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Summary of the FE commission's conclusions

The background of the investigation

On 21 December 2020, the Minister of Justice set up this commission to investigate certain matters concerning the Defense Intelligence Service.

The task of the FE commission has been to investigate and account for certain matters covered by the special investigation of the Oversight Board for the Intelligence Services into the Defense Intelligence Service, which the Board submitted to the Ministry of Defense on 21 August 2020.

The special investigation of the Board was launched on the basis of material that one or more whistleblowers submitted to the Board. The result of the Board's investigation is classified, but the Board's press release of 24 August 2020 states the following about the investigation:

Based on a source-critical investigation of the submitted material, the Board assesses the following:

- *That since the establishment of the Board in 2014 and until the summer of 2020, the FE has, among other things, on several occasions during the Board's inspections and meetings with the head of the FE, withheld key and crucial information and provided the Board with incorrect information regarding the service's collection and disclosure of information.*

It's the Board's opinion that the statutory duty to provide information is absolutely necessary for functional oversight and that it is based on trust by the legislator that the FE complies with this obligation in all respects. The result of these repeated breaches of the statutory duty to provide information is that the legality

check that the Board is required to carry out under the FE Act, and which contributes to the legitimacy of the FE's work, does not work out as intended.

- That at central parts of the FE's collection capabilities there are risks that can lead to unlawful collection against Danish citizens.*
- That the submitted material indicates that the FE's management has failed to follow up on, or further investigate indications of espionage within the Ministry of Defense.*
- That there is a culture of insufficient legal awareness within the FE's management and parts of the service, which results in unlawful activities or inappropriate situations within the service to be shelved, including not informing the Oversight Board about matters relevant to its supervision.*
- That the submitted material indicates that FE before the supervision was established in 2014 has initiated operational activities in violation of Danish law, including by obtaining and passing on a significant amount of information about Danish citizens.*
- That the FE has unjustifiably processed information about an employee of the Oversight Board.*

Against this background, the Board recommends that a political decision be made on the following:

- Whether an investigation should be made into whether the FE has carried out and is carrying out its task as a national security authority within the area of the Ministry of Defense in accordance with section 1 (1) of the FE Act.*
- The need to uncover whether the FE has adequately informed policy makers about all relevant issues concerning key parts of the service's collection capability.*

The framework for the commission's investigation is regulated by a special law on the FE commission (Act No. 1938 of 15 December 2020 on the Investigation of Certain Matters Concerning the Defense Intelligence Service).

The FE commission must submit a report about the result of its investigation to the Minister of Justice, who gives the Parliamentary Committee on the Intelligence Services

access to it.

The report is classified and thus not published, but the commission is required by law to publish, as far as possible, a summary of its conclusions in a form that does not contain information that could harm relations with foreign powers, state security or third parties.

The commission hereby publishes the summary of its conclusions.

The commission's investigation and assessments

The matters to be investigated by the commission are described in more detail in a terms of reference, which - after being submitted to the Parliamentary Committee on the Intelligence Services - have been determined by the Minister of Justice. The terms of reference contain classified information and are, according to the FE Commission Act, exempt from public access.

The terms of reference are thus not publicly available, but according to the preparatory work for the FE Commission Act, the commission's investigation *will focus on the most central and specific points in the Board's criticism of the Defense Intelligence Service, including questions about possible collection and disclosure of information regarding Danish citizens, the briefing of subsequent defense ministers and the possible withholding of information and submission of incorrect information to the Intelligence Oversight Board, and the question of the Defense Intelligence Service's unjustified processing of information about an employee of the Oversight Board.*

Based on the conducted investigation and explanation, the commission shall, amongst other things, consider whether there is basis for the state to hold anyone accountable.

The commission had access to the same material which formed the basis for the special investigation by the Oversight Board. As part of the investigation, the commission has further reviewed extensive material obtained by the commission from, among other things, the Defense Intelligence Service and the Ministry of Defense.

According to the Law on the FE commission, the investigation should in