

## **Consideration of EU matters in the Folketing - a summary**

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# Consideration of EU matters in the Folketing

## - a summary

### 1. Introduction

The purpose of this summary is to give a complete overview of the procedures which apply to the Folketing's consideration of EU matters.

The formal basis

The consideration of EU matters in the Folketing is based on the 1972 **Danish Accession Act** ("tiltrædelsesloven") governing Denmark's accession to the European Communities (with subsequent amendments) and the **reports** issued continuously by the European Affairs Committee since 1973. In addition, the **Standing Orders of the Folketing** give guidelines on the consideration of EU matters in the European Affairs Committee and the sectoral committees.

Section 6(2) of the Danish Accession Act (as amended by the ratification of the Nice Treaty in 2001) stipulates that:

*"The Government shall inform the European Affairs Committee of proposals for Council decisions which shall apply directly in Denmark or whose implementation requires the participation of the Folketing".*

This duty of information has been clarified and extended considerably by the adoption of reports ("beretninger") from the European Affairs Committee of the Folketing. The reports contain, for instance, the key provisions regarding the mandate sought in the European Affairs Committee. All reports in relation to the Government's **duty to inform, procedures etc.** have been agreed with the Government.

Consolidated report

In total, the European Affairs Committee has produced more than 25 reports concerning the Committee's procedures for considering EU matters. As previous reports and the provisions contained therein remain in force, it can be difficult to get a complete overview of current procedures. The so-called consolidated report makes up for this, partly by consolidating applicable rules and procedures, partly by compiling established practice in key areas<sup>1</sup>.

## 2. The role of the European Affairs Committee (proposed negotiating position etc.)

The powers and responsibilities of the European Affairs Committee comprise matters which are the subject of proceedings in **the European Union** and **the World Trade Organization** and extend to the coordination of proceedings in the Folketing concerning such matters, cf. the Standing Orders of the Folketing. The consideration of WTO matters is described in Section 10.

### 2.1. Consideration of EU matters in the European Affairs Committee (procedures etc.)

The European Affairs Committee **considers items on the agenda of the Council of Ministers**. In principle, this happens at the weekly Friday meeting of the Committee, where the relevant Ministers present the items on the agenda of the following week's Council meetings. In order to facilitate preparing for the meetings, the Government will circulate a summary memorandum to the members of the European Affairs Committee and the relevant sectoral committee(s) eight days before the Committee meeting<sup>2</sup>.

Proposed negotiating positions are presented orally

The summary memoranda should be composed in such a manner that reading them alone will suffice to prepare members of the European Affairs Committee for the meeting. This presumes that the summary memorandum is an updated version of the basic memorandum, if a basic memorandum was indeed drawn up<sup>3</sup>. Please refer to Section 9 and Annex 3 for a more detailed description of what the memoranda must contain, including basic and summary memoranda. The Government will present matters to the European Affairs Committee **orally**, either for information or in order to secure its proposed negotiating position. The Government will **inform** about matters of **considerable importance** but **present** its **proposed negotiating position** in the case of decisions of **major significance**<sup>4</sup>. The Government decides which EU matters fall within each of the two categories<sup>5</sup>.

A proposed negotiating position is presented to the European Affairs Committee before the Danish position is determined (e.g. in connection with an agreement at first reading between the Council and the European Parliament)<sup>6</sup>.

Dual consideration

Generally, the Government shall inform the European Affairs Committee in a manner respecting both the **influence of the Folketing** and **the freedom of the Government to negotiate**<sup>7</sup>.

There are no votes as such in the European Affairs Committee. If, based on the Committee's deliberations, the Chairman concludes that

**he has not established the existence of a majority against the proposed negotiating position**, the Government shall negotiate on that basis<sup>8</sup>. The Committee chairman will base his vote count on how many Members of the Folketing the respective parties' members on the Committee represent. Once approved, the proposed negotiating position is often referred to as the **negotiating mandate**, or just **mandate**, granted by the European Affairs Committee.

Annex 2 contains a more detailed description of the voting rules in the European Affairs Committee.

Verbatim transcription

The Government's proposed mandate is transcribed verbatim in the Committee's own minutes<sup>9</sup>. The Minister of Foreign Affairs has stated that the Committee minutes, even if transcribed verbatim, cannot bind the Government in constitutional terms.

The meetings of the European Affairs Committee are open to the public

In principle, the meetings of the European Affairs Committee are **open** except where the interests at stake in the negotiations are such that the Committee is required to sit in private. The European Affairs Committee and the Government decide jointly which matters to consider behind closed doors<sup>10</sup>. See also Section 7 about openness and transparency in the consideration of EU matters.

## 2.2. Early submission and proposals for revised mandates

The Government undertakes to provide the European Affairs Committee, at the earliest possible date, with continuous information about consideration of proposals of major significance<sup>11</sup>. This information could be given under "Matters arising" as a permanent item on the European Affairs Committee agenda in connection with the Government's ordinary presentations to the Committee.

Timing of presentation of proposed negotiating position

Proposals of major significance are presented to the European Affairs Committee with a view to seeking a mandate **before the Danish position is determined** (e.g. in connection with an agreement at first reading between the Council and the European Parliament).

The Government has informed the European Affairs Committee that it interprets the above sentence as follows<sup>12</sup>:

*"The Government shall endeavour to avoid the combination of proposed mandate and A point when presenting Council meeting agenda items. In connection with potential agreements on matters of major significance at first reading, it shall endeavour to present its proposed mandate prior to Coreper granting the Presidency a mandate to enter into agreement with the European Parliament. Furthermore, when during the first information round the European Affairs Committee has signalled a particular interest (under the item*

*"Matters arising"), the Government shall endeavour to present its proposed mandate even earlier."*

In the cases where the Government presents matters with a view to securing a negotiating mandate before the first reading in the European Parliament, the Government is requested to pay particular attention to informing the European Affairs Committee, in so far as possible, about the provisional position of the European Parliament. This information should be given in a summary memorandum with the Minister elaborating on the position during the Committee meetings.

