Remarks to the Bill

General Remarks

1. Introduction

1. 1. Purpose of and background to the Mediation and Complaints-Handling Institution for Responsible Business Conduct

The proposal is an element of the implementation of the government's objective that Denmark should take the lead in terms of companies' global responsibility in relation to labour rights and human rights, international environmental standards and anti-corruption measures.

Increasingly, corporate social responsibility (CSR) is a parameter of international competition. Customers, investors and other stakeholders require companies to respect international principles, no matter where in the world they do business. When companies accept their social responsibility there is also increased potential for growth. Examples show that a company can plan its purchase of coffee beans, for example, in a way that creates value for the individual coffee farmer, for instance via training programmes and the delivery of quality plants and quality fertiliser. The company also achieves a quality product and better earnings from a larger and more homogeneous harvest.

Experience shows that cultivating activities of this type raises complicated CSR issues in relation to labour rights and human rights, international environmental standards and anti-corruption measures. If Danish companies are to make greater use of this growth potential they should have access to a Mediation and Complaints-Handling Institution that can settle CSR disputes.

The government furthermore expects Danish companies to conduct themselves responsibly when they do business in both domestic and global markets. The Mediation and Complaints-Handling Institution must therefore also be a body where CSR infringements can be raised, documented and published.

The OECD's Guidelines for Multinational Enterprises (Recommendations for Responsible Business Conduct in a Global Context) are CSR recommendations. The guidelines are not legally binding, but are CSR recommendations for companies, no matter where in the world they do business.

As an OECD member, Denmark is obliged to work for the dissemination of the guidelines, and for Danish companies' compliance with the guidelines. The government's objective is for Denmark to take the lead in terms of global responsibility in relation to labour rights and human rights, international environmental standards and anti-corruption measures. Therefore Danish public enterprises, government and regional authorities, as well as Danish private and public organisations, must also comply with the guidelines, since in many situations these entities operate in comparable situations to private companies.

The OECD's guidelines state that each country must create a so-called OECD national contact point (NCP). Denmark is fulfilling this obligation by creating the Mediation and Complaints-Handling Institution for Responsible Business Conduct.

The Mediation and Complaints-Handling Institution will

generally disseminate knowledge of the guidelines and consider cases concerning infringement of the OECD's Guidelines for Multinational Enterprises. It is therefore possible to complain to the Danish Mediation and Complaints-Handling Institution if a Danish company, for example, fails to comply with the guidelines.

In total, 43 governments, representing 85 per cent of foreign investments, have adopted the guidelines. All regions of the world are thereby represented. These governments encourage their companies to comply with the guidelines, wherever they operate.

On this basis, the purpose of the Bill is to create a Mediation and Complaints-Handling Institution that, quickly and effectively, can consider cases concerning infringement of international standards and principles for global CSR, cf. the OECD's Guidelines for Multinational Enterprises in force at any time. The guidelines describe what is considered to be CSR in relation to such themes as human rights, the environment, labour rights, etc.

The Mediation and Complaints-Handling Institution solely assesses compliance with the guidelines, and can offer alternative solutions such as mediation.

As a consequence, the fact that a case has been concluded by the Mediation and Complaints-Handling Institution, possibly by the parties themselves finding a solution to the case, does not exclude other authorities' powers to, for instance, invoke unlawful conditions, etc., including in any subsequent proceedings under criminal law.

In addition to considering concrete incidences of infringement, the Mediation and Complaints-Handling Institution also has the object of promoting the implementation of the OECD's Guidelines for Multinational Enterprises, and compliance by Danish companies, authorities and organisations. The Mediation and Complaints-Handling Institution must therefore also conduct activities that support the CSR efforts of Danish companies, authorities and organisations, for example as guidance in relation to the consideration of concrete cases, or in information and education activities.

The government attaches importance to creating the basis for responsible growth, in fellowship with relevant stakeholders. The Bill is closely related to the recommendations from October 2011 submitted to the government by the Council on Corporate Social Responsibility concerning what Denmark should do to live up to the UN's new recommendations from June 2011, as well as the aforementioned guidelines from the OECD. The government considers it to be a great strength that the Council is broadly composed, with representatives from commerce and business, trade unions and NGOs, and that the recommendations were adopted by a unanimous Council.

The OECD's Guidelines for Multinational Enterprises are an important starting point because the guidelines are an internationally recognised frame of reference for CSR that incorporates a large number of international standards and principles, including the UN's Guiding Principles on Business and Human Rights. The guidelines lay down what is expected of companies, globally and nationally, no matter where they operate, in terms of ensuring respect for labour rights and human rights, international environmental standards and anti-corruption guidelines, etc. In addition, the OECD's guidelines also create an overall framework for how companies can generally be supported in contributing positively to social, environmental and economic progress. For the government this entails that the requirements made of companies in this regard must also apply to authorities and organisations.

The OECD's Guidelines for Multinational Enterprises do not apply solely to multinational enterprises. The OECD's guidelines thus call on all enterprises, whatever their size, to comply with the guidelines.

1.2. Purpose and background to the amendment of the Financial Statements Act

The government attaches importance to Denmark being an international leader in promoting respect for human rights and limiting detrimental climate change. The challenges that the world community faces in relation to both human rights and climate change cannot be solved by the national states alone. It is vital that large companies in particular also become actively engaged in these areas. This is an issue that has received increasing international attention in recent years, and which will therefore be of great significance to companies' reputation in the future.

The government's evaluation of the companies' reporting practice shows that less than 40 per cent of large Danish companies report on human rights. Yet this does not mean that the companies do not respect human rights in their business activities, but that there is a need for more of them to report on their efforts. The evaluation also shows that 89 per cent of large companies report on the environment/climate as part of their annual CSR reports. There is nonetheless a need for companies to continue to develop their climate initiatives and reporting. The requirements of companies' climate reporting can be expected to be tightened in view of the increasing demand for information concerning, in particular, companies' strategies to limit CO2 emissions.

The purpose of the Bill is to further strengthen Danish companies' activities in relation to human rights and climate change. This will be beneficial to society overall, but will also benefit the individual company. For example, it will be easier for Danish companies to stand out from their competitors in global markets if Danish products and services are perceived as responsible and sustainable. The proposed disclosure requirements will create greater openness and thereby strengthen the opportunities of, among others, customers, investors, employees, the media and the local community to relate to the CSR initiatives of companies and investors, and in particular with regard to human rights and climate impacts.

For citizens, the Bill will entail greater transparency and clarity concerning a company's activities in relation to human rights and climate change. To the extent that the Bill will encourage the companies concerned to commence or further develop policies and activities within human rights, there can also be positive effects in relation to improving working conditions and the working environment, and in relation to local impacts from the company's activities both in Denmark and abroad, and in the company's business relations.

To the extent that the reporting requirement encourages more of the companies concerned to work on climate issues, the Bill may also lead to positive climate effects, for example via climate and environmental management and investments in environmental and energy-efficient technology to reduce companies' energy consumption and thereby their CO2 emissions.

In June 2011, the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights. The UN Guiding Principles on Business and Human Rights recommend states to encourage and, where appropriate, require companies to disclose how they relate to the human rights impacts of their activities. The UN Guiding Principles indicate that companies must report in the areas where there is a considerable risk of infringement of human rights – either as a consequence of the nature of the company's business activities, the geographical area in which the company operates, or the nature of the company's business relations.

