

# 22DK02 – Development of framework and methodology for prioritisation of the revision of existing legislation for digital-readiness



**Output 3 – summaries of outputs 1 and 2 for communication and dissemination purposes**

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## **Summary of Output 1: Analytical report on the current situation in Denmark with regard to the revision of legislation for digital-readiness**

In 2018, a broad political agreement was reached in Denmark to ensure that new legislation is “digital-ready.” For legislation to be digital-ready, it must comply with seven principles, namely: 1. Simple, clear rules; 2. Digital communication; 3. Possibility of automated case processing; 4. Consistency across authorities; 5. Safe and secure data handling; 6. Use of public infrastructure; and 7. Prevention of fraud and errors.

To support the effort and help implement the principles, a secretariat for digital-ready legislation was established within Denmark’s Agency for Digital Government. The secretariat is responsible for screening legislative proposals to ensure consistently high-quality impact assessments relative to the above principles and to counsel and advise the Ministries in drafting legislation that is digital-ready. However, the Secretariat’s scope focuses on newly proposed legislation. Accordingly, while new legislation is overall digital-ready, ***progress to date has been much slower regarding the ongoing review and revision of pre-2018 legislation from a digital-readiness and future-proofing standpoint.***

The OECD’s analytical report on digital-ready legislation in Denmark ***aims to map and review existing practices in Denmark for revising the stock of pre-existing legislation from a digital-readiness and future-proofing standpoint.*** It first assesses Denmark’s actions to ensure that new legislation is digital by default. Second, it discusses the regulatory stock’s importance for the success of digital-readiness-enhancing and public sector modernisation efforts. Third, it examines Denmark’s practices for ex post regulatory review generally and with a focus on digital readiness. Finally, it provides some preliminary recommendations for achieving digital-ready legislation goals in Denmark.

### ***Denmark’s experience in preparing digital by default legislation***

Between May 2018 and November 2022, the Secretariat for Digital-Ready Legislation screened 1253 primary acts of legislation and advised ministries on the drafting of 420 legislative proposals to ensure their digital readiness and assess public implementation impacts. Additionally, the Secretariat developed guidance materials to facilitate compliance with the principles for digital-ready legislation.

In general terms, while there is room for improvement, findings indicate a promising trend. Ministry representatives consider the Secretariat’s involvement in legislative preparation valuable. They also find informal dialogue and process co-ordination by the Secretariat beneficial in streamlining the legislative preparation process. However, there is still room for strengthening the focus on digital-ready legislation at an earlier stage of the decision-making process, including political agreements and negotiation processes.

### ***Why the regulatory stock and legacy legislation matter for modernisation efforts?***

Since the regulatory stock is far larger than the flow of new laws and regulations, ex post evaluations are essential for overall regulatory quality. Accordingly, the absence of a systematic review of pre-existing legislation often presents a significant obstacle to government efforts to modernise their digital infrastructure and leverage the advantages of contemporary digital services.

In Denmark, ex post evaluation is required for some laws, but there are no thresholds or criteria used systematically to identify regulations that will be evaluated. Ministerial officials’ decision

to undertake an ex post evaluation is based on the political importance of the legislation, but they have the liberty to decide what regulation ought to be evaluated as well as the depth of the evaluation analysis.

Stakeholders in Denmark argue that modernisation efforts are being hindered in certain areas due to the need of accommodating outdated legislation, particularly when it has evolved through piecemeal amendments over time without systematic reviews to ensure rules are digital-ready and future-proof. The Danish Public Administration Act, adopted in 1985, is an example of a legacy legislation that could be posing obstacles to the digitalisation of public services. Whilst meant to be technology neutral, the Act features several procedures that are difficult to digitalise in their existing form, such as public hearings and consultative procedures.

The OECD preliminarily identified policy areas within the purview of ministries such as Employment, Industry, Business and Financial Affairs, Taxation, Finance, Transport, and Interior and Housing for regulatory review. Across these areas, there is a substantial accumulation of legislation. While ministries traditionally accounted for most of the legislative production, agencies are increasingly involved. Notably, the average time since the creation of legislative sections varies among policy areas, with Interior and Housing having the shortest average time (6 years) and Transport the longest (9 years).