In case no agreement is reached between the Council and the European Parliament at first reading, it is particularly important for the summary memorandum to indicate to what extent the proposal has changed fundamentally.

The Government agrees that, in those cases where the proposal on the Council agenda has changed fundamentally, it may be necessary to submit a proposal for a **revised mandate**<sup>13</sup>.

### **2.3. Consideration of matters concerning the EU Common Foreign and Security Policy (Second pillar)**

The above procedures apply to all matters falling under the supranational cooperation within the European Community (First pillar). As regards matters falling under the EU Common Foreign and Security Policy (Second pillar), the Government is obliged only to inform the European Affairs Committee<sup>14</sup>. However, there are instances of the Government choosing to submit CFSP matters with a view to securing a negotiating mandate. This happened, for instance, in the case of the weapons embargo on China presented to the European Affairs Committee on 18 March 2005 with a view to securing a negotiating mandate.

### **2.4. Consideration of matters concerning police and judicial cooperation in criminal matters (Third pillar)**

Matters concerning cross-border police and judicial cooperation (Third pillar) are considered in the Legal Affairs Committee and in the European Affairs Committee. Proposed mandates, if any, are submitted to the European Affairs Committee<sup>15</sup>. Framework decisions constitute a particular type of legislative act and were introduced by the Treaty of Amsterdam on 1 May 1999. They are used within EU **intergovernmental** police and judicial cooperation in criminal matters. The presentation of **proposed mandates** in relation to **framework decisions** is subject to **special rules** which have not been written into the reports of the European Affairs Committee but have been agreed with the Government in an exchange of letters<sup>16</sup>.

Special agreement on framework decisions

These rules mean that the Government **will not be seeking a negotiating mandate in the European Affairs Committee on framework decisions when these decisions will be considered by the Folketing under Section 19 of the Constitutional Act** which states that the Folketing must consent to obligations under international law which entail changes in Danish law or are of major importance in any other respect.

The reason is that a framework decision is binding in international law from the time it is adopted in the Council, requiring no subsequent ratification. Consequently, if a framework decision entails **changes in law** or is of **major importance** in any other respect, the procedure under Section 19 of the Constitutional Act must be invoked **before** Denmark may participate in the adoption of a framework decision in the Council. In practice, this means that, when informing the European Affairs Committee prior to the relevant Council meeting, the Government must communicate its intention to make negotiations in the Council subject to parliamentary approval until the Folketing has adopted a motion for a resolution approving the draft framework decision.

However, invoking Section 19 of the Constitutional Act is not required when the framework decision neither entails changes in Danish law nor is of major importance in any other respect. **In the latter two cases the Government shall seek a negotiating mandate in the European Affairs Committee** if it concerns adoption of a matter of major significance.

It should be underlined that a framework decision can indeed be of major significance, cf. the reports of the European Affairs Committee, thus requiring submission with a view to securing a negotiating mandate, even if the matter is not of major importance under Section 19 of the Constitutional Act and therefore does not require consideration by the Folketing.

## **2.5. Matters dealt with under the Comitology procedure<sup>17</sup>**

Information which the Government provides to the European Affairs Committee in connection with decisions made under one of the **comitology procedures** is subject to a number of special requirements. These procedures become relevant when a European legislative act delegates certain **implementing powers** to the European Commission. In reality, this concerns

1) major proposals for Commission directives, regulations and decisions adopted in regulatory committees and

2) proposals which are adopted in management committees where decisions of a more general nature are made.

In principle, the Government shall present matters to be adopted under the comitology procedure in accordance with the guidelines which apply to proposals adopted by decision in the Council of Ministers. This means that **matters of considerable importance** are presented in the European Affairs Committee for information while **matters of major significance** are presented with a view to securing a negotiating mandate.

Tight  
comitology  
procedure  
deadlines

Because of the tight deadlines which apply to consideration under the comitology procedure, the Government often will not have sufficient time to present matters of an informative nature at an ordinary European Affairs Committee meeting. In these cases, the Government may submit the matter in the form of a memorandum. This has, in fact, become established practice. The memorandum should be submitted to the European Affairs Committee and the relevant sectoral committee **as early as possible to allow both committees to react**, for instance by summoning the Minister to a consultation prior to the regulatory or management committee making its decision<sup>18</sup>. Matters of major significance where the Government will be presenting its proposed mandate must be put on the agenda of a European Affairs Committee meeting. If this cannot take place at an ordinary meeting, an extraordinary meeting must be called<sup>19</sup>.

Requirements  
of front cover  
information of  
comitology  
memoranda

The European Affairs Committee imposes a **number of requirements** on the layout of Government memoranda on matters for adoption under the comitology procedure. Thus, on the cover page of the memorandum it must be specified that this concerns a matter for decision under the comitology procedure, when the decision will be made in the committee, the Government's evaluation of the impact on the level of protection in Denmark and, finally, the Government's position on the matter<sup>20</sup>.

It must thus be stated whether the level of protection will be improved, remain the same or be reduced in the areas of health, safety, environmental protection, protection of the working environment and consumer protection<sup>21</sup>.

In the few matters dealt with under the comitology procedure which do not concern protection levels, it must also be specified on the cover page of the memorandum that the proposal does not concern the level of protection in Denmark<sup>22</sup>.

## 2.6. European Affairs Committee consideration of informal Council meetings<sup>23</sup>

Information about informal Council meetings

Prior to informal Council meetings, the Government will inform the European Affairs Committee about matters of considerable importance expected to be discussed. The Government will subsequently issue a written report on the course of the informal meeting. Such written reports may also be issued in case the European Affairs Committee has not received prior information about the matters discussed at the meeting. Government reports serve to ensure that the European Affairs Committee receives in-depth information about essential political discussions at informal Council meetings<sup>24</sup>.