The OECD has incorporated the new UN Guiding Principles on Business and Human Rights in its revised Guidelines for Multinational Enterprises that were adopted by the OECD Ministerial Council on 25 May 2011. This Bill will ensure that Denmark complies with the OECD's revised guidelines.

With regard to companies' climate impact, the Bill must also be considered against the background of the increased international focus on the need for companies to systematically include climate issues in their business strategy, evaluate their climate impact and report thereon to relevant stakeholders. The focus on companies' climate impact, and how they are affected by climate change, is expected to increase up to the UN's Rio+20 conference in June 2012.

Sharper international focus on the need for companies to systematically include climate issues in their business strategy and climate reports can be an advantage for Denmark. Denmark has already taken significant initiatives, in international terms, in relation to companies' general CSR reporting, with the provision in Section 99 a of the Financial Statements Act, and in relation to promoting companies' climate initiatives, with the so-called Climate Compass. The Climate Compass is a web-based tool that helps companies to measure their climate impact and prepare a strategy to limit this impact.

It will be a natural consequence of these initiatives to specifically require large companies to reflect on their initiatives in relation to both respect for human rights and climate change, and to report on these issues in their annual financial statements.

A survey by CBS (Copenhagen Business School) on behalf of the Danish Business Authority (formerly the Danish Commerce and Companies Agency) in autumn 2011 shows that a large proportion of companies report on environmental and climate issues, and that the proportion of companies that report on human rights is increasing. A statutory amendment entailing that companies must specifically consider their human rights and climate change initiatives and provide information thereon would support this positive development and contribute to even more companies reporting positively on their initiatives in these areas.

2. Content of the Bill

2.1. The Mediation and Complaints-Handling Institution for Responsible Business Conduct

2.1.1 Current law

Countries that have adopted the OECD's Guidelines for Multinational Enterprises are obliged to establish a national contact point (NCP). An NCP is an example of a non-judicial mediation and complaints institution. Currently 42 countries, including Denmark, have established NCPs.

The Danish NCP works for the OECD's Guidelines for Multinational Enterprises to be disseminated in Denmark and complied with by Danish companies all over the world.

Today, the NCP is placed in the Ministry of Employment. The Ministry has undertaken both the chairmanship and the secretariat function for the NCP. The NCP can consider cases concerning Danish companies that act in conflict with the OECD's guidelines. The NCP examines cases, possibly in cooperation with the points of contact of other OECD countries. The NCP also generally supports that the OECD's guidelines are respected. Private individuals, associations, NGOs, companies and other parties may bring cases.

The NCP in its present form does not live up to the recommendations of the Council on Corporate Social Responsibility.

There is no Danish statutory basis for the existing Danish NCP.

The government wishes to gather and focus the initiatives concerning Danish companies' CSR and compliance with international guidelines. Therefore, the tasks of the existing NCP are transferred to and continued in the new Mediation and Complaints-Handling Institution established in accordance with the recommendations of the OECD and the UN for non-judicial grievance mechanisms. The existing NCP will continue its work until the proposed new Mediation and Complaints-Handling Institution has been established. The Mediation and Complaints-Handling Institution will thereafter take over the consideration of any cases that have not been concluded.

2. 1. 2 Content of the Bill

2.1.2.1. The composition and location of the Mediation and Complaints-Handling Institution

The Danish Business Authority lays down the more detailed rules for the composition of the Mediation and Complaints-Handling Institution. The intention is to base the determination of the more detailed rules for the composition of the Mediation and Complaints-Handling Institution on the recommendations of the Council on Corporate Social Responsibility.

The Council on Corporate Social Responsibility recommends that the Mediation and Complaints-Handling Institution is composed of five members: a chairman, an expert member, and three organisation representatives that are all nominated by the Minister responsible. This will ensure that the Mediation and Complaints-Handling Institution can work quickly and effectively. In concrete terms, the Council proposes that the organisation representatives be nominated on the recommendation of the Confederation of Danish Industry (DI), the Danish Confederation of Trade Unions (LO) and the Danish 92 Group (Forum for Sustainable Development).

The Council furthermore recommends that the Mediation and Complaints-Handling Institution be independent of the political level, but that in future the administrative responsibility be held by a ministry. The Mediation and Complaints-Handling Institution will therefore be located in the Danish Business Authority, which also undertakes the secretariat function for the Council on Corporate Social Responsibility.

2.1.2.2. Consideration of cases by the Mediation and Complaints-Handling Institution

The government attaches importance to ensuring that any party against which a complaint is made has the opportunity to first seek a solution together with the complainant. If this is not successful, as a general rule a solution should be sought by mediation, led by the Mediation and Complaints-Handling Institution. Dialogue and mediation therefore play a central role in the consideration of cases by the Mediation and Complaints-Handling Institution. If mediation is not possible, or in the event of serious infringements, the Mediation and Complaints-Handling Institution must examine the case and consider whether an infringement has taken place. The Mediation and Complaints-Handling Institution does not have actual sanctions available, but may make a statement concerning the case. The Mediation and Complaints-Handling Institution may follow up on whether the party in question adheres to any requests.

The OECD's guidelines recommend that the Mediation and Complaints-Handling Institution 1) publishes a statement when a decision to refuse a case has been taken, 2) publishes a description of the solution that the parties have reached, if the case is resolved by mediation, 3) provides an assessment of the case with recommendations for how the guidelines can be complied with, if the case has been examined.

All of the Institution's statements will be published on its website after prior notice to the parties to the case.

In the event of the rejection of the case, the Institution will publish a brief statement with grounds for the rejection of the case, but without stating the names of the parties. The Institution's statements in the event of rejection will be published on the Institution's website, where they will be accessible until the Institution's annual report has been published. Hereafter the statements will be deleted from the Institution's website. The annual report will present statistics for the Institution's consideration of cases during the past year, but will not state the actual content of the statements.

On mediation by the Institution, the Mediation and Complaints-Handling Institution will publish a statement describing the case, and stating the key elements of the mediation result. The parties affected participate actively in the consideration of the case, but will also be consulted prior to the final publication of the statement. The Mediation and Complaints-Handling Institution will follow up on whether, one year after the conclusion of the case, any agreements reached as part of the mediation result have been complied with. If the parties have complied with the mediation result, the statement is deleted from the Institution's website.

On the publication of a statement on the basis of an investigation, the parties will be consulted concerning the Institution's statement and informed in good time prior to the final publication. Hereafter the statement will be published on the Institution's website. The Mediation and Complaints-Handling Institution follows up on whether any requests in the statement have been complied with one year after the publication of the statement. If the parties have complied with the requests, the parties are informed that the statement is deleted from the Institution's website. If the requests have not been complied with, the statement will remain on the website. The Mediation and Complaints-Handling Institution will follow up on the statement on an annual basis. If the requests have been met, the statement will be deleted from the Institution's website.

On the basis of the recommendations from the Council on Corporate Social Responsibility it is proposed that the Mediation and Complaints-Handling Institution's cases concerning infringement of the OECD's Guidelines for Multinational Enterprises are subject to the Access to Public Administration Files Act when the case has been concluded, unless the consideration of the case is concluded with the parties themselves having found a solution and thereby concluded the case. Reference is made to the remarks to Section 7 of the Bill.

