

# **Coronavirus pandemic in the EU – Fundamental Rights Implications**

**Country:** Denmark

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# 1 Measures taken by government/public authorities

## 1.1 Emergency laws/states of emergency, including enforcement actions

Reference period: 21 March – 30 April (included)

On 30 March 2020, the Prime Minister announced the possibility of a controlled reopening of Denmark.<sup>1</sup> On 6 April 2020 the Prime Minister announced the government's plans of the first phase in a controlled and gradual reopening of Denmark; commencing on 15 April 2020 with the reopening of the country's early childhood education and care facilities, leisure facilities, and schools (until 5th grade).<sup>2</sup>

On 15 April 2020, the first phase of a controlled and gradual reopening of Denmark was initiated.<sup>3</sup> This involved the reopening of most early childhood education and care facilities and schools (until 5th grade) with certain precautions. On 20 April 2020 businesses with unavoidable customer contact such as hairdressers were also reopened. In addition, colleges and boarding schools (dormitories) were opened to students at the final stages of their education.

Some of the emergency laws and executive orders (*bekendtgørelser*) have been extended, and new ones have entered into force. The most central of these are mentioned in the sections below.

## 1.2 Measures affecting the general population

On 2 April 2020, a law toughening penalties for covid-19 related offenses entered into force. The law introduces a new section to the Criminal Code (section 81d) whereby several penalties may be increased up to double if the offense is based on or related to the covid-19-epidemic in Denmark, including offenses such as document forgery, theft and embezzlement. The penalty level is further toughened, and hence can become four times as high as the current penalty level, if the offense occurred under circumstances that unjustly obtained or sought to obtain a loan, credit, support, subsidy or similar compensation from relief packages to counteract damages by the covid-19 epidemic have been unjustly obtained or sought, cf. section 81 d (2). The level of fines imposed as a supplementary penalty for offenses relating to relief packages to mitigate the effects of the covid-19-epidemic is correspondingly increased, cf. section 81 d (3). Moreover, according to section 81 d (4), the law generally implies that it must be included as an aggravating circumstance if the offense is based on or linked to the covid-19 epidemic in Denmark. For instance, if a person steals 1.500 DKK worth of hand sanitiser from a hospital or similar, the penalty for first occurrence will be imprisonment 30 days according to case law. Section 81 d (1) presupposes that the penalty is increased to imprisonment 60 days. Further offences that are penalized by fines should according to section 81 d (1) be penalized with imprisonment in cases of subsequent offences or if the offence is committed under special circumstances, e.g. in the case of theft of protective equipment from hospitals (for a

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<sup>1</sup> Denmark, press conference, speech by the Prime Minister on 30 March 2020, available in Danish at: [http://stm.dk/p\\_14935.html](http://stm.dk/p_14935.html)

<sup>2</sup> Denmark, press conference, speech by the Prime Minister on 30 March 2020, available in Danish at: [http://stm.dk/p\\_14938.html](http://stm.dk/p_14938.html)

<sup>3</sup> Denmark, Danish Police (*Politiet*), Gradual reopening of Denmark (*Kontrolleret genåbning af det danske samfund*), available in Danish at: <https://politi.dk/coronavirus-i-danmark/seneste-nyt-fra-myndighederne/foerste-trin-i-kontrolleret-genaabning-af-det-danske-samfund>

smaller sum).<sup>4</sup> In addition, the law provides for the possibility of blocking websites from which certain criminal offenses are committed, which have a background in or is connected to the covid-19 epidemic in Denmark.<sup>5</sup> The law contains both an audit and a sunset clause. This implies that the Minister of Justice no later than 30 November 2020 must propose a revision of the law, while the law is automatically repealed 1 March 2021, unless the Parliament decides beforehand to extend it.

### 1.2.1 Social distancing

On 18 March 2020, events, activities and gatherings of more than 10 people were banned. This ban has been provisionally extended until 8 June 2020. Persons violating the ban are subject to a fine of 2500 DKK for first time offenders.<sup>6</sup> The ban does not prevent more than 10 people from being present and moving around, for example, in a shop, a supermarket, an airport or at a train station. Similarly, the general use of public transport (trains, buses, aircraft, ferries, etc.) and general presence at a workplace are excluded. The prohibition also does not apply if it is an assembly for a political or other purpose, including demonstrations or political meetings.<sup>7</sup>

On 20 April 2020 the government enacted a ban on gatherings of more than 500 people. The ban is valid until 1 September 2020.<sup>8</sup>

On 25 April 2020 at 21h00 the police issued a temporarily prohibition to stay in a zone at a popular waterfront at Islands Brygge, Copenhagen. The ban lasted until 1 May 2020 at 23h59.<sup>9</sup>

### 1.2.2 Education

Between 11 March 2020 and 14 April 2020, schools, universities, as well as most early childhood education and care facilities have been physically closed. However, a few childcare institutions have remained open for emergency caretaking (*nødpasning*) of children (0-9-year-old). The emergency caretaking was offered to children whose parents hold critical functions in society and for children with special socioemotional, pedagogical or treatment needs or social problems at home.<sup>10</sup>