## 2.7. Information about meetings in the European Council<sup>25</sup>

The European Affairs Committee is informed **before** and **after** summits

Twice during each EU Presidency, the Heads of State and Government will meet in the special configuration known as **the European Council**. The Folketing's consideration of these meetings follows **established practice** involving both the Foreign Policy Committee and the European Affairs Committee. Prior to meetings in the European Council, the Government will **consult** the Foreign Policy Committee. The European Affairs Committee is **informed** about the summits; the information includes the Government's position.

If the Government is of the opinion that it needs a negotiating mandate, it is common practice for the Foreign Minister to present a proposed mandate at a meeting of the European Affairs Committee prior to briefing the Committee on the forthcoming meeting in the European Council.

The proposed mandate will typically be presented in connection with the General Affairs and External Relations Council meeting at which the next summit is prepared.

After the European Council, the Government will report orally to both the Foreign Policy Committee and the European Affairs Committee on the course and outcome of the summit<sup>26</sup>.

The Minister of Foreign Affairs will submit to the European Affairs Committee copies of all European Council documents which the Ministry considers politically important. These documents are circulated to the Committee as annexes. The Ministry of Foreign Affairs will forward all other European Council reports and documents in electronic form to the Secretariat of the European Affairs Committee; interested members may request copies from the Secretariat. The electronic agenda of European Affairs Committee meetings also will contain links to all European Council documents received by the Secretariat<sup>27</sup>.

## **2.8. The procedure in relation to Intergovernmental Conferences<sup>a</sup>**

Prior to meetings in the European Council held in connection with an Intergovernmental Conference (IGC), the Prime Minister will provide thorough information about the major questions expected to be up for discussion. When the discussions can be expected to lead to decisions of major significance, the Government will present its proposed mandate orally to the European Affairs Committee in the usual manner. The same procedure applies to informal Council of Ministers meetings where major questions concerning the preparation of IGCs will be up for discussion.

All initiatives submitted in writing by other countries in relation to discussions about IGCs will be forwarded immediately to the European Affairs Committee.

Danish initiatives of major significance submitted in writing by the Government in relation to discussions about IGCs will be raised in the European Affairs Committee to secure the Government's mandate.

## **2.9. Informal briefing meetings at the Ministry of Foreign Affairs<sup>28</sup>**

In order to continuously update the Committee's knowledge of the EU and WTO, the Minister of Foreign Affairs will take the initiative to hold at least two annual informal briefing meetings, which will be open to independent experts.

## **3. The role of the Sectoral Committees (early involvement etc.)<sup>29</sup>**

The sectoral committees have the option of **early consideration** of major new Commission proposals within their respective spheres of competence (See Annex 1 of the Standing Orders on the sectoral committees). The decision on how to consider EU matters within their

Early  
involvement

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<sup>a</sup> Please refer to the European Affairs Committee report dated 31 August 1990. Please note that, on 10 September 1996, the European Affairs Committee produced a report on the procedure in relation to the 1996 Intergovernmental Conference (IGC). This report contained certain detailed provision, e.g. that: "All initiatives submitted in writing to the IGC shall be forwarded immediately to the European Affairs Committee, preferably in Danish or English but, if not available in either of those languages at the time, then in the original language. When the Danish version of such initiatives becomes available, it shall be forwarded to the Committee."

spheres of competence is up to the sectoral committees themselves. This may take the form of summoning the relevant Minister to a **consultation** prior to Council meetings, asking **committee questions** of the Government or contacting the Danish Members of the European Parliament.

Furthermore, the sectoral committees may report an **opinion** on individual proposals in support of the European Affairs Committee in connection with its subsequent position on the Government's proposed mandate. The sectoral committees may also report an opinion to the European Affairs Committee on Commission Green and White Papers and other consultation papers. Such an opinion will form the basis for the European Affairs Committee reporting a joint consultation response to the Commission on behalf of the Folketing, possibly jointly with the relevant sectoral committee(s).

Sectoral committees perform first subsidiarity check

In addition, the sectoral committees may perform an early check on whether major new legislative proposals comply with **the principle of subsidiarity**. This happens on the basis of a short Government **subsidiarity memorandum**, which must reach the European Affairs Committee and the relevant sectoral committee(s) not later than **two weeks** after the proposal is made available in a Danish language version<sup>30</sup> (See also the section on subsidiary checks below).

The European Affairs Committee performs the **final check** on whether major new proposals for European Union legislation comply with the principle of subsidiarity. This happens partly on the basis of Government basic and summary memoranda, partly on the basis of a recommendation, if any, from the relevant sectoral committee(s).

In support of both the European Affairs Committee's and the sectoral committees' consideration of Commission proposals for legislation and other major initiatives, the Government will draw up a **basic memorandum** on each initiative, which must reach the relevant sectoral committees and the European Affairs Committee not later than four weeks after the proposal has been tabled<sup>31</sup>.

In addition to a description of the Commission proposal, the basic memorandum will contain the Government's evaluation of the impact of the proposal on Danish legislation and the socio-economic situation. The basic memorandum also will contain the Government's provisional overall position on the proposal and its updated evaluation of compliance with the subsidiarity principle, as well as a summary of the responses from consultations involving industry and interest groups. Please refer to Section 9 and Annex 3 for more detailed **Requirements Specifications** for basic memoranda<sup>32</sup>.

#### 4. Subsidiarity checks<sup>33</sup>

As described in Section 3, the sectoral committees may perform an **early check** on whether **major** new EU proposals for legislation comply with the principle of subsidiarity. The check is performed on the basis of a Government subsidiarity memorandum. If a sectoral committee is of the opinion that a proposal is in breach of subsidiarity, it will make a recommendation to the European Affairs Committee. The European Affairs Committee will then subject the proposal to its own subsidiarity check on the basis of **the sectoral committee recommendation**. If there is a discrepancy between the recommendations of the European Affairs Committee and the sectoral committee, a joint meeting will be called. The **final recommendation** will be submitted to the Commission<sup>b</sup>.