2.1.2.3. Which cases are considered

The Mediation and Complaints-Handling Institution considers cases concerning infringement of the OECD's Guidelines for Multinational Enterprises. The criteria in this Bill for a case to be considered by the Mediation and Complaints-Handling Institution therefore follow the OECD's guidelines for the consideration of appeals in the NCPs.

It is vital that the party that brings the case can present

objective grounds for and reasonable documentation of the alleged infringement of the OECD's Guidelines for Multinational Enterprises, cf. the remarks to Section 4 of the Bill. When a case is considered by the Mediation and Complaints-Handling Institution this does not necessarily mean that an infringement has taken place, but solely that it has been shown to be sufficiently probable that an infringement may have taken place.

The OECD's guidelines do not state any further criteria for what is considered to be suitable documentation, but emphasise that it is the NCPs that decide whether the case in question is *bona fide,* i.e. that the complainant acts in good faith. Acting in "good faith" in this context means, among other things, reacting in time, maintaining confidentiality, where this is appropriate, and refraining from impeding the process and from threatening reprisals against the parties involved in the procedure. On the other hand, the parties should engage themselves in the consideration of the case in order to find a solution to the issues raised that is in accordance with the guidelines.

The Mediation and Complaints-Handling Institution should, among other things, base its assessment on whether there are objective grounds for and reasonable documentation of the alleged infringement, that there is a clear relation between the concrete case that is raised and the company's activities, for example, and how similar cases are considered nationally and internationally. Whether there are objective grounds and reasonable documentation must depend on a concrete assessment based on the documentation presented.

If a third party represents an involved party, documentation of this must be submitted, for example as a letter of authorisation. Experience from other countries' NCPs shows that it is most often a third party, such as an NGO or trade union, that submits a case. This is especially relevant in countries where the party concerned may not have the resources to contact the mediation and complaints institution itself, or is not expected to do so, due to fears of reprisals. The OECD's guidelines emphasise in this respect that the NCPs should consider grievances submitted by the business sector, trade unions, NGOs and other interested parties.

The Mediation and Complaints-Handling Institution may reject cases, for example due to insufficient documentation.

The Mediation and Complaints-Handling Institution may resume a case should there be special grounds to do so. This would, for example, be the case if new factual information emerges that is of such significance to the case that there is a certain probability that the case would have had another outcome if the information had been available on the Institution's original consideration of the case.

If the Mediation and Complaints-Handling Institution rejects a request for resumption of a case, the Mediation and Complaints-Handling Institution publishes a brief description of the request, with the grounds for the rejection. The parties to the case are named, unless the parties to the case are not named in the previous statements by the Mediation and Complaints-Handling Institution concerning the case.

2.1.2.4. The Mediation and Complaints-Handling Institution's basis for assessment

The Mediation and Complaints-Handling Institution shall consider whether the party concerned has infringed the OECD's Guidelines for Multinational Enterprises. Applying the OECD's Guidelines for Multinational Enterprises as the Mediation and Complaints-Handling Institution's evaluation basis will include the most significant element of all relevant international principles and CSR conventions, in particular the UN's new Guiding Principles on Business and Human Rights.

The purpose of the OECD's Guidelines for Multinational Enterprises is to encourage companies to use their ability to contribute positively to economic, social and environmental progress and to minimise any problems caused by their activities. The Mediation and Complaints-Handling Institution should keep this overall objective in mind. It should thus be included as a positive element in the assessment if the company demonstrates a real willingness to comply with the guidelines. The Mediation and Complaints-Handling Institution hereby also contributes to creating an incentive to comply with CSR expectations. The same applies to state or regional authorities and public or private organisations in comparable situations.

The global nature of the OECD's Guidelines for Multinational Enterprises makes them a common frame of reference for companies, no matter where in the world they operate.

The OECD's Guidelines for Multinational Enterprises recommend that the Mediation and Complaints-Handling Institution shall, among other things, receive approaches concerning both small and large enterprises. The activities of the Mediation and Complaints-Handling Institution are thus not limited to large multinational enterprises. The Mediation and Complaints-Handling Institution should be aware, however, that the OECD does not expect small enterprises to have the same level of due diligence as large enterprises. Although small enterprises usually have a simpler supply chain, they also typically have fewer resources than large enterprises.

The activities of small enterprises are increasingly part of the global production chain, however, and thus entail a risk that the enterprises, irrespective of their size, can have an adverse impact on the surrounding environment. The activities of small enterprises can thus potentially have a significant adverse impact, but the impact will usually be less than that from large companies.

The OECD's Guidelines for Multinational Enterprises contain a number of explanatory commentaries prepared by the OECD's Investment Committee. The Mediation and Complaints-Handling Institution can use these commentaries as a supplementary interpretation basis. The Mediation and Complaints-Handling Institution can draw inspiration for the Institution's consideration of cases from the cases considered by NCPs in other countries.

In cases of doubt, the Mediation and Complaints-Handling Institution can contact the OECD's Investment Committee and, to the extent relevant, cooperate with other

NCPs and international partners to promote a common understanding and positive development.

2. 1. 2. 5. Due diligence

A company's due diligence is a key concept in both the UN Guiding Principles on Business and Human Rights and the OECD's Guidelines for Multinational Enterprises. The concept is therefore also of key significance to the Mediation and Complaints-Handling Institution's assessment of the grievance. Due diligence is intended to minimise the risk of infringements in relation to the company's business activities. Due diligence entails that the company actively and methodically examines the risk of infringement of the OECD's guidelines in relation to the company's business activities, both within the company itself and in other companies on which it has an influence, such as suppliers, and takes measures to prevent the risk of such infringements. The same applies to state or regional authorities and to public or private organisations in comparable situations.

According to the OECD's Guidelines for Multinational Enterprises, companies should complete due diligence processes as part of their risk management and decision-making processes. In accordance with the OECD and the UN's definition of due diligence, companies should, in concrete terms, identify, prevent, mitigate and account for actual and potential infringements and adverse impacts.

When actual infringements are identified, the company should exercise any influence it may have – in collaboration with others, if applicable – to put an end to the infringement and ensure the necessary remedy for the affected party(ies).

Expectations of the company's responsibility thus cannot be limited to a pre-defined number of suppliers or a specific link in the supply chain. It is important to emphasise, however, that the intention is not to transfer responsibility from supplier to company.

While companies must, on the one hand, include due diligence in their decision-making processes, the OECD's guidelines also emphasise that the nature and scope of due diligence depend on the concrete situation and the particular circumstances of the individual company. In practice, the Mediation and Complaints-Handling Institution's assessment of whether the OECD's Guidelines for Multinational Enterprises have been infringed, and the concrete assessment of the company's responsibility, will be based in particular on whether the company has shown due diligence in relation to what can reasonably be expected of the company in the context in which it operates. The same applies to state and regional authorities and public or private organisations in comparable situations. In its "Guidelines for sustainable supply chain management" (June 2010) the Council on Corporate Social Responsibility has described in further detail which measures should be expected of companies and authorities in relation to the supply chain.