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<sup>4</sup> Denmark, Ministry of Justice (*Justitsministeriet*), press release, 25 March 2020, available in Danish at: [https://www.justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2020/eksempler\\_paa\\_den\\_skaerpede\\_strafudmaalings\\_betydning.pdf](https://www.justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2020/eksempler_paa_den_skaerpede_strafudmaalings_betydning.pdf)

<sup>5</sup> Denmark, Act no. 157 of 2 April 2020 on amending the Criminal Code, the Danish Administration of Justice Act and the Danish Aliens Act (*Forslag til lov om ændring af straffeloven, retsplejeloven og udlændingeloven (Skærpet straf for lovovertrædelser med baggrund i eller sammenhæng med covid-19 og blokering af hjemmesider, hvorfra der begås visse lovovertrædelser, som har baggrund i eller sammenhæng med covid-19)*), available in Danish at: <https://www.retsinformation.dk/eli/ft/201913L00157>

<sup>6</sup> Denmark, Danish Police, Measures against COVID-19 in Denmark, April 2020, available in English: <https://politi.dk/en/coronavirus-in-denmark/extension-of-measures-during-the-covid19-outbreak-in-denmark>

<sup>7</sup> See also Denmark, Danish Police (*politiet*), available in Danish at: <https://politi.dk/coronavirus-i-danmark/seneste-nyt-fra-myndighederne/nye-tiltag-mod-spredning-af-covid-19-i-danmark>.

<sup>8</sup> Denmark, Executive order no. 456 of 20 April 2020 on prohibition of major assemblies for management of covid-19 (*Bekendtgørelse om forbud mod store forsamlinger i forbindelse med håndteringen af covid-19*), available in Danish at: <https://www.retsinformation.dk/eli/ta/2020/456>

<sup>9</sup> Denmark, Danish Police, news release, 25 April 2020, available in Danish at: <https://politi.dk/koebenhavns-politi/nyhedsliste/koebenhavns-politi-forbyder-ophold-paa-islands-brygge/2020/04/25>

<sup>10</sup> Denmark, Executive order no. 510 of 24 April 2020 on closure and gradual, controlled reopening of daycare facilities, schools, institutions, etc. and on emergency care in the management of coronavirus disease 2019 (COVID-19) (*Bekendtgørelse om lukning og gradvis, kontrolleret genåbning af dagtilbud, skoler, institutioner m.v. og om nødpasning i forbindelse med håndtering af Coronavirussygdom 2019 (COVID-19)*), available in

Municipalities were obliged to conduct outreach services, making sure that children in special need of emergency caretaking were offered the opportunity.

On 1 April 2020, special government funding (13,5 million DKK) was granted to several civil society organisations providing support and counselling services to especially vulnerable children and their families during covid-19.<sup>11</sup>

Since 15 April 2020, early childhood education and care facilities and primary schools (until 5<sup>th</sup> grade) have gradually and cautiously been opening.<sup>12</sup> Colleges and vocational programs including school periods, internships, and journeyman graduation reopened for teaching in the final year. Furthermore, some specific labour market courses reopened if the course was required to start a specific job. The re-opening have also included students referred to special education, special classes and the youth school regardless of grade level. Meanwhile, all children have been required to attend online classes (*fjernundervisning*) while schools have been physically shut down.<sup>13</sup> University students, high school students etc. are still required to attend classes online. Allegedly, online classes have been especially problematic to attend for immigrant children without a Danish social security number as this number has been necessary to access the online material.<sup>14</sup>

On 22 April 2020, the Danish Union of Teachers (*Danmarks Lærerforening*) published a study following a survey of emergency education during the corona crisis (*Undersøgelse om nødundervisning under coronakrisen*). One of the findings is that more than half of the teachers (58%) have students who do not attend emergency education. These students are largely students with academic and / or social challenges, students from vulnerable homes, students with a mother tongue other than Danish and / or students with special needs.<sup>15</sup> Red Cross Youth (*Ungdommens Røde Kors*) have initiated an online initiative to support children at home with their homework and who feel socially isolated.<sup>16</sup> However,

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Danish at: <https://www.retsinformation.dk/eli/lta/2020/510>; Denmark, The official guidelines for emergency caretaking (*Planlagte kriterier for nødpasning*), 13 March 2020, available in Danish at:

<https://www.uvm.dk/aktuelt/nyheder/uvm/2020/mar/200313-her-er-de-planlagte-kriterier-for-noedpasning>

<sup>11</sup> Denmark, Ministry of Social Affairs and the Interior (*Social og Indenrigsministeriet*), newsletter, 1 April 2020, available in Danish at: <https://sim.dk/nyheder/nyhedsarkiv/2020/apr/boernepakke-skal-sikre-hjaelp-til-udsatte-boern-under-covid-19/>

<sup>12</sup> Denmark, Executive order no. 510 of 24 April 2020 on closure and gradual, controlled reopening of daycare facilities, schools, institutions, etc. and on emergency care in the management of coronavirus disease 2019 (COVID-19) (*Bekendtgørelse om lukning og gradvis, kontrolleret genåbning af dagtilbud, skoler, institutioner m.v. og om nødpasning i forbindelse med håndtering af Coronavirussygdom 2019 (COVID-19)*)

