

Réponses au questionnaire sur la régulation économique
Responses to the questionnaire on economic regulation

Danemark
Cour suprême

Denmark
Supreme Court

QUESTIONNAIRE ON ECONOMIC SECTORAL REGULATION IN EUROPEAN UNION COUNTRIES

I. Scope and purpose of economic sectoral regulation

1. *Economic sectoral regulation mainly focuses on sectors submitted to European Union' secondary legislation (transport, energy, postal activities, electronic communication, audiovisual media). Are other sectors subject to such regulation in your country?*

E.g. gambling, finance, food and public water supply.

2. *Is the whole set of European Union' secondary legislation for economic sectoral regulation transported into national law and/or practically implemented?*

Yes.

3. *Is economic sectoral regulation only aimed at introducing competition in sectors where there is State monopoly? If not, what are its other purposes (implementing an internal market, defining universal service obligations, consumer protection, etc.)?*

Other purposes are the above mentioned as well as environmental purposes.

4. *Is economic sectoral regulation an ex ante control, aimed at defining obligations for companies in the regulated sectors a priori, or an ex post control, aimed at upholding competition in case of infringement?*

Economic sectoral regulation is primarily aimed at defining obligations for companies in the regulated sectors a priori, as rules aimed at upholding competition are gathered in the Danish Competition Act, which implements EU competition regulation.

5. *Has the implementation of an economic sectoral regulation prompted the emergence of competition in the relevant sectors? Did new entrants manage to fit in regulated markets? If not, why?*

Yes, competition may have emerged.

6. *Has the implementation of an economic sectoral regulation directly or indirectly lead to the total or partial privatisation of publicly owned companies?*

Yes.

7. *Which economic sectors would you like to address more specifically in terms of regulation?*

As a part of the judicial power, The Danish Supreme Court cannot speak in political matters. The Danish government is however debating liberalisation in the areas of health care and pharmacists.

II. Organisation of economic sectoral regulation

8. *Is economic sectoral regulation implemented by one or several independent authorities? If so, on what grounds was this choice made and how is this independence guaranteed?*

In general, economic sectoral regulation is administrated by government agencies, for instance the Danish Transport Authority and the Danish Competition Authority. In general, these agencies are not independent, but part of a Ministry.

Denmark has a number of boards. These boards are all considered public authorities, but they are independent. The boards decide cases, and most cases are settled in this manner.

The Danish Energy Regulatory authority consists of a board and an office for regulation of the gas, electricity and district heating markets. The board members are appointed by the Minister of Climate and Energy. The office is an independent national authority which supervises the energy sectors and assists the board. The decisions can be appealed to the Danish Energy Board of Appeal. The board of appeal is independent and has the authority to decide cases regarding for instance pricing and access to the market. The composition is regulated to ensure its independence, and the chairman is a judge.

The Danish Telecommunications Complaint Board is also independent and beyond instruction from the Ministry for Business and Growth. There are also independent boards regulating railroads and harbours.

In other areas The Competition Council that is responsible for the Competition Act is the responsible authority. The council is independent as the Minister has no right to issue instructions. Members are appointed by the Minister, but the constitution of the council is decided by law in order to ensure its independence and authority. The council has the authority to decide cases and investigate sectors for instance. Decisions can be appealed to the Danish Competition Appeals Tribunal, which has a judge as the chairman.

9. *Are these authorities independent of the regulated economic sectors? If so, how is this independence guaranteed?*

See answer to question 8.

10. *Do these authorities have a regulatory power? If so, is it at general regulatory power for the sectors concerned or a narrower regulatory power limited to certain specific aspects of regulation?*

In general, regulation is implemented by the Parliament, and ministerial orders are issued by the relevant Ministry. Some of the sector authorities may have regulatory power.

11. *Do these authorities take part in drafting the relevant legislation for the regulated sectors, through notice procedures for instance?*

The government agencies do take part in drafting relevant legislation. Other authorities may be consulted in the legislation process.

12. *Do these authorities have a sanctioning power toward companies of the regulated sectors? If so, what kind of sanctions can they adopt and under which procedure? Do these procedures guarantee compliance with provisions of article 6§1 of the CPHRFF?*

Yes. The relevant Ministries and for instance the Competition Council has the power to issue an enforcement notice, to grant an injunction against a company and to fine a company. The same is true for the The Danish Energy Regulatory authority and the Energy Appeals Board.

A decision can be appealed to the courts and thus the provisions of article 6 of the CPHRFF are met.

13. *Is every economic sector regulated by a specific authority, or are there some authorities exercising their powers in several sectors?*

Some authorities exercise their powers in several sectors.

14. *How are economic sectoral regulatory authorities' competences articulated with those, when appropriate, of a transverse authority in charge of assessing compliance to competition law?*

The sectoral regulatory authorities have different competences than the Competition Council.

III. Judicial review of economic sectoral regulatory authorities' decisions

15. *Are all economic sectoral regulatory authorities' decisions subject to judicial review? If not, which decisions are not subject to such checks and why?*

Yes. All regulatory authorities' decisions are subject to judicial review.

Cases can be brought before the ordinary courts and are tried as ordinary civil actions. The role of the court is defined accordingly. The courts are however reluctant to try the discretion exercised by public authorities in full.

As previously mentioned most cases are settled by the public authorities and are thus never appealed to the courts.

16. *Which system of jurisdiction is competent to verify these decisions? When relevant, is the same system of jurisdiction competent to control the decisions of the authority in charge of assessing compliance to competition law?*

The ordinary court system tries these cases as any other cases, and thus it is the same system.

17. *Which kind of legal recourse is open against the decisions? What are the relevant legal proceedings in the matter?*

The decisions can be tried in the court system.

18. *Which control does the judge exercise in these decisions? Does he monitor the formal requirements, legal proceedings and/or reasons for these decisions? For which kind of decisions does he have limited control? In contrast, for which kind of decisions does he exercise thorough control?*

The courts can try both formal requirements, legal proceeding and to some extent the reasons for the decisions. As previously mentioned, the courts are reluctant to try the discretion made by public authorities in full, but the courts are able to try whether or not a decision has valid reason.

19. *While exercising his power of judicial review, how does the judge keep himself informed (appointment of experts, specialised and contradictory investigation, resort to universities, international sources consultation, etc.)?*

The Danish courts are usually informed by appointment of experts. The experts will answer questions formulated by the parties and may give a statement in court.

In some cases the court will be assisted by expert lay assessors.

The Maritime and Commercial Court consist of a judicial judge and two lay judges. This court has found itself competent to try decisions made by the authorities in depth. This question is now pending before The Supreme Court.

20. *Which role does the administrative Supreme Court take toward these decisions? What are the major decisions of supreme administrative justice in economic sectoral regulation matters?*

Denmark does not have an administrative Supreme Court. The Supreme Court is a court of appeal for the High Court and for cases of general importance.