#### 5. Information about legal proceedings against Denmark<sup>34</sup>

A special procedure as described below applies to information from the Government on possible legal proceedings by the European Commission against Denmark in the form of a **letter of formal notice**, possibly followed by **reasoned opinions** and **applications**.

A **letter of formal notice** constitutes the first administrative step by the Commission in a matter which it believes may give rise to proceedings at the European Court of Justice.

The European Affairs Committee will be kept informed about all Commission **letters of formal notice** to Denmark by brief communications from the Government about such letters. In matters which the Government deems particularly important, the European Affairs Committee will receive memoranda on the substance of the letter of formal notice and the Government's reply immediately after the reply has been submitted to the Commission. If requested to do so by the Committee, the Government will forward the actual letter of formal notice and its reply to the European Affairs Committee.

In those cases where the letter of formal notice procedure is not applied, the Government will inform the European Affairs Committee about legal disputes which arise as a consequence of Danish EU membership and which, in the opinion of the Government, are

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<sup>b</sup> The report dated 10 December 2004 on a procedure for the Folketing's subsidiarity checks stipulates a six-week limit on the consideration in the Chamber. The limit is based on the relevant provisions in the Treaty establishing a Constitution for Europe, including the Protocol on the application of the principles of subsidiarity and proportionality. The Treaty has not come into force.

Letters of  
formal notice

important and relevant. This could, for instance, apply to cases of unlawful state aid and misuse of national protective measures.

Reasoned  
opinions

The European Commission's letter of formal notice may be followed by its **reasoned opinion** in the event that the Commission is not satisfied with the reply from the Danish Government. The Government will provide continuous information to the European Affairs Committee about all reasoned opinions from the Commission as these constitute actual steps towards a possible court case. The European Affairs Committee will receive a memorandum on the substance of the Commission's reasoned opinion along with the Government's reply. Upon request from the Committee, the Government will forward the reasoned opinion and its reply to the opinion.

Applications

Commission **applications against Denmark** at the European Court of Justice and the Government's replies will be forwarded as memoranda to the European Affairs Committee for information. The forwarding of the application and reply will follow the same guidelines as above.

Confidentiality  
requests

If requested to do so by the Government, the European Affairs Committee shall treat as confidential the details of the legal proceedings contained in the memorandum. However, all letters of formal notice, reasoned opinions and applications will be **subject to confidentiality**<sup>35</sup> just as, in principle, Government replies are confidential.

The fact that legal proceedings against Denmark in a particular area have been instigated, or are being prepared, is not subject to confidentiality. The brief communications on letters of formal notice received are, therefore, not subject to confidentiality.

## 6. Consideration of Commission consultative documents (Green and White Papers etc.)

### 6.1. Consideration in Committee<sup>36</sup>

In support of the European Affairs Committee's consideration of consultative documents from the Commission, the Government will forward basic memoranda on all Green and White Papers and other major documents (communications etc.) where the Commission requests a consultation response<sup>37</sup>.

Consultation  
documents  
are put on the  
committee  
agendas

New consultation documents are put on the agenda of a European Affairs Committee meeting. The European Affairs Committee will then decide whether to consider the document itself or pass it on to the relevant sectoral committee(s) with a request that it/they consider the

matter. Once the sectoral committee response has been drawn up, it will form part of the European Affairs Committee's further considerations on whether to produce a consultation response and whether, before that, further consideration is indicated, e.g. in the form of a hearing, a consultation with the Minister concerned or an interpellation debate.

## **6.2. Consultation responses submitted to the European Affairs Committee by the Government**

It has been agreed that, when submitting consultation responses to the European Commission as part of its preparatory work on legislation, the Government will also forward them to the European Affairs Committee<sup>38</sup>.

## **7. Openness and transparency in the consideration of EU matters<sup>39</sup>**

### **7.1. Access to European Affairs Committee documents**

The vast majority of the documents which the Government forwards to the European Affairs Committee are **available to the public**; they are uploaded to the websites of the EU Information Centre and the Folketing when the EU Secretariat enters them in its records. A few documents contain confidential information and are therefore labelled "**Confidential**". These documents are not made public. Such documents may, for instance, comprise WTO matters or Commission **letters of formal notice**, reasoned opinions and applications, cf. Section 5: "Information about legal proceedings against Denmark".

Documents  
are available  
to the public

### **7.2. Openness around European Affairs Committee meetings**

The meetings of the European Affairs Committee should, in principle, be open. However, when dictated by the interests at stake in the negotiations, the Committee shall sit in private. The European Affairs Committee and the Government decide jointly which matters to consider in private<sup>40</sup>.

### **7.3. Confidentiality rules when sitting in private**

If the European Affairs Committee is sitting in private, the Folketing's general confidentiality rules on committee negotiations apply, cf. Standing Orders of the Folketing, Section 8(7).

Confidentiality in general comprises points of view, arguments and evaluations put forward by a member or a Minister during the Committee meeting. Factual information from the Committee meeting may, however, be passed on freely. It is common practice for a member to be allowed to quote his or her own opinions from a closed Committee meeting; equally, a member may also discuss the substance of a closed meeting with his or her party group. Confidentiality does not extend to information about which members participated in the Committee's consideration of a particular matter, nor to the outcome of a vote, including reference to which members voted for or against.

In certain circumstances, regard for e.g. the Government's negotiating position may dictate a more stringent application of confidentiality. Breaching this more stringent confidentiality may constitute a breach of criminal law. When, in a closed meeting of the European Affairs Committee, a Minister underlines the confidentiality of the information he or she is providing, it is an indication that, in this instance, the confidentiality goes beyond that defined by the Standing Orders of the Folketing<sup>41</sup>.

