign bribery investigations such as forensic audits, electronic evidence, cooperation with domestic authorities (FIU, tax, etc.), obtaining bank records, forensic or expert analysis, telephone intercept, or other covert investigative techniques.

Table 2. Investigative techniques used in ten foreign bribery investigations between 2013-2022

	Investigative measures	Outcome of the investigation		Investigative measures	Outcome of the investigation
1.	Open-source search. Interview of relevant parties.	Investigation terminated. (s749(2) AJA)	**6.**	Company and house searches. Interviews of witness and suspects.	Charges withdrawn. (s721 subsection 1(2) AJA)
2.	MLA request sent to Brazil and reviewed material received.	Investigation terminated. (s749(2) AJA)	**7.**	Open-source search. Cooperation with the self-reporting company, review, and assessment of received material. Interview of relevant parties.	LP: guilty plea and fine imposed. (s899 AJA) NPs: Charges withdrawn. (s721 subsection 1(2) AJA)
3.	Searches, material seized and reviewed. Interviews of relevant parties. Cooperation with the US.	LP: Prosecution waived. (s722 subsection 1(4) AJA) NPs: Charges withdrawn. (s721 subsection 1(2) AJA)	**8.**	Several attempts to get the reporting person to convince a person with alleged knowledge of the case to contact SØIK.	Investigation not commenced. Dismissal of a filed report. (s749(1) AJA) (Awaits closing).
4.	Requested information from the World Bank and reviewed material received.	Investigation terminated. (s749(2) AJA)	**9.**	Meetings with the Danish company. Review extensive lawyer examination.	Investigation not commenced. Dismissal of a filed report. (s749(1) AJA)
5.	MLA request sent to Brazil and reviewed material received.	Investigation terminated. (s749(2) AJA)	**10**	Initial assessment of the quality and reliability of the information from the whistle-blower regarding jurisdiction.	Investigation terminated. (s749(2) AJA)

Commentary

The lead examiners recommend that Danish law enforcement authorities make full use of the expansive range of investigative techniques available in foreign bribery investigations, including special investigative techniques.

Access to information by law enforcement

Bank and tax records

153. Denmark states that a recent amendment of the AJA makes it possible to obtain banking information without a court order (Section 804(4) AJA). During the on-site visit, Danish authorities stated bank records are obtained easily by letter, however depending on the amount and type of information sought there can be delays. SØIK and NSK have not sought bank records in a foreign bribery investigation.

154. As noted in Phase 3, the DTA may – but does not have to – disclose information to law enforcement authorities spontaneously and upon request. Section 28(3) of the Public Administration Act provides that that "confidential information may be passed on to another administration authority only when the information must be assumed to be of essential importance to the performance of that other authority's activities or for a decision to be made by that other authority". The DTA's guidelines describe the process and conditions for providing information to law enforcement authorities.

155. Danish prosecutors did not mention any difficulty in obtaining information from the DTA. After the on-site visit, Danish authorities stated that SØIK has sought tax records in a recent foreign bribery case, which was ongoing.

Beneficial ownership

156. Since December 2017, most legal persons in Denmark are required to register beneficial ownership information with the Danish Central Business Register (CVR). The register is hosted by the DBA and also includes basic information on companies. There are systems in place to ensure information is accurate when submitted and the DBA takes action if inaccurate information is found. In its 2018 report, the FATF found that law enforcement authorities in Denmark were able to access information quickly and simply on most legal persons through an extensive system of registers. The report also found: "Beneficial ownership information is relatively easily traced through the CVR where no foreign ownership or control is involved. However, where beneficial ownership is more complex or involves foreign persons, legal or

otherwise, then it is significantly more difficult."[44] Law enforcement authorities made similar statements during the on-site visit.

Commentary

The lead examiners commend Denmark for establishing a beneficial ownership registry and recommend that the Working Group follow up on the law enforcement authorities' effective access to beneficial ownership information in foreign bribery cases.

Specific issues in foreign bribery enforcement

157. In Phase 3, the WGB identified several specific issues in foreign bribery enforcement actions, including the insufficiency of inquiries before termination of investigations, limited efforts to secure foreign evidence and cooperation and over reliance on parallel investigations in foreign jurisdictions. In response to these issues, the WGB recommended that SØIK thoroughly investigate and prosecute foreign bribery allegations; routinely and promptly co-ordinate with foreign law enforcement authorities; and make greater efforts to investigate and prosecute even in the absence of parallel investigations in foreign jurisdictions (Phase 3 recommendation 3(d)(i), (ii) and (iv)).

158. Sixteen allegations of foreign bribery involving Danish companies or nationals have been detected since Phase 3. This section analyses Danish law enforcement's handling of ten foreign bribery cases where authorities either did not open an investigation or closed it prematurely. The analysis reveals that the issues identified in Phase 3 persist, and new issues have arisen. It raises concerns about efforts made to investigate the liability of Danish parent companies for foreign bribery allegedly committed by foreign subsidiaries, an issue first identified in Phase 2. It also highlights concerns discussed in other sections of this report on resources, corporate liability, jurisdiction, investigative techniques, and international cooperation.

Investigations not opened

159. Four allegations of foreign bribery detected since Phase 3 were not investigated by Danish law enforcement authorities because the authorities determined there was no reasonable presumption that a criminal offence liable to public prosecution had been committed (See Section B.2.a). Three cases were reported by reputable media outlets and detected through the WGB's media monitoring. Although Danish authorities can open an investigation from media reports, they declined to do so because they considered the information reported in the media was too vague and they did not try to obtain information capable of satisfying the reasonable presumption threshold through other measures such as open-source searches or informal cooperation. In these cases, there were ongoing investigations in passive-side and other WGB countries (see also Section A.2.). The fourth case was reported to SØIK by the company involved.

160. In the ***Pharmaceutical No.1 and No.2 (China)*** cases, it was alleged that several multinational pharmaceutical companies paid bribes to doctors and government officials in China. Two Danish pharmaceutical companies and their Chinese subsidiaries were implicated in the scheme. In 2013, it was widely reported in reputable international media sources that China had opened an investigation and both Danish companies were co-operating with authorities. Other WGB countries investigated allegations concerning companies domiciled in their jurisdictions. Denmark did not seek to co-operate with the other WGB countries nor China, and despite the WGB urging Denmark to investigate, Denmark reported to the WGB that an investigation would not be opened because the allegations described in the media reports were too vague.

161. In the ***Construction (Lithuania)*** case, the Lithuanian subsidiary of a Danish civil engineering company allegedly bribed local public officials to secure a public procurement contract for the renewal of

[44] FATF (2017), Mutual Evaluation of Denmark.

sewerage networks. In 2019, Lithuania charged the CEO of the Lithuanian SOE responsible for the tender with demanding bribes. Information that was reported to the WGB. Denmark, however, considered there were no grounds to commence an investigation because the information in the media reports was vague. Danish authorities did not seek to cooperate with Lithuania, even informally. Nor did they take any steps to establish the liability of the Danish parent company or assess if any Danish nationals employed in the Lithuanian subsidiary were implicated in the scheme.

162. In a fourth case, ***Infrastructure (Slovak Republic)***, it was alleged that between 2006 and 2020 a Danish company's subsidiary worked with local business partners that paid bribes to Slovakian officials. The Danish company self-reported to SØIK. SØIK determined from a review of material disclosed by the company that there was no reasonable presumption that an offence had been committed that was subject to Danish jurisdiction because "the acts appear to have taken place in Slovakia alone." Contrary to DPP instructions, issued after the Phase 3 evaluation, it appears that SØIK did not thoroughly examine all possible jurisdictional bases, including to identify if any Danish nationals were implicated in the scheme. It is also unlikely that Danish authorities could have thoroughly discounted all potential basis of liability of the Danish parent company and its employees solely from an assessment of the material voluntarily disclosed. In addition, Denmark did not seek assistance from, or report the matter to, the Slovak Republic, another WGB country, nor encourage the company to report the bribery to Slovakian law enforcement.

Investigations closed prematurely

163. Denmark discontinued six cases at the investigative stage. An analysis of these cases reinforces concerns raised in Phase 3. Several cases also demonstrate a reluctance by Danish authorities to proactively investigate the liability of Danish companies for acts allegedly committed outside of Denmark in foreign subsidiaries. Concerningly, one case was discontinued because SØIK considered the offences were not serious enough to justify the costs and duration of proceedings.

164. The first case, ***Infrastructure (Togo)*** was detected in 2019 through a report from a member of the public. The only investigative steps taken by SØIK were attempts to get the reporting person to convince a Togolese official with alleged knowledge of the case to contact them. Denmark provided no other information about this case and law enforcement authorities report the investigation is to be closed.

165. In Phase 3, the WGB observed that Danish authorities were too reliant on parallel or foreign investigations (e.g., against a foreign official for accepting a bribe) and were not doing enough to investigate locally. The ***Charter Contracts (Brazil)*** and ***Shipping Contracts (Brazil)*** are recent examples of similar inadequate domestic investigation. In the first case, it was alleged that between 2006 and 2014 a Danish shipping company paid bribes of USD 3.4 million to the director of a State-Owned petroleum company in Brazil via local intermediaries to secure charter contracts valued USD 146 million. The only investigative steps taken by Denmark was to send an MLA request to Brazil. SØIK discontinued the investigation in 2017 when they did not receive a satisfactory response and did not take any other measures to investigate. In December 2019, new allegations concerning USD 2.8 million in bribes paid by the Danish company to the same Brazilian public official through different intermediaries were reported in the international media. Brazilian police searched the Danish company's offices in Rio de Janeiro and São Paulo. In 2020, Brazilian prosecutors charged two individuals including a former executive of the Danish company and sought orders to freeze USD 200 million in company assets. The entire bribery scheme is estimated to involve 200 contracts with a value of USD 1.2 billion. The company issued a statement saying it was committed to co-operating with the authorities. However, despite the developments in the Brazilian investigation, which Denmark were aware of through the WGB, Danish authorities did not reopen the investigation.

166. Phase 4 identified another new issue in Danish enforcement. In one case the decision to prosecute was influenced by resource considerations. In the ***Infrastructure Projects (Indonesia & Viet Nam)*** case, a Danish company allegedly engaged in fraudulent practices and bribed public officials to influence the

award and execution of five separate World Bank-financed infrastructure and development contracts in Indonesia and Viet Nam. In March 2017, the World Bank's sanctions board found the company liable for three counts of fraud and two counts of corruption for paying bribes of USD 10 000 and USD 50 000 to public officials in Indonesia and Viet Nam and debarred the company for 14 years. It also found the company's managing director, a Danish citizen, guilty of fraud and debarred him for a period of three years and six months.

167. The World Bank reported the matter to the Danish MFA in April 2016. SØIK requested information from the World Bank's investigation but took no steps to investigate the matter themselves. By the time Denmark received information from the World Bank in 2017 some allegations were time-barred. Danish authorities reviewed the information, and three and half months later — with no independent enquires made — discontinued the investigation against the natural and legal person. SØIK explained the reasons for discontinuance in a letter to the World Bank. The letter stated two allegations of fraud were time-barred, and a possible criminal prosecution would only involve a less serious allegation of fraud and two allegations of corruption with bribe payments in the region of USD 15 000. The letter states "The prosecution of the three allegations would lead to difficulties, costs and duration of proceedings which are disproportionate to their importance and the sentence […] expected to be imposed." Weight was assigned to the fact that the World Bank's investigation was administrative and did not observe the legal guarantees of a criminal prosecution; the standard of proof was not beyond a reasonable doubt; and "the international nature of the case and age of the allegations renders a significant degree of uncertainty and difficulties in obtaining information through international requests to Viet Nam and Indonesia which could be lengthy and costly."

168. This case is another illustration of Denmark's reliance on a foreign investigation and complete absence of domestic investigation, which resulted in some fraud charges being time-barred. However, of greater concern is SØIK's assessment of the seriousness of the foreign bribery offences. The State Prosecutor not only mistakenly considered the bribes were USD 15 000, not USD 60 000, but he failed to appreciate the significant value of the five contracts and substantial advantage the company obtained from the bribery scheme, as well as the serious harm that can result from corruption in development projects.

169. Two other cases affirm concerns first raised in Phase 2 over whether Denmark would effectively investigate and prosecute Danish companies for foreign bribery committed by their subsidiaries or joint ventures. Anti-Bribery Recommendation Annex I.C. prescribes that countries must ensure that a legal person cannot avoid responsibility by using intermediaries, including related legal persons and other third parties, irrespective of their nationality, to offer, promise, or give a bribe to a foreign public official on its behalf.

170. In the ***Transport (China)*** case, it was alleged that between 2011 and 2016, Chinese employees of a Chinese subsidiary of a Danish company paid bribes to business partners in China, including a Chinese public official. The allegations were reported to SØIK by a whistleblower in 2016. The only investigative step taken by SØIK was reviewing the information provided by the whistleblower. Authorities did not approach the Danish companies or seek to cooperate with Chinese authorities. SØIK concluded there were "no grounds for assuming that the reported acts have been made upon request from or through other forms of criminal acts by the Danish parent company" and therefore there is no Danish jurisdiction. This case raises concerns not only about the limited steps taken to investigate but also SØIK's application of the corporate liability framework. From a review of emails from a whistleblower alone, presumably without full disclosure of the company's books and financial records, it is questionable whether SØIK could have adequately assessed the structure of the group of companies to properly determine the potential liability of the Danish parent company, and thoroughly examinealternative bases of liability including failure to prevent foreign bribery, see Section C.1.a.

171. In the ***Permits and Licenses (India)*** case it was alleged that between 2015 and 2016 a Danish brewing company through its subsidiary in India bribed Indian public officials to ensure swifter regulatory processing time and better manufacturing terms for a local brewery. The only investigative steps SØIK

took were open-source searches and witness interviews. No effort was made to obtain evidence from India. From these limited investigative steps, SØIK determined they did not have jurisdiction because "in Danish law, parent and subsidiary companies are treated as separate entities and that events in a subsidiary cannot create responsibility for the parent company, except in cases where the parent company actively participates in or encourages the illegal activities, or neglects to take due diligence measures once they become aware of the illegal activity in the subsidiary". In arriving at that decision, the Prosecutor ascribed weight to the fact that the company has had anti-bribery codes of conduct since 2014, and it conducted an internal investigation.

172. Even in the case where Denmark achieved a resolution, ***Paint and Coating (Germany & Asia)***, it is unclear if SØIK conducted a detailed forensic analysis of information supplied by the company before it negotiated a plea. The resolution relied on admissions made by the company. The available evidence was insufficient to proceed with foreign bribery charges against two senior employees of the company.

Commentary

The lead examiners are concerned that Danish law enforcement authorities are not proactively and seriously assessing foreign bribery allegations reported in reputable media sources and under investigation in other WGB and passive-side countries.

They also note the very limited investigative steps taken by Danish law enforcement when investigations are opened in foreign bribery cases. They are concerned about Danish authorities' reliance on obtaining evidence from foreign authorities and the absence of comprehensive domestic investigation before investigations are terminated. They are particularly concerned that Denmark has discontinued a foreign bribery investigation in at least one instance because the cost and duration of proceedings were considered disproportionate to the importance of the crimes. They also consider that Denmark is not effectively investigating and prosecuting Danish companies for foreign bribery committed by their subsidiaries.

The lead examiners reiterate Phase 3 recommendations 3(d)(i) and (iv). They recommend that Danish law enforcement authorities make greater efforts to thoroughly investigate and prosecute foreign bribery allegations and obtain relevant evidence domestically, even in the absence of parallel investigations in foreign jurisdictions. They also recommend that authorities explore all potential bases of criminal liability of Danish natural and legal persons, including complicity or failure to prevent foreign bribery, especially in cases concerning foreign subsidiaries of Danish companies.

Article 5

173. Article 5 of the Convention requires that the investigation and prosecution of foreign bribery are not influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved. The Phase 3 report raised two issues concerning Article 5. First, investigators and prosecutors were unaware of Article 5 of the Convention. Second, the potential for the Minister of Justice to intervene in foreign bribery cases by giving orders to the DPP (Section 98 AJA).

174. The 2014 DPP Bribery Guidelines emphasise that the factors enumerated in Article 5 must not influence foreign bribery cases. Despite this positive step, both issues identified in Phase 3 persist.

175. Danish authorities said they are unaware of the 2014 guidelines and conceded a general lack of awareness of Article 5. The DPP has not disseminated the guidelines since 2014, and they are not included in the DPP's electronic knowledge base. As in Phase 3, Danish authorities referred only to Section 96 AJA and the duty of police and prosecutors to prosecute crimes fairly, expeditiously, and according to the rules in the Act. DPP's guidelines on the Quality and Legality of Criminal Proceedings issued in January 2022

do not mention Article 5 either. Current awareness of Article 5 among police and prosecutors appears inadequate.

Commentary

The lead examiners recommend that the Working Group follow up on steps taken by Denmark to raise awareness of Article 5 of the Convention.

Jurisdiction

Territorial and nationality jurisdiction

176. Denmark has not amended the jurisdiction provisions of the Criminal Code since Phase 3, according to which Denmark can exercise both territorial and nationality jurisdiction over natural and legal persons in foreign bribery cases (Sections 6-9A CC).