<https://www.retsinformation.dk/eli/lta/2020/510> and The Danish Police in the gradual reopening of Denmark, available in Danish at: <https://politi.dk/coronavirus-i-danmark/seneste-nyt-fra-myndighederne/foerste-trin-i-kontrolleret-genaabning-af-det-danske-samfund>

<sup>13</sup> Denmark, Act no. 241 of 19 March 2020 on temporary measures in the children and education area and the free public awareness-raising activity to ensure prevention and mitigation in connection with covid-19 (*L 241 Lov om midlertidige foranstaltninger på børne- og undervisningsområdet og folkehøjskoleområdet og for den frie folkeoplysende virksomhed til forebyggelse og afhjælpning i forbindelse med covid-19*), available in Danish at: <https://www.retsinformation.dk/eli/lta/2020/241>

<sup>14</sup> Denmark, Article from the Danish newspaper Politiken, 3 April 2020, available in Danish at:

<https://skoleliv.dk/nyheder/art7730355/>Vi-kan-tabe-nogle-meget-udsatte-børn-på-gulvet<>

<sup>15</sup> Denmark, Danish Union of Teachers (*Danmark's Lærerforening*), Survey of emergency education during the corona crisis, 22 April 2020, available in Danish at: <https://www.dlf.org/nyheder/2020/april/undersogelse-om-noedundervisning-under-coronakrisen>

<sup>16</sup> Denmark, Red Cross Youth (*Ungdommens Røde Kors*), Corona Friends, available in Danish, at:

<https://urk.dk/CoronaVenner>

schools have not been closed for students with special needs, including students from vulnerable homes.

### 1.2.3 Work

On 20 April 2020, health clinics, private hospitals, health practitioners, and other businesses with unavoidable customer contact such as hairdressers, tattooists and driving instructors could reopen as two provisions in the executive order were revoked by the authorities.<sup>17</sup> The reopening of certain businesses concerned must follow requirements regarding the arrangement of the workspace such as a maximum of people allowed per square metre.<sup>18</sup>

Health care professionals, working in the sector for the elderly, police and others working with socially vulnerable groups are considered to perform 'critical functions' and are working following continuously revised guidelines from the Danish Health Authority (*Sundhedsstyrelsen*).<sup>19</sup> All persons working in the public sector not performing 'critical functions' have been sent home until 10 May 2020.<sup>20</sup>

The Danish Health Authority provides guidelines, posters and other materials regarding a safe handling of COVID-19 for a variety of sectors and workplaces, such as supermarkets, schools and daycare institutions.<sup>21</sup>

The government offers salary compensation as a help to companies and employees who are economically challenged due to COVID-19. It is also possible for companies to apply for compensation for fixed expenses. Self-employed and freelancers can apply for compensation for 90 % of their lost revenue. These compensation agreements run until 8 July 2020.<sup>22</sup>

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<sup>17</sup> Denmark, Danish Police, Reopening of liberal professions (*Genåbning af liberale erhverv*), 16 April 2020, available in Danish at: [https://politi.dk/-/media/mediefiler/corona/genaabning/genaabning-liberale-erhverv\\_170420.pdf?la=da&hash=84679BE53159FFF534A834B2158D589E9A17E74B](https://politi.dk/-/media/mediefiler/corona/genaabning/genaabning-liberale-erhverv_170420.pdf?la=da&hash=84679BE53159FFF534A834B2158D589E9A17E74B)

<sup>18</sup> Denmark, Executive order no. 445 of 19 April 2020 on prohibition of major assemblies and prohibition of access to and restrictions on certain premises for coronavirus disease management 2019 (COVID-19) (*Bekendtgørelse om forbud mod større forsamlinger og forbud mod adgang til og restriktioner for visse lokaler i forbindelse med håndtering af Coronavirussygdom 2019 (COVID-19)*), available in Danish at: <https://www.retsinformation.dk/eli/ta/2020/445>

<sup>19</sup> Denmark, Danish Health Authority (*Sundhedsstyrelsen*), 23 April 2020, guidelines available in Danish at: <https://www.sst.dk/da/Udgivelser/2020/Retningslinjer-for-haandtering-af-COVID-19>

<sup>20</sup> Denmark, Danish Police (*Politiet*), Gradual reopening of Denmark (*Kontrolleret genåbning af det danske samfund*), available in Danish at: <https://politi.dk/coronavirus-i-danmark/seneste-nyt-fra-myndighederne/foerste-trin-i-kontrolleret-genaabning-af-det-danske-samfund>

<sup>21</sup> Denmark, Danish Health Authority, 5 May 2020, Staff in other sectors (*Personale i øvrige sektorer*), available in Danish, at: <https://www.sst.dk/da/corona/personale-i-ovrig- sektor>