Fixed  
framework for  
meetings with  
Danish MEPs

### **8. European Affairs Committee cooperation with Danish MEPs<sup>42</sup>**

There are regular meetings between the European Affairs Committee and the Danish Members of the European Parliament. Meetings take place approximately once a month and are held immediately before the European Affairs Committee meets.

The Danish MEPs may contact the European Affairs Committee to propose that the Committee submit a committee question to a Minister. The European Affairs Committee may subsequently draw on the proposal if formulating a concrete committee question<sup>43</sup>.

## 9. The basis for decisions - Government memoranda<sup>44</sup>

In support of consideration of EU matters in the European Affairs Committee and the sectoral committees, the Government will submit the following types of memoranda:

- **Subsidiarity memoranda**

In support of the Folketing's subsidiarity checks, the Government will submit to the European Affairs Committee and the relevant sectoral committee(s) a **preliminary subsidiarity memorandum** on all major new proposals from the European Commission **not later than two weeks after the proposal has been submitted** to the Council in Danish. The memorandum must contain, inter alia, the Government's independent preliminary evaluation of the proposal's compliance with the subsidiarity principle.

- **Basic memoranda**

The Government will draw up basic memoranda on<sup>45</sup>:

- all new proposals for directives
- all new Green and White Papers and other major consultative documents (communications etc.)
- other proposals for legislation which, in the opinion of the Government, are important.
- Commission acts, adopted in the regulatory committees, which the Government considers important decisions of more general importance submitted to a management committee.

The Government will submit the basic memoranda to the Folketing at the latest when the Government begins to commit itself to positions in the Council working groups, however **not later than four weeks after the proposal has been submitted** to the Council in a Danish language version. Summaries of the responses from consultations with interest groups and others will be submitted as soon as they become available<sup>46</sup>.

The basic memoranda must contain, inter alia:

- the contents of the proposal in summary form
- a description of the main elements of the proposal, including its legal basis
- a description of existing Danish legislation and the impact of the proposal thereon

- the implications of the proposal for government finances, socio-economic matters and the environment and its impact on the level of protection in Denmark
- a section on the Government's provisional overall position on new Commission proposals
- to the extent it is possible and the positions are known, a section on the general expectations as regards other countries' positions
- a section containing an independent and exhaustive evaluation of the proposal's compliance with the subsidiarity principle (This element constitutes an update and potentially an elaboration of the preliminary subsidiarity memorandum submitted by the Government not later than two weeks after the proposal has been submitted to the Council in a Danish language version.)

- **Summary memoranda**

Summary memoranda on all items on the Council meeting agenda are submitted **not later than eight days before consideration in the European Affairs Committee**<sup>47</sup>. While containing the same type of information as the basic memoranda, the information in summary memoranda must be updated. A summary memorandum thus constitutes a collection of updated basic memoranda, provided the Government has previously drawn up basic memoranda on the individual items. As regards summary memoranda not preceded by a basic memorandum, i.e. concerning matters not of a legislative nature or not considered to be important, the summary memorandum should, in principle, contain the same information as a basic memorandum, though only to the extent the information is relevant<sup>48</sup>.

As regards the sections on the positions of the Government and other countries, these should be worded in general terms.

Changes on the basic memorandum must always be clearly marked, e.g. in bold typeface or with a line in the left margin.<sup>49</sup>

As regards matters decided by qualified majority, the summary memorandum should indicate whether the matter in question is expected to be put to the vote, whether Denmark seems likely

to be in a minority or whether Denmark may form part of a blocking minority<sup>50</sup>.

- **Supplementary memoranda**

The Government will submit supplementary memoranda if proposals undergo major change during consideration, for instance in cases where the Commission makes major changes to the proposals<sup>51</sup>.

- **Reports from Council meetings**

The Government will submit **not later than five working days** after each Council meeting a written report with a brief description of the outcome of politically interesting matters and the result of any votes taken. This obligation **also applies to informal Council meetings** to the extent that they consider matters of considerable importance.

- **Outline memoranda**

Every six months the Government will draw up an outline memorandum on important future matters within the province of individual ministries.

- **Comitology**

In connection with the submission of documents considered under the EU comitology procedure, the Government must indicate on the cover page its evaluation of the impact of the proposal on the level of protection in Denmark and the Government's position on the proposal.

- **Section 2 Committee (agriculture) and Section 5 Committee (fisheries)**

The reports from the Section 2 and Section 5 Committees are forwarded to the Secretariat of the European Affairs Committee for Committee members to read, subject to confidentiality<sup>52</sup>.

- **Information on the implementation of directives etc.**<sup>53</sup>

The Government will inform the European Affairs Committee and, in parallel, the relevant sectoral committee on the implementation in Denmark of adopted directives etc. which were previously submitted to the European Affairs Committee with the Government's proposed mandate. The information is contained in a brief memorandum drawn up as soon as possible after the publication of a notice or similar instrument. The memorandum sets out which directive the notice relates to. The notice also contains a reference to the directive number

Memorandum  
minimum  
requirements  
are listed in  
Annex 3

published in the Official Journal of the European Union and to the COM number used when the European Affairs Committee considered the directive in question.

**Please see Annex 3** for a complete overview of the minimum requirements which apply to Government memoranda.

### **9.1. European Affairs Committee agendas<sup>54</sup>**

Prior to a meeting of the European Affairs Committee, the agenda is usually distributed in **four editions**. In the case of ordinary Committee meetings, distribution of the agenda follows a set pattern. Departures from the standard procedure set out below may occur, for instance, if the need for distribution of further versions of the agenda arises.

The first version of the agenda is distributed on the Wednesday of the week preceding the Committee meeting in question. The agenda contains a preliminary overview of the Council meetings to be presented at the Committee meeting.

The second version of the agenda is distributed on the Friday of the week preceding the meeting of the European Affairs Committee. This version indicates which items the Government expects to present with a view to securing its negotiating mandate. The items in question are marked with the Danish abbreviation for "expected mandate item". If an item is expected to be considered behind closed doors, it is marked with the Danish abbreviation for "consideration behind closed doors expected".