177. Nationality jurisdiction is subject to dual criminality. Section 7(1) CC provides that Denmark has jurisdiction to prosecute a person for an offence committed wholly outside Denmark if, when the charges are laid: (i) the person is a Danish national or resident; and (ii) the act is also a crime in the country where it occurred. For legal persons it is only necessary that the offence itself is criminalised in the foreign country. The country does not need to have criminal liability of legal persons (Section 7b CC).

Jurisdiction to prosecute extraterritorial foreign bribery

178. In Phase 1, the WGB identified a gap in Denmark's jurisdiction to prosecute foreign bribery committed by Danish nationals wholly outside of Denmark (extraterritorial foreign bribery). The issue has been reiterated in subsequent evaluations. The WGB observed that the dual criminality requirement in Section 7(1) CC creates a difficulty in prosecuting foreign bribery cases in the scenario where a Danish national bribes a foreign public official of Country A while in Country B, if the act in question is not an offence in Country B.

179. In Phase 3, the WGB recommended that Denmark ensures 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 (Phase 3 recommendation 4(a)).

180. Denmark has asserted alternative bases of jurisdiction to address the lacuna. After the Phase 3 on-site visit, Denmark referred to Section 8(v) CC which grants Denmark jurisdiction over non-nationals and provides 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" (universal jurisdiction). Denmark stated Section 8(v) CC grants jurisdiction over all foreign bribery cases as required by the Convention.

181. The 2014 DPP Bribery Guidelines reinforce this position and state that where jurisdiction cannot be established under Sections 6, 7 or 9 CC, the foreign bribery offence will be subject to Danish jurisdiction under Section 8(v) CC. The guidelines refer to the *travaux préparatoires* to the CC on the amendments to Section 122 creating the foreign bribery offence, which state that the jurisdictional requirements of several international instruments including the OECD Anti-Bribery Convention can be met through the application of Section 8(v) CC, therefore no amendment to the jurisdictional provisions of the Criminal Code is required.

182. During the on-site visit, representatives of the MOJ confirmed the scenario described above is still the correct interpretation of Danish law. Police and prosecutors from NSK said they were not aware of the 2014 Guidelines. When asked specifically about the application of Section 8(v) CC, they said they were

aware of its application in EU sanctions cases but did not know if it applied to foreign bribery. A judge mentioned the potential of establishing extraterritorial jurisdiction under Section 8(v) CC for acts of foreign bribery but said case law would need to be considered to determine its application. Furthermore, practice shows that Danish authorities have not sought to apply Section 8(v) CC in a foreign bribery case, and therefore Danish courts have not considered the issue of whether Denmark can prosecute extraterritorial foreign bribery if the dual criminality requirement in Section 7(1) CC cannot be met.

Jurisdiction over legal persons

183. The 2021 Anti-Bribery Recommendation, Annex I(B)(4), requires countries to explore all available jurisdictional bases when investigating and prosecuting legal persons for foreign bribery. In asserting nationality jurisdiction over legal persons, they should consider criteria such as, but not limited to, the laws under which the legal person was formed or is organised or the legal person's headquarters or effective management and control. Countries should also ensure they can exercise appropriate jurisdiction over legal persons regardless of whether they have jurisdiction over the natural person who committed foreign bribery.

184. According to the preparatory works on Section 9(1) CC regarding corporate liability, nationality jurisdiction over Danish legal persons can be established by consideration of where the company is headquartered or conducts its main activities.

185. As regards territorial jurisdiction, under Section 9(1) CC, criminal acts of legal persons are deemed to have been committed at the place where the act(s) creating the liability of the relevant legal person was committed. Section 9(2) CC provides that an act may also be deemed to have been committed in the place where its consequences occurred or were intended to occur. Theoretically, bribery that occurs outside of Denmark that is either intended or does benefit a Danish company is within Danish jurisdiction. In addition, Danish authorities state that it is implicit from Sections 9(1) and 27(1) CC that jurisdiction can be exercised over the legal person regardless of whether there is jurisdiction over the natural person who committed the foreign bribery offence.

Jurisdiction issues in practice

186. The developing practice in foreign bribery cases raises concerns about Denmark's application of its jurisdictional rules. In at least three alleged foreign bribery cases, Danish authorities found that there was no Danish jurisdiction because the alleged acts occurred abroad and involved a foreign subsidiary of a Danish company. In each case, the investigative steps were extremely limited, and the determination that there was no Danish jurisdiction was made from the information provided by the reporting person or company itself. Danish authorities did not report specific investigation measures that were directed at exploring territorial links to Denmark and/or establishing whether any Danish national or resident may have been involved in the alleged acts to assert nationality jurisdiction.

Commentary

Denmark has broad jurisdictional rules that prima facie provide an adequate basis to investigate and prosecute foreign bribery allegations; these potentially include universal jurisdiction in cases of extraterritorial foreign bribery. However, practice demonstrates that law enforcement authorities are not exploring all jurisdictional bases available under Danish law when investigating and prosecuting foreign bribery allegations, contrary to previous recommendations of the WGB and instructions to police and prosecutors issued by the DPP in 2014.

The lead examiners recommend that Denmark takes steps to ensure that Danish law enforcement authorities consider all possible bases of jurisdiction in foreign bribery cases, including universal jurisdiction, where appropriate.

Statute of limitations

187. In 2013, Denmark increased the maximum penalty for foreign bribery from three to six years imprisonment, which extended the applicable statute of limitations from five to ten years. The statute of limitations runs "from the date when the criminal activity or omission ceased" and is suspended when the accused is notified of the provisional charge, or a prosecution is initiated (Sections 93 and 94 CC).

188. During the onsite visit, Danish prosecutors stated there is no indication that the ten-year limitation period is insufficient. They referred to Section 94 CC and emphasised that where misconduct occurs over a period of time, the limitation period starts when the conduct stops, and the "whole crime can be prosecuted from the beginning". Lawyers agreed the limitation period was sufficient and said it is consistent with other economic crimes in Denmark. Lawyers also said in a bribery case the statute of limitations starts when "the payments stop." Denmark did not provide any jurisprudence on the interpretation of Sections 93 and 94 CC.

189. In two cases, ***Infrastructure (Slovak Republic)*** and ***Infrastructure Projects (Indonesia & Viet Nam)***, SØIK considered, among other factors, that some criminal acts were time-barred when it decided not to investigate the foreign bribery allegations. It is unclear whether the prosecution considered whether Section 94 CC permitted these earlier acts to be prosecuted as part of a course of conduct as described during the on-site visit. Also of concern is the fact that some potential offences were time-barred appears to have influenced the decision not to investigate other serious non-time-barred allegations of foreign bribery in the same case.

Commentary

The lead examiners recommend that the Working Group follow up on the application of the statute of limitations in foreign bribery cases, in particular where some, but not all, acts are time-barred.

B.3. International co-operation

190. In Phase 3, the WGB identified four issues regarding international cooperation. First, the WGB considered that Denmark could make greater efforts to coordinate with and obtain evidence from foreign law enforcement authorities. Second, the dual criminality requirement for MLA meant that the provision of assistance was subject to the statute of limitations for the corresponding offence in Denmark, which at the time was five years for foreign bribery, diminishing Denmark's ability to provide effective assistance to other Parties to the Convention. Third, the extradition of nationals was limited by the three-year maximum penalty for foreign bribery. Finally, Denmark did not keep adequate statistics on MLA and extradition requests.

191. The WGB recommended that Denmark follow through on its intention to raise the maximum penalty for foreign bribery to six years imprisonment, thereby increasing the limitation period for MLA to ten years and broadening the basis for extradition. As discussed above, the maximum penalty was increased in 2013. At the time of the Phase 3 Two-Year follow-up report, SØIK had adopted new policies to pursue MLA in foreign bribery cases proactively. However, Denmark still did not maintain adequate statistics on MLA and extradition.

B.3.a. Mutual legal assistance

Central authority

192. In 2016, the DPP's International Affairs Unit replaced the MOJ as the central authority for MLA requests to and from all countries except the Nordic countries (Finland, Iceland, Norway, and Sweden) and requests made under the Convention on Mutual Assistance in Criminal Matters between the Member

States of the European Union (2000) (EU Convention (2000)). Nordic and EU requests are transmitted directly to judicial authorities. The DPP also administers requests for assistance to and from Greenland and the Faroe Islands. Nowadays, the MOJ does not have a role in processing or executing MLA requests and has not intervened in any foreign bribery cases.

Bilateral and multilateral treaties

193. Bilateral and multilateral treaties are the principal legal basis for seeking and providing MLA in Denmark. Denmark is a party to several multilateral treaties under which MLA may be sought and provided in foreign bribery cases, including an agreement with other Nordic Countries (1974), the EU Convention (2000), the European Convention on Mutual Assistance in Criminal Matters (1959) (including the 1978 and 2001 protocols), and the UNCAC. Denmark has not adopted the European Investigation Order because it has an opt-out from EU regulation in the area of freedom, security and justice (AFSJ). Denmark has bilateral agreements with the US, Hong Kong, China, and since 2022 the UAE. The EU-UK Trade and Cooperation Agreement, which provides a basis for MLA, entered into force in Denmark in 2021. Denmark also grants MLA based on reciprocity, even if there is no bilateral or multilateral agreement governing relations with another State.

Legal and procedural framework

194. Denmark reports no specific changes to the legal framework for MLA since Phase 3. This is because Denmark does not have specific legislation governing the execution of MLA. All relevant national legislation may be used. If changes have been made to the AJA or the CC, they apply equally to executing an MLA request as to domestic prosecution.

195. Since Phase 3, the DPP has issued new guidelines (2019) for police and prosecutors on international cooperation that detail the procedure for incoming and outgoing MLA. The guidelines state that MLA may be provided if the investigative measure requested can be carried out in corresponding national Danish criminal proceedings by reference to the AJA. Dual criminality is required because the AJA is applied analogously. Therefore, consideration is given to the corresponding Danish offence, including the maximum penalty and the statute of limitations. Following the increase of the maximum penalty for foreign bribery to six years imprisonment, a wide range of investigative techniques are available for foreign bribery related MLA requests. The applicable statute of limitations is now ten years. Danish authorities can provide other forms of assistance such as interviewing witnesses when the offence is time-barred in Denmark (e.g., in the ***Oil (Brazil)*** case). Before sending an outgoing request, Danish authorities must also apply Danish law. If a court order is required for a certain investigative step, they must request one and follow Danish criminal procedure.

196. As in Phase 3, international cooperation may be sought and provided outside formal MLA channels. Danish police liaison officers are posted in three foreign countries, and five liaison officers are posted to Europol.[45] Denmark's opt-out of AFSJ EU regulation also means that it has not joined the European Public Prosecutor's Office (EPPO) and Eurojust. However, Denmark signed an agreement with Eurojust in 2019 that facilitates cooperation under the Eurojust Regulation. Danish national representatives are seconded to Eurojust and facilitate MLA and informal cooperation. They also coordinate investigations and prosecutions with other Eurojust member states and third countries via cooperation agreements. Through this arrangement, Denmark has a joint investigation team (JIT) with Mauritius in a foreign bribery case. In Phase 3, it was reported that SØIK was considering signing memorandums of understanding with the World Bank and other multilateral development banks. This did not come to fruition. However, SØIK

[45] Danish police liaison officers are posted in Bangkok, Thailand, Tirana, Albania, and Ankara, Türkiye with accreditation in neighbouring countries.

did cooperate with the World Bank in one foreign bribery case (***Infrastructure Projects (Indonesia & Viet Nam)***).

Statistics

197. Denmark still does not keep comprehensive statistics of all incoming and outgoing MLA and extradition requests, including those to and from Greenland and the Faroe Islands (Phase 3 recommendation 6(iii)). The DPP can only provide limited statistics from its case management system for incoming MLA requests from countries outside of the EU and Nordic countries. Requests transmitted directly to the police districts are recorded in a different case management system that cannot be easily searched. The DPP Guidelines stipulate that the police and public prosecutors must maintain statistics of all incoming and outgoing requests received by them and must also forward a copy of the outgoing requests to the DPP for statistical purposes. However, the DPP believe that the police districts do not always do this (only 63 were received in 2021) despite DPP issuing reminders and holding annual seminars on MLA.

198. Concerning extradition, the DPP does keep statistics on all incoming and outgoing requests, including European Arrest Warrants (EAW), except requests to and from Nordic countries, which are transmitted directly to the police units.

Commentary

As in Phase 3, the lead examiners recommend that Denmark maintain comprehensive and detailed statistics on incoming and outgoing foreign bribery-related MLA and extradition requests.

Efforts to secure foreign evidence and cooperation

199. In Phase 3, the WGB recommended that SØIK make greater efforts to obtain evidence and information from foreign authorities before terminating foreign bribery cases (Phase 3 recommendation 3(d)(iii)). Denmark has sought MLA in only two foreign bribery cases investigated since 2013. Both requests were sent to WGB countries (Brazil and Germany).

200. In the ***Shipping Contracts (Brazil)*** case, Denmark requested evidence from Brazilian authorities in June 2015 and received a response within three months. After reviewing that material, Denmark made a second request in January 2016. Denmark sent a reminder to Brazil six months after the request. However, no response was received, and Denmark discontinued the investigation in April 2017 without taking any other steps to investigate. Denmark did not follow up on the MLA request further or use alternative channels such as the WGB's informal meetings of law enforcement officials to facilitate cooperation. Brazil eventually responded in 2018. SØIK reviewed the material but did not reopen the investigation.

201. In the ***Paint and Coating (Germany & Asia)*** case, Denmark sought and received assistance from Germany. The requests were executed within one day to five months. However, the requests only related to the charge of failing to prevent commercial bribery (Count 1). Denmark did not request assistance from other countries where several of the Danish company's subsidiaries accused of paying bribes to public officials are domiciled, including Indonesia, Singapore, Viet Nam, China, Cyprus,[46] and Greece (Count 2).

[46] Note by the Republic of Türkiye: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".

This is significant because Danish prosecutors did not have sufficient evidence to particularise with adequate specificity the conduct that constituted foreign bribery in relation to that charge (see Section B.1.b).

202. In several other cases, Denmark made no effort to obtain evidence and information from foreign authorities before closing the investigation. In the ***Infrastructure Projects (Indonesia & Viet Nam)*** case, Denmark sought information from the World Bank but did not seek assistance from Indonesia or Viet Nam as it was assumed there would be great difficulties and costs in obtaining information from those countries. In the ***Permits and Licenses (India)*** case, Denmark did not attempt to obtain evidence from India where the offences were alleged to have occurred. In three recent cases, ***Transport (China)***, ***Infrastructure (Togo)*** and ***Infrastructure (Slovak Republic)***, Denmark dismissed a report or closed the investigation based purely on an assessment of the report or information provided by the self-reporting company without any efforts to obtain foreign evidence or cooperation. In the Togo case, Danish authorities made attempts to get the reporting person to convince a Togolese public official to contact SØIK but made no effort to interview the witness themselves through a formal MLA request or other channels.

203. Denmark's involvement in a JIT with Mauritius in one ongoing foreign bribery case is a recent positive development.

MLA requests received

204. Since 2015, Denmark has executed MLA requests in two foreign bribery cases, ***Oil (Brazil)*** and ***Paint and Coating (Germany & Asia)***. In the first case, Denmark responded to two requests from Brazil, even though the case was time-barred in Denmark. The responses took eight and thirteen months. Denmark attributes the delay to translation issues. In the second case, Denmark provided Germany with court records and witness statements within five days.

205. The 2022 survey of WGB members on international cooperation with Denmark raises concerns about Denmark's responsiveness to MLA requests and whether Denmark is adequately investigating foreign bribery cases detected through information from foreign authorities (See also Section A.3.). The Secretariat received information from five WGB countries. The feedback was mainly positive. However, one country described an MLA request concerning a sensitive corruption investigation sent to Danish authorities in 2019 that has never been executed. Another country cooperated with Danish authorities concerning a bribery investigation in 2016. The WGB member country was investigating passive bribery concerning bribes allegedly paid by Danish companies operating in the fur industry to its public officials and described extensive and productive cooperation with Danish law enforcement. SØIK did not open an investigation in that case.

Commentary

Practice demonstrates that Danish authorities are not proactively seeking information or evidence from foreign authorities when a foreign bribery report is received, or allegations of foreign bribery are detected. Foreign evidence or information could corroborate a report or enhance an investigation and prevent early termination of cases. Therefore, the lead examiners reiterate Phase 3 recommendation 3(d)(iii) that Denmark routinely and promptly co-ordinate 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.

The lead examiners praise Denmark for its recent joint investigative team in a foreign bribery case and encourage Denmark to adopt such practices in future cases. They recommend that Denmark

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Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

make full use of regional and international law enforcement networks to secure cooperation in foreign bribery cases.

B.3.b. Extradition

206. Denmark can seek and provide extradition in foreign bribery cases based on bilateral and multilateral treaties, the EAW (for EU member countries) and the Nordic Arrest Warrant (NAW), and in accordance with the Danish Extradition Act (2020). In the absence of a treaty, Denmark may grant extradition based on reciprocity. Dual criminality is usually required unless an agreement or the Extradition Act provides otherwise. Denmark has never sought or granted extradition in a foreign bribery case.

207. Since Phase 3, Denmark has introduced a new Extradition Act (2020). The Act was introduced in response to several decisions of the Court of Justice of the EU to ensure that Danish law complied with the Council Framework Decision of 13 June 2002 on the EAW (2002/584/JHA). The Act sets out the applicable conditions and procedures for extradition from Denmark to Nordic states, EU states (except Finland and Sweden) and other states. Before the amendment, the DPP would issue or grant extradition requests. Under the amendments, all extradition requests must be adjudicated by a court. The 2020 Act does not include Denmark's overseas territories. The previous Extradition Act (1967) regulates requests concerning Greenland and the Faroe Islands.