Companies, authorities and organisations working with processes for due diligence in relation to their business activities will be much better equipped to prevent infringements, thereby minimising their risk of being the subject of a complaint or investigation by the Mediation and Complaints-Handling Institution, and thereby possibly being criticised. Should the company, authority or organisation nevertheless be the subject of a case, the Mediation and Complaints-Handling Institution should base its assessment on how due diligence is dependent on the size of the enterprise in question, the business context and complexity, the seriousness of the infringement, whether the reason for the infringement is beyond the (potential) control and influence of the company, whether the company is dependent on the products or services in question, and finally, the consequences of breaking off cooperation or procurement in relation to the infringement, i.e. whether terminating the cooperation would impair or improve the situation.

Situations can thus arise in which the assessments of identical infringements differ according to the due diligence achieved by the company, authority or organisation, and the actual context.

For companies with many subsuppliers, and for small and medium-sized enterprises, due diligence can seem a daunting task. The Mediation and Complaints-Handling Institution must therefore ensure relevant guidance that expands and interprets the concept of due diligence in the OECD's guidelines, including in relation to specific areas such as human rights, labour rights, the environment/climate, and anti-corruption, etc. The guides should, to the relevant extent, be based on existing or planned international guide, especially from the OECD and UN.

In addition, the Mediation and Complaints-Handling Institution can, for example, prepare guidelines of a more general nature, possibly on the basis of concluded cases, in order to prevent similar cases.

2.2. Amendment of the Financial Statements Act

2.2.1 Current law

In accordance with Section 99 a of the Financial Statements Act, large companies are required to supplement the Management's Review with a CSR report. CSR means that companies voluntarily incorporate issues concerning human rights, social conditions, environmental and climate conditions, as well as anti-corruption measures, in their business strategy and business activities.

The report must be published as part of the Management's Review. A company may, however, instead provide the CSR report in a supplement to the annual report, or on its website.

If the company does not have CSR policies this must be stated in the Management's Review.

The current Section 99 a of the Financial Statements Act among other things lists the elements that can be part of CSR, in terms of human rights and climate issues. However, there are no specific requirements for the report to include information on respect for human rights and on policies to reduce the climate impacts of the company's activities.

2.2.2 Content of the Bill

The Bill proposes an expansion of Section 99 a of the Financial Statements Act concerning the CSR report to expressly include a report on the company's policies to respect human rights and policies to reduce the climate impacts of its activities.

The Bill concerns the companies that are already subject to Section 99 a of the Financial Statements Act – i.e. large companies subject to accounting class C and companies subject to accounting class D.

Concerning human rights and climate issues the reporting shall otherwise, in terms of content, adhere to the existing structure, cf. Section 99 a(2) 1) - 3) of the Financial Statements Act. The companies concerned may include any CSR report in the company's Management's Review. Alternatively, the company may place the CSR report in a supplementary report to the annual report, or on the company's website, in accordance with the current requirements in Section 99 a(3) of the Financial Statements Act. If the company does not have policies for human rights or climate issues, this must also be disclosed.

The expansion does not affect companies' opportunities to present their CSR reports - including on human rights and climate issues - on the basis of a concrete assessment of relevance. The reporting of human rights and climate issues thus does not deviate from the reporting of any other topic, with the exception of the requirement that the company must explicitly consider these two particular topics.

The requirement that the CSR report must explicitly include information concerning human rights and climate issues shall not lapse even if the company uses the opportunity to refer to a progress report in connection with accession to the UN Global Compact, cf. Section 99 a(7) of the current Financial Statements Act. If the progress report to the UN also includes human rights and climate issues, however, the company is not required to submit a separate report on these issues, in accordance with Section 99 a(2). It should be noted that the principles in the UN Global Compact include both human rights and environmental and climate issues, so that a UN progress report should include the company's activities in these areas.

Equivalent reporting requirements to those in this Bill will be introduced for institutional investors, mutual funds and stock-exchange listed financial enterprises (banking institutions and insurance companies, etc.) that are not subject to the Financial Statements Act. To a great extent the accounting regulations for these enterprises are laid down in Orders issued by the Danish Financial Supervisory Authority. The disclosure obligation concerning human rights and climate issues, as proposed in this Bill, will therefore, in respect of these companies, be determined in an Order laid down by the Financial Supervisory Authority. This can take place on the basis of the existing powers to lay down accounting regulations in the acts concerning these enterprises.

2.2.3 Supporting initiatives of relevance to the fulfilment of the reporting requirement

The government will contribute to Danish companies achieving a level of CSR that complies with the UN Guiding Principles on Business and Human Rights and the OECD's Guidelines for Multinational Enterprises by developing and disseminating tools and knowledge about CSR – including on human rights and climate issues - to Danish companies and their business associates. Among other things, this will take place by developing the existing tools that are available via www.csrgov.dk.

This work will focus particularly on helping companies to assess the significance of human rights and climate impacts to their business activities.

Supporting measures for companies' reporting on and descriptions of human rights include the UN Global Compact Self Assessment Tool and the CSR Compass.

With regard to supporting measures to promote companies' reporting on and descriptions of their climate impacts, the Climate Compass (www.climatecompass.dk) enables companies to measure their climate impact in accordance with internationally recognised principles (the GHG Protocol). The Climate Compass consists of a guidance section with advice on how companies can achieve energy savings and prepare a climate strategy, as well as a CO2 calculator with which companies can use a recognised method to calculate their climate impact measured in CO2 equivalents (CO2e). Companies can thus use the Climate Compass to achieve a series of important information to include in their reporting of climate issues.

3. Financial and administrative consequences for the public sector

The Finance Act for 2012 makes an annual appropriation of DKK 3 million to the Mediation and Complaints-Handling Institution for Responsible Business Conduct. It is assessed that the Bill does not otherwise have financial or administrative consequences for the public sector.

4. Financial and administrative consequences for the business sector

The establishment of the Mediation and Complaints-Handling Institution for Responsible Business Conduct is not assessed to impose administrative burdens on business enterprises.

This is because the administrative burdens in individual cases are not subject to the measurements of administrative burdens by the Danish Business Authority's Centre for Quality in Business Regulation (CKR). The basis for measurements by the AMVAB (Activity Based Measurement of Businesses) method is that all companies comply with and fulfil the regulations. Administrative burdens related to case administration concerning complaints, legal proceedings and process-related activities of that nature are therefore not quantified.

CKR assesses that the amendment of the Financial Statements Act will impose new administrative burdens on

the companies that report on CSR, but that have not previously reported on their policies on human rights and climate impacts. CKR does assume, however, that a large proportion of the companies that have activities that can be related to human rights or climate impacts already report on these issues in CSR reports under the current regulations. CKR cannot quantify the new administrative burdens at the present time, but CKR does assess that a limited number of companies will be required to expand their reports to include human rights and climate impacts. On this basis, CKR assesses that the administrative burdens in the overall economy as a consequence of the Bill will be minor.

Overall, the Bill is thus assessed to have only minor financial and administrative consequences for the business sector in the overall economy.

5. Environmental consequences

The requirement to report on climate impacts is expected to have a positive impact on the environment as a consequence of companies' reporting of and work on their climate impacts. The Bill otherwise has no environmental consequences.

6. Administrative consequences for citizens

The Bill has no administrative consequences for citizens.

7. Relations to EU law

The Bill does not include aspects of EU law.

