

The Danish Parliament in Europe – Europe in the Danish Parliament

Introduction

Which challenges do we face?

Common European legislation sets important conditions for and is interwoven with Danish domestic politics. Any failure on the part of the Danish Parliament to actively influence future EU legislation at an early stage therefore constitutes a democratic deficit. The Danish Parliament's involvement in EU matters is in many cases a precondition for conducting its parliamentary duty of shaping Danish legislation.

The European Affairs Committee is currently the principal forum for the Danish Parliament's scrutiny of EU policy. In the past, the Danish parliamentary model for scrutiny of the Government's EU policy was renowned for its efficiency. However, recent studies show that the Danish Parliament has fallen behind several other national parliaments in a period during which the importance of EU legislation for Danish citizens and companies has increased (see Section 7.5).

The European Affairs Committee of the Danish Parliament therefore asked the EU Reform Group to investigate the matter and draw up proposals for how a modernised system of parliamentary scrutiny of EU policy might look if Denmark were to join the EU today. The assignment comprised designing a model for parliamentary scrutiny that is efficient, inclusive and transparent.

The EU Reform Group's interviews with stakeholders at the Danish and European levels (see Annex II) show that the Danish Parliament's involvement in EU policy is too weak and comes too late. Therefore, the Danish Parliament exerts only minimal influence on European legislation that it will subsequently implement in Danish law and which will apply to Danish citizens and companies.

The EU Reform Group examined the following key issues: 1) How can the Danish Parliament ensure greater influence on decisions made in the EU, 2) through which channels, and 3) at what point in the decision-making process? Finally, the EU Reform Group also examined: 4) What will it take to create an engaged and informed debate on EU policy in Denmark?

How can the Danish Parliament enhance its influence on EU decisions?

The overarching question is how the Danish Parliament can enhance its possibilities of exerting influence on EU issues? How should EU issues be embedded in the general work of the Danish Parliament and who should be in charge of representing the Danish Parliament vis-à-vis external stakeholders? In the current, centralised model, the European Affairs Committee is not only responsible for controlling the Government but also coordinates parliamentary processing of a very large number of EU issues. Would it help if the Danish Parliament were to focus its efforts on fewer important EU issues?

If the scrutiny of EU issues were more broadly anchored through granting more influence and greater responsibility to political party leaders, parliamentary groups and sectoral committees that possess important expertise with regard to relevant national legislation, we could expect to see a more engaged Danish Parliament acting from a stronger bargaining position. Sustaining a strong role for the European Affairs Committee is also important as it ensures that the Danish Parliament has a broad-based, cross-party voice on EU policy vis-à-vis the Government in office at any given time. Moreover, the Danish Parliament will be able to reap the full benefit of expertise about future EU regulations that key NGOs, business groups and other stakeholder organisations have at their disposal. The EU Reform Group investigated how all of this could be achieved. Their inquiries resulted in recommendations 3 and 6.

Through which channels should the Danish Parliament exercise influence?

The EU Reform Group examined another important issue, i.e. whom should the Danish Parliament try to influence? Currently, the Danish Parliament expresses its opinion mainly by means of Government scrutiny. The Danish Parliament rarely acts independently vis-à-vis European institutions, e.g. in connection with monitoring EU institutions' compliance with the subsidiarity principle. In the past, the Danish Parliament took part in the public consultation phase via responses to the Commission's green and white papers. New public consultation processes mean that the Danish Parliament is now absent from the decisive pre-legislative phase. The Danish Parliament should engage in a direct dialogue on future EU proposals with the European Commission, the European Parliament, other EU Member States' parliaments and civil society. This will be an impossible task unless the Danish Parliament prioritises the EU issues that are most important for Denmark. Recommendations 3-6 of this report address how such prioritisation and timely participation could be achieved.

At what point in the decision-making process should the Danish Parliament become involved?