208. The 2013 increase of the statute of limitations to ten years brings Denmark in line with other Parties to the Convention. The expiry of the statute of limitations in Denmark is not grounds for refusal of a NAW, however, it is an optional ground for refusal of an EAW and a mandatory ground to refuse extradition to other countries. The increase in the maximum penalty for foreign bribery to six years imprisonment also means that Danish nationals accused of foreign bribery are now also extraditable to other countries outside the Nordic countries and the EU (Section 18 Extradition Act). As in Phase 3, Danish nationals who are not extradited due to their nationality will be considered for prosecution in Denmark.

B.4. Concluding and sanctioning foreign bribery cases

209. Since Phase 3, Denmark has sanctioned one legal person for foreign bribery. The sanction was imposed as part of a non-trial resolution in 2019 for several charges, including failure to prevent foreign bribery. This section addresses sanctions for natural persons; confiscation; non-trial resolutions; and debarment from public procurement. See Section C.3 on sanctions for legal persons.

B.4.a. Sanctions for natural persons

Legal framework on sanctions for natural persons

210. Natural persons who commit foreign bribery are punishable by a fine or a prison term not exceeding six years (Section 122 CC), which is in line with the sanctions available for passive bribery.[47] Suspended imprisonment sentences may be imposed if the court finds that a prison sentence is not necessary (Section 56 CC). The amount of a fine is set as day fine units (Section 51 CC). The value of the day fine unit takes into account the person's capacity to pay. The number of day fine units takes into account the nature and gravity of the offence (Sections 51 and 80 CC). The Danish authorities stated that this includes the value of the proceeds of crime. The minimum applicable fine is DKK 2. The law does not set an upper limit to the amount of fines for natural persons. The Criminal Code contains provisions on

[47] Act no. 634 of 12 June 2013 amending the Criminal Code and other acts increased the maximum prison sentence under Section 122 CC from three to six years. This amendment fully implemented Phase 3 recommendation 5(a) requiring that Denmark promptly increase the maximum penalties for foreign bribery committed by natural persons.

mitigating and aggravating circumstances, including lists of such circumstances that should normally be taken into account when determining the sentence (Section 80 et seq. CC). Mitigating circumstances include self-reporting, cooperation, and remediation. No further guidance or training is provided to prosecutors or judges on determining the level of sanctions for natural persons convicted of foreign bribery.

211. From April 2020 to January 2022 a new Section 81.d CC[48] doubled the maximum penalty applicable to foreign bribery and money laundering, among other offences, where these offences were committed in connection with the Covid-19 pandemic in Denmark. The maximum sentence applicable could be quadrupled if these offences were committed in connection to governmental aid programmes aimed at mitigating the economic effects of the pandemic. These provisions have not been applied in relation to any domestic or foreign bribery cases.

212. No other ancillary sanctions are applicable in relation to foreign bribery under the Criminal Code. Persons sanctioned for foreign bribery may be debarred from public procurement (see Section B.4.d).

Sanctions applied to natural persons in practice

213. No natural person has ever been sanctioned in a foreign bribery case in Denmark. Denmark provided very limited information on sanctions imposed to natural persons in domestic cases since Phase 3. Between 2015 and 2022, 33 natural persons were convicted for active domestic bribery, but the specific sanctions imposed were communicated only in relation to the ***Domestic Bribery Case***. In this case, in 2019, on appeal, the High Court convicted one natural person of one count of active bribery and aiding abetting fraud and sentenced them to 6 months of imprisonment conditional on carrying out community service. Another natural person was convicted of 13 counts of bribery and 11 counts of forgery of authority and sentenced to 1 year and 3 months of imprisonment. This sanction was not suspended given "the seriousness and number of the offences." No more information is available on the methodology for determining the level of sentences.

Publication of sanctions

214. The Danish Prosecution Service stated they have internal guidelines on how to communicate about criminal cases to the public and the media, in order to promote the transparency of the Danish criminal justice system. Denmark did not communicate these guidelines. The authorities stated, however, that publication of information on a resolution would be decided, in consultation with the DPP communication unit, on a case-by-case basis, taking into account the significance of the case and whether it received media attention. While the non-trial resolution in the ***Paint and Coating (Germany & Asia)*** case was announced in a press release, Danish authorities noted that not all foreign bribery resolutions would necessarily be communicated as proactively.

215. In addition, the public can request a copy of decisions in criminal cases under conditions described in Section 41 AJA et seq.

Commentary

In the absence of sanctions imposed on natural persons for foreign bribery, the lead examiners recommend that the Working Group continue to follow up on sanctions imposed in practice to natural persons for foreign bribery as case law and practice develop.

B.4.b. Confiscation

216. While the Phase 3 report did not raise any issues in relation to the framework for confiscation in Denmark, the WGB noted that Denmark could not provide comprehensive statistics on confiscation. The

[48] Act no. 157 of 2 April 2020 on amending the Criminal Code, the Administration of Justice Act and the Aliens Act

WGB recommended that Denmark maintain detailed statistics on sanctions including confiscation, as well as asset seizure and restraint, in practice (Phase 3 recommendations 6(i) and (ii)) and decided to continue to follow up on confiscation imposed in practice for foreign bribery (Phase 3 follow-up issue 13(b)).

Legal framework

217. As in Phase 3, the rules on confiscation and seizure are set out in Sections 75 to 77a CC and Chapter 74 AJA, respectively. Since Phase 3, the confiscation regime was only amended in 2013 to extend the statute of limitations for confiscating smaller amounts from 5 to 10 years.

218. As noted in Phase 3, confiscation of proceeds or property of corresponding value is discretionary in Denmark. Section 75(1) CC provides that "the proceeds of a criminal act, or a corresponding amount, may be confiscated in full or in part". Danish authorities explained during the on-site visit that, in practice, confiscation will normally be ordered where prosecution has proven that assets are proceeds of crime or represent equivalent value to such proceeds.

219. Denmark also explained that bribes (as instrumentalities in active bribery cases) or property of equivalent value may be confiscated under Section 75(2) and (3) CC. However, instrumentalities may be confiscated "only if this is necessary to prevent further offences or is otherwise specially justified." In the ***Domestic Bribery case***, the Supreme Court rejected the prosecution's request for confiscation of the bribes because they consisted of "dinners, travel experiences and the like." In ***Paint and Coating (Germany and Asia)***, no confiscation was ordered because the proceeds could not be quantified. No consideration was given to confiscating instrumentalities. In the absence of details on the criteria for determining that instrumentalities should be confiscated, there is a concern that Section 75(2) CC may hinder the confiscation of bribes in foreign bribery cases.

220. All relevant participants in the on-site visit stated that confiscation may be ordered, in addition to a fine, as part of the two types of non-trial resolutions available in Denmark. This was confirmed by Danish authorities after the on-site visit in relation to agreements on a fine (Section 899 AJA).

Confiscation in practice

221. Since Phase 3, Denmark has taken several steps aiming to increase its general capacity to trace, seize and confiscate assets. The resources allocated to the Asset Recovery Office (ARO), which is the specialised body within the NSK providing assistance in tracing and seizing assets, appear to have increased, from "1-2 prosecutors and 4-5 police officers" at the time of the FATF evaluation in 2017,[49] to 4 prosecutors, 1 student, 1 superintendent, 13 investigators and 1 administrative staff in July 2022. In addition, the DPP issued detailed guidelines for prosecutors on seizure and confiscation on 1 July 2021.

222. However, these measures do not appear to have had any impact on foreign bribery cases. No assets have been traced, seized, confiscated, or repatriated in relation to such cases since Phase 3. The information provided by Denmark in relation to ***Paint and Coating (Germany & Asia)*** case raises concerns and questions. In this case, prosecutors did not take steps to quantify the benefits of misconduct, despite having secured full cooperation from the corporate defendant, which should have facilitated this task. They considered that estimating the proceeds would be too difficult given the complexity of the case, which involved various jurisdictions. More generally, prosecutors met during the on-site visit acknowledged that estimating the benefits of crime is often a challenge in complex cases. They noted, however, that this can be compensated by the possibility to impose an additional fine. It is unclear how the value of the additional fine is determined. In the absence of any estimation of the value of the benefits, it is also unclear how the authorities can be confident that the absence of confiscation is adequately compensated.

[49] FATF (2017), Mutual Evaluation Report of Denmark, p. 56

223. Also of concern, while the SIG do not have specialists in asset recovery or confiscation and may ask for the ARO's assistance in complex cases, the SIG normally handles asset recovery and confiscation in its own cases. The ARO has never been involved in any foreign bribery case. In its written inputs to the evaluation, the ARO showed limited understanding of the specificities of confiscation in bribery cases, citing its potential role in the confiscation of bribes, without consideration to the benefits of bribery. In general, Denmark has not raised awareness among law enforcement and other competent authorities of the importance of thorough financial investigations to detect and recover bribes and foreign bribery proceeds; nor considered developing and disseminating to law enforcement guidelines for identifying, quantifying, and confiscating bribes and foreign bribery proceeds, as requested by the Anti-Bribery Recommendation.

224. Finally, Denmark has not taken any steps to collect comprehensive statistics on seizure and confiscation, as recommended by the WGB in Phase 3.

Commentary

The lead examiners recommend that Denmark take measures, including revising the law, if necessary, to ensure that bribes to foreign public officials, or property of equivalent value, can be subject to confiscation in line with Article 3 of the Convention, and in particular, regardless of the nature of the bribes.

They also note that Denmark has taken various steps to increase its general capacities to trace, seize and confiscate assets since Phase 3. However, they are concerned that no effort was made to confiscate the proceeds of crime in the case that resulted in a sanction for foreign bribery in 2019. This can be attributed to a lack of awareness among investigators and prosecutors of the importance of financial investigations to trace and recover foreign bribery proceeds; and a limited capacity to do so. The lead examiners therefore recommend that Denmark take all necessary steps (i) to raise awareness among law enforcement authorities, including the ARO, of the importance of thorough financial investigations to detect and recover bribes and foreign bribery proceeds; and (ii) to make sure that law enforcement and prosecutors have access to the necessary expertise and capacities to help them effectively identify, quantify and confiscate bribes and foreign bribery proceeds, including by mobilising the ARO, where appropriate, and by considering developing and disseminating relevant guidelines. Finally, the lead examiners reiterate Phase 3 recommendations 6(i) and (ii) that Denmark maintain detailed statistics on asset seizure and confiscation.

B.4.c. Non-trial resolutions

225. In Phase 3, the WGB found that the form of non-trial resolutions available under Section 832 AJA ("penalty notices") presented multiple shortcomings, including the lack of a detailed framework and issues of accountability and transparency. The WGB thus recommended that 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 (Phase 3 recommendation 3(c)). As part of the Phase 3 Two-Year follow-up report, the WGB considered that the newly adopted 2014 DPP Bribery Guidelines, which included provisions on some elements of the penalty notices, were insufficient to implement the recommendation.

226. Since Phase 3, there have not been any legislative developments concerning non-trial resolutions, nor has the DPP issued new guidelines. However, two bribery cases (one domestic and one foreign) concluded since Phase 3 shed some light on the availability and use of non-trial resolutions in Denmark. Two types of non-trial resolution as defined in the Anti-Bribery Recommendation are available to conclude foreign bribery cases in Denmark:

- With respect to offences that should not result in a penalty higher than a fine (i.e. if it would not require a sentence of imprisonment) a prosecutor may issue a "penalty notice" (Section 832 AJA)

to inform the defendant that the case can be decided without a trial. If the defendant admits guilt and pays the fine by a certain time, then the prosecution is withdrawn. In the ***Domestic Bribery Case***, the company received two fines, one by a court and one through a penalty notice.

- In 2019, Denmark's first resolution in a foreign bribery case (***Paint and Coating (Germany & Asia)***) took the form of an "agreement on a fine" under Section 899 AJA. Under this provision, a case may be settled by the defendant agreeing in court to a specified fine or confiscation order. This resolution is available if (i) the offence may be punished by a fine or result in confiscation, (ii) the prosecutor consents, and (iii) the court finds no reason to doubt the defendant's guilt.

227. These provisions raise several concerns, as analysed below.

Framework

228. Key features of both penalty notices and agreements on a fine are not clearly defined. This can be explained by the fact that Sections 832 and 899 AJA were introduced in the Danish Criminal Code in order to speed up the administration of justice in simple, minor cases and were not designed for the resolution of complex cases such as foreign bribery. During the on-site visit, the Danish authorities and lawyers noted that Sections 832 and 899 AJA do not constitute a proper non-trial resolution framework. The representatives of the private sector considered that the introduction of such a framework would be beneficial especially for legal persons, as noted under Section A.6.

229. Both types of non-trial resolutions have been applied to legal persons in relation to the bribery of domestic or foreign public officials under Section 122 CC. Danish authorities explained that, in principle these provisions are not applicable to natural persons in relation to Section 122 CC. This is because, natural persons may be punished by imprisonment under Section 122 CC. Section 832 AJA is applicable only to "[…] offences that are not deemed to result in a higher penalty than a fine" and Section 899 AJA when "the offence under the law may be punished by a fine or result in confiscation". Whilst Danish authorities do not exclude the possibility that a natural person might be sanctioned for foreign bribery under these provisions, they did not clarify what conditions would need to be met for this to occur.

230. In addition, there is no guidance on the considerations that may lead prosecutors to issue a penalty notice or consent to a defendant's agreement on a fine. During the on-site visit, the authorities indicated that, whilst in practice, admission of the facts and cooperation would normally be grounds for offering or consenting to a non-trial resolution, they do not constitute mandatory conditions for doing so. It is also unclear whether self-reporting or the adoption of remediation measures, including corporate compliance measures, could be considered conditions for applying Sections 832 or 899 AJA.

231. Finally, contrary to what is expected from countries in the Anti-Bribery Recommendation, Denmark does not provide clear and publicly accessible information on the advantages that an alleged offender may obtain by entering either type of non-trial resolution.

Sanctions

232. The 2014 DPP Bribery Guidelines state that the size of the fine in a penalty notice is determined based on the same rules that apply to sentences imposed by a court. During the on-site visit, prosecutors stated that the same principle applies to agreements on a fine. In general, as noted in Section B.4, prosecutors and courts have significant discretion in determining the level of sanctions under the Criminal Code. There are no specific guidelines on the reduction of sentence that could be granted in non-trial resolutions. As noted in Section C.3., the sanction imposed under the agreement on a fine reached in the ***Paint and Coating (Germany & Asia)*** case does not alleviate the concerns expressed by the WGB in Phase 3 about the low level and the lack of transparency of sanctions imposed in the case falling under Article 1 of the Convention that was resolved at the time.

233. Both penalty notices and agreements on a fine are equated to convictions for certain aspects, including for considering repeat offending or, as clarified by Danish authorities after the on-site visit, exclusion from public procurement. During the on-site, the authorities clarified that confiscation can be applied in addition to a fine under both types of non-trial resolutions.

Accountability

234. The procedure for penalty notices does not entail the involvement of a judge. The superior prosecutor's office may intervene and decide to continue the proceedings (Section 832(4) AJA, referring to Section 724(2) AJA). During the on-site visit, prosecutors stated that a prosecutor intending to offer a penalty notice would normally seek clearance with superior prosecutors. However, whether this is systematically done in practice and the extent of such review are unclear. Danish authorities stated that, in practice, the superior prosecutor rarely goes against the prosecutor's decisions. Agreements on a fine under Section 899 AJA, on the other hand, are submitted to a court, which must find "no reason to doubt the defendant's guilt". During the on-site visit, prosecutors and judges confirmed that courts exert some oversight on agreements on a fine, including to verify whether the type of resolution is opportune, whether the defendant has accepted the fine, and whether the fine is appropriate. How detailed and systematic such questioning is in practice remains unclear. During the on-site visit, prosecutors stated that, in the ***Paint and Coating (Germany & Asia)*** case, the judges exercised some oversight on the adequacy of the fine. They did not go as far as to request clarification however, on the exact nature of the charges covered by the agreement, although this should have been an essential consideration in assessing the adequacy of the sanctions.

Transparency

235. The DPP may decide to publish a press release on any type of resolution, based on a case-by-case assessment.

236. In 2019, SØIK announced the non-trial resolution in the ***Paint and Coating (Germany & Asia)*** case through a press release SØIK made significant efforts to ensure it had a significant impact in raising awareness of the case. This is a positive development. The press release briefly mentions the misconduct; the fact that the company self-reported and cooperated with the prosecution service; and that the "amount of the fine reflects the seriousness of the crime, as the bribery has taken place systematically, intentionally and for a number of years".[50] However, the press release failed to mention that the subsidiaries' misconduct more specifically included bribery of foreign public officials. Danish authorities noted that foreign bribery non-trial resolutions would be communicated in a press release based on a case-by-case assessment.

237. The public can request a copy of decisions in criminal cases, but with certain limitations. Penalty notices against individuals cannot be requested. As for court decisions accepting a defendant's agreement on a fine, copies can be requested but certain exceptions apply, in particular for privacy reasons. Final decisions that are older than a year can only be accessed for journalistic or scientific research purposes (Section 41b AJA). In any event, the possibility to request a copy of criminal decisions is not a substitute of the information that should be provided to the general public.