<sup>22</sup> Denmark, Ministry of Employment, 18 April 2020, press release, Agreement about temporary salary compensation extended with a month (*Trepartsaftale om midlertidig lønkomensation forlænget med en måned*), available in Danish at: <https://bm.dk/nyheder-presse/pressemeddelelser/2020/04/trepartsaftale-om-midlertidig-loenkomensation-forlaenget-med-en-maaned/>, see also Ministry of Employment, 19 April 2020, news, New agreement will help more unemployed, employees and vulnerable groups in the labour market (*Ny aftale skal hjælpe flere ledige, lønmodtagere og sårbare grupper på arbejdsmarkedet*), available in Danish at: <https://bm.dk/nyheder-presse/nyheder/2020/04/ny-aftale-skal-hjaelpe-flere-ledige-loenmodtagere-og-saarbare-grupper-paa-arbejdsmarkedet/>

For unemployed persons the length of the unemployment benefit (*dagpenge*) has been extended which means that fewer people will lose their right to unemployment benefit.<sup>23</sup>

#### 1.2.4 Access to justice

Courts have been closed since 13 March 2020 but reopened on 27 April 2020. The courts will resume as many cases with physical appearance as possible if the cases can be conducted in a safe manner, i.e. courtrooms have been arranged so that it is possible to keep a distance of 2 meters between persons so that there is a minimum of 4 squaremeters per person in the room. In some cases, there will be physical shielding with e.g. plexiglass, which is considered to have a protective effect and can serve as an alternative if the distance requirement cannot be complied with. Moreover, cleaning and disinfection of affected contact points (door handles, handrails, switches, microphones, buttons on vending machines etc.) is done several times during the day. To reduce the spread of COVID-19, courts will follow Danish Health Authorities' recommendations and keep two meters distance between participants and daily repeated cleaning. During the period where the courts have been closed, critical cases such as preliminary statutory hearings in criminal cases (*grundlovsforhør*) were conducted through normal court proceedings. The Danish Court Administration (*Domstolsstyrelsen*) have estimated it would be possible to conduct approximately 75 % of all cases after the reopening.<sup>24</sup>

#### 1.2.5 Freedom of movement

The temporary border control and related entry ban introduced to control the spread of the coronavirus has been extended until 1 June 2020. Borders are not closed for Danish citizens or persons living or working in Denmark. Staff working in the health sector, working with elderly or socially vulnerable groups are encouraged to stay home 14 days after returning from travelling. Persons who commute to other countries to work are exempted from the recommendation of staying home for 14 days. The Danish Ministry of Foreign Affairs discourages all non-necessary travel to foreign countries. Likewise, all travel to the Faroe Islands is discouraged whereas all travel to and from Greenland is closed down until 30 April 2020.<sup>25</sup>

Since closure of borders on 14 March 2020 and until 30 April 2020, approx. 70 asylum seekers have been registered. As of Friday 13 March 2020, a number of asylum schemes have been suspended, i.e. Dublin transfers both in and out of Denmark has been on hold the government has also taken a number of other steps to limit the spread of infection in the asylum system, i.e. the Immigration Service (*Udlændingestyrelsen*) suspended the conduct of asylum interviews on 13 March 2020, and the Refugee Appeals Board has been temporarily closed.<sup>26</sup>

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<sup>23</sup> Denmark, Ministry of Employment (*Beskæftigelsesministeriet*), 19 April 2020, news, New agreement will help more unemployed, employees and vulnerable groups in the labour market (*Ny aftale skal hjælpe flere ledige, lønmodtagere og sårbare grupper på arbejdsmarkedet*), available in Danish at: <https://bm.dk/nyheder-presse/nyheder/2020/04/ny-aftale-skal-hjaelpe-flere-ledige-loenmodtagere-og-saarbare-grupper-paa-arbejdsmarkedet/>

<sup>24</sup> Denmark, Courts of Denmark (*Domstolene*), 17 April 2020, available in Danish at: <http://www.domstol.dk/om/Nyheder/oevrigenyheder/Pages/Domstolenegenaabner27april.aspx>

<sup>25</sup> Denmark, Danish Police (*Politiet*), available in Danish at: <https://politi.dk/coronavirus-i-danmark/hvis-du-skal-rejse-ind-i-eller-via-danmark>

<sup>26</sup> Denmark, Ministry of Immigration and Integration (*Udlændinge- og Integrationsministeriet*), 25 March 2020, available in Danish at: <https://uim.dk/nyheder/regeringen-har-sat-dublin-overforsler-i-bero>; Denmark, Ministry of Immigration and Integration (*Udlændinge- og Integrationsministeriet*), 22 March 2020, available in Danish at: <https://uim.dk/nyheder/covid-19-regeringen-vil-forebygge-smittespredning-fra-asylansogere>

## 1.3 Impact of measures on particular groups

### Homeless people

Given the prohibition to gather more than 10 people, many shelters for homeless persons are in a challenging position. Each municipality is in charge of ensuring access to safe accommodation for homeless persons. However, the creation of new shelters etc. requires the approval of the social welfare authorities. Given the extraordinary situation, the Ministry of Social Affairs and the Interior (*Social og Indenrigsministeriet*) have encouraged the municipalities to contact relevant social welfare authorities to enhance approvals.<sup>27</sup>

The Ministry has provided additional funding (1 million DKK) to prolong the emergency accommodation scheme, which normally ensures accommodation for the homeless during the winter and extended it until the end of June 2020.<sup>28</sup>