8. Consulted authorities and organisations, etc.

AE (the Economic Council of the Labour Movement), ATP (the Danish Labour Market Supplementary Pension Fund), the Danish Breweries Association, Businesses for Social Responsibility/Europe, CSR Forum, Copenhagen Business School, the Association of Danish Law Firms, the Confederation of Danish Employers, the Danish Construction Association, the Danish Chamber of Commerce, the Danish Shipowners' Association, Danish Standards, the Danish Data Protection Agency, DIEH (the Danish Ethical Trading Initiative), the Confederation of Danish Industry, the Danish Association of Financial Analysts, EKF (Denmark's export credit agency), UN Global Compact, FSR (the Danish Association of State-Authorised Public Accountants), Dan Church Aid, the Danish Bankers Association, FA (the Financial Sector's Employers Association), First North, the Danish Insurance Association, the Danish Competition and Consumer Authority, the Greenland Home Rule, The Danish Federation of Small and Medium-Sized Enterprises, HK (the union of commercial and clerical employees), ICJ - International Commission of Jurists, the Federation of Danish Investment Associations, the Danish Institute for Human Rights, the Committee on Corporate Governance in Denmark, Local Government Denmark (LGDK), the University of Copenhagen, the Danish Agriculture and Food Council, the Knowledge Centre for Agriculture, DLBR (the Danish Agricultural Advisory Council), the Danish Association of Managers and Executives, the Danish Confederation of Trade Unions, the Employees' Capital Pension Fund, Nasdaq OMX Copenhagen A/S, Save the Children Fund Denmark, the Danish Accounting Standards Board, The Danish Mortgage Credit Association, the Association of Danish Mortgage Banks, Roskilde University, the Danish Council for Sustainable Business Development, the University of Southern Denmark, Verdens Skove (Forests of the World), VFSA (the Danish corporate forum for social responsibility), WWF, Aalborg University, Aarhus University, the Danish 92 Group (Forum for Sustainable Development.

9. Summary table

	Positive consequences/Reduced expenses	Negative consequences/Increased expenses
Financial and administrative consequences for the public sector	None	The Finance Act for 2012 makes an annual appropriation of DKK 3 million to the Mediation and Complaints-Handling Institution for Responsible Business Conduct.
Financial and administrative consequences for the business sector	None	It is assessed that there will be minor administrative consequences as a result of the work to report on human rights and climate issues.
Environmental consequences	It is assessed that the reporting on climate impacts will have a positive influence on the environment.	None
Administrative consequences for citizens	None	None
Relations to EU law	The Bill does not include aspects of EU law.	

Remarks concerning the individual provisions of the Bill

To Section 1

It is proposed in subsection 1 that the Minister for Business and Growth establishes a Mediation and Complaints-Handling Institution to consider approaches concerning compliance with the OECD's Guidelines for Multinational Enterprises in order to resolve disagreements and ensure ongoing CSR improvements.

In addition to considering concrete approaches concerning compliance with the OECD's Guidelines for Multinational Enterprises, the Mediation and Complaints-

Handling Institution shall also undertake activities to support the CSR initiatives of Danish companies, authorities and organisations.

It is proposed in subsection 2 that the Mediation and Complaints-Handling Institution is an independent body within public administration. The Mediation and Complaints-Handling Institution will thus conduct its activities independently of instructions concerning the consideration and conclusion of the individual case. The Mediation and Complaints-Handling Institution will thus not be subject to powers of instruction, control or similar from the Ministry of Business and Growth, or from other parties.

As a consequence, decisions of the Mediation and Complaints-Handling Institution may not be brought before another administrative authority. By decisions of the Mediation and Complaints-Handling Institution is meant all decisions related to the Institution's consideration of cases, including statements by the Institution.

It is proposed in *subsection 3* that the Mediation and Complaints-Handling Institution consists of a chairman, an expert member and three organisation representatives.

The chairman undertakes process-facilitating tasks in the initial phases and a decision-facilitating role in the concluding phase, if the conflict has not already been resolved.

The chairman shall assist the weaker party that may require special support, but also assist companies, for example, so that the chairman can help to conclude a case quickly and in a way that also takes account of the company's situation.

In particular, the chairman's role is to create a basis for mediation of the case, and to promote solutions via dialogue with the parties to the case.

The chairman holds the overall responsibility for the activities of the Institution, including in relation to mediation and the mediation results.

It is proposed in *subsection 4* that the members of the Mediation and Complaints-Handling Institution are appointed by the Minister for Business and Growth. The chairman is appointed for a term of four years, with the possibility of re-appointment. The other members of the Mediation and Complaints-Handling Institution are appointed for terms of three years, with the possibility of re-appointment. This ensures a gradual transition in the event of new persons being appointed, so that the accumulated experience can be passed on.

In *subsection* 5 the Danish Business Authority is proposed to be authorised to lay down more detailed rules for the appointment of the members of the Mediation and Complaints-Handling Institution and the qualifications of the members.

Rules will be laid down that the three organisation representatives shall be appointed on the recommendation of an organisation for the business sector, an organisation for employees, and an organisation for NGOs. The organisations should recommend representatives that have the knowledge and qualifications that make them suitable to contribute to the consideration of cases by the Mediation and Complaints-Handling Institution.

As far as possible, the chairman and the expert member shall have qualifications in the form of a relevant social science or legal background, and knowledge of CSR and in particular of recognised international guidelines in that area. The chairman shall furthermore, as far as possible, have experience from mediation, business experience, including from the global business world, and considerable personal integrity.

In principle the chairman represents the Mediation and Complaints-Handling Institution in its external affairs.

To Section 2

It is proposed in *Section 2* that the Danish Business Authority undertakes the secretariat function for the Mediation and Complaints-Handling Institution.

The secretariat of the Danish Council on Corporate Social Responsibility is also provided by the Danish Business Authority. The anchoring of the secretariat function for the Mediation and Complaints-Handling Institution for Responsible Business Conduct in the Danish Business Authority ensures coordination between the Mediation and Complaints-Handling Institution's activities and the preventive guidance and advisory services provided by the Council to the business sector. This also ensures efficient use of State funds, as well as synergy gains with regard to the other CSR work of the Danish Business Authority.

The Council on Corporate Social Responsibility is an independent council and the same is proposed with regard to the Mediation and Complaints-Handling Institution for Responsible Business Conduct, cf. the proposed Section 1(2).

The secretariat function will be undertaken in accordance with Section 1(2) of the Bill, in which it is proposed that the Mediation and Complaints-Handling Institution's activities are not subject to any instructions.

To Section 3

It is proposed in *Section 3* that the Mediation and Complaints-Handling Institution considers cases concerning infringement of the OECD's Guidelines for Multinational Enterprises that have either taken place in Denmark or concern Danish private or public enterprises or their business associates, state or regional authorities or their business associates, or private or public organisations or their business associates. Regional authorities shall comprise both regions and municipalities.

The Mediation and Complaints-Handling Institution considers cases concerning infringement of the OECD's Guidelines for Multinational Enterprises (Recommendations for Responsible Business Conduct in a Global Context) that are in force at any time. The OECD's revised Guidelines for Multinational Enterprises were adopted by the OECD Ministerial Council on 25 May 2011 and are published on the OECD's website: www.oecd.org. If the OECD's Guidelines for Multinational Enterprises are expanded or amended the Mediation and Complaints-Handling Institution may consider cases concerning infringements of the expanded or amended OECD's Guidelines for Multinational Enterprises. Cases concerning possible infringements that have taken place before new OECD's guidelines entered into force are assessed on the basis of the guidelines in force at the time of the alleged infringement.