Timing is the most critical factor for influence in the EU. The earlier stakeholders make their voice heard, the better opportunities for influencing the content of EU proposals. European governments, the European Parliament, businesses and different interest groups all begin to influence EU regulations long before the Commission presents draft proposals for new EU legislation. All stakeholders know that the best chance of exerting influence on EU policy is during the pre-legislative phase. Early involvement is therefore key. This applies when seeking to influence both the long-term strategic EU agenda as well as individual EU proposals.

At present, the Danish Parliament either enters the arena too late or does not get there at all. When it comes to both the debate on EU's long-term strategic agenda and the pre-legislative phase, the Danish Parliament is most often absent. When it comes to responding to EU proposals, the Danish Government often presents its negotiation position to the European Affairs Committee too late, and the opportunity to exert influence is lost. Therefore, a key recommendation in the report is that the Danish Parliament should influence much earlier and the Government should request its negotiating mandates much sooner.

The EU Reform Group also discussed the role of the Danish Parliament in implementing EU legislation with the research team responsible for a research project entitled »Det nationale råderum: ved gennemførelse af EU-regler (National Legislative Provisions in the implementation of EU legislation). The EU Reform Group has taken the research project's principal conclusions and recommendations into account. This includes securing more efficient influence of the Danish Parliament on EU legislation by focusing on ex-ante scrutiny

of EU policy and early involvement. Moreover, the Danish Parliament should focus its efforts on the most important EU issues (see Section 7.8).

What will it take to create an engaged and informed debate on EU policy?

Lastly, the EU Reform Group examined how the Danish Parliament can help to promote an engaged and informed debate on EU policy. Increased engagement requires more interest and more knowledge. The respective concerns of politicians, the media and national population are interconnected. The challenge here is therefore not merely to find a way for the Danish Parliament to create the best possible conditions, under which its members can become actively engaged in shaping EU policy, but also to improve teaching about the EU in education systems, and promote public information and debate about the EU in Denmark. The recommendations in Section 5 address these challenges.

Why do we need to reform the way the Danish Parliament works with EU affairs?

Many of the challenges we face need to be resolved locally, regionally, nationally and at the European and global levels. Whenever a member of the Danish Parliament has to find solutions to the day-to-day difficulties faced by Danish citizens, companies and organisations, they cannot rely simply on looking at the provisions in Danish law or in the next year's Finance Act. Very often, the member has to look to Brussels.

In many areas, European regulation form important conditions for Danish politics. For example, if the Danish Parliament wishes to change the rules regarding the use of endocrine disrupting chemicals in cosmetics, incentives for companies to invest sustainably, the Danish labour market model, imposing taxes on multinational companies, energy labelling on refrigerators or jobs in small and medium-sized exporting companies, it must also consider the issue from a European perspective. Danish domestic politics does not take place solely in Copenhagen. To a great extent, our domestic policies also unfold in Brussels.

However, this is not reflected in the way the Danish Parliament processes EU legislation. Today, the European Affairs Committee exercises scrutiny of the incumbent Government's EU policies, and grants the Government mandates to negotiate with the Council on behalf of Denmark. Unfortunately, the European Affairs Committee is involved much too late – often at a point at which it is no longer possible to change anything. The sectoral committees, spokespersons and party leaders pay little attention to EU policy.

This is not to say that Danish interests are not represented at EU level. The Government and Danish stakeholder organisations put much effort into influencing future EU legislation and represent a wide range of Danish interests vis-à-vis EU institutions. They seek to influence decisions at any early stage, i.e. in the pre-legislative phase (green phase, see diagram below), during which the opportunities to exert influence are greatest.

However, the Danish Parliament is absent in the pre-legislative process. It enters the arena during the later stages of negotiations (yellow phase). Politicians elected to Parliament by the public play no part in what may be described as their primary task: representing the interests of the Danish public on topics that have direct influence on Danish citizens' everyday lives. This is a democratic problem.