The third version of the agenda is distributed on the Tuesday three days before the European Affairs Committee meeting. The agenda now includes additional information, i.e. which Ministers are expected to present the individual items on the agenda, and which Ministers are responsible for individual items<sup>55</sup>. In addition, the Secretariat of the European Affairs Committee will have added relevant references to annexes.

The fourth edition of the agenda is distributed on the Thursday before the Friday meeting of the European Affairs Committee; against each agenda item is an abbreviation indicating which items will be presented with a view to **securing a negotiating mandate** and which items will be considered behind **closed doors**.

The agendas of the European Affairs Committee are distributed as hard copy and in electronic form. The electronic version of the agenda is e-mailed directly to Committee members and substitutes and their secretaries. The electronic version contains links to all the European Affairs Committee annexes and Commission proposals referred to in the agenda.

The above procedure does not apply to presenting and reporting meetings in the European Council where, typically, there will be fewer versions of the agenda.

## **10. Consideration of WTO matters<sup>56</sup>**

It has been agreed that, **every six months**, the Government will brief the European Affairs Committee on **matters of considerable importance** expected to be considered in a WTO framework, including the work performed in World Trade Organization committees. The European Affairs Committee puts special emphasis on being informed on matters which may impact on the level of protection in Denmark in the areas of health, the environment, labour market and consumer affairs.

In addition to the six-monthly briefing, the Government will keep the European Affairs Committee informed on the work within the WTO if the ground is being prepared for major decisions of a political nature.

The Government will also present, on a continuous basis, those matters which are being considered at the WTO Ministerial Conferences and in the WTO General Council as well as the matters where the Commission additionally requires a negotiating mandate from the EU Council of Ministers.

The Government's presentation of WTO matters in the European Affairs Committee follows the same criteria as for EU matters. This means that the Government will inform the European Affairs Committee on matters of considerable importance while, in the case of decisions on matters of major significance, its presentation is aimed at securing a negotiating mandate.

Negotiating mandates are also sought in WTO matters

## **11. List of Annexes**

Annex 1

Standing Orders of the Folketing - the Standing Order on the involvement of sectoral committees in EU matters

Annex 2

European Affairs Committee voting rules

Annex 3

Minimum requirements of Government memoranda on EU initiatives

Annex 4

An overview of the memoranda drawn up and submitted to the Folketing by the Government

## **Annex 1**

### **Standing Orders of the Folketing - the Standing Order on the involvement of sectoral committees in EU matters**

In order to ensure early involvement of the Folketing's sectoral committees in the examination of the substance of EU matters, it has been written into the Standing Orders (Section 7(2) that EU matters form an integral part of the sectoral committees' spheres of competence<sup>57</sup>.

#### **S t a n d i n g   O r d e r s ,   S e c t i o n   7 ( 2 )**

The Standing Orders Committee lays down the rules on the spheres of competence of the committees, including EU matters. [...]

#### **T h e   S t a n d i n g   O r d e r s   C o m m i t t e e ' s   c o m m e n t s o n   t h e   S t a n d i n g   O r d e r s ,   S e c t i o n   7 ( 2 )**

Today, the vast majority of the sectoral committees consider EU matters. The sectoral committees receive the same documents and memoranda as the European Affairs Committee. Several of them are also actively involved in the Folketing's consultations on Commission Green and White Papers.

Furthermore, most sectoral committees have a tradition of summoning the relevant Minister to a consultation the week before a meeting in his or her respective Council of Ministers. In some cases, the sectoral committee also will draw up a written recommendation to the European Affairs Committee. However, at this late stage it is difficult to influence significantly the final elaboration of a Commission proposal.

Add to this that an increasing number of proposals are adopted after the first reading in the European Parliament; this also leads to increased pressure to involve the European Affairs Committee and the sectoral committees at an early stage.

Early examination of the substance in the sectoral committees will contribute to securing maximum influence in EU matters for the Folketing.

In order to increase the focus on EU matters, it has been proposed that the Standing Orders specifically mention that, as a natural part of their spheres of competence, the sectoral committees also should consider EU matters and do so early for maximum influence on the decision-making process.

## **Annex 2**

### **European Affairs Committee voting rules**

In some cases, the European Affairs Committee will follow the same voting rules as the other standing committees of the Folketing.

1) When considering proposals for legislation and motions for a resolution, the Committee will follow the same rules as other standing committees in respect of recommendations and minority opinions in the report etc., namely that only ordinary members are cited in the report.

2) When the Committee makes other decisions outside of the particular EU legislative process (e.g. the election of its chairperson and vice-chairman and votes on time of meetings), it will follow the common rules of the Standing Orders of the Folketing whereby only ordinary members are entitled to vote. In such cases, the ordinary members present thus decide the outcome.

Apart from the above voting situations, the European Affairs Committee does not, in actual practice, distinguish between ordinary members and substitutes.

In those cases where the Committee is performing the special task assigned to it under Section 6(2) of the Danish Accession Act, i.e. considering EU matters and deciding whether to grant the Government a negotiating mandate, no actual vote will be taken. Instead, the Chairman will draw his conclusion on the basis of the opinions expressed by the spokespersons of the individual parties. In drawing his conclusion, the Chairman will count the number of Members the respective parties have in the Chamber.

While it is the Government which conducts negotiations in the Council, the Folketing may influence the Government's negotiating mandate via the European Affairs Committee. This procedure gives the Government a reasonable degree of certainty that it will not face a vote of no confidence in the Chamber of the Folketing because of its position in the Council, provided it stays within the mandate granted.

**The rule is: The Chairman will conclude that "there seems to be no majority against the Government's proposed mandate", unless a sufficient number of spokespersons representing a majority in the Chamber oppose the Government position.**

Or, to put it differently: No mandate will be granted if a majority in the Chamber, as represented by their spokespersons in the European Affairs Committee, oppose it.