Commentary

The lead examiners note that Denmark was able to impose its first ever sanction for foreign bribery by using one of the two types of non-trial resolution available under the Danish Criminal Code. However, they regret that Denmark has yet to adopt a clear framework for such resolutions, allowing for the imposition of transparent, effective, proportionate, and dissuasive sanctions, and

[50] Public Prosecutor's Office (4 March 2019), Press Release.

effectively encouraging self-reporting. They recommend that Denmark adopt a clear and transparent framework for non-trial resolutions, in line with Anti-Bribery Recommendation XVIII.(i)(ii)(iii) and (iv).

B.4.d. Debarment from public procurement

238. In Phase 3, the WGB found that the implementation of Denmark's debarment regime might be completely ineffective. In particular, contracting authorities faced difficulties in obtaining information on whether candidates or tenderers had been subject to a criminal conviction; the maximum period of exclusion permitted was not clear; and there was no information on how debarment due to foreign bribery convictions had been implemented in practice. The WGB therefore recommended that 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 (Phase 3 recommendation 12(a)).

239. In 2015, Denmark adopted a new Public Procurement Act[51] transposing the 2014 EU Public Procurement Directive[52] in Danish law. The Public Procurement Act was revised in 2022.[53] The new regime does not address all the issues identified in Phase 3.

240. Under Section 135 of the Public Procurement Act, exclusion from participation in a procurement procedure shall be imposed for five years if the candidate or tenderer "has been convicted or fined by final judgement" for a range of offences, including foreign bribery. The exclusion may not be applied in two cases. First, as in Phase 3, the contracting authorities may consider there are overriding reasons relating to the public interest. These reasons are not defined by the Public Procurement Act or case law. Denmark clarified that the exclusion may be omitted "for reasons of significant public interests, such as considerations regarding health, safety, public order or environmental protection," or national security. Second, the applicant can "self-clean" by demonstrating that "any loss" caused by corruption has been compensated; active cooperation has been provided to law enforcement authorities; and suitable measures to prevent further misconduct have been taken. Each contracting authority is in charge of conducting the self-cleaning assessment of a candidate or tenderer for the purpose of its own procurement procedures.

241. The Danish authorities clarified after the on-site that whether Section 135 of the Public Procurement Act is applicable to non-trial resolutions under Sections 832 and 899 AJA. Denmark did not provide information on whether the company sanctioned as part of a non-trial resolution in the ***Paint and Coating (Germany and Asia)*** case was excluded from any public procurement procedure in Denmark.

242. In addition, as in Phase 3, there are doubts as to the effectiveness of Denmark's debarment regime. First, determining that a candidate or tenderer was convicted or received a final sanction for foreign bribery may be still difficult in practice for contracting authorities. Companies may choose to request a certificate from the DBA proving that they have not been convicted of corruption. However, the DBA does not have authority to obtain full criminal records, but only criminal records "for public use" that are limited to two years. Denmark stated that companies may now complete a "declaration on honour" regarding the period not covered by the DBA's certificate. During the on-site visit, the authorities stated that such declaration would normally be checked "if there is a reasonable doubt." It is unclear how contracting authorities conduct verifications in these cases.

[51] Act No. 1564 of 15 December 2015 on Public Procurement

[52] Directive 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

[53] Act No. 884 of 21 June 2022 amending the Act on Public Procurement, the Act on the Complaints Board for Public Procurement and the Act on the Procurement of Tenders in the Building and Construction Sector

243. Second, contracting authorities' staff have not been provided any guidance or training on Denmark's debarment rules, including in relation to the self-cleaning procedure. A representative of the DCCA met during the on-site visit stated that most of the self-cleaning requests have been granted so far and suggested that they may not always have been carried out thoroughly. By contrast, they noted that the self-cleaning assessment carried out in relation to the company sanctioned in the ***Domestic bribery case*** "worked very well". In that case, the State and Municipal Procurement Service and the Danish Agency for Economic Affairs assessed the sanctioned company's reliability annually during the exclusion period. They considered the company had successfully self-cleaned and disseminated their assessment to all contracting authorities in order to inform their own procurement processes. However, even in this case, the fact that the company was considered as having "self-cleaned" proved controversial in the public, given the media attention received by the case and the seriousness of the misconduct involved. In order to improve the transparency and consistency of reliability assessments, the DCCA developed guidelines on the self-cleaning procedure and recently became responsible for issuing non-binding opinions on all reliability assessments to guide contracting authorities' decisions. The guidelines and new arrangements entered into force on 1 January 2023. Their impact on the effectiveness of the debarment regime could not been assessed.

Commentary

The lead examiners note that, as in Phase 3, and even though the debarment regime was overhauled in 2015, this regime may remain ineffective. They recommend that Denmark take the necessary steps to ensure that contracting authorities have adequate access to information on criminal convictions and sanctions. The lead examiners welcome Denmark's current efforts to draw on the lessons from the first years of practice to improve the effectiveness of the debarment regime and to issue guidance to contracting authorities aiming to ensure that exclusion from public procurement due to foreign bribery is effectively implemented in practice. The Working Group should follow up on the effectiveness of the debarment regime in relation to sanctions for foreign bribery in practice.

B.5. Offences related to foreign bribery

B.5.a. False accounting offences

244. False accounting is prohibited by two offences in the Danish Criminal Code. Section 296(1)(ii) CC prohibits the giving of incorrect or misleading information concerning the affairs of a legal person in various communications such as public announcements concerning financial conditions, financial statements required by law, or reports, accounts, and declarations to certain bodies or individuals. Section 302 CC prohibits "a particularly gross violation of the statutory requirements" concerning, among other things, bookkeeping, including registration of transactions and preparation of accounting records; as well as storage of accounting records, including descriptions of bookkeeping and systems for storing and finding material. There have not been substantive changes to these provisions since Phase 3. Both natural persons and legal persons can be criminally liable for these offences.

245. In Phase 3, the WGB recommended that Denmark promptly increase sentences for false accounting for the purpose of committing or concealing foreign bribery so that sanctions for these offences are effective, proportionate, and dissuasive (Phase 3 recommendation 5(b)). Since Phase 3, however, the maximum sentences available for the false accounting offences have not been increased. Both offences remain punishable by a fine or imprisonment up to 18 months. During the onsite visit, the Danish authorities suggested that accounting offences were not considered as serious as bribery, which is why the maximum sentence had not been increased.

246. Denmark also stated that false accounting may be covered by the forgery and money laundering offences under Sections 171-172, 290 and 290a CC, which may be sanctioned by imprisonment terms of up to six or eight years in "particularly aggravated" cases. However, these offences would not cover all the types of misconduct described in Article 8(1) of the Convention (as already noted by the WGB in the Phase 3 Two-Year follow-up report in relation to Section 290 CC).

247. Denmark could not provide statistics on the enforcement of the false accounting offences, including in relation to foreign bribery, since Phase 3. This is because false accounting cases can also be investigated by local police units, and relevant data is not centralised by the authorities. Denmark has not demonstrated that false accounting has been proactively pursued in relevant foreign bribery cases. Based on the information available, false accounting charges have only been considered in two foreign bribery cases since Phase 3. The SIG reported that one ongoing foreign bribery case involves false accounting (***Power Plant (Mauritius)*** case). No details were provided on this case. In the *Medical Equipment Case* (ongoing in Phase 3), the Danish subsidiary of an American company engaged in a scheme to channel approximately USD 20 million in improper payments to various third parties and to conceal those payments by creating fictitious invoices, also causing its parent company to falsify its books and records. Some of these payments were allegedly bribes for Russian public officials. In Denmark, the subsidiary was charged with serious breach of accounting requirements, in contravention of Section 302 CC read in conjunction with various provisions of the Danish Accounting Act. Danish prosecutors eventually dropped all charges because the two companies and the subsidiary's CFO concluded non-trial resolutions with the US authorities over the same facts.

Commentary

The lead examiners recall that false accounting can be used to cover up very serious offences, including foreign bribery. They deeply regret that Denmark has not increased the maximum sanctions available for false accounting, as requested by the Working Group since Phase 2, and are concerned that Denmark considers that such reform is unnecessary. The lead examiners therefore reiterate Phase 3 recommendation 5(b) that Denmark promptly raise the maximum sanctions available for false accounting offences. The lead examiners also recommend that Denmark maintain statistics on investigations, prosecutions, and sanctions for false accounting in relation to foreign bribery. They recommend that the Working Group follow up on the enforcement of these offences.

B.5.b. Money laundering offence

248. In Phase 3, the WGB noted that money laundering is criminalised in Section 290 CC through a criminal proceeds-receiving offence (i.e. handling stolen goods). Any crime, including foreign bribery, can be a predicate offence to money laundering. Since Phase 3, a new Section 290a CC has been introduced in order to criminalise self-laundering.[54] However, as noted by the FATF,[55] while the new provision covers self-laundering by transfer and conversion, it does not explicitly criminalise self-laundering by concealment or disguise. Self-laundering is still not criminalised in Greenland or the Faroe Islands. The Greenland Parliament has passed a bill criminalising self-laundering, but it is unclear when the relevant provisions will come into force. There are no plans to criminalise self-laundering in the Faroe Islands.

249. Under the Criminal Code, money laundering may be sanctioned by a fine or imprisonment for a term not exceeding one year and six months. Where the money laundering is of a "particularly aggravated" nature, the sentence may be increased to six years under Section 290 CC, and eight years under Section 290a CC. Section 290a CC provides that money laundering may be considered particularly aggravated "especially because of the commercial or professional nature of the offence, or due to the gain made or

[54] Act no. 711 amending the Criminal Code of 8 June 2018.
[55] FATF (2018), 1st Enhanced Follow-up Report & Technical Compliance Re-Rating, Denmark

intended, or when several offences have been committed." Not all foreign bribery-related money laundering case would necessarily be considered aggravated. In 2017, the FATF found the sanctions available for ordinary money laundering were not proportionate or dissuasive.[56]

250. During the on-site visit, representatives of the civil society and the MLS noted that Denmark might be vulnerable to foreign bribery-related money laundering. This perception was confirmed by the recent NRA, which concluded that foreign bribery-related money laundering risks are very significant in Denmark. Despite these risks, and awareness of these risks, as in Phase 3, there has not been any investigation, prosecution, or sanction in relation to money laundering predicated on foreign bribery, however. The Danish authorities did not demonstrate proactivity in pursuing foreign bribery-related money laundering. The Danish authorities stated that no money laundering element was considered in any of the foreign bribery cases investigated since Phase 3. In general, no parallel financial investigation is carried out in foreign bribery cases for the purpose of either pursuing money laundering or seizing or confiscating assets.

Commentary

The lead examiners note that Denmark has enhanced its money laundering offence since Phase 3. However, self-laundering by concealment or disguise is not explicitly criminalised in Denmark and the Faroe Islands and Greenland do not criminalise any type of self-laundering. They note that foreign bribery-related money laundering would not necessarily be considered aggravated. Denmark's efforts to enforce foreign bribery-related money laundering are not commensurate to the "very significant" risks identified by the authorities in Denmark. Denmark has not carried out parallel financial investigations in any foreign bribery cases, which may hinder both its confiscation efforts, as noted above, and its capacity to pursue potential money laundering elements in such cases.

The lead examiners therefore recommend that Denmark take steps to ensure the sanctions for foreign bribery-related money laundering are effective, proportionate and dissuasive. They also recommend that Denmark proactively pursue potential money laundering elements of foreign bribery cases, including by conducting thorough financial investigations.

[56] FATF (2017), Mutual Evaluation Report of Denmark

C. RESPONSIBILITY OF LEGAL PERSONS

C.1. Scope of corporate liability

251. The legislative provisions on corporate liability have not been amended since Phase 3. Corporate liability for criminal offences, including foreign bribery, derives from the combined application of Section 25 CC, which provides that legal persons may be sanctioned with a fine when so provided by law, and Section 306 CC, which provides that legal persons may be held liable for violations of the Criminal Code. Liability can be imposed on a wide range of legal persons, including SOEs, to the extent that they perform functions equal or comparable to private individuals (Sections 26 and 27(2) CC). The conditions for triggering liability of a legal person are that (i) an offence has been committed in the course of its activities and (ii) one or more individuals "connected" to the legal person, or the legal person itself, have committed the offence (Section 27 CC). In 2015, the DPP issued new guidelines on corporate liability, which are binding on prosecutors (2015 DPP Corporate Liability Guidelines).[57]

252. In Phase 3, the WGB identified issues and made recommendations concerning the scope of corporate liability in relation to the liability of parent companies for acts committed by subsidiaries; the prosecution of subordinate employees; and the independence of proceedings against legal persons. Overall, Denmark has made limited progress in addressing these issues.

C.1.a. Liability of parent companies for acts committed by subsidiaries

253. In Phase 2, the WGB raised concerns over whether Denmark would effectively investigate and prosecute Danish companies for foreign bribery committed by their subsidiaries or joint ventures. These concerns remained in Phase 3. The DPP guidelines applicable at the time explicitly stated without qualification that a parent company cannot be held liable for crimes committed by a subsidiary.

254. In Phase 3, Danish authorities stated that parent companies could be held liable for foreign bribery committed by a subsidiary or joint venture based on the doctrine of complicity. More specifically, a parent company would be liable for foreign bribery: if [its] officer authorises the subsidiary to commit the bribery; if it contributed to the execution of an offence by instigation, advice, or action; or if its officers accept that its subsidiary commits bribery. A parent company could also be held liable for failing to prevent foreign bribery by a subsidiary. Danish authorities explained that a legal person could be held accountable for not taking reasonable measures to prevent bribery if it had reason to believe that bribery would occur. The WGB noted, however, that the DPP Guidelines contained a blanket statement excluding liability for crimes committed by a subsidiary and did not reflect these more nuanced approaches to liability based on complicity and failure to prevent. Nor had Danish authorities prosecuted a legal person on these grounds. The WGB therefore recommended Denmark 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

[57] Rigsadvokaten, Criminal Liability for Legal Persons, RM 5/1999 – Revised 17 April 2015.

and that Denmark amend the Guidelines to 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 (Phase 3 recommendation 2(b)).

255. The 2015 DPP Corporate Liability Guidelines still contain "special rules for parent/subsidiary companies" and the same general rule that if an offence is committed by a subsidiary, the liability must be asserted against the subsidiary and not the parent company. However, the general rule is now qualified by an instruction that in cases of this nature, prosecutors should consider whether the subsidiary belongs to a group of companies where responsibility for certain activities is placed within the subsidiary but where the real decisions are made at group level, i.e., in the parent company, and thus influences the activities that lie within the subsidiary. In such cases, charges must be brought against both the parent company and the subsidiary. Alternatively, the Guidelines refer to liability on the basis of complicity in Section 23 CC and state "if no evidence can be provided that the real decisions were made in the parent company, it should be considered whether the parent company can be considered a contributor to the subsidiary's violations by incitement, aiding and abetting, cf. § 23 of the Criminal Code. For example, if the parent company encourages the subsidiary to act illegally, or if the parent company fails to prevent a criminal offence, it has a presumption the subsidiary will commit."

256. In the ***Paint and Coating (Germany & Asia)*** case, a company was sanctioned for failure to prevent commercial and foreign bribery committed by its subsidiaries in various countries. The basis for establishing liability against the parent company was complicity (Section 23 CC). More specifically, the company admitted to having failed to prevent acts of bribery committed by employees of the relevant subsidiaries, despite being aware of the practice. However, in several other cases, Denmark has either not investigated or terminated the investigation because foreign subsidiaries committed the alleged bribery (see also Section B.2.b).

257. During the on-site visit, prosecutors emphasised the general principle that the subsidiary's liability is assessed separately. They said the ***Paint and Coating (Germany & Asia)*** case was a rare example where the parent company had the accounting and compliance oversight of the subsidiary. Lawyers for some of Denmark's largest companies said that proving the parent company's liability is more an evidentiary obstacle than a legal one. They said that Denmark's jurisdiction rules are far-reaching. One lawyer said that proof of the parent company's involvement in the subsidiary's activities can "easily" be established and gave the example of an executive of the parent company being on the board of the subsidiary. They attributed the lack of corporate enforcement to Denmark's prosecution authorities being insufficiently resourced to prosecute such complex cases adequately.

Commentary

The lead examiners welcome the amendments to the guidelines on corporate liability that qualify the rule on parent/subsidiary liability and provide instructions to prosecutors to consider the liability of the parent company through an assessment of the group as a whole, as well as alternatives bases of liability such as complicity and failure to prevent foreign bribery. They also acknowledge the recent conviction of a Danish company for failure to prevent foreign bribery committed by subsidiaries in various countries. However, practice in recent foreign bribery cases demonstrates that prosecutors are not applying the guidelines and considering all potential bases for corporate liability when they receive reports of allegations of foreign bribery committed by subsidiaries. As a result, Danish legal persons are potentially avoiding responsibility for foreign bribery committed by related legal persons.

The lead examiners recommend that Denmark specifically trains law enforcement authorities on the law concerning parent/subsidiary liability and emphasise prosecutors' obligation to consider the liability of the parent company through a holistic assessment of the group, as well as alternatives bases of liability such as complicity and failure to prevent foreign bribery.