It is proposed that the Mediation and Complaints-Handling Institution may consider a case on the basis of a complaint. The Mediation and Complaints-Handling Institution may also consider a case at its own volition if the Mediation and Complaints-Handling Institution becomes aware of possible infringements via other channels. In principle, the Mediation and Complaints-Handling Institution does not consider anonymous approaches, but the Mediation and Complaints-Handling Institution may consider the case at its own volition, based on a concrete assessment.

The OECD's Guidelines for Multinational Enterprises

distinguish between enterprises' initiatives in relation to:

a. Infringements that the enterprise has caused or has contributed to; and
b. Infringements to which the enterprise has not contributed directly, but which nonetheless can be related directly to the enterprise's activities, products or services.

If the enterprise is not the reason for the infringement of the OECD's Guidelines for Multinational Enterprises, but contributes to the infringement, the contribution should be of a considerable nature for the case to be considered. Whether a considerable contribution is involved is based on a concrete assessment in the case concerned. If the enterprise has not contributed to the infringement, but the infringement can be related directly to the enterprise's activities, products or services, a considerable infringement of the guidelines should be involved. The aforementioned applies to companies, authorities and organisations.

In *subsection 2* a Danish private or public company is proposed to be defined as a Danish private or public company that is domiciled in Denmark.

In *subsection* 3 Danish private or public organisations are proposed to be defined as private or public organisations that are domiciled in Denmark.

In *subsection 4* business associates are proposed to be defined as business associates, entities in the supply chain and other non-public or public entities that can be related directly to the business activities, products or services of the company, authority or organisation. This does not concern objective liability. However, the liability of the party concerned does extend further than, for example, a company's own entities and subsidiaries. According to the OECD's guidelines, a company's liability extends into the company's supplier and distribution chain. The Mediation and Complaints-Handling Institution may therefore become involved in cases that concern infringements that have taken place at one of the company's subsuppliers, for example. The principle is that the liability is the same for the entire supply or distribution chain. It is recognised internationally, however, that in practice, liability depends on several circumstances, including the size of the company concerned and its ability to exercise influence. There is no doubt, however, that there is a special obligation with regard to suppliers or distributors in the first instance, since in this case the party concerned has a direct contractual relation. This is also where there is a special opportunity to influence the party concerned via the contracts that are concluded. In principle, it is vital that the company concerned, irrespective of size, exercises the required due diligence by means of a number of relevant assessments and initiatives, see also clause 2.1.2.5 above, and hereby identifies and considers risks of infringement within its sphere of influence, cf. the Council on Corporate Social Responsibility: Guidelines for sustainable supply chain management (2010).

To Section 4

It is proposed in Section 4 that any party may bring a case before the Mediation and Complaints-Handling Institution on their own behalf, or that of a third party. When there is no physically wronged person, for example in the case of an infringement concerning the environment, the party shall conduct the case on the latter's own behalf. The complaint must be made in writing, and if the third party represents an affected party, documentation of this must be submitted, for example as a letter of authorisation.

In contrast to the consideration of cases before the courts, there is no requirement for the complainant to have a legal interest in the case before a case can be considered by the Mediation and Complaints-Handling Institution for Responsible Business Conduct. Cases may therefore be brought on the behalf of a third party that has been infringed by the action or omission, for example because the infringed party does not itself have the opportunity to submit the complaint.

The vital aspect is that the complainant submits objective grounds for and reasonable documentation of the alleged infringement of the OECD's Guidelines for Multinational Enterprises. The intention is to ensure balance between the consideration that anyone should in principle be able to bring a case, and that the Mediation and Complaints-Handling Institution must be able to reject complaints that can be regarded as harassment, for example. By objective grounds is meant that the case concerns matters described in the OECD's Guidelines for Multinational Enterprises. Reasonable documentation can, for example, be a description of the course of events, and any pictures, video documentation or similar.

The OECD's guidelines do not state any additional criteria regarding documentation, but emphasise that it is up to the NCPs to determine whether the concrete case that the approach concerns is *bona fide*, i.e. whether the complainant is acting in good faith and has fair intentions. Acting in "good faith" in this context means, among other things, reacting in time, maintaining confidentiality where this is appropriate, and refraining from impeding the process and from threatening reprisals against the parties involved in the procedure. On the other hand, the parties should engage themselves in the consideration of the case, in order to find a solution to the questions that are raised in accordance with the guidelines.

The Mediation and Complaints-Handling Institution should, among other things, base its assessment on whether there are objective grounds for and reasonable documentation of the alleged infringement, whether there is a clear relation between the concrete case that is raised and the company's activities, for example, and how similar cases are considered nationally and internationally. Whether there are objective grounds and reasonable documentation must depend on a concrete assessment based on the documentation presented.

The Mediation and Complaints-Handling Institution may reject the case if the Mediation and Complaints-Handling Institution deems that there are no objective grounds for and reasonable documentation of the alleged infringement of the OECD's Guidelines for Multinational Enterprises, including if it is deemed that the complainant is not acting in good faith, for example if the complaint is related to harassment, or the complaint must be considered to be unfounded. With regard to a rejection of the case, reference is otherwise made to the remarks to the proposed Section 5.

To Section 5

It is proposed in *subsection 1* that the Mediation and

Complaints-Handling Institution may refuse the case, after an initial assessment. This assessment is based on formal criteria, including written documentation, and whether there are objective grounds for and reasonable documentation of the alleged infringement of the OECD's Guidelines for Multinational Enterprises, cf. Section 4.

If the Mediation and Complaints-Handling Institution refuses to consider the case, it is proposed in *subsection 2* that the Mediation and Complaints-Handling Institution publishes a brief description of the case with grounds for the rejection, but without naming the parties to the case. Publication in which the parties to the case remain anonymous shall take place in such a way that it is not possible for the general public to identify the parties to the case on the basis of other information in the case.

If the Mediation and Complaints-Handling Institution refuses a request for the resumption of a case the Mediation and Complaints-Handling Institution publishes a brief description of the request, with the grounds for the rejection. The parties to the case are named unless the parties to the case are not named in the previous statements by the Mediation and Complaints-Handling Institution concerning the case.

To Section 6

It is proposed in *Section 6* that the complaint deadline for bringing a case before the Mediation and Complaints-Handling Institution is five years as from the date that the contested action or omission was discontinued. The complaint deadline is interrupted when a complaint is received by the Mediation and Complaints-Handling Institution, or when the Mediation and Complaints-Handling Institution raises a case at its own volition. The deadline for submitting a case is proposed to be set at five years in order to ensure an appropriate time frame that makes it possible to follow up on any infringements among the infringements stated in Section 3 of the Bill, with due consideration that these may be infringements that have taken place abroad, and which may concern environmental issues.

To Section 7

It is proposed in *subsection 1* that the company, authority or organisation shall be encouraged to resolve the case itself together with the complainant and within a pre-determined time frame. The Mediation and Complaints-Handling Institution does not publish anything concerning the case.

At this stage of the consideration of the case the Mediation and Complaints-Handling Institution has no obligation to ensure the investigation of the case in addition to the information provided by the parties to the case. It is thus the parties themselves that, within a private framework and outside the auspices of the Mediation and Complaints-Handling Institution, negotiate a solution to the case.