Homeless persons experiencing symptoms of covid-19 are encouraged by the Ministry of Social Affairs and the Interior to reach out to health services,<sup>29</sup> e.g. through information material such as pamphlets.<sup>30</sup>

### Older people

The administrative order, from 18 March 2020, to temporary ban<sup>31</sup> visitors' access to public and private nursing homes, senior homes and relief centres was prolonged on 6 April 2020.<sup>32</sup>

The Danish Health Authority has published various material concerning the coronavirus for elderly and chronically ill, as they are considered in a particularly vulnerable position. Moreover, residents of nursing homes and other people who are particularly at risk, have for instance been offered vaccines against pneumococcus free of charge.<sup>33</sup>

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<sup>27</sup> Denmark, information from the Ministry of Social Affairs and the Interior (*Social og Indenrigsministeriet*), 8 April 2020, available in Danish at: <https://sim.dk/nyheder/nyhedsarkiv/2020/mar/opdateres-loebende-informationer-om-coronavirus-og-socialomraadet-med-faqs/#faq>

<sup>28</sup> Denmark, the Ministry of Social Affairs and the Interior (*Social og Indenrigsministeriet*), 25 April 2020, available in Danish at: <https://sim.dk/nyheder/nyhedsarkiv/2020/apr/alle-partier-indgaar-aftale-om-hjaelp-til-saarbare-og-udsatte-grupper/>

<sup>29</sup> Denmark, the Ministry of Social Affairs and the Interior (*Social og Indenrigsministeriet*), 12 March 2020, available in Danish at: <https://sim.dk/nyheder/nyhedsarkiv/2020/mar/opdateres-loebende-informationer-om-coronavirus-og-socialomraadet-med-faqs/#faq>

<sup>30</sup> Denmark, SAND - The Danish national organisation for homeless people (*SAND - De Hjemløses Landsorganisation*), 30 March 2020, available in Danish at: <http://sandudvalg.dk/nyheder/information-til-hjeml%C3%B8se-om-corona>

<sup>31</sup> Denmark, order from the Danish Patient Authority, 18 March 2020, available in Danish: <https://stps.dk/da/nyheder/2020/vigtig-information-om-begraensning-af-besoeg-paa-sygehuse,-plejehjem,-bosteder-mv/~media/47E3BE4B407C4107A9A9A5B2A2C8374E.ashx>

<sup>32</sup> Denmark, order from the Danish Patient Authority, 6 April 2020, available in Danish: <https://stps.dk/da/nyheder/2020/aendringer-i-bekendtgoerelsen-om-besoegsrestriktioner-paa-sygehuse,-plejehjem-mv/~media/83D6C0A22BD94BA99923A16A9CA8EDCD.ashx>

<sup>33</sup> Denmark, information from the DaneAge Association (*Ældresagen*) on COVID-19, available in Danish at: <https://www.aeldresagen.dk/om-aeldresagen/lige-nu/corona>

Elderly people have the highest death rate in Denmark for confirmed coronavirus disease. For the age group 70-79 years 17 % of those infected with coronavirus disease have died, for 80-89 years it is 26 % and for 90+ it is 44 %.<sup>34</sup>

Whereas there does not exist a coherent nationwide updated record of nursing home residents; *Statens Serum Institut*, an institution under the auspices of the Danish Ministry of Health, has linked address information on tested persons and detected COVID-19 cases with care home addresses to get an overview of COVID-19 at nursing homes and thus, follow the development<sup>35</sup>.

On 24 March 2020, deaths among nursing home residents accounted for 1/3 of deaths among COVID-19 cases in Denmark. 8 percent of all nursing home residents have been tested (e.g. 3414 persons). 425 residents were tested positive.<sup>36</sup>

## Detainees

The Danish Prison and Probation Service (*Kriminalforsorgen*) has launched several initiatives to reduce the risk of spreading the coronavirus within its facilities, including visit restrictions, downsizing of staffing and no new sentences with foot shackles are implemented.<sup>37</sup>

Executive order no. 221 of 17 March 2020 on prevention and containment of the prevalence of Coronavirus disease 2019 (COVID-19) in The Danish Prison and Probation Service (*Bekendtgørelse om forebyggelse og inddæmmelse af udbredelse af Coronavirussygdom 2019 (COVID-19) på kriminalforsorgens område*) was extended to 11 May 2020. The order regulates among other things, the possibility of the prison service to cut off the detainees' right to visit, exit or community in order to prevent or contain the prevalence of COVID-19 in the prison institutions and thus, limits possibilities of alternatives to detention.<sup>38</sup>

On 12 March 2020 the Danish Prison and Probation Service ceased to commit convicted offenders to serving their prison sentence. Commitment of convicted offenders to serve their sentence was resume as part of Denmark's gradual reopening from 17 April 2020.<sup>39</sup>

On 28 March 2020, the Danish Prison and Probation Service confirmed the first case of COVID-19.<sup>40</sup>

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<sup>34</sup> Denmark, Danish Health Authority, Numbers and supervision of COVID-19 (*Tal og overvågning af COVID-19*), available in Danish at: <https://www.sst.dk/da/corona/tal-og-overvaagning>