C.1.b. Prosecution of subordinate employees

258. In Phase 3, the WGB noted that in addition to the general rules on prosecutorial discretion, prosecutors had another discretion in cases involving companies. Under the applicable DPP guidelines, in cases where both a legal person and one or more individuals could be prosecuted, the following principles applied: (i) the general rule is to prosecute the company; (ii) corporate management and executive employees are prosecuted (along with the company) only if they have acted with intent or gross negligence; (iii) subordinate employees are generally not prosecuted unless special circumstances apply (e.g. an aggravated offence committed with intent, possibly at his/her own initiative).

259. The WGB expressed concerns that the guidelines provided an unqualified exception for prosecuting subordinate employees and recommended that Denmark amend the Guidelines to ensure that subordinate employees are not exempted from prosecution in foreign bribery cases (Phase 3 recommendation 2(b)(ii)). The WGB also observed that the principle might have been applied in the *Development Aid Procurement* case, where the company settled, and no individuals were prosecuted. Therefore, the WGB issued a second recommendation that Denmark 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 (Phase 3 recommendation 3(d)(v)).

260. The 2015 DPP Corporate Liability Guidelines have not removed the exception for subordinate employees. As in Phase 3, the guidelines state as a general principle, if the management of the legal person or a senior employee, including the director, has acted intentionally, or has shown gross negligence, the charge must be brought against the person or persons personally responsible in addition to the legal person. The guidelines further state that charges against subordinate employees must not be brought unless there are special circumstances. During the on-site visit, representatives of the SSK stated that under the guidelines, prosecutors would not look at subordinate employees; they would usually only charge senior managers.

261. Practice in foreign bribery cases has not mitigated the WGB's Phase 3 concerns nor implemented its recommendations. Two senior employees were charged in the ***Paint and Coating (Germany & Asia)*** case. However, the charges were withdrawn due to a lack of evidence after the company negotiated a settlement. In the ***Domestic Bribery Case***, individuals were prosecuted and convicted in some bribery schemes but not others. Denmark's statements about what employees were prosecuted are conflicting and inconsistent. It is unclear if subordinate employees were prosecuted in that case. In the *Medical Equipment Case*, which was ongoing in Phase 3, the Danish subsidiary of an American company made improper payments to third parties, which involved accounting misconduct and potential foreign bribery. In Denmark, the subsidiary was charged with false accounting. Danish prosecutors eventually dropped all charges because the two companies and the subsidiary's CFO had concluded non-trial resolutions with the US authorities over the same facts. However, charges against nine other individuals were also withdrawn because the prosecution was "not likely to result in a conviction." The Danish authorities did not elaborate on why they did not pursue the case against these individuals.

Commentary

Contrary to the WGB's recommendation in Phase 3, revised DPP Guidelines issued in 2015 did not remove the exception for prosecuting subordinate employees. No natural person has ever been convicted of foreign bribery in Denmark. In both cases where Denmark reached a settlement with a corporate defendant, charges against natural persons were abandoned. The lead examiners, therefore, reiterate Phase 3 recommendations 2(b)(ii) and 3(d)(v) that Denmark amend the DPP guidelines to ensure that subordinate employees are not exempted from prosecution in foreign bribery cases and law enforcement authorities ensure that both natural and legal persons are prosecuted in foreign bribery cases whenever appropriate, including when a settlement is discussed or reached with a corporate defendant.

C.1.c. Independence of proceedings against legal persons

262. In Denmark, criminal liability of a legal person requires proof that the offence was perpetrated by one or more individuals connected to the legal person or the legal person itself (Section 27 CC). The Anti-Bribery Recommendation Annex I.B(2) states that a country's system of liability of legal persons should not restrict the liability to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted.

263. The WGB noted in Phase 2 the complete identification of one or more individuals, or the prior conviction of the natural person(s), is not a prerequisite to proceed against legal persons. However, it must be proven that "someone" within the company committed the crime intentionally or by negligence (depending on the mental element of the crime). There had been no prosecutions against companies for active bribery at that time. Therefore, the WGB decided to follow up on 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. This follow-up issue was reiterated in Phase 3 (follow-up issue 13(a)).

264. During the on-site visit, a representative of NSK said if the natural person who committed the bribery "cannot be found," the legal person can still be prosecuted. However, Denmark did not provide concrete examples of convictions imposed on legal persons where prosecutors could not proceed against the individual perpetrator. In the ***Paint and Coating (Germany & Asia)*** case, the company accepted a fine. Two natural persons were charged, but there was insufficient evidence to proceed with the prosecution. The case only confirms that a legal person can be found liable for foreign bribery as part of a non-trial resolution (Section 899 AJA) even if no individual is convicted.

Commentary

Having regard to the limited enforcement of the foreign bribery offence against corporate defendants in Denmark, the lead examiners reiterate Phase 3 follow-up issue 13(a) and recommend that the Working Group continue to follow up 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.

C.1.d. Successor liability

265. Anti-Bribery Recommendation Annex I.B(5) provides that countries "should have appropriate rules or other measures to ensure that legal persons cannot avoid liability or sanctions for foreign bribery and related offences by restructuring, merging, being acquired, or otherwise altering their corporate identity".

266. The Danish Criminal Code does not expressly provide for successor liability. The 2015 DPP Corporate Liability Guidelines contain some guidance on this issue. They indicate changes that are irrelevant for establishing criminal liability (e.g. conversion of the entity into another legal form or discontinuance of the activity that gave rise to the violation). The guidelines also state that in case of merger, the principle of "universal succession" applies, i.e. criminal liability may be considered to have been transferred to the surviving company. In case of split-up, the choice of the entity to be charged will depend on a specific assessment of which entity may be found to continue the activity that is relevant for the criminal proceedings.

267. These internal prosecutorial guidelines, however, are not binding for courts. During the on-site visit, the Ministry of Justice stated that the rules on successor liability are well-established, but no case law was provided to support this assertion. The NSK was not aware of any relevant jurisprudence. Judges and a lawyer met on-site expressed views that seemed to differ from the principles set out in the guidelines. The authorities stated that successor liability has not been an issue in any foreign bribery case.

Commentary

The lead examiners note that guidelines on corporate liability provide useful clarifications on successor liability to prosecutors. However, in the absence of relevant jurisprudence, and given the differing views expressed by some practitioners during the on-site visit, the lead examiners recommend that the Working Group follow up on how successor liability is applied in foreign bribery cases.

C.2. Enforcement of corporate liability in practice

268. In Phase 3, the WGB noted that under DPP Corporate Liability Guidelines, the general rule for corporate crimes is to prosecute the company rather than individuals. However, corporate prosecutions for intentional economic crimes were infrequent. Only the *Development Aid Procurement Case* resulted in a corporate prosecution, and Denmark could not provide statistics on the number of investigations, prosecutions, and sanctions of legal persons for intentional economic crimes. A judge stated that corporate prosecutions usually concerned occupational safety and environmental offences, not intentional economic crimes. Accordingly, the WGB recommended that Denmark enhance the usage of and train law enforcement authorities on, the corporate liability provisions in foreign bribery cases (Phase 3 recommendation 2(a)).

269. Denmark still does not maintain specific statistics on foreign bribery enforcement actions. However, from the information Denmark provided on Section 122 CC, between 2015 and 2022, only three legal persons have been sanctioned for active bribery. In nine cases where companies were charged under Section 122 CC all charges were withdrawn.

Commentary

The data provided by Denmark demonstrates that the prosecution of legal persons for active bribery in Denmark is rare and authorities have discontinued most foreign bribery cases against corporate defendants. The limited number of corporate prosecutions might be attributed to a lack of understanding of the corporate liability law. The lead examiners reiterate Phase 3 recommendation 2(a) that Denmark enhances the usage of and trains law enforcement authorities on the corporate liability provisions in foreign bribery cases.

To enable the WGB to assess Denmark's progress in the implementation of this recommendation, the lead examiners also recommend that Denmark maintain detailed and precise statistics on all foreign bribery enforcement actions against legal persons, including data on the number and type of person(s) charged, the offence(s), the procedure adopted including where matters are resolved through non-trial resolutions (out-of-court settlements), the outcome of proceedings, sanctions imposed, and for matters that are not proceeded with, the timing and reasons for discontinuance.

C.3. Sanctions for legal persons

C.3.a. Legal framework

270. The only type of criminal sanction applicable to a legal person for foreign bribery in Danish law is a fine (Section 25 CC). Denmark explained that, in the Danish criminal justice system, sanctions, including fines, are determined following an adversarial system, whereby courts make a decision based on the respective proposals from the prosecutors and the defence. In practice, courts and prosecutors have significant discretion in determining the level of fines for foreign bribery.

271. The 2015 DPP Corporate Liability Guidelines Prosecutors provide some guidance on determining the amount of fines: these fines should be determined as "aggregate fines", confirming the finding from Phase 3 that the system of "day fines" does not apply to legal persons; there is no upper limit to the amount of fines that can be imposed on legal persons; and particular consideration must be given to the legal person's financial position and the financial gain obtained through the offence. The guidelines include examples of ranges of fines for some offences, but not for foreign bribery. No specific training on determining sanctions for legal persons is provided to prosecutors or courts.

272. During the on-site visit, a representative from the MOJ highlighted that fines are determined based on a holistic assessment, with particular attention to the size of the legal persons and the significance of the benefits derived from the offence. Prosecutors also emphasised the importance of precedent, although not binding. In the case of bribery, since there is limited case law, sanctions applied in relation to other types of crime, such as violations of competition law, would normally be considered.

273. Representatives from the MOJ, prosecutors and judges met during the on-site visit considered that no further guidance or training on determining sanctions in bribery cases is needed. In general, courts consider that this discretion is an essential element of their responsibilities. Section 81.d CC was temporarily introduced in the Criminal Code during the Covid-19 pandemic, to double or quadruple the level of sanctions applicable to a range of offences where these had been committed in connection to the Covid-19 pandemic. This provision proved controversial among Danish judges precisely because they perceived it as an infringement on their discretion in assessing individual cases.[58]

C.3.b. Sanctions applied in practice

274. In Phase 3, Denmark had imposed sanctions in only one case falling within the scope of Article 1 of the Convention, which was concluded through a non-trial resolution with a company that admitted to committing private corruption. The sanction imposed was considered low when compared to the value of the bribe. Denmark did not provide any details on the methodology used to determine the level of the fine. The WGB decided to follow up on the sanctions imposed in practice (Phase 3 follow-up issues 13(b)). The WGB also recommended that Denmark maintain detailed statistics on sanctions imposed in practice (Phase 3 recommendation 6(ii)).

275. One legal person has been sanctioned for foreign bribery since Phase 3. In the ***Paint and Coating (Germany & Asia)*** case, on 1 March 2019, a Danish company received a fine of DKR 197 500 000 (USD 26.5 million) after pleading guilty of one count of failing to prevent commercial bribery (Germany) and one count of failing to prevent commercial and foreign bribery (Asia). The company admitted it knew of and failed to prevent, through ensuring compliance with its anti-bribery policies, employees of the Germany subsidiary paying USD 9.4 million "kick-back payments" to ship managers to secure favourable terms. The company also admitted it knew of and failed to prevent employees in several Asian subsidiaries making similar payments of USD 3.5 million. The sanction was imposed as part of an agreement on a fine under Section 899 AJA.

276. This sanction does not alleviate the concerns raised in Phase 3 regarding the lack of transparency and low level of sanctions imposed in foreign bribery cases.

277. First, the nature of the misconduct sanctioned in this case was not precisely established by the prosecutors, who did not differentiate, in particular, acts of foreign bribery from acts of commercial bribery, even though these offences carry different sanctions under the Danish Criminal Code.

278. Second, the methodology the Danish authorities stated was followed for determining the value of the fine raises questions. The starting point appears to have been a comparison with the value of bribes paid and sanctions imposed in the ***Domestic Bribery Case***. Then aggravating factors (including the "long

[58] European Commission (2022), 2022 Rule of Law Report, Country Chapter on the rule of law situation in Denmark

timeframe of the offence") and mitigating factors (including the fact that the company self-reported and carried out an internal audit) were taken into account. Consideration was also given to case law related to violations of competition law. The exact weight given to each of these considerations was not explained. In addition, the method followed for determining the fine in ***Domestic Bribery Case*** itself lacked clarity. Finally, as already noted in Section B.4.b.), the sanction imposed in the ***Paint and Coating (Germany & Asia)*** case did not take into account the benefits derived from the misconduct. These benefits were not quantified. Prosecutors met during the on-site visit explained that this task would have been too resource-intensive since the misconduct occurred in foreign subsidiaries located in various countries. The fact that the company was fully cooperating with the authorities in this case should have facilitated this task. This lack of proactivity may be explained by the fact that Denmark does not provide any guidance or training on identifying and quantifying bribes and the proceeds of foreign bribery, even though this is required under the Anti-Bribery Recommendation. Since the benefits could not be assessed, the Danish authorities stated that an unspecified "punitive element" was added to the fine.

279. Overall, whilst, as stressed by the Danish authorities, this sanction was the largest ever sought by SØIK at the time, given the uncertainties over the exact nature of the misconduct sanctioned, the value of the proceeds derived from the misconduct, and the exact methodology followed to establish the fine, it is unclear whether this sanction was effective, proportionate, and dissuasive. More generally, representatives from the private sector met during the on-site visit observed that sanctions imposed in bribery cases are low in Denmark compared to other jurisdictions.

280. Regarding the transparency of sanctions imposed to legal persons in practice, Denmark published a press release about ***Paint and Coating (Germany & Asia)***. While this is a positive step, the publication failed to include essential elements such as the fact that the misconduct included bribery of foreign public officials. Denmark noted that the decision to publicise foreign bribery resolutions through a press release would be taken on a case-by-case basis.

Commentary

The lead examiners commend Denmark for securing its first ever sanction for foreign bribery in 2019, which was also the largest sanction imposed on a legal person by SØIK at the time. However, this sanction does not alleviate the concerns raised in Phase 3 about the lack of transparency and effectiveness of sanctions imposed in foreign bribery cases. The nature of the facts that were sanctioned, and in particular to what extent they involved foreign bribery, were not precisely particularised by the prosecutors. The method followed for determining the level of the fine was also not entirely clear. No efforts were made to quantify the benefits from the crimes committed in this case. The lead examiners therefore recommend that Denmark take all necessary steps, for example by providing guidance to prosecutors and judges, to ensure greater transparency in the method for determining the level of fines imposed in foreign bribery cases, and to ensure that these sanctions are effective, proportionate, and dissuasive, taking into account, to the extent possible, the benefits from foreign bribery.

C.4. Engagement with the Private Sector

C.4.a. Efforts to raise awareness of foreign bribery in the private sector

281. In Phase 3, the WGB welcomed awareness-raising efforts made by Denmark and found that the awareness of foreign bribery among the Danish private sector was very high. However, the authorities could have done more to engage with the private sector in developing awareness-raising measures or guidance, in particular on corporate compliance (especially for SMEs) and the facilitation payments defence. The WGB thus recommended that Denmark continue its foreign bribery awareness-raising efforts within the private sector (Phase 3 recommendation 10(a)(i)).

282. In Phase 4, the Danish authorities did not report progress in the implementation of this recommendation. Denmark cited the updating of the MOJ's Booklet "How to Avoid Corruption" in 2015. However, neither the representatives of the government or the private sector met on-site knew of this publication. Denmark further reported that, in 2018, SØIK started an informal network with Danish Industry, Transparency International Denmark and eight large private sector companies in order to organise one or two annual meetings to discuss corporate best practices and experiences in avoiding foreign bribery and corruption. Knowledge of this initiative was limited among panellists.

283. In general, the private sector representatives met during the on-site visit were not aware of initiatives from the government to raise awareness of foreign bribery.

284. Representatives from the private sector and civil society met on-site all agreed that Danish companies have a high level of awareness of foreign bribery. However, as in Phase 3, this awareness appears to be maintained because of enforcement of foreign bribery laws by foreign authorities. Panellists noted that awareness of foreign bribery is more limited in SMEs.

C.4.b. Efforts to promote the adoption of internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery

285. In Phase 3, the WGB found that, while awareness of foreign bribery was high, a fair number of Danish companies might not have adequate compliance measures and internal controls to prevent foreign bribery. The WGB therefore recommended that Denmark 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 (Phase 3 recommendation 10(a)(ii)).

286. In Phase 4, Denmark made limited efforts made to encourage the adoption of corporate compliance measures. In 2005, the Ministry of Business and Growth and Confederation of Danish Industry had launched the CSR Kompasset, a free online tool aimed to help companies, including SMEs, implement responsible supply chain management, and address foreign bribery. The tool is still available and is now developed in collaboration between the Confederation of Danish Industry and the Danish Business Authority. In addition, in 2018, the MFA, the Confederation of Danish Industry, companies and NGOs launched a collective action aimed at assisting companies in managing demands for small facilitation payments.

287. The civil society and private sector representatives met during the on-site visit agreed that Danish businesses have developed a strong anti-corruption compliance culture over the past decade. However, corporate efforts to prevent and detect foreign bribery have mainly been made in reaction to enforcement efforts by foreign jurisdiction, and in compliance with foreign standards and guidance. In addition, anti-corruption compliance measures are more limited in Danish SMEs. Business organisation representatives highlighted the support they provide to SMEs in this respect (including through the CSR Kompasset mentioned above). Companies were of the view that more guidance could be provided to SMEs.