If the parties do not succeed in resolving the case, it is proposed in *subsection 2* that the Mediation and Complaints-Handling Institution undertakes a preliminary investigation of the case. At this stage of the consideration of the case, the Mediation and Complaints-Handling Institution has an obligation to ensure the investigation of the case to the extent necessary to determine whether the appeal is to be considered further or rejected. If the Mediation and Complaints-Handling Institution assesses, on the basis of the preliminary examination, that the case must be rejected the Mediation and Complaints-Handling Institution publishes a brief description of the case with the grounds for the rejection, but without naming the parties to the case.

If the Mediation and Complaints-Handling Institution decides to consider the case further, it is proposed in *subsection 3* that the Mediation and Complaints-Handling Institution can offer mediation to the parties. Mediation requires the consent of both parties. At this stage of the consideration of the case the Mediation and Complaints-Handling Institution has no obligation to undertake further investigation of the case, but the parties to the case may submit further information. At this stage of the consideration of the case the Mediation and Complaints-Handling Institution focuses on achieving a situation where mediation between the parties will be constructive and solution-oriented. A statement is published that the parties have requested the Mediation and Complaints-Handling Institution to mediate in a case. It will be stated that it has not been considered whether an infringement has taken place or not.

The parties are also encouraged not to conduct the case in public by making announcements in the media, etc. If this request is not observed this will be included in the Mediation and Complaints-Handling Institution's assessment of whether the parties have contributed constructively to the mediation process.

The chairman holds the overall responsibility for the mediation, including ensuring that the mediation results are in accordance with the OECD's guidelines.

If the case is resolved by mediation, the Mediation and Complaints-Handling Institution publishes a statement with a brief description of the case and the outcome of the mediation. The Institution's statement must consider explicitly whether the mediation result is in accordance with the OECD's guidelines. The Mediation and Complaints-Handling Institution follows up on whether any agreements in the mediation result have been complied with one year after the conclusion of the case and states whether the parties concerned have lived up to any agreements in the mediation result, or whether this is not the case. If the parties have complied with the mediation result the statement is deleted from the Institution's website.

It is proposed in subsection *4,* that the Mediation and Complaints-Handling Institution shall undertake an actual examination of the case in cases where the Institution does not offer mediation, the parties do not consent to mediation in the case, or the parties have not succeeded in finding a solution after a mediation attempt, or where there are possible gross infringements of the OECD's Guidelines for Multinational Enterprises, such as slavery, torture or particularly extensive environmental pollution. The Mediation and Complaints-Handling Institution may refuse mediation, for example if a party at the same time pursues

the case actively in the media.

It is proposed in *subsection 5* that a statement is published that the Mediation and Complaints-Handling Institution is investigating the case. With regard to the determination of requirements of this publication scheme reference is made to the remarks to the proposed Section 8. The investigation is planned on the basis of the Mediation and Complaints-Handling Institution's assessment. At this stage of the consideration of the case the Mediation and Complaints-Handling Institution has an obligation to ensure the disclosure of information in addition to the information already provided and the information submitted by the parties to the case. The Mediation and Complaints-Handling Institution shall investigate the case to an extent that makes it possible for the Mediation and Complaints-Handling Institution to make a statement concerning the case. The Mediation and Complaints-Handling Institution should, on the basis of a concrete assessment, obtain knowledge from institutions that have relevant and recognised expertise, including, for example, in relation to a specific professional or geographical area. This is particularly relevant in relation to cases that are matters of principle. The Mediation and Complaints-Handling Institution may furthermore perform inspection at the site where the alleged infringement is taking place or has taken place, for example.

The statement should include information concerning the parties to the case, the nature of the possible infringement and when a result of the investigation can be expected. The statement should furthermore include that it has not been considered whether an infringement has taken place or not. In order to protect the investigation, the parties are encouraged not to pursue the case in public.

On the basis of the Mediation and Complaints-Handling Institution's investigation the Mediation and Complaints-Handling Institution makes a statement concerning the case, cf. *subsection 6.* The Mediation and Complaints-Handling Institution follows up on the statement after one year and makes a new statement, stating either that the party concerned has lived up to the Mediation and Complaints-Handling Institution's statement concerning the case, or that this is not the case. If the party concerned has not lived up to the Mediation and Complaints-Handling Institution's statement concerning the case, the statement will remain on the website. The Mediation and Complaints-Handling Institution performs an annual follow-up on the statement. If the party concerned lives up to the Mediation and Complaints-Handling Institution's statement concerning the case the statement is deleted from the Institution's website.

The Mediation and Complaints-Handling Institution's statements are published. The Institution solely considers infringements of the OECD's guidelines and does not assess whether legislation has been infringed.

The purpose of the publication scheme is to implement the OECD's Guidelines for Multinational Enterprises. The OECD's guidelines recommend that the Mediation and Complaints-Handling Institution 1) publishes a statement when a decision to refuse the case has been taken, 2) publishes a description of the solution that the parties have achieved if the case is resolved by mediation, and 3) provides an assessment of the case with recommendations for how the guidelines can be complied with if the case has been investigated.

The scheme will furthermore increase consumer protection and improve the guidelines for consumers, as the information that is published will be relevant to the actions of individual persons in relation to health or environmental protection, and for ensuring that consumers, buyers, etc. can pursue their interests in relation to the companies, organisations and authorities concerning which information is published.

In addition, companies, organisations and authorities will be motivated to make a special effort to comply with the OECD's Guidelines for Multinational Enterprises, and thereby motivated to make a special effort in an area where infringements are not subject to sanctions in the classical sense in the form of taxes, fines or criminal penalties.

Infringement of the OECD's guidelines is overseen solely by the Mediation and Complaints-Handling Institution, which does not issue sanctions, but solely makes statements concerning a case. The statement in itself is to influence conduct and thereby also have a preventive effect with regard to compliance with the OECD's guidelines. The purpose of the scheme therefore cannot be fulfilled solely by the publication of statements in anonymous form, which means that the names of the parties will be included in the cases where the Institution makes a statement on the case.

Such publication may take place within the framework of the Danish Act on the Processing of Personal Data and the general rules of professional secrecy.

All of the Institution's statements are published on its website after prior notice to the parties to the case, see under 2.1.2.2.

To Section 8

In *Section 8* special provisions are proposed concerning publication in connection with the work of the Mediation and Complaints-Handling Institution.

The principle is that restraint and care must be exercised on any departure from the principle concerning the disclosure of public information. Nonetheless, it is proposed in *subsection 1* that cases are not subject to the Access to Public Administration Files Act until the consideration of the case has been concluded.

The provision in subsection 1 shall first and foremost protect the relationship of trust between the parties that can be necessary for the Mediation and Complaints-Handling Institution's further consideration of the case. Any publication of individual circumstances or documents at an earlier time could be detrimental to the relationship of trust between the parties and thereby impede the consideration of the case by the Institution.

In addition, there is found to be a requirement to protect the company, etc. that is the subject of a complaint, and to ensure reasonable terms for the company in question.

However, the information in the case will be subject to the access provisions of the Access to Public Administration Files Act, with the exceptions laid down in this Act, once the consideration of the case has been concluded. It is emphasised that the publication restriction only concerns the period of time until a case is concluded.