<sup>35</sup> Denmark, *Statens Serum Institut*, 24 April 2020, available in Danish at: <https://files.ssi.dk/COVID19-epi-trendogfokus-24042020-3-bj69>

<sup>36</sup> Denmark, *Statens Serum Institut*, 24 April 2020, available in Danish at: <https://files.ssi.dk/COVID19-epi-trendogfokus-24042020-3-bj69>

<sup>37</sup> Denmark, Danish Prison and Probation Service (*Kriminalforsorgen*), information on COVID-19, available in Danish at: <https://www.kriminalforsorgen.dk/corona/>

<sup>38</sup> Denmark, Executive order no. 221 of 17 March 2020 on Prevention and containment of the prevalence of Coronavirus disease 2019 (COVID-19) in The Danish Prison and Probation Service (*Bekendtgørelse om forebyggelse og inddæmmelse af udbredelse af Coronavirussygdom 2019 (COVID-19) på kriminalforsorgens område*) available in Danish at: <https://www.retsinformation.dk/eli/ta/2020/221>

<sup>39</sup> Denmark, Danish Prison and Probation Service (*Kriminalforsorgen*), information on Covid-19, available in Danish at: <https://www.kriminalforsorgen.dk/corona/>

<sup>40</sup> Denmark, Danish Prison and Probation Service (*Kriminalforsorgen*), available in Danish at: <https://www.kriminalforsorgen.dk/om-os/nyt-og-presse/nyheder/foerste-indsatte-med-covid-19-konstateret/>

## 2 Users' data - privacy and data protection

### 2.1 Arrangements between public authorities and other actors to allow collection, sharing and processing of user data

On 23 March 2020, a news article was published on a request made by *Statens Serum Institut*, which is an institution under the auspices of the Danish Ministry of Health, to the telecom industry about delivery of location data from mobile phones. According to the article the request was confirmed by both *Statens Serum Institut* and the telecom industry. The article mentions that *Statens Serum Institut* wanted data about transportation and shopping habits of the population, and that it intends to use the national police (*Rigspolitiet*) to collect this data.<sup>41</sup> Subsequently, the Institute specified that it did not intend to receive any personal data but only aggregated and anonymised statistical information.<sup>42</sup>

On April 3 2020, the Danish Business Authority (*Erhvervsstyrelsen*), which has the responsibility of, among others, the Danish rules implementing the ePrivacy Directive, provided the telecom industry with a statement on whether or not the data which the telecom industry could provide to *Statens Serum Institut* according to them were anonymised and aggregated data. The Danish Ministry of Justice was requested for an opinion on this matter as regards the setup proposed by the Danish telecom industry. The Danish Ministry of Justice did not have any remarks, as the relevant data would be disclosed in an aggregated and fully anonymous format. The Danish Data Protection Agency (*Datatilsynet*) was also asked – specifically by the telecom industry – to contribute to the statement and therefore also provided an indicative assessment on the matter, since a final assessment had to be reserved for a specific complaint or case.<sup>43</sup>

Currently, the Danish authorities are developing an app with exposure notification technology as a part of the reopening strategy. The app will register close encounters and thereby identify potential transmission of COVID-19 through Bluetooth-technology. The main objective of the app is exposure notification, where users anonymously can notify close encounters about potential exposure to COVID-19. It will be completely voluntarily to download and use the app, when it is launched. The Danish authorities are currently working on establishing the legal and technical basis for the solution.

On 6 April 2020, the Minister of Health announced that a mobile app is being developed as a digital supplement to manual infection tracking and other actions taken by the authorities to stop the spread of COVID-19.<sup>44</sup> The app is yet to be launched due to issues regarding the use of Bluetooth on iPhones.

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<sup>41</sup> Denmark, Coronavirus: Serum Institute will check the movements of the Danes with mobile data (*Coronavirus: Seruminstitut vil tjekke danskernes bevægelser med mobildata*), 23 March 2020, available in Danish at: <https://www.dr.dk/nyheder/indland/coronavirus-seruminstitut-vil-tjekke-danskernes-bevaegelser-med-mobildata>

<sup>42</sup> Denmark, Jyllandsposten, Statens Serum Institut breaks the silence: “We do not want to have Danes under surveillance” (*Statens Serum Institut bryder tavshed: »Vi vil på ingen måde overvåge danskerne«*), 26 March 2020, available in Danish at: <https://jyllands-posten.dk/indland/ECE12039741/statens-serum-institut-bryder-tavshed-vi-vil-paa-ingen-maade-overvaage-danskerne/>

<sup>43</sup> Denmark, press release, Telecom Industry Association (Teleindustrien), ”Teleselskaber bidrager til COVID-19 analyser”, 14 April 2020, available in Danish at: <http://www.teleindu.dk/teleselskaber-bidrager-til-covid-19-analyser/>

<sup>44</sup> Denmark, press conference 6 April 2020, available in Danish at: [http://www.stm.dk/p\\_14938.html](http://www.stm.dk/p_14938.html), see also press release from Ministry of Health 8 April 2020, available in Danish at: <https://www.sum.dk/Aktuelt/Nyheder/Coronavirus/2020/April/Ny-digital-loesning-til-borgere-skal-COVIDmeter.aspx>