288. Anti-corruption compliance measures and programmes may be considered when determining the level of fines (e.g. in the ***Domestic Bribery Case***) and as part of the self-cleaning procedure in relation to public procurement access (see Section B.4.d.). However, no information or guidance on how internal controls, ethics and compliance programmes or measures are taken into consideration in government agencies' decision-making processes are publicised and easily accessible for companies. As noted above, Danish businesses' main motive for adopting anti-corruption compliance measures appears to be foreign enforcement.

C.4.c. Engagement with the private sector by the Ministry of Foreign Affairs and foreign missions

289. In Phase 3, the WGB noted that the assistance provided by Danish foreign missions to Danish companies facing bribery risks could be improved. In particular, the WGB recommended that TCD consult with the MOJ or SØIK before providing guidance to companies facing foreign bribery risks, in order to ensure the soundness of such guidance (Phase 3 recommendation 10.b).

290. Denmark provided some information on the steps taken by foreign missions to inform Danish companies operating abroad on foreign bribery laws, and assist Danish companies faced with bribe solicitation. During the on-site visit, the MFA highlighted that Danish embassies usually have advisors who may provide anti-corruption guidance to Danish companies. In 2020, the MFA issued an updated Anti-Corruption Policy for TCD, which contains guidelines on what TCD staff can do to assist Danish companies in preventing corruption and other types of financial crime. TCD "can offer companies information on the economic and political situation, the local business environment and challenges, as well as Government & Public Affairs (GPA) assistance in relation to specific challenges faced by the company," but the guidelines expressly provide that TCD is "not expected, or indeed allowed, to give specific legal assistance to companies." During the on-site visit, a representative from TCD confirmed that specific legal advice to companies, would fall outside TCD's area of expertise and, in such situations TCD would direct companies to external legal advice.

291. The representatives from the private sector met during the on-site visit were of the view that Danish foreign missions provide valuable guidance to Danish companies overseas facing bribe solicitations. Danish companies stated they would feel comfortable approaching foreign missions about these issues, even though they noted that foreign missions cannot provide fully confidential advice. Private sector representatives cited specific instances where Danish embassies provided proactive advice to Danish companies faced with foreign bribery risks.

Commentary

The lead examiners note that large Danish companies continue to display a high level of awareness of foreign bribery and have developed robust compliance programmes aimed to detect and prevent foreign bribery since Phase 3. However, these trends were essentially driven by foreign authorities' enforcement efforts. In addition, small and medium sized enterprises are yet to adopt and implement adequate measures to prevent and detect foreign bribery.

For these reasons, the lead examiners reiterate the Phase 3 recommendation 10(a) that Denmark continue its foreign bribery awareness-raising efforts within the private sector; 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. Awareness-raising efforts should include providing relevant guidance to SMEs.

D. OTHER ISSUES

D.1. Tax measures for combating bribery

D.1.a. The non-tax deductibility of bribe payments

292. In Phase 3, the WGB noted that the DTA did not re-open tax files to assess whether tax deductions were made for bribe payments once they learned of a conviction in a relevant case. SØIK had not shared information with the DTA on a conviction for bribery that could have triggered the reopening of a tax file. The WGB thus decided to follow up on the application of the non-tax deductibility of bribes in practice, particularly on whether SØIK promptly informs the DTA of convictions related to foreign bribery, and whether the DTA re-assesses the tax returns of taxpayers convicted of foreign bribery (Phase 3 follow-up issue 13(d).

Legal framework

293. Section 8 D of the Tax Assessment Act prohibits the tax deduction of bribes paid to public officials. This provision was revised in 2013 and 2015[59] in order to extend the non-deductibility to private sector bribes. This removed a potential difficulty, identified in Phase 3, in determining whether a bribe was made to a public official or private sector employee, especially in the case of state-owned enterprises. As before, the provision does not specifically refer to active bribery (Section 122 CC) but to passive bribery (Section 144 CC). However, the way in which the provision refers to passive bribery has changed. Previously, "*no tax deduction [was] allowed for expenses for bribes of the type referred to in Section 144".* For the new Section 8 D to be applicable, passive bribery has to be *"punishable under section 144"*. There may be cases in which, while active bribery is punishable, passive bribery is not, and Section 144 CC may not be applicable. In those cases, it may be argued that the bribe is, in fact, tax deductible. The Danish authorities stated that the content of the provision has not changed in relation to bribes paid to foreign public officials, and that this is made clear in the DTA's guidelines (*Juridisk Vejledning*). However, a review of the guidelines does not clearly lead to this conclusion.

294. Denmark states that no conviction is required to apply the non-deductibility of bribes. During the on-site visit, the representatives from the DTA were not able to provide more details on the evidentiary threshold applicable, in the absence of relevant practice.

295. Tax files may be reopened within three years and four months from the end of the fiscal year (Sections 26 and 31 of the Tax Assessment Act). However, this can be extended up to six years for some categories of taxpayers, which were not clearly identified by Denmark. In some circumstances, including where a taxpayer misled SKAT intentionally or by gross negligence in the context of a previous tax

[59] The revised Section 8 D reads: "When calculating the taxable income, no deduction is given for bribery expenses as mentioned in section 144, section 299, subsection 2, and section 304 a, subsection 2 of the Criminal Code (…). The provision applies, regardless of whether the said bribe is legal according to the legislation of the state where the expenditure on the bribe is incurred. The only decisive factor is whether the bribery would be punishable under section 144, section 299, subsection 2, and section 304 a, subsection 2 of the Criminal Code (…)."

assessment, tax files may be reopened within an absolute limit of 10 years from the date the tax or duty becomes payable (extraordinary tax assessment, Sections 27 and 32 of the Tax Assessment Act). SKAT stated that the periods for ordinary and extraordinary reassessments are appropriate.

296. Denmark confirmed that, as noted by the WGB in Phase 3, Section 8 D of the Tax Assessment Act is applicable to small facilitation payments.

Non-tax deductibility of bribes in practice

297. Denmark does not collect statistics on cases where deductions of bribes are refused. As mentioned above, the DTA has not applied Section 8 D of the Tax Assessment Act in relation to foreign bribery since 2016. The DTA stated it was not informed by law enforcement about any foreign bribery cases. SKAT officials met during the onsite were not aware of the sanction imposed in ***Paint and Coating (Germany and Asia)***, and Section 8 D of the Tax Assessment Act was not applied in relation to this case. The authorities also explained that they do not monitor the media for foreign bribery cases.

Commentary

The lead examiners note that the revised Section 8 D of the Tax Assessment Act limits the prohibition of the tax deductibility of bribes to cases where passive bribery is "punishable". They recommend that Denmark take all necessary steps to clarify that the non-tax deductibility of bribes is always applicable in relation to active foreign bribery, including where passive bribery is not publishable.

In addition, they are concerned that Denmark has not applied Section 8 D in relation to foreign bribery since Phase 3, including in relation to the foreign bribery case where a sanction was imposed. The lead examiners recommend that Denmark ensure that law enforcement promptly informs SKAT of convictions or other sanctions related to foreign bribery, and that SKAT re-assesses the tax returns of taxpayers convicted or sanctioned of foreign bribery. They recommend that Denmark keep statistics in relation to the application of Section 8 D of the Tax Assessment Act.

D.1.b. Tax treatment of sanctions and confiscation imposed on legal persons

298. Fines and confiscations are not tax deductible in Denmark. However, there is one exception where the confiscated assets have previously been taxed. In such cases, if taxed amounts are confiscated, the previously taxed part can be deducted as a loss of income, even if the confiscation is due to a violation of provisions of the Criminal Code or of other legislation. This is set out in SKAT's guidelines, which state: *"If taxed amounts are confiscated, the previously taxed part can be deducted as a loss of income, even if the confiscation is due to a violation of provisions of the Criminal Code or of other legislation."*

CONCLUSION: POSITIVE ACHIEVEMENTS, RECOMMENDATIONS AND FOLLOW-UP ISSUES

299. The Working Group acknowledges Denmark's efforts since Phase 3 to implement the Convention and related instruments. Based on the findings in this report, the Working Group concludes by commending Denmark on good practices and positive achievements, makes recommendations to Denmark for further improvement, and identifies issues for follow-up.

300. The Working Group reiterates most Phase 3 recommendations (14 recommendations fully reiterated and 4 recommendations partially reiterated out of 20 outstanding recommendations at the time of the Phase 3 Two-Year follow-up report).

301. Denmark should provide a written follow-up report in March 2024 on its enforcement efforts, and the implementation of recommendations 1(a), 12(a)(b), 15, 17(b)(c)(d) and 18(a)(c). Denmark will also report to the Working Group in writing in March 2025 on its implementation of all recommendations, on its foreign bribery enforcement actions, and on developments related to the follow-up issues.

Good practices and positive achievements

302. According to the Phase 4 Monitoring Guide, Phase 4 evaluations should reflect good practices and positive achievements which have proved effective in combating foreign bribery and enhancing enforcement.

303. The main positive achievement in Denmark since Phase 3 is the country's first ever foreign bribery sanction. This USD 26 million fine imposed on a legal person for failure to prevent commercial and foreign bribery committed in various countries by foreign subsidiaries was the largest ever sanction sought by SØIK at the time. More positive enforcement outcomes could be secured by Denmark if the two ongoing foreign bribery investigations come to fruition.

304. Denmark has significantly enhanced its anti-money laundering framework since Phase 3, including by increasing its FIU's resources and analytical capability. Denmark's FIU conducted an assessment of its foreign bribery-related money laundering risks as part of Denmark's AML/CFT National Risk Assessment. As part of various measures to mitigate these risks, the FIU is developing corruption indicators to improve its capacity to screen and analyse relevant suspicious transaction reports. Denmark has also been

developing a public register of beneficial ownership and politically exposed persons. These steps represent good practices and may contribute to activating Denmark's anti-money laundering mechanisms as a detection source of foreign bribery cases. Denmark's detection capacity should also be improved by the implementation in 2021 of a general whistleblower protection regime that applies to both the public and private sectors, especially if Denmark addresses the weaknesses identified in the report.

305. Large companies have been proactive in implementing the new whistleblower regime and contributed to raising the awareness of the importance of whistleblowing among employees. These companies also display a strong level of awareness of foreign bribery risk and have put robust anti-corruption compliance systems. While the legal framework on the small facilitation payment exception has not yet been clarified, the Danish authorities have engaged in a collective action with the civil society and the private sector that aims to combat the phenomenon, and reportedly already yielded positive results. This initiative represents another good practice. In 2018, a network bringing together law enforcement authorities, large companies and the civil society was established to discuss topics relevant to preventing and combating foreign bribery. This initiative represents a commendable effort from the Danish authorities to engage in multistakeholder cooperation in the anti-corruption area.

306. Finally, Denmark has overhauled its public debarment system, which provides that persons convicted or sanctioned of corruption cannot have access to public contracts. While the effectiveness of the new regime is yet to be demonstrated, Denmark should be commended for the steps taken to draw the lessons from the first years of practice in order to ensure more transparency and consistency in procurement authorities' decisions.

Recommendations of the Working Group

Recommendations for preventing and detecting foreign bribery

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 [Anti-Bribery Recommendation III and IV.i].

    (b) continue to take steps to raise the awareness of the foreign bribery offence among public officials, particularly public officials from agencies that interact with, or that are exposed to information regarding companies operating abroad;

    (c) clarify the obligations for these public servants, IFU employees, and implementing partners of Danida and the IFU, to report all credible suspicions of foreign bribery involving Danish individuals or companies detected to Danish law enforcement authorities [Anti-Bribery Recommendations IV.i and XXI.vi; Phase 3 recommendations 10(a) and 11(a)]; and

    (d) continue its foreign bribery awareness-raising efforts within the private sector, and encourage companies, especially SMEs, to develop and adopt adequate internal controls, ethics and compliance systems to prevent and detect foreign bribery, including by providing guidance, and promoting the OECD Good Practice Guidance [Anti-Bribery Recommendations IV, XXI and XXIII, Annex I.A.2 and Annex II.B; Phase 3 recommendation 10(a)].

2. Regarding the detection of foreign bribery allegations in the media, the Working Group recommends that Denmark ensure that law enforcement authorities put in place proactive media monitoring processes to detect potential foreign bribery cases and ensure that the Working

Group's media monitoring information is properly utilised [Anti-Bribery Recommendation VIII and XXI.iv].

3. Regarding detection through information received from foreign authorities or international organisations, the Working Group recommends that Denmark take measures to ensure law enforcement authorities proactively and seriously assess all credible foreign bribery allegations detected through these sources, including information spontaneously transmitted or obtained through mutual legal assistance requests [Anti-Bribery Recommendation VIII and XIX.B.iv].

4. Regarding the self-reporting of foreign bribery, the Working Group recommends that Denmark consider measures, including as part of a clear and transparent framework for non-trial resolutions, to encourage persons who participated in, or have been associated with, the commission of foreign bribery, to supply information useful to competent authorities for investigating and prosecuting foreign bribery [Anti-Bribery Recommendations X.iii and XVIII].

5. Regarding whistleblowing, the Working Group recommends that Denmark take the necessary steps to:

    (a) clarify that the new framework applies to foreign bribery allegations;

    (b) ensure that whistleblower reports on foreign bribery allegations are subject to appropriate protections and remedies, in line with Anti-Bribery Recommendation XXII;

    (c) ensure that effective, proportionate, and dissuasive sanctions are applicable to those who retaliate against reporting persons; and

    (d) enhance awareness-raising efforts in the public on the available reporting channels, protections, confidentiality guarantees, and the scope of misconduct that can be reported. [Anti-Bribery Recommendation XXII]

6. Regarding money laundering, the Working Group recommends that Denmark:

    (a) maintain statistics on STRs and MLS reports to law enforcement that relate to foreign bribery [Convention Article 7; Anti-Bribery Recommendation XXI.iii]; and

    (b) raise awareness of foreign bribery as a predicate offence to money laundering and develop foreign bribery-related anti-money laundering measures, such as typologies and training for MLS officials and obliged entities [Convention Article 7; Anti-Bribery Recommendation XXI.iii; Phase 3 recommendation 8(i)].

7. With respect to accounting requirements, external audit and internal company controls, the Working Group recommends that Denmark:

    (a) promptly issue guidance to auditors on the scope of their reporting obligations [Anti-Bribery Recommendation XXIII.B; Phase 3 recommendation 9]; and

    (b) take measures to raise awareness of foreign bribery among accountants and auditors [Anti-Bribery Recommendation XXIII.B].

8. Regarding tax, the Working Group recommends that Denmark:

    (a) provide guidance clear and/or training to tax auditors on detecting and reporting foreign bribery suspicions to law enforcement [Tax Recommendation I(ii) II];

    (b) maintain detailed statistics on the application of Section 8 D of the Tax Assessment Act and reporting by tax officials to law enforcement authorities [Tax Recommendation I, II; Phase 3 recommendation 6(iv)];

(c) take all necessary steps to clarify that the non-tax deductibility of bribes is always applicable in relation to active foreign bribery, including where passive bribery is not publishable [Tax Recommendation I(i) and (ii)]; and

(d) ensure that law enforcement promptly informs DTA of convictions or other sanctions related to foreign bribery, and that DTA re-assesses the tax returns of taxpayers convicted or sanctioned of foreign bribery [Tax Recommendation I, II].

9. Regarding export credits, the Working Group recommends that EKF ensure that guidance available on measures to be taken where it becomes aware or has reasons to believe that bribery may be involved in a transaction, or where a party that already receives support from EKF is convicted of foreign bribery, is sufficient [Export Credit Recommendation VI, VII and VIII]

10. Regarding official development assistance, the Working Group recommends that Denmark:

(a) ensure that Danida (i) take all necessary steps to require persons applying for ODA contracts be required to declare if they have been convicted of corruption offences; and (ii) verify publicly available debarment lists of national and multilateral financial institutions during the applicant's selection process and on an ongoing basis, and include such lists as a possible basis of exclusion from application to ODA funded contract [Official Development Recommendation 6(ii) and (iv)]; and

(b) ensure that: (i) the Investment Fund for Developing Countries (IFU)'s ODA contracts specifically prohibit implementing partners and their possible sub-contractors from engaging in corruption; (ii) persons applying for the IFU's ODA contracts be required to declare that they have not been convicted of corruption offences; (iii) the IFU systematically verifies publicly available debarment lists of national and multilateral financial institutions during the applicant's selection process and on an ongoing basis, and clearly includes such lists as a possible basis of exclusion from application to ODA funded contract; and (iv) the IFU adopts clear criteria and processes for sanctioning cases of corruption, in particular for terminating support and requiring the repayment of a loan [Official Development Recommendation 6(ii), (iv) and (v) and 8].

Recommendations for investigating, prosecuting, and sanctioning foreign bribery and related offences

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 [Convention Article 1, Commentary 9; Anti-Bribery Convention 14; Phase 3 recommendations 1(a)];

(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 [Convention Article 1, Commentary 9; Anti-Bribery Convention 14; Phase 3 recommendations 1(b)];

(c) provide guidance to investigators and prosecutors on the definition of foreign public officials, including those of public international organisations [Convention Article 1, Commentary 12 et seq.; Phase 3 recommendation 3(g)(iii)]; and

(d) take proactive steps to extend the Convention to the Faroese Islands and Greenland, including by: (i) raising awareness of the Convention and its benefits in the Faroese and Greenlandic authorities; and (ii) assuring the Faroese and Greenlandic authorities that Denmark will provide them with support when they engage in the process of applying the Convention [Convention Article 1].