If the Mediation and Complaints-Handling Institution rejects a case after an initial assessment, cf. the proposed Section 5, the case is concluded when the Appeals Institution has published a brief description of the case with grounds for the rejection. If the Mediation and Complaints-Handling Institution sends the case to the parties with a request to resolve the case themselves, cf. the proposed Section 7(1), the case is concluded when the parties have found a solution and have informed the Institution thereof, cf., however, the exemption in the proposed subsection 2. If the Mediation and Complaints-Handling Institution rejects a case on the basis of a preliminary investigation of the case, cf. the proposed Section 7(2), the case is concluded when the Appeals Institution has published a brief description of the case with the grounds for rejection. If the Mediation and Complaints-Handling Institution mediates between the parties, cf. the proposed Section 7(3), the case is concluded when the parties have reached an agreement and the Mediation and Complaints-Handling Institution's statement has been published. If the Mediation and Complaints-Handling Institution undertakes an actual investigation of the case, cf. the proposed Section 7(4), the case is concluded when the Mediation and Complaints-Handling Institution's statement concerning the case is published, cf. Section 7(6), first clause. If the Mediation and Complaints-Handling Institution follows up on a previous statement or mediation result, cf. the proposed Section 7(3) and (6), the case is concluded when the Mediation and Complaints-Handling Institution's new statement is published. In this situation, solely the new documents and information in the case will be exempt from the access provisions, cf. Section 8(1).

Subsection 2 proposes an exemption to the general rule in subsection 1 whereby cases are not to be subject to the access provisions in the Access to Public Administration Files Act even if the case has been concluded, if the consideration of the case is concluded with the parties themselves finding a solution, cf. the proposed Section 7(1).

It is assessed that confidentiality is an important precondition for the parties to be motivated to achieve a constructive solution to the case at their own initiative. It is therefore proposed that the documents and information that may be held by the Mediation and Complaints-Handling Institution are also exempt from the Access to Public Administration Files Act after the conclusion of the case, cf. Section 8(2).

The aforementioned concerning Section 8 also applies in relation to the re-consideration of cases.

To Section 9

It is proposed in *Section 9* that the Danish Business Authority be authorised to lay down more detailed rules concerning the activities of the Mediation and Complaints-Handling Institution, including rules concerning the consideration of cases and the Institution's external communication, such as the publication of the Mediation and Complaints-Handling Institution's statements. Rules for the mediation procedure and for the investigation of the case will be included in the rules for the consideration of cases by the Institution.

Especially in view of the publication scheme, in order to protect the rule of law it is important that rules are determined for the activities of the Mediation and Complaints-Handling Institution that ensure the effective, rapid and reliable consideration of cases, but with due consideration of significant fundamental principles for the rule of law. Rules will thus be laid down concerning consultation and prior notification, as well as other rules concerning publication. The rules will be based on the recommendations from the Council on Corporate Social Responsibility.

Rules will be determined for the Mediation and Complaints-Handling Institution's decision-making process, including that decisions are taken by a simple majority, and that the chairman shall hold the casting vote in the event of a tied vote.

Rules will be determined that the Mediation and Complaints-Handling Institution may determine deadlines for the consideration of cases, including for the disclosure of information from the parties to the case and the consequences of non-compliance with the deadlines for the consideration of the case. The Council on Corporate Social Responsibility assesses that, as a general rule, a case can be concluded after six months, and after nine months if the case is subject to both mediation and subsequent investigation, cf. Section 7 of the Bill. The OECD recommends that a case be concluded within 12 months. The time frames of both the Council and the OECD are indicative and may be extended if it is assessed that this will be beneficial to the resolution of the case.

It will in addition be laid down that the Mediation and Complaints-Handling Institution may allocate advisers to one or both parties to a case. The purpose is to ensure that the mediation outcome is in the interests of both parties. The allocation of advisers is based on a concrete assessment of each individual case.

Rules will furthermore be laid down for the reporting of the work of the Mediation and Complaints-Handling Institution. The intention is for the Institution to prepare an annual report that is published and also discussed with the Council on Corporate Social Responsibility and the OECD's Investment Committee, in order to improve the work of the Institution.

Finally, it will be laid down that the Mediation and Complaints-Handling Institution may adopt rules of procedure within the framework laid down in the Act or in provisions issued pursuant to the Act.

To Section 10

It is proposed in *Section 10* that the Act shall enter into force on 1 November 2012.

The background to the proposed date of entry into force is that more detailed rules must be laid down for the activities of the Mediation and Complaints-Handling Institution, including rules concerning the consideration of cases, etc. Furthermore, the members of the Mediation and Complaints-Handling Institution must be appointed, and the organisation of the Mediation and Complaints-Handling Institution must be in place before the Act can enter into force.

The handling of tasks hitherto, which is undertaken by the existing NCP in the Ministry of Employment, will be taken over by the Mediation and Complaints-Handling Institution as from the entry into force of the Act.

It is proposed that *subsection 2,* which concerns the amendment to the Financial Statements Act, cf. Section 11 of the Bill, enters into force for financial years commencing on 1 January 2013 or later. This will ensure a clear framework for when companies must expect to be required to comply with amended reporting requirements. The companies are furthermore granted sufficient time to plan the work of preparing their annual financial reporting. The majority of the companies required to comply with the requirements of the Financial Statements Act are subject to a financial year that runs from 1 January to 1 December.

To Section 11

It is proposed that a new *subsection 3* be added to *Section 99 a* of the Financial Statements Act to stipulate that any CSR report must specifically include details of the company's policies to respect human rights and policies to reduce the climate impacts of the company's activities.

As stated in Section 99 a(1) of the current Financial Statements Act, large companies must supplement the Management's Review with a CSR report. CSR means that companies voluntarily integrate the consideration of, for instance, human rights, social conditions, environmental and climate impacts, as well as anti-corruption measures, in their business strategy and business activities.

If the company has policies for human rights or climate issues, or both, the report concerning these two topics must include the information stated in Section 99 a(2) of the Financial Statements Act which specifies the overall requirements of the content of the CSR report.

If the company does not have policies for human rights or climate issues, it is proposed that this must be stated explicitly by the company. The company is not required to state its reasons.

The provisions concerning dissemination and publication, cf. Section 99 a(3)-(7) of the Financial Statements Act, which as a consequence of the proposal to Section 99 a(3) become Section 99 a(4)-(8), shall likewise apply to policies for human rights and climate issues.

To Section 12

It is proposed that a provision be added that the Minister for Business and Growth will present proposals for the revision of all or parts of the Act on a Mediation and Complaints-Handling Institution for Responsible Business Conduct during the 2015-16 parliamentary year.

In the intervening period, the experience with the activities of this new Institution will be evaluated, and in this context it must be considered whether there is a need for adjustment of the regulations or other circumstances concerning the activities of the Mediation and Complaints-Handling Institution. The intention is, among other things, to obtain an OECD peer review concerning the work of the Institution, as the basis for the evaluation.

To Section 13

Section 13 of the Bill concerns the territorial delineation of the Bill. It is proposed that the Act shall not apply to the Faroe Islands and Greenland.

It is proposed, however, that the Act may be enforced in Greenland in full or in part by Royal Ordinance, subject to the amendments required by Greenlandic conditions.