To explain the diagram: The red line indicates the degree to which it is possible to influence draft EU legislation. The X-axis represents the time it takes to prepare, propose, negotiate, pass and implement legislation. Actions taken at EU level are shown above the X-axis. Actions taken in the Danish Parliament are shown below the X-axis. The Y-axis represents opportunities to exert influence on EU proposals. The line shows that the opportunities to exert influence are greatest in the green pre-legislative phase (before a proposal is presented), that there are fewer opportunities towards the end of the yellow phase when laws are negotiated and finally passed, and very limited opportunities to make changes in the red implementation phase.

Division of power in the Danish Constitutional Act

According to the Danish Constitutional Act, the Government and the Danish Parliament jointly hold legislative power in Denmark. When the Government expresses an opinion regarding European cooperation on Denmark's behalf, it expresses that opinion also on behalf of the Danish Parliament. When it comes to shaping common European legislation, the Danish Parliament is involved too late or not at all, even though these matters largely impinge on Danish domestic policies. Government ministers and the civil service contribute to the adoption of EU legislation in a wide range of legislative areas on Denmark's behalf. When negotiating EU matters of major significance, the Government must obtain a mandate from the Danish Parliament's European Affairs Committee. However, the Danish Parliament is often involved too late in the EU decision-making process when real opportunities to exert influence are very limited (see Section 3).

If we are to avoid undermining not only the division of power in Section 3 of the Constitutional Act but also members of the Danish Parliament's entitlement to introduce bills and other measures (Section 41), we need to redress the balance between the Danish Parliament's influence as a legislative power and the Government's freedom to act as Denmark's negotiator in the Council. One way to re-establish some of the legislative influence the Danish Parliament has lost is to ensure that the involvement of the Danish

Parliament in EU policy takes place much earlier and more frequently. Among other initiatives, this could be achieved if the Danish Parliament's scrutiny of EU issues resembled the national legislative process. This would apply to timing and thoroughness but also through a more active participation in the EU's pre-legislative work.¹

The Danish Parliament has free rein to introduce its own bills. In the so-called "Danish Maastricht Judgment"² (1998), the Danish Supreme Court ruled that the Danish Parliament could decide for itself whether the Government's participation in European cooperation should be conditional on more democratic control.

Danish Supreme Court Judgment on the Maastricht Treaty of 6 April 1998

"With regard to the question of whether the surrender of sovereignty in pursuance of the Accession Act is such that it contravenes the provision in the Danish Constitutional Act of democratic governance, the court notes that any submission of parts of the Danish Parliament's legislative power to an international organisation implies a certain encroachment on democratic governance. This was taken into account in the wording of stringent requirements regarding the adoption in pursuance of Section 20(2). With regard to the EU Treaty, supreme legislative power was surrendered to the Council, within which body the Danish Government can express its opinion on behalf of the Danish Parliament. It seems that the Danish Parliament itself is responsible for determining whether the Government's participation in European Union cooperation should be subjected to further democratic control."

Since the Maastricht Treaty, EU cooperation has been further intensified by a series of treaties, most recently the Treaty of Lisbon. In the Lisbon Judgment³, the Danish Supreme Court asserted that the Government is responsible for consistently monitoring that Denmark's participation in the EU takes place within the boundaries of the Constitutional Act and the constitutional principles of sovereignty associated with accession to the treaties.

The Constitutional Act builds on the premise that the Danish Parliament passes legislation via a Danish legislative process (Section 3 and Section 41), whereas there is a special regulation that applies to legislation via supranational organisations (Section 20), in which the Government represents Denmark (Section 19).⁴ Even so, one might question whether the primary regulation and the special regulation in

¹ Pursuant to the Danish Constitutional Act, the Danish Government and the Danish Parliament are both entitled to introduce bills and other measures. The Government's entitlement is stipulated in Section 21 of the Danish Constitutional Act, whereas the Danish Parliament's entitlement is stipulated in Section 41.

² Danish Supreme Court Judgment of 6 April 1998 in Case no. I 361/1997, Hanne Norup Carlsen et al versus Prime Minister Poul Nyrup Rasmussen.

³ U2013.1451H ruling of 20 February 2013.