The particular form of voting employed in the European Affairs Committee has not been laid down in the Standing Orders. However, it has become established practice, followed by successive chairmen over many years without demur.

This practice builds on the assumption that the spokesperson represents his party, i.e. all members of the party in the Chamber would vote in support of the position expressed by their spokesperson.

The way the Chairman reaches his conclusion follows established practice whereby he will count the Members of those parties which have clearly expressed their opposition. If their Members in the Chamber number 90 or more, the Chairman will conclude that there is a majority against the Government's proposed mandate. If they number 89 or less, he will conclude that he has not established the existence of a majority against the proposed mandate.

The procedure means that a party does not count towards this "negative majority" in the following cases:

- 1) If the party spokesperson, while having made critical remarks, does not directly express his party's opposition to the proposed mandate
- 2) If the party spokesperson participates in the meeting but refrains from taking the floor
- 3) If the party's member(s) of the Committee do(es) not participate in the meeting
- 4) If the party is not represented in the Committee and has not indicated to the Chairman in advance that it is opposed to the actual proposed mandate. According to established practice, this rule also applies to non-attached Members who are not on the Committee.

### Annex 3

#### Minimum requirements of Government memoranda on EU initiatives<sup>58</sup>

Subject	Requirements
Type of document	The type of document must be indicated clearly, e.g. basic memorandum, supplementary memorandum or current memorandum.
Initiative title	The correct title must be indicated + its "popular name, if any, e.g. in the case of the food additives directive, popularly known in Denmark as the "Food make-up directive".
Distribution in parallel to sectoral committees	It must appear from the memorandum if it has been sent to one or more sectoral committees.
Identification	The COM number and procedure number must be indicated. If it concerns a revised proposal, the previous COM number also must be indicated.
Dates	Relevant dates must be indicated clearly, including the date the Commission adopted/tabled the proposal.
Legal basis	Relevant treaty provisions and an indication of which decision-making procedure applies, e.g. the co-decision procedure. If a matter falls under the comitology procedure, the memorandum must include reference to the enabling regulation or the directive on which the procedure is based.
Use of language	The style of writing used in the memoranda must be short, precise and easily understood, avoiding jargon.
Previous submission to the European Affairs Committee	Reference to previously submitted memoranda with an indication of dates as well as the dates of previous presentation(s) in the European Affairs Committee, with a precise indication of when the proposed mandate was presented.
Summary	Memoranda must always contain a brief summary of contents and expected impacts.
Contents	The contents of the proposal, limited to the important elements. In the case of amended proposals, the amendments must be indicated clearly.
Existing Danish legislation and the impact of the proposal thereon	A brief description of the existing Danish legislation, the changes which the proposal would entail, and whether the expected changes must be anchored in law or fall within the Minister's scope of authority.
Subsidiarity and proportionality	The Government will provide an independent and exhaustive evaluation of the proposal's compliance with the subsidiarity principle. (This element constitutes an update and potentially an elaboration of the preliminary subsidiarity memorandum to be submitted by the Government not later than two weeks after the proposal has been submitted to the Council in Danish.)
Impacts of the proposal	Impacts in the following areas: <ul style="list-style-type: none"> <li>• Government finances</li> <li>• Socio-economic matters</li> </ul>

	<ul style="list-style-type: none"> <li>• Environment</li> <li>• Protection levels</li> </ul> <p>The impacts on legislation must appear from the memorandum section concerning "existing Danish law and the impact of the proposal thereon".</p>
Consultation	<p>Indication of consultation partners. Brief summary of essential consultation responses, preferably in table form, including opinions expressed at the meetings of the Section 2 Committee (agriculture) and Section 5 Committee (fisheries). If consultation responses have not been received by the end of the four-week deadline for basic memoranda, the memorandum must indicate the consultation deadline fixed by the Government and the consultation partners to whom the document has been forwarded.</p>
Danish position	<p>The memorandum must indicate the Government's provisional general position on the EU proposal.</p>
Potential negotiating scenario	<p>As regards matters decided by qualified majority, it should appear from the summary memorandum whether the matter in question is expected to be put to the vote, whether Denmark seems likely to be in a minority, or whether Denmark may form part of a blocking minority. To the extent it is possible and the positions are known, the general expectations in respect of the positions of other countries must be indicated in both the basic and the summary memorandum.</p>
Danish decisions on European policy	<p>The memoranda must contain reference to relevant decisions on European policy adopted in the Folketing, e.g. proposals for adoption.</p>

#### Annex 4

#### An overview of the memoranda drawn up and submitted to the Folketing by the Government

<b>Type of memorandum</b>	<b>Context</b>	<b>Submission deadline</b>
<b>Preliminary subsidiarity memorandum</b>	Submitted for major new legislative proposals	Two weeks after the proposal has been submitted to the Council in Danish
<b>Basic memorandum</b>	Submitted for all proposed directives and other major legislative proposals and Commission decisions, as well as all Green and White Papers and other major consultative documents	Four weeks after the proposal has been submitted to the Council in Danish
<b>Summary memorandum</b>	Covers all items on Council meeting agendas	Eight days before the meeting of the European Affairs Committee
<b>Reports from Council meetings</b>	Drawn up after each Council meeting; also applies to informal Council meetings where essential political discussions have taken place.	Five working days after the Council meeting
<b>Six-monthly outline memoranda</b>	Drawn up every six months and covering important future matters within the province of individual ministries.	No deadline indicated
<b>Government consultation responses</b>	When submitting consultation responses to the European Commission as part of its preparatory work on legislation, the Government will forward them also to the European Affairs Committee.	No deadline indicated
<b>Information on the implementation of directives etc.</b>	When directives have been implemented in Danish law	As soon as possible
<b>Minutes of meetings in Section 2 and Section 5 Committees</b>	Forwarded to the Secretariat of the European Affairs Committee, subject to confidentiality	No deadline indicated
<b>Supplementary memoranda</b>	Drawn up if proposals undergo major change during consideration.	No deadline indicated
<b>Information about legal proceedings against Denmark</b>	Takes place under a special procedure, cf. Section 5	No deadline indicated

<b>European Affairs Committee agendas</b>	Prior to meetings of the European Affairs Committee, the agenda is normally distributed in four versions, cf. Section 9.1.	See Section 9.1
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## Notes

The name "The European Affairs Committee of the Folketing" ("Folketingets Europaudvalg") was adopted in 1994. From 1973 to 1994, the Committee operated under the name "The Market Committee" ("Markedsudvalget"). For practical reasons, the name "European Affairs Committee" has been used consistently in the notes below.