### ***Lessons learnt from Denmark's practices for ex post regulatory review***

Denmark has made important attempts to further develop and institutionalise ex post reviews of legislation. However, the integration of digital readiness assessments into ex post reviews remains sporadic, as these are rarely perceived as a priority by civil servants. Reviews often occur reactively, triggered by specific events such as scandals or failures, rather than being anticipatory and systematic.

Several political economy factors combined to an underdeveloped evaluation culture and appropriately institutionalised “feedback loops” tend to hinder ex post reviews. Furthermore, another obstacle relates to concerns regarding any potential broader discussions and political agreements stemming from ex post reviews.

Finally, there is insufficient representation of stakeholders' perspectives in Denmark's current approach to digital-ready legislation, and stakeholders are not being engaged early enough in the evaluation process.

### ***Preliminary recommendations***

- **Integrated and flexible assessment cycles, and systematic ex-post evaluations are a precondition for digital-ready legislation:** Further institutionalization, coupled with high-level political endorsement and increased visibility of ex-post evaluation of legislation, including its digital-readiness component, are essential. Ex-post evaluations should be articulated with the use of stakeholder engagement and regulatory impact assessment (RIA).
- **Ex-post evaluations for greater digital readiness should be guided by a holistic approach:** Efforts to promote the digitalisation of public services, and the regulatory changes that it entails, should be prioritised based on expected net benefits. Reviewing, revising, and simplifying areas of legislation that have been developed over the years in a patchwork way should be a priority. Attention should be paid to preventing digitisation from increasing complexity, while capitalising on digitally enabled opportunities for “hiding” complexities.
- **A robust and comprehensive methodology should be developed and coupled with appropriate oversight.**

- **Data strategies need to go hand in hand with digital-ready legislation efforts:** Since IT systems used by the government often depend on other data sources not in their possession, integration efforts are needed, as are agreements so data can be shared and used. Given the necessary investment and efforts in this area, those should be focused on areas offering the largest potential benefits.
- **Institutional coordination and knowledge management should be improved:** Systematic dialogue and cooperation across government ministries and agencies are crucial for knowledge sharing, as well as to bring about a shared understanding of key digital- and innovation-related regulatory challenges, opportunities, and potential actions to address them. Denmark could consider creating of a network of focal points/digital readiness "champions" in each ministry, leading to the development of a community of practice.

## Summary of Output 2: Methodology to identify the potential for the revision of non-digital-ready legislation and support the prioritisation exercise

*The report presents a methodology to support government officials identify non-digital-ready legislation in Denmark that should be considered as priority for legislative review.*

The methodology follows a two-steps approach.

- The **first step** consists of **high-level appraisal and filtering**, relying on quantitative text analysis and expert assessments.
- The **second step**, which involves more **in-depth assessment**, consists of a combination of “manual” data processing, interviews and deliberative/focus group assessment.

### **First step: high-level appraisal and filtering**

- **Purpose:** Provide an initial selection of legislation that may need to be considered as a priority for review and revision from a digital-readiness standpoint.
- **Scope:** Individual pieces of primary legislation.
- **Method:** Quantitative text analysis and expert judgement assessment.
- **Ranking approach:** flag-based approach, attributing a “flag” to pieces of legislation that may warrant priority consideration. Only “flagged” legislation should be considered for the step 2’s in-depth assessment (see below).
- **Proposed criteria and assessment methods:**

Table 1. Criteria and assessment methods for high-level appraisal and filtering

Criteria	Assessment method	Indicator	Flag attributed if the law
Simplicity and clarity: <i>readability</i>	Quantitative text analysis	LIX readability index	Contains at least 42% of sections showing LIX readability index values above 50 (meaning “very difficult”).
Simplicity and clarity: <i>references to other laws</i>	Quantitative text analysis	Number of references to other laws by tracking the number of “lov om”, “lovens”, and “Sætter i kraft” occurrences.	Presents at least one occurrence for one of the proxy terms for references to other laws.
Tech neutrality as measured by basic hindrances	Quantitative text analysis	Proxy terms in the legislation: “Brev”, “Anbefalet brev”, “Telefonisk”, “Telefax”, “Elektronisk post”, “Personligt fremmøde”, “Personlig underskrif”, “Kopi”, and “Stempel”.	Contains at least one occurrence for at least one of the proxy terms.
Review or sunset clauses included in legislation	Quantitative text analysis	Proxy terms in the legislation: “ophæves den” and “forslag om revision”	Includes neither a review clause nor a sunset clause