12. Regarding sanctions and confiscation for foreign bribery, the Working Group recommends that Denmark:

    (a) Take measures, including revising the law, if necessary, to ensure that bribes to foreign public officials, or property of equivalent value, can be subject to confiscation in line with Article 3 of the Convention [Convention Article 3];

    (b) Take all necessary steps, for example by providing guidance to prosecutors and judges, to ensure greater transparency in the method for determining the level of fines imposed in foreign bribery cases, and to ensure that these sanctions are effective, proportionate and dissuasive, taking into account, to the extent possible, the benefits from foreign bribery [Convention Article 3; Anti-Bribery Recommendation XV, XVI];

    (c) raise awareness among law enforcement authorities, including the Asset Recovery Office (ARO), of the importance of thorough financial investigations to detect and recover bribes and foreign bribery proceeds [Anti-Bribery Recommendation XVI(iii)];

    (d) make sure that law enforcement and prosecutors have access to the necessary expertise and capacities to help them effectively identify, quantify and confiscate bribes and foreign bribery proceeds, including by mobilising the ARO, where appropriate, and by considering developing and disseminating relevant guidelines [Convention Article 3; Anti-Bribery Recommendation XVI]; and

    (e) maintain detailed statistics on asset seizure and confiscation [Convention Article 3; Phase 3 recommendations 6(i) and (ii)].

13. Regarding debarment from public procurement, the Working Group recommends that Denmark take the necessary steps to ensure that contracting authorities have adequate access to information on criminal convictions and sanctions [Anti-Bribery Recommendation XXIV(ii)].

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 [Anti-Bribery Recommendation XVIII; Phase 3 recommendation 3].

15. Regarding jurisdiction for foreign bribery, the Working Group recommends that Denmark take steps to ensure that Danish law enforcement authorities consider all possible bases of jurisdiction in foreign bribery cases, including universal jurisdiction, where appropriate [Convention, Article 4, Commentary 25 and 26; Anti-Bribery Recommendation Annex I.B.4; Phase 3 recommendation 4(a)].

16. Regarding the investigative and prosecutorial framework, the Working Group recommends that Denmark:

    (a) ensure that foreign bribery specialisation is developed and fostered within the NSK and SSK [Convention Article 5; Anti-Bribery Recommendation VI];

    (b) take steps to ensure that local law enforcement authorities refer all foreign bribery cases to the NSK [Convention Article 5; Anti-Bribery Recommendation VI.ii; Phase 3 recommendation 3(b)];

(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 [Convention Article 5; Anti-Bribery Recommendation VI.iii];

(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 [Convention Article 5; Anti-Bribery Recommendation VI, VII, Annex I.D]; and

(e) train NSK, SSK and other law enforcement officials specifically on the foreign bribery offence and related issues [Convention Article 5; Anti-Bribery Recommendation VI.iii; Phase 3 recommendation 3g(ii)].

17. Regarding the enforcement of the foreign bribery offence, the Working Group recommends that Denmark:

(a) ensure that law enforcement authorities: (i) proactively gather information from diverse sources to increase the number of allegations and to enhance investigations, and keeps accurate records of detection sources; (ii) act promptly and proactively so that complaints or reports of bribery of foreign public officials are seriously investigated, and all credible allegations are thoroughly assessed to evaluate if there is a reasonable presumption that a criminal offence has been committed; (iii) make greater efforts to thoroughly investigate and prosecute foreign bribery allegations and obtain relevant evidence domestically even in the absence of parallel investigations in foreign jurisdictions, (iv) make full use of the expansive range of investigative techniques available in foreign bribery investigations, including special investigative techniques; and (v) explore all potential bases of criminal liability of Danish natural and legal persons, including complicity or failure to prevent foreign bribery, especially in cases concerning foreign subsidiaries of Danish companies [Convention Articles 4, 5, 9; Anti-Bribery Recommendation V, VII, Annex I.B.4, C and D; Phase 3 recommendations 3(d)(i)(ii)(iv)].

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 [Convention, Articles 3, 8; Phase 3 recommendation 5(b)];

(b) maintain statistics on investigations, prosecutions, and sanctions for false accounting in relation to foreign bribery [Convention, Articles 3, 8];

(c) ensure the sanctions for foreign bribery-related money laundering are effective, proportionate and dissuasive [Convention Article 7]; and

(d) proactively pursue potential money laundering elements of foreign bribery cases, including by conducting thorough financial investigations in such cases [Convention, Articles 3, 8; Anti-Bribery Recommendation, XVI(iii)].

19. Regarding international cooperation, the Working Group recommends that Denmark:

(a) routinely and promptly co-ordinate 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 [Convention Article 9, Anti-Bribery Recommendation XIX; Phase 3 recommendation 3(d)(iii)];

(b) make full use of regional and international law enforcement networks to secure cooperation in foreign bribery cases; [Convention Article 9, Anti-Bribery Recommendation XIX]; and

(c) maintain comprehensive and detailed statistics on incoming and outgoing foreign bribery-related mutual legal assistance and extradition requests [Convention Article 9; Anti-Bribery Recommendation XIX; Phase 3 recommendation 6(iii)].

20. 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, including on parent/subsidiary liability, and emphasise prosecutors' obligation to consider the liability of the parent company through a holistic assessment of the group, as well as alternatives bases of liability such as complicity and failure to prevent foreign bribery [Convention Articles 2, 5; Anti-Bribery Recommendation VI, Annex I.C; Phase 3 recommendation 2(a)];

(b) amend the DPP guidelines to ensure that subordinate employees are not exempted from prosecution in foreign bribery cases [Convention Articles 2, 5; Anti-Bribery Recommendation Annex I.C; Phase 3 recommendations 2(b)(ii)];

(c) ensure both natural and legal persons are prosecuted in foreign bribery cases whenever appropriate, including when a settlement is discussed or reached with a corporate defendant [Convention Articles 2, 5; Anti-Bribery Recommendation Annex I.B, D; Phase 3 recommendation 3(d)(v)]; and

(d) maintain detailed and precise statistics on all foreign bribery enforcement actions against legal persons, including data on the number and type of person(s) charged, the offence(s), the procedure adopted including where matters are resolved through non-trial resolutions (out-of-court settlements), the outcome of proceedings, sanctions imposed, and for matters that are not proceeded with, the timing and reasons for discontinuance [Convention Article 2, 3, 5; Anti-Bribery Recommendation IV.iii].

Follow-up by the Working Group

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

(a) Handling of whistleblower reports concerning foreign bribery allegations by law enforcement [Anti-Bribery Recommendation, VI(ii) XXII].

(b) Impact of the obligation for the Investment Fund for Developing Countries to inform the relevant implementing partners before reporting a foreign bribery allegation on later investigations by law enforcement [Official Development Recommendation 7].

(c) Law enforcement authorities' access to beneficial ownership information in foreign bribery cases [Anti-Bribery Recommendation X(i)].

(d) Steps taken by Denmark to raise awareness of Article 5 of the Convention [Convention Article 5].

(e) Application of the statute of limitations in foreign bribery cases, in particular where some, but not all, acts are time-barred [Convention Article 6].

(f) Effectiveness of the debarment regime in relation to sanctions for foreign bribery in practice. [Anti-Bribery Recommendation XXIV]

(g) Sanctions imposed in practice to natural and legal persons for foreign bribery [Convention Article 3].

(h) Enforcement of the false accounting offences [Convention Articles 3 and 8].

(i) Legal or procedural obstacles 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; Anti-Bribery Recommendation Annex I.B; Phase 3 follow-up issue 13(a)].

(j) Application of successor liability in foreign bribery cases [Convention Article 2; Anti-Bribery Recommendation Annex I.B].

ANNEX 1: FOREIGN BRIBERY ALLEGATIONS DETECTED SINCE PHASE 3

Investigations not opened

Oil (Brazil)

In the 1990s, a shipping company jointly owned by a Norwegian and a Danish company allegedly paid bribes to the director of a State-Owned petroleum company in Brazil to secure an 11-year oil contract. The allegation was widely reported in the media and included in the WGB's media monitoring in 2016. Denmark became aware of this case upon receiving a request for information from Brazil. The statute of limitations had expired in Denmark prior to these allegations coming to light. Denmark assisted Brazilian authorities with their enquiries and responded to two MLA requests. A Danish national was indicted by Brazilian authorities along with the Brazilian company executive who admitted to receiving bribes over a seven-year period. The outcome of the proceedings is unknown.

Fishing (Estonia)

In 2007-2008 a Danish national and owner of several fishing companies operating in Estonia allegedly bribed an ex-adviser to Estonia's Agriculture Minister in return for ensuring that Ministry of Agriculture officials acted in the interests of the Danish businessman. The case was prosecuted in Estonia and reported in Estonian and other Baltic media. After several years of litigation, the Danish businessman and the Estonian public official were acquitted by an Estonian court in 2013. This case was not investigated in Denmark because the statute of limitations had expired by the time Danish authorities became aware of the case through the WGB's media monitoring.

Promotional Funds (EU)

It is alleged that an organised criminal group, active in Belgium and Bulgaria between 2008 and 2017, paid bribes to EU officials to win a EUR 19 million tender for promotional programmes for agricultural products. A dual Danish and Greek national is implicated in the allegations. This case was included in the WGB's media monitoring in 2022 and is under investigation in other WGB countries. Denmark has not investigated this matter because authorities were not aware of the allegations.

Pharmaceutical No.1 and No.2 (China)

Several multinational pharmaceutical companies allegedly paid bribes to doctors and government officials in China. Two Danish pharmaceutical companies and their Chinese subsidiaries are alleged to be involved in the scheme. In 2013, Chinese authorities opened an investigation and the companies involved were cooperating with the Chinese authorities. Authorities in other WGB countries investigated allegations concerning companies domiciled in their jurisdictions. Denmark did not open an investigation because information in the media reports was too vague.

Construction (Lithuania)

In 2017 the Lithuanian subsidiary of a Danish civil engineering company is alleged to have bribed local public officials to secure a EUR 4.1 million public procurement contract for the renewal of sewerage networks. The case was reported by Lithuanian media and included in the WGB media monitoring in July 2019. The CEO of the Lithuanian SOE responsible for the tender has been charged with passive bribery in Lithuania. The prosecution is ongoing. Denmark did not open an investigation because information in the media reports was too vague.

Infrastructure (Slovak Republic)

Between 2006 and 2020 a Danish company's subsidiary worked with local business partners that paid bribes to Slovakian officials. The Danish company self-reported to SØIK. SØIK determined there was no reasonable presumption that an offence had been committed that was subject to Danish jurisdiction because "the acts appear to have taken place in Slovakia alone."

Investigations discontinued

Charter Contracts (Brazil) and Shipping Contracts (Brazil)

Between 2006 and 2014, a Danish shipping company allegedly paid bribes of USD 3.4 million to the director of a State-Owned petroleum company in Brazil via local intermediaries to secure charter contracts valued at USD 146 million. SØIK requested MLA from Brazil but discontinued the investigation in 2017 when they did not receive a satisfactory response. A response was eventually received in 2018. SØIK reviewed the material but did not reopen the investigation.

In December 2019, new allegations concerning USD 2.8 million in bribes paid by the Danish company to the same Brazilian public official through different intermediaries were reported in the international media. Brazilian police searched the Danish company's offices in Rio de Janeiro and São Paulo. In 2020, Brazilian prosecutors charged two individuals, including a former executive of the Danish company, and sought orders to freeze USD 200 million in company assets. The company issued a statement saying it was committed to co-operating with the authorities. The bribery scheme is estimated to involve 200 contracts with a value of USD 1.2 billion. Denmark did not reopen the investigation.

Transport (China)

Between 2011 and 2016, Chinese employees of a Chinese subsidiary of a Danish company allegedly paid bribes to business partners in China, including a Chinese public employee. The allegations were reported to SØIK by a whistleblower in 2016. SØIK concluded there were "no grounds for assuming that the reported acts have been made upon request from or through other forms of criminal acts by the Danish parent company" and therefore there is no Danish jurisdiction.

Permits and Licenses (India)

Between 2015 and 2016 a Danish brewing company through its subsidiary in India allegedly bribed Indian public officials to ensure swifter regulatory processing time and better manufacturing terms for a local brewery. SØIK determined they did not have jurisdiction because "in Danish law, parent and subsidiary companies are treated as separate entities and that events in a subsidiary cannot create responsibility for the parent company, except in cases where the parent company actively participates in or encourages the illegal activities, or neglects to take due diligence measures once they become aware of the illegal activity in the subsidiary".

Infrastructure Projects (Indonesia & Viet Nam)

A Danish company allegedly engaged in fraudulent practices and bribed public officials to influence the award and execution of five separate World Bank-financed infrastructure and development contracts in Indonesia and Viet Nam. In March 2017, the World Bank's sanctions board found the company liable for three counts of fraud and two counts of corruption for paying bribes of USD 10 000 and USD 50 000 to public officials in Indonesia and Viet Nam and debarred the company for 14 years. It also found the company's managing director, a Danish citizen, guilty of fraud and debarred him for a period of three years and six months.

In 2017 Denmark discontinued the investigation because SØIK determined that "the prosecution […] would lead to difficulties, costs and duration of proceedings which are disproportionate to their importance and the sentence […] expected to be imposed" and "the international nature of the case and age of the allegations renders a significant degree of uncertainty and difficulties in obtaining information through international requests to Viet Nam and Indonesia which could be lengthy and costly."

Infrastructure (Togo)

In 2019, a Danish company allegedly attempted to bribe Togolese officials to win an infrastructure contract. The case was detected through a report by from a member of the public. The only investigative steps taken by SØIK were attempts to get the reporting person to convince a Togolese official with alleged knowledge of the case to contact them. Denmark provided no other information about this case and law enforcement authorities report the investigation is to be closed.

Sanctions imposed

Paint and Coating (Germany & Asia)

A Danish company self-reported to Danish authorities commercial and foreign bribery committed in the group's subsidiaries between 2004 and 2016. The company was charged with one count of failing to prevent commercial bribery by a German subsidiary and one count of failing to prevent commercial and foreign bribery by several subsidiaries predominantly domiciled in Asian countries. The company admitted it knew of and failed to prevent employees of the German subsidiary from paying DKK 70 million (USD 9.4 million) in "kick-back payments" to ship managers to secure favourable terms. The company also admitted it knew of and failed to prevent employees in several other mainly Asian subsidiaries from making similar payments of DKK 26.4 million (USD 3.5 million). Prosecutors were unable to trace the exact recipients of the payments. However, they knew the subsidiaries made payments to representatives of SOEs. For this reason, the second count was characterised as foreign bribery "in part." Prosecutors were unable to quantify the benefits of the bribery schemes. In March 2019, the Danish parent company pleaded guilty to both charges, and the court imposed a fine (agreed between prosecution and the company) of DKK 197 500 000 (USD 26.5 million).

Ongoing investigations

Power Plant (Mauritius)

A Danish company allegedly bribed Mauritian public officials, through intermediaries, to obtain access to confidential tender-related information regarding the redevelopment of the Saint Louis power plant in Mauritius, a project financed by the African Development Bank (AfDB). The allegations were first reported to the company in April 2018 by a whistleblower. The company ordered an external investigation. It dismissed the employees involved, reported two persons to the Danish police in July 2018 and self-reported the case to the AfDB and other relevant stakeholders.

In 2020, the AfDB conducted an investigation that found that the Danish company engaged in fraudulent and corrupt practices in the context of the project. The company and the Bank reached a settlement whereby the company was debarred for 21 months (until March 2022) from Bank-financed projects.

NSK and Mauritian ICAC have a joint investigation team. In September 2021, several natural persons associated with the Danish company and a local subcontractor were arrested by Mauritian police. As were a former energy minister and managers of the Central Procurement Board. NSK has charged one former employee of the Danish company with foreign bribery.

Unknown case

Danish authorities are investigating a Danish company for allegedly committing foreign bribery in 2020. Denmark did not provide any other information.