The app is being developed by the Danish IT company NetCompany for the state. Each mobile with the app will be given a unique serial number that will not be linked to the persons personal data such as social security number (CPR-number) or name. The app will not use data from the mobiles GPS; therefore, the app will not register where mobiles meet. Data collected by the app will continuously be deleted from the smartphones after 7 days. The app is supposed to help authorities with tracking the virus. If a person using the app has been near another user of the app who is later tested positive for COVID-19, the app will give the infected user the opportunity to share the information with encounters registered by the app, thereby warning them about the risk of exposure to COVID-19. Users can then take their precautions in accordance with the advices of the Danish Health Authority.<sup>45</sup>

By logging in with NemID, which is a common secure login on the Internet, the app will be able to tell you whether your COVID-19 test is positive.<sup>46</sup> The Danish authorities find it necessary for users to verify COVID-19 infection through the Danish Microbiology Database (MiBa) to avoid the spread of false information regarding exposure and infection risk. Information about personal identity will be deleted after identification.

## 2.2 Legal framework enabling collection, processing, sharing and storage of user data

On 4 April 2020, an executive order on disclosure obligations and processing of personal data to prevent dissemination and infection of the coronavirus entered into force.<sup>47</sup> The order obligates legal entities to disclose any information that is relevant to prevent the spread of the coronavirus; such information must be given when requested, either by the police or the Danish Patient Safety Authority (*Styrelsen for Patientsikkerhed*). Information could only be requested from legal entities when both relevant and necessary in the context of combatting the dissemination of COVID-19. The order directly refers to information covered by article 6 and 9 in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).

Initially, the order stated that legal entities could become obliged to disclose the name and address of a credit card holder and the time and place for the credit card transaction.<sup>48</sup> The rule was subsequently repealed. It is not specified what the information is - the only criteria in the legislation is that the information must be relevant to help prevent the spread of the coronavirus. The addressees of the legal obligation are "legal persons" (*juridiske personer*). Information could only be requested from legal entities when both relevant and necessary in the context of combatting the dissemination of

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<sup>45</sup> The Danish Health Authority's advices can be found here <https://www.sst.dk/da/corona-eng/faq>

<sup>46</sup> For more information about NemID, see: [https://www.nemid.nu/dk-en/about\\_nemid/introduktion\\_til\\_nemid/index.html](https://www.nemid.nu/dk-en/about_nemid/introduktion_til_nemid/index.html)

<sup>47</sup> Denmark, Executive order no. 347 of 30 March 2020 on disclosure obligations and processing of personal data to prevent dissemination and infection in conjunction with the coronavirus disease management 2019, (*Bekendtgørelse om oplysningsforpligtelser samt behandling af personoplysninger med henblik på at hindre udbredelse og smitte i forbindelse med håndtering af Coronavirussygdom 2019 (COVID-19)*), available in Danish at: <https://www.retsinformation.dk/eli/lt/2020/347>

<sup>48</sup> Denmark, Executive order no. 347 of 30 March 2020 on disclosure obligations and processing of personal data to prevent dissemination and infection in conjunction with the coronavirus disease management 2019 (*Bekendtgørelse om oplysningsforpligtelser samt behandling af personoplysninger med henblik på at hindre udbredelse og smitte i forbindelse med håndtering af Coronavirussygdom 2019 (COVID-19)*), available in Danish at: <https://www.retsinformation.dk/eli/lt/2020/347>

COVID-19. The first executive order also specifically included traffic location data with the purpose of locating an individual. This part was also not explicitly included in the amended executive order of 4 April 2020.

## 2.3 Privacy and data protection concerns and possible solutions

The Danish Data Protection Agency (*Datatilsynet*) has expressed concerns that any upcoming app for tracking COVID-19 is potentially intrusive to privacy, even though that current circumstance is exceptional, and voluntariness and transparency is crucial when developing this app.

According to the Danish Data Protection Agency, the data controller must therefore focus on the necessary balance between the needs of solutions to the extraordinary situation and the rights of individual citizens, in particular that the collection and use of the information is done in a safe and transparent manner. Furthermore, in situations where there is a high risk to citizens' rights, a data protection impact assessment must always be carried out before the treatment is started, and in all cases data protection must be considered in the design of the app.