Age of legislation and/or amendment record	Expert assessment with proposal for Quantitative text analysis	Working group invited to advice on the indicator.	Working group invited to advice on the flag criteria.
Activities governed by the law	Expert assessment	<p>Assessment questions:</p> <ol style="list-style-type: none"> <li>1) Does the legislation have potential significant impacts on innovation?</li> <li>2) Does the legislation govern fast-growing or innovative economic activities (e.g. in the digital sphere)?</li> <li>3) Does the legislation affect a significant number of other laws (e.g. if other laws refer to lists, definitions, etc. contained in the law at hand...)?</li> <li>4) Does the legislation impose information or reporting obligations upon large numbers of compliance entities (e.g. tax filing, administrative declarations...)?</li> <li>5) Does the legislation govern the handling of individual files/cases (e.g. management of social benefits, subsidies...)?</li> </ol>	One flag to be attributed for each positive answer to the questions
Link to IT modernisation plans	Expert assessment	Assessment question: Whether the piece of legislation at hand is concerned by an IT modernisation plan.	Is deemed to be concerned by an IT modernisation plan.
EU Law transposition	Expert assessment	<p>Assessment questions:</p> <ol style="list-style-type: none"> <li>1) Does the regulation transpose, in full or in part, an EU Directive? (Yes/No)</li> <li>2) If "Yes" to 1), does this limit significantly the scope for revision of the law? (Yes/No)</li> </ol>	If the answer to both questions 1) and 2) is "No".
Volume of complaints	Expert assessment	Number of complaints.	If the volume of complaints over a given reference period exceeds the average number of complaints in the policy area over the same period.

## Second step: in-depth assessment and deliberation

- **Purpose:** General “reality check” and complement to the results obtained after the high-level appraisal and filtering.
- **Scope:** Combination of “manual” data processing, interviews, and deliberative/focus group assessment.
- **Scoring approach:** Partial scores are computed for each assessment criterion. A scale-based approach ranging between 0 and 2 is proposed, with higher scores indicating higher revision priority. The sum of partial scores (Sn) will constitute the overall score (S) for the piece of legislation under consideration.
- **Assessment method:** expert assessment.
- **Proposed criteria:**

Table 2. Proposed criteria for in-depth assessment

Criterion	Score = 0	Score = 1	Score = 2
<b>Automated case processing</b>	The law makes possible fully automated case processing.	The law makes possible partly automated case processing. Verification and checks required.	The law does not make possible automated case processing. Manual case management and/or discretionary judgement by case worker required.
<b>Digital communication with business and citizens</b>	The law makes possible full digital communication between public sector authorities and business and citizens. The law foresees alternatives to digital communication (if appropriate).	The law makes possible partial digital communication between public sector authorities and business and citizens. Some hindrances to digital communication remain, e.g. it lacks clarity regarding what should be communicated digitally; it does not take due account of future technological development; it does not contemplate alternatives to digital communication even though they would be necessary...	The law does not make possible digital communication between public sector authorities and business and citizens.
<b>Use of digital solutions compliance monitoring and fraud prevention</b>	The law makes it possible to collect and process all the necessary information from public registers to monitor compliance and prevent fraud and errors, and does not present any legal obstacles to effective IT application for compliance monitoring or control purposes.	The law makes it possible to collect and process some of the necessary information from public registers to monitor compliance and prevent fraud and errors. It is unclear whether it presents legal obstacles to effective IT application for compliance monitoring or control purposes.	The law presents clear legal obstacles to effective IT application for compliance monitoring or control purposes.
<b>Proportionality of measures informed by risk profile</b>	The regulation is fully risk-based.	Part of the regulation is risk-based	The regulation is not including any risk-based component