ANNEX 2: LIST OF ACRONYMS

AJA	Administration of Justice Act
ARO	Asset Recovery Office
CC	Criminal Code
CEC	Centre for Economic Crime
CoE	Council of Europe
CVR	Central Business Authority
Danida	Danish International Development Agency
DBA	Danish Business Authority
DDCA	Danish Competition and Consumer Authority
DKK	Danish Krones
DPP	Director of Public Prosecutions
DTA	Danish Tax Agency
EAW	European Arrest Warrant
ECA	Export credit agency
EKF	Eksportkreditfonden (Denmark's export credit agency)
EDD	Enhanced Due Diligence
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FSA	Danish Financial Supervisory Authority
FSR	Danske Revisorer (auditors' professional association)
IFRS	International Financial Reporting Standards
IFU	Investment Fund for Developing Countries
IOSCO	International Organization of Securities Commissions
ISA	International Standards on Auditing
LEA	Law enforcement authorities
LP	Legal person
MFA	Ministry of foreign affairs
ML	Money laundering
MLA	Mutual legal assistance
MLS	Money Laundering Secretariat (Danish financial intelligence unit)
MOJ	Ministry of Justice
NP	Natural person
NTR	Non-trial resolution
ODA	Official development assistance
SCU (*NSK*)	National Unit for Special Crime
SIG	International Group within the National Unit for Special Crime
SME	Small and medium-sized enterprise
SOE	State-owned or controlled enterprise
SØIK	State Prosecutor for Serious Economic and International Crime

SPSCU (*SSK*)	State Prosecutor for Special Crime
STR	Suspicious transaction report
TC (or TCD)	Trade Council
UN	United Nations
UNCAC	United Nations Convention against Corruption
UK	United Kingdom
US	United States
USD	United States Dollar
WGB	Working Group on Bribery

ANNEX 3: PHASE 3 RECOMMENDATIONS

	PHASE 3 RECOMMENDATIONS	TWO-YEAR WRITTEN FOLLOW-UP
Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery		
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];	Not implemented
	(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].	Partially implemented
2	Regarding to 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];	Partially implemented
	(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].	Not implemented
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];	Fully implemented
	(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];	Not implemented
	(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];	Partially implemented

	PHASE 3 RECOMMENDATIONS	TWO-YEAR WRITTEN FOLLOW-UP
	(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 co-ordinate 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];	Partially implemented
	(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];	Fully implemented
	(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];	Fully implemented
	(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].	Partially implemented
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];	Partially implemented
	(b) Ensure that its law enforcement authorities thoroughly explore territorial links to Denmark in foreign bribery cases [Convention Article 4].	Fully implemented
5	Regarding sanctions, the Working Group recommends that Denmark promptly increase the maximum penalties for:	
	(a) foreign bribery committed by natural persons, and	Fully implemented
	(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].	Not implemented
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].	Partially implemented
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].	Partially implemented
Recommendations for ensuring effective prevention, detection and reporting of foreign bribery		
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- 53 money laundering measures, such as typologies and	Partially implemented

	PHASE 3 RECOMMENDATIONS	TWO-YEAR WRITTEN FOLLOW-UP
	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].	
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].	Not implemented
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];	Partially implemented
	(b) TCD consult with the MOJ or SØIK to ensure the soundness of its guidance. [2009 Recommendation III.i].	Not implemented
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];	Partially implemented
	(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].	Partially implemented
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];	Not implemented
	(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].	Not implemented

ANNEX 4: ON-SITE VISIT PARTICIPANTS

Public sector

Danish Business Authority

Danish Competition and Consumer Authority

Danish Data Protection Authority

Danish Financial Supervisory Authority

Danish Tax and Customs Administration

Eksportkreditfonden

Faroe Islands Representation

Greenland Representation

Investment Fund for Developing Countries

Ministry of Finance

Ministry of Industry, Business and Financial Affairs

Ministry of Justice

Ministry of Foreign Affairs, including the Trade Council of Denmark

Ministry of Taxation

Money Laundering Secretariat

Law enforcement and the Judiciary

Director of Public Prosecution's Office

National Special Crime Unit (*National enhed for Særlig Kriminalitet*, NSK), including the International Group (SIG) and the Asset Recovery Office

State Prosecutor for Special Crime Unit (*Statsadvokaten for Særlig Kriminalitet*, SSK)

National Courts Administration

Judges from District, High and Supreme courts

Private sector

Companies

A.P. Møller – Mærsk

Coloplast

DSB

DSV

Ørsted

Business organisations

Confederation of Danish Industries (DI)

Danish Agriculture & Food Council (Landbrug & Fødevarer)

Danish Chamber of Commerce (Dansk Erhverv)

Lawyers and Legal Academics

Kromann Reumert Law Firm

Bruun og Hjejle

University of Copenhagen

Accounting and auditing

Danske Revisorer

Deloitte

KPMG

PwC

Civil society

Transparency International Denmark

ANNEX 5: EXCERPTS OF RELEVANT LEGISLATION

Criminal Code

Foreign Bribery Offence

Section 122.

(1) Any person who unduly gives, promises or offers to someone performing a public function or office with a Danish, foreign or international public organisation a gift or another benefit to make the relevant person perform or fail to perform such function or office is sentenced to a fine or imprisonment for a term not exceeding six years.

Provisions on Corporate Liability

General Rules, Part 5. Criminal liability of legal persons

Section 25.

(1) A fine can be imposed on a legal person where so provided by or pursuant to statute.

Section 26.

(1) Provisions on the criminal liability of companies and other corporations comprise any legal person, including public and private limited companies, cooperative societies, partnerships, associations, societies, foundations, estates and local and state authorities, unless otherwise provided.

(2) Those provisions also comprise sole proprietorships if they are comparable to the enterprises referred to in subsection (1), especially in view of their size and organisation.

Section 27.

(1) It is a condition precedent to the criminal liability of a legal person that an offence has been committed in the course of its activities and that the offence was caused by one or more natural persons connected to the legal person or by the legal person as such. Section 21(3) on punishment for attempts applies with the necessary modifications.

(2) State and local authorities may only be punished for offences committed in carrying on activities which are equal or comparable to activities carried on by private individuals.

Special Rules, Part 29. Special provisions on legal persons

Section 306.

(1) Companies and other incorporated bodies (legal persons) may incur criminal liability under the rules of Part 5 for violation of this Code.

Provisions on Sanctions

General Rules, Part 6. Penalties

Section 31.

(1) The ordinary penalties are imprisonment and fines.

[…]

Section 50.

(1) Fines will go to the Treasury.

(2) A fine can be imposed as a supplementary penalty together with another type of sanction where the accused made or intended to make a financial gain for himself or others.

(3) The person fined cannot claim payment or refund of the fine from any other persons.

Section 51.

(1) Where a fine is imposed or accepted in court pursuant to this Code, the amount of the fine is set as day fine units. This does not apply to fines imposed as a supplementary penalty together with another sanction. The number of day fine units will be determined in view of the nature of the offence and the circumstances referred to in section 80 and must be at least one and not more than 60 fine units. The amount of the individual day fine unit is determined to correspond to the relevant person's average daily earnings, provided always that the life situation of the person fined should be taken into consideration, including his assets, family responsibilities and other factors affecting his ability to pay. The minimum amount of a day fine unit is DKK 2.

(2) When determining a fine for an offence by which the relevant person made or intended to make a substantial financial gain for himself or others and the imposition of day fine units would result in a total fine amount deemed to be lower than reasonable in view of the amount of the profit that was earned or could have been earned by committing the offence, the court can impose a fine other than as day fine units.

(3) When determining other fines, special consideration must be given, in addition to due consideration to the nature of the offence and the circumstances referred to in section 80, to the offender's capacity to pay and to the gain or savings obtained or intended.

(4) The police may obtain such information from other public authorities as is necessary to determine the fine. The police may further, from registers kept by public authorities, including the courts, request the information on the circumstances of the relevant person considered important for the determination of the fine. Such information can be given in writing or by direct data transfer.

Section 52.

(1) (Repealed)

Section 53.

(1) If a fine is not paid, an alternative sentence of imprisonment must be imposed in lieu of a fine.

Section 54.

[…] (3) No alternative sentence can be determined for fines imposed on legal persons.

[…]

General Rules, Part 9. Other sanctions for criminal acts

[…]

Section 75.

(1) The proceeds of a criminal act, or a corresponding amount, may be confiscated in full or in part. Where the basis for determining the size of such amount is insufficient, an amount deemed equivalent to the proceeds made may be confiscated.

(2) If deemed necessary to prevent further offences or otherwise justified by special circumstances, the forfeiture of the following items may be ordered:

(i) items used for or intended to be used for a criminal act;

(ii) items produced through a criminal act; and

(iii) items otherwise involved in a criminal act.

(3) Instead of forfeiture of such items as are referred to in subsection (2), an amount corresponding to the full or partial value of such items may be confiscated.

(4) Instead of forfeiture under subsection (2), a decision may be made about measures relating to the items to prevent further offences.

(5) Where an association or a society is dissolved by judgment, an order of forfeiture of its assets and other property may be issued.

Section 76.

(1) Confiscation may be made under section 75(1) from the person who received the proceeds directly after the criminal act.

(2) An order of forfeiture of the items referred to in section 75(2) may be made against the person liable for the offence and against the person on whose behalf he acted, and an order of confiscation may similarly be made in respect of the valuables referred to in section 75(3).

(3) Specifically secured rights in items subject to forfeiture will only lapse if so decided by the court on the conditions set out in subsection (2).

(4) Where one of the persons referred to in subsections (1) and (2) has undertaken transactions after the criminal act involving proceeds or items of the nature mentioned in section 75(2) or rights in such proceeds or items, the proceeds or items transferred may become subject to a forfeiture order against the acquirer or the corresponding value may be confiscated from the acquirer if he was aware of the connection between the proceeds or items transferred and the criminal act or has displayed gross negligence in this respect or if the transfer was gratuitous.

(5) If a person subject to a confiscation or forfeiture order under subsection (1)-(4) dies, his liability under the order will cease. This does not apply to confiscation under section 75(1).

Section 76 a.

(1) Property owned by a person found guilty of a criminal act may become subject to forfeiture in full or in part where -

(i) the act is of such nature that it may generate substantial proceeds; and

(ii) the act is punishable by imprisonment for at least six years according to law or is contrary to the legislation on controlled substances.

(2) Property acquired by the relevant person's spouse or cohabitant may be subject to forfeiture in full or in part on the conditions referred to in subsection (1) unless -

(i) the property was acquired more than five years before the criminal act warranting forfeiture under subsection (1); or

(ii) the marriage or cohabitation had not been established when the property was acquired.

(3) Property transferred to a legal person over which the relevant person exercises control, whether alone or jointly with his significant others, may be subject to forfeiture in full or in part on the conditions referred to in subsection (1). The same applies if the relevant person receives a substantial portion of the legal person's income. No forfeiture can be ordered if the property was transferred to the legal person more than five years before the criminal act warranting forfeiture under subsection (1).

(4) No forfeiture can be ordered under subsections (1)-(3) if the relevant person renders probable that the property was acquired lawfully or with lawfully acquired funds.

(5) Instead of forfeiture of specific property under subsections (1)-(3), an amount corresponding to the full or partial value of such property may be confiscated.

Section 77.

(1) If a confiscation or forfeiture order is made under section 75(1) or 76a and someone has a claim for compensation due to the offence, the property subject to confiscation or forfeiture may be applied to settle the claim for compensation.

(2) The same applies to items and valuables subject to forfeiture under section 75(2) or confiscation undersection 75(3) if so decided in the judgment.

(3) Where the convicted person has paid compensation to the victim following the judgment in one of the cases referred to in subsections (1) and (2), the amount subject to confiscation or forfeiture will be reduced correspondingly.

307. Part 28. Offences against property

Section 290.

(1)Any person who wrongfully accepts or obtains for himself or others a share of the proceeds obtained from criminal acts, and any person who dishonestly, after an offence, assists another person in securing the proceeds of a criminal offence by hiding, retaining, transporting or providing assistance for the disposal of the proceeds or in any similar manner, is sentenced to a fine or imprisonment for a term not exceeding one year and six months for handling stolen goods unless the act falls within section 290a. (2)The sentence may increase to imprisonment for six years if stolen goods were handled in a particularly aggravating manner, especially because of the commercial or professional nature of the offence, or due to the scope of the gain made or intended, or when several offences have been committed. (3)A penalty cannot be imposed under this provision on any person who accepts any proceeds for ordinary subsistence from a family member or his cohabitant, or on any person who accepts any proceeds as normal remuneration for ordinary consumer goods, household goods or services.

Section 290 a. (1) Any person who converts or transfers money, gained directly or indirectly through the proceeds of a criminal offence, to hide or disguise its illegal origin is sentenced to a fine or imprisonment for a term not exceeding one years and six months for money laundering. (2)The sentence may increase to imprisonment for eight years if the money laundering was of a particularly aggravating nature, especially because of the commercial or professional nature of the offence, or due to the gain made or intended, or when several offences have been committed.

Administration of Justice Act

Provisions on Non-Trial Resolutions

Section 832.

(1) In cases of offences that are not deemed to result in a higher penalty than a fine, the prosecution may in a fine notice inform the accused that the case can be decided without a trial, if the accused pleads guilty to the offence and declares himself ready before a specified deadline to pay a fine specified in the fine notice. The deadline may be extended by the prosecution upon request.

(2) The rules in section 834, subsection 1, no. 2 and 3, and subsection 2, on the requirements for the content of an indictment apply correspondingly to fine notices.

(3) An accused under the age of 18 may, in immediate connection with the offence, accept a fine without the consent of the holder of parental responsibility.

(4) If the accused accepts the fine, further prosecution lapses, cf., however, section 724, subsection 2, and section 832 a, subsection 2. The decision has the same repetitive effect as a judgment.

(5) The Minister of Justice shall lay down rules on confiscation in accordance with similar rules as in subsections 1-3. The rule in section 724, subsection 2 shall apply correspondingly.

Section 899.

(1) A case may be decided by the defendant in court agreeing to a specified fine or confiscation of certain objects or a certain amount, if

1) The offence under the law may be punished by a fine or result in confiscation,

2) The court finds no reason to doubt the defendant's guilt and

3) The prosecutor gives consent.

(2) The amount of the fine determined by law shall not be binding upon the imposition of a fine under subsection 1.

(3) If the defendant agrees to a fine or confiscation pursuant to subsection 1, information on this shall be entered in the court book. An agreement has the same effect as a judgment as regards enforcement and repeat offences.

Provisions on Investigation and Prosecution

Section 96

Subsection 1. The task of the public prosecutors is with the police to prosecute crimes according to the rules of this law.

Subsection 2. Public prosecutors must advance any case as expeditiously as the nature of the case allows, thereby ensuring not only that persons who have committed a crime are held accountable but also that the prosecution of innocents does not take place.

Section 98. The Minister of Justice is the superior of the public prosecutors and supervises them.

(2). The Minister of Justice can lay down provisions on the public prosecutors' performance of their tasks.

(3). The Minister of Justice can give the public prosecutors instructions regarding the handling of specific cases, including whether to start or continue, refrain from or stop prosecution. An order pursuant to this provision to begin or continue, refrain from or stop prosecution must be in writing and accompanied by a reason. Furthermore, the Speaker of the Danish Parliament must be notified in writing of the order. If the considerations mentioned in section 729 c, subsection 1, makes it necessary, notification can be postponed. For the purpose of access to documents under sections 729 a-d, the order is regarded as material provided by the police for the purposes of the proceedings.

(4). The Minister of Justice processes complaints about decisions made by the Director of Public Prosecutions as the first instance, cf. however the provision in section 1018 e, subsection 4.

Section 721

Subsection 1. Prosecution in a case may be abandoned in whole or in part in cases,

1) where the charge has proven to be unfounded,

2) where further prosecution cannot otherwise be expected to lead to the accused being found guilty,

3) where section 10 b or section 89 of the Criminal Code would be applicable if the accused were to be found guilty, when it is estimated that no or only an insignificant penalty would be imposed, and that conviction would not otherwise be of significant importance, or

4) where the completion of the case will cause difficulties, costs or processing times that are not proportionate to the importance of the case and the penalty that can be expected to be imposed if applicable.

Subsection 2. The Minister of Justice or the person authorized by the Minister of Justice to do so lays down detailed rules on the competence to abandon prosecution.

Section 722

Subsection 1. Charges in a case may be waived in whole or in part in cases,

1) where, according to the law, the intended offense cannot result in a higher penalty than a fine and the offence is of little criminal merit,

2) where pursuant to section 723, subsection 1, it is stipulated as a condition that the accused is subjected to assistance measures in accordance with section 52 of the Social Services Act,

3) where the accused was under 18 years of age at the time of the crime, and conditions are set according to section 723, subsection 1,

4) where section 10 b or section 89 of the Criminal Code is applicable, when it is estimated that no or only an insignificant penalty would be imposed, and that conviction would not otherwise be of significant importance,

5) where the completion of the case will cause difficulties, costs or processing times that are not proportionate to the importance of the case and the penalty that can be expected to be imposed,

6) where the legislation contains special authority for charges to be waived, or

7) where this follows from provisions laid down by the Minister of Justice or the Attorney General.

Subsection 2. In other cases, prosecution can only be waived if there are particularly mitigating circumstances or other special circumstances and prosecution cannot be considered required in the public interest.

Subsection 3. The Minister of Justice or the person authorized by the Minister of Justice to do so lays down detailed rules on the competence to waive charges.

Section 742

Reports of criminal offenses are submitted to the police.

(2). The police shall, upon a report or on their own initiative, initiate an investigation when there is a reasonable presumption that a criminal offence which is being pursued by the public authorities has been committed.

Section 749

Subsection 1. The police will reject a filed report if there is no basis for starting an investigation.

Subsection 2. If there is no basis for continuing an investigation that has begun, the decision to discontinue the investigation can be made by the police, if no charges have been laid. If charges have been laid, the provisions of section 721 and section 722 apply.

Subsection 3. If the report is rejected or the investigation is terminated, the victim or, if the victim has died, the victim's next of kin is notified. The same applies to others who must be assumed to have a reasonable interest in this. The decision can be appealed to the superior prosecuting authority according to the rules in chapter 10.

Tax Assessment Act

Section 8 D

When calculating the taxable income, no deduction is given for bribery expenses as mentioned in section 144, section 299, subsection 2, and section 304 a, subsection 2 of the Criminal Code, and section 10 b of the Act on the Promotion of Integrity in Sport. The provision applies, regardless of whether the said bribe is legal according to the legislation of the state where the expenditure on the bribe is incurred. The only decisive factor is whether the bribery would be punishable under section 144, section 299, subsection 2, and section 304 a, subsection 2 of the Criminal Code, and section 10 b of the Act on the Promotion of Integrity in Sport, if the bribe had taken place in Denmark.

www.oecd.org/corruption/anti-bribery