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- <sup>1</sup> It appears from the European Affairs Committee's report of 10 December 2004 that the EU Secretariat shall draw up such an overview.
- <sup>2</sup> European Affairs Committee report dated 19 February 1999
- <sup>3</sup> European Affairs Committee report dated 10 December 2004
- <sup>4</sup> European Affairs Committee report dated 29 March 1973
- <sup>5</sup> European Affairs Committee report dated 14 June 74
- <sup>6</sup> European Affairs Committee report dated 23 June 2006
- <sup>7</sup> European Affairs Committee report dated 29 March 1973
- <sup>8</sup> European Affairs Committee report dated 29 March 1973
- <sup>9</sup> European Affairs Committee report dated 24 June 1983
- <sup>10</sup> European Affairs Committee report dated 23 June 2006
- <sup>11</sup> European Affairs Committee report dated 23 June 2006
- <sup>12</sup> Exchange of letters between the Foreign Minister and the Committee Chairman dated 27 June 2006 and 9 August 2006, respectively.
- <sup>13</sup> European Affairs Committee report dated 10 December 2004
- <sup>14</sup> European Affairs Committee reports of 20 May 1994 and 10 May 2001
- <sup>15</sup> European Affairs Committee report dated 20 May 1994
- <sup>16</sup> Cf. letter from the Minister of Justice dated 8 May 2002 to the Chairman of the European Affairs Committee containing a "Memorandum on the submission of framework decisions to the European Affairs Committee". See also the 6 July 2002 reply from the Minister of Justice to questions from the European Affairs Committee on the procedure for the submission of framework decisions.
- <sup>17</sup> European Affairs Committee reports of 19 February 1999, 10 May 2001 and 10 December 2004
- <sup>18</sup> European Affairs Committee reports of 19 February 1999 and 10 May 2001
- <sup>19</sup> European Affairs Committee report dated 19 February 1999
- <sup>20</sup> European Affairs Committee report dated 10 December 2004
- <sup>21</sup> European Affairs Committee report dated 10 December 2004
- <sup>22</sup> European Affairs Committee report dated 10 December 2004
- <sup>23</sup> European Affairs Committee reports of 27 September 1996 and 10 December 2004
- <sup>24</sup> European Affairs Committee report dated 10 December 2004
- <sup>25</sup> European Affairs Committee report dated 28 May 1976
- <sup>26</sup> European Affairs Committee report dated 28 May 1976
- <sup>27</sup> The procedure in question for the distribution of European Council documents has not been formalized in a report; it is based on mutual understanding between the Ministry of Foreign Affairs and the European Affairs Committee.
- <sup>28</sup> European Affairs Committee report dated 24 June 1983
- <sup>29</sup> In relation to this section please see the European Affairs Committee reports of 19 February 1999 and 10 May 2001
- <sup>30</sup> European Affairs Committee report dated 10 December 2004
- <sup>31</sup> European Affairs Committee report dated 10 December 2004
- <sup>32</sup> European Affairs Committee reports of 10 September 1996 (Annex 3) and 10 December 2004 (Annex 1)
- <sup>33</sup> European Affairs Committee report dated 10 December 2004
- <sup>34</sup> European Affairs Committee report dated 16 July 1993
- <sup>35</sup> European Affairs Committee report dated 16 July 1993
- <sup>36</sup> European Affairs Committee reports of 19 February 1999 and 10 December 2004
- <sup>37</sup> European Affairs Committee reports of 19 February 1999 and 10 December 2004

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- 38 European Affairs Committee report dated 10 December 2004
- 39 European Affairs Committee report dated 10 December 2004
- 40 European Affairs Committee report dated 23 June 2006
- 41 European Affairs Committee report dated 29 March 1973
- 42 European Affairs Committee reports of 19 February 1999 and 10 December 2004
- 43 European Affairs Committee report dated 19 February 1999 and the 7 May 1999 report on amending the Standing Orders of the Folketing submitted by the Committee for Standing Orders
- 44 European Affairs Committee reports dated 10 December 2004, 19 February 1999 and 27 September 1996
- 45 European Affairs Committee reports of 27 September 1996 and 19 February 1999
- 46 European Affairs Committee report dated 10 December 2004
- 47 European Affairs Committee reports of 19 February 1999 and 10 December 2004
- 48 European Affairs Committee report dated 10 December 2004
- 49 European Affairs Committee report dated 10 December 2004
- 50 European Affairs Committee report dated 10 December 2004
- 51 European Affairs Committee report dated 27 September 1996
- 52 European Affairs Committee report dated 27 September 1996
- 53 European Affairs Committee report dated 27 September 1996
- 54 The administrative procedures referred to in this section are based partly on the European Affairs Committee report dated 10 December 2004 (Annex 3), partly on established practice derived from a mutual understanding between the European Affairs Committee and the Ministry of Foreign Affairs.
- 55 European Affairs Committee report dated 10 December 2004 (Annex 3)
- 56 European Affairs Committee report dated 14 March 1997
- 57 Parliamentary resolution B 81, 2004-2005 legislative year, 1st session
- 58 European Affairs Committee reports dated 27 September 1996 (Annex 3) and 10 December 2004.