⁴ In a report of the Constitutional Commission of 1946, a passage in an annex entitled 'Opinion regarding issues associated with Section 19 of the Danish Constitutional Act', written by Max Sørensen, reads: "One of the guiding principles in consideration of such issues should probably be that these functions of the state are exercised in ways that harmonise best with the general principles of the Constitutional Act pertaining to the exercise of state affairs, i.e. that, as far as possible, the principles of democratic governance shall be applied. This in turn means that Rigsdagen's (the first Danish Parliament) participation and control must be prescribed such that other matters of importance do not constitute a hindrance to them."

practice have exchanged places, due to the increasing importance of EU legislation.⁵ For these reasons, greater participation of the Danish parliament in the EU legislative process at a time when de facto influence is possible would coincide with the intents of the Constitutional Act.

Denmark's influence in the EU

It is crucial that the Danish Parliament agree on the objectives that Denmark should pursue as member of the EU. During the EU Reform Group's many discussions with various actors, it was stated that Denmark is largely a defensive, reactive player in the EU. When proposals introduced by the European Parliament, the Commission and other EU Member States do not match Danish opinions or interests or when such measures collide with the Danish opt-outs, our central administrative institutions and stakeholder organisations tend to proceed to oppose them.

This defensive approach is closely connected to the absence of a common Danish policy on Europe. The Danish Parliament has so far failed to formulate a set of common goals and a list of legislative measures Denmark should pursue at EU level. Moreover, there is no public debate on these matters. There is a lack of common understanding of what is important for Denmark and what Denmark hopes to achieve as an EU Member State. If Denmark is to play a more active and pro-active role, the Danish Parliament need to start the debate about Danish influence in the EU and discuss these matters publicly. There is an urgent need of creating a common foundation for promoting Danish interests in the EU. If the Danish Parliament does not play an active part in promoting Danish interests, Danish influence on the European agenda becomes weaker.

A broad parliamentary majority behind Danish European policy gives the Government the best possible working conditions in the EU. It is crucially important for Denmark's influence in the EU that Danish parliamentarians can exert influence on, understand and claim ownership of the decisions Denmark contributes to making in the EU. More influence on EU affairs requires more engagement in the Danish Parliament and prioritizing the issues that are most important to Danish interests. The opportunities of the Danish Parliament to influence EU decision-making are currently inadequately exploited. The inadequacies are associated with the enormous amount of EU issues that the Danish Parliament must scrutinize and a failure to prioritise.

However, it is also important that the Government have the best possible opportunities to promote Danish interests efficiently in the Council. This can best be achieved by formulating the Danish position at an early stage while still preserving flexibility in the negotiations. Several of this report's recommendations aim to create a better understanding in the Danish Parliament of how negotiations in Brussels actually take place. A better understanding would encourage wider ownership of the results of such negotiations.

If Denmark is to optimise its influence in the EU in the future, it is crucial to prioritise the issues that are most significant for Denmark by focusing efforts on the most important elements of these and engage the sectoral committees and political groups at an early stage while also restricting the volumes of papers and number of meetings to those that are strictly necessary. This practise should be established through close collaboration between the Danish Parliament and Government, and through early dialogue with external stakeholders.

⁵ For example, this might apply not only to areas in which the EU has exclusive competence (TFEU, Article 3), such as trade and competition policies, but also in collaborative areas in which the EU and its Member States share competence, such as agricultural and environmental policies, and where EU regulation is intensive.

The good news is that achieving influence in the EU is not necessarily difficult. The Commission is receptive to new ideas, and, in many contexts, Denmark is seen as a pioneering country that other Member States can learn from. The European Parliament functions as a symbiosis between politicians and stakeholders (in the broadest sense of the term, i.e. including NGOs, EU Member States' Governments, business organisations and many more). Members of national parliaments are also invited to participate and give input, formally and informally.

“The sooner Denmark expresses its position – even if it is only an interim opinion – the more influence it will enjoy. The best strategy is to get involved before the Commission introduces its proposal – and, bearing in mind that Denmark is a small member state, an early presence is even more important.” Jeppe Tranholm-Mikkelsen, Secretary-General of the European Council.