Furthermore, there are also some other fundamental data protection considerations that, in the opinion of the Danish Data Protection Agency, should generally be considered:

- Data minimisation principle: It is a prerequisite that no measures are implemented that could have been achieved by using solutions that are less intrusive to the individual citizen.
- Voluntariness: In the opinion of the Danish Data Protection Agency, it is important that it is voluntary for the individual citizen if they want to use the app. It is therefore positive that the government has already stated that this will also be the case.
- Transparency: It must be clear to the citizens who is behind the solution and what is happening with the information. This is crucial for the citizens' confidence in the solution, but it is also a prerequisite for the fact that as a citizen you can actually decide whether you want to contribute their information.
- Security: It is important that collection and storage of information is done in a safe and sound manner. If citizens provide their information or allow tracking of their movement patterns, they must also be assured that the information is not compromised or used for other purposes than the original or otherwise abused.
- Temporary solution: COVID-19 has led to an extraordinary - but probably also a temporary - situation. Therefore, the health authorities must also consider how long it is necessary to collect and store the information and at the same time ensure that the information collected through the app is deleted when the COVID-19 situation ends.
- The Danish Data Protection Agency will have a particular focus on verifying that the technical solutions have the appropriate security and that all data or representations of these, that can be connected to a given citizen, is deleted as soon as the extraordinary purpose of processing the data ceases.<sup>49</sup>

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<sup>49</sup> Denmark, Danish Data Protection Service about app (*Datatilsynet om app*), available in Danish at: <https://www.datatilsynet.dk/presse-og-nyheder/nyhedsarkiv/2020/apr/datatilsynet-om-app-frivillighed-og-gennemsigthed-er-afgoerende/>

Several institutions and organisations have also expressed concern regarding increased surveillance as a measure to combat the coronavirus.

The TechDK commission (set up by DJØF – a trade union for professionals within social sciences, business and law) have published recommendations about technology and digitalisation in conjunction with the COVID-19. In the report TechDK expresses concerns about the growing surveillance of the population.<sup>50</sup>

The Danish Council for Digital Security has highlighted (in relation to requests for tele data from *Statens Serum Institut*) that data should as far as possible be anonymous and far reaching surveillance measurements should have sunset clauses attached.<sup>51</sup>

The Danish Institute for Human Rights has highlighted that increased surveillance and the introduction of new technology can have far reaching consequences and that a careful and human rights-based approach by the state is imperative before introducing any new measures.

The Danish Institute for Human Rights didn't raise specific criticisms over the app since it has not yet been released. The Danish Institute for Human Rights instead recommends the following:

- The protection of citizen data must be implemented from the beginning of the development and design of the app.
- Only necessary data must be collected, and the data must be deleted as soon as there is no longer a need for it.
- The data collected must be protected from abuse.
- The data must not be used for anything else than its original purpose<sup>52</sup>

IDA (the Danish association for technical, IT and natural sciences professionals) has also presented a set of recommendations on the development of a contact tracing app which is compliant with personal data rules. IDA recommends that national surveillance technologies are created, hereafter surveillance-apps, used for combating/surveilling the spread of the COVID-19, if there is sufficient medical evidence for it being an effective tool, if these surveillance-apps live up to it-security and privacy criteria and demands, and that it is always a condition that the measures taken are very temporary.

- It must be a condition for the development and implementation of any app or similar tool, that the purpose of the app is in precise wording and that the design is adapted to the purpose of the app.

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<sup>50</sup> Denmark, TechDK Commission recommendation for the corona crisis (*TechDK Kommissionens anbefaling til corona-krisen*), April 2020, available in Danish at: [https://www.djoef.dk/-/media/documents/djoef/t/techdk\\_coronakatalog\\_a4\\_0420\\_web.ashx](https://www.djoef.dk/-/media/documents/djoef/t/techdk_coronakatalog_a4_0420_web.ashx)

<sup>51</sup> Denmark, The Danish Council for Digital Security's standing on coronavirus and protection of personal data (*Rådet for Digital Sikkerheds positionspapir for coronavirus og beskyttelse af personoplysninger*), 26 March 2020, available in Danish at: <https://static1.squarespace.com/static/5592479ee4b0224fac5497af/t/5e7ca2f7c8fb3629d3990d8f/1585226488832/Brug+af+persondata+til+sporing+af+coronavirus.pdf>

<sup>52</sup> Denmark, DEBATE: Extensive surveillance can become normal (*DEBAT: Vidtgående overvågning kan blive normal*), 20 April 2020, available in Danish at: <https://menneskeret.dk/nyheder/debat-vidtgaaende-overvaagning-kan-normalt>

- Collection and use of data must be scientifically - and not politically - justified, which means that data must be collected and used only when the health services specifically stated the need for the knowledge.
- Always collect the least amount of data and only for the original purpose.
- Always ensure anonymity for citizens, that use the app and that the app must be transparent.
- There must always be a time limit for storing and using data - a so-called sunset clause. And a specific supervisory authority must be appointed, whose task is to ensure that all data is erased at the right time, e.g. The National Audit Office (*Rigsrevisionen*).
- A solution must be prepared with the involvement of independent legal privacy experts and it-security specialists, alternatively sent in consultation.
- Download and use of the app must be voluntary.
- Data must be kept with the citizen. Information on positive test results must be stored by a Danish authority and always in Denmark.
- As a citizen, you need to know exactly what data is being collected about you, and that you always have the option to delete the app and your own data.
- Information on the user being infected with covid-19 must be validated by the health authorities to avoid errors and abuses.<sup>53</sup>

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<sup>53</sup> Denmark, IDA's standing on digital surveillance instruments during covid-19 (*IDAs holdning til digitale overvågningsredskaber under covid-19*), available in Danish at: <https://ida.dk/media/6468/idas-anbefalinger-til-corona-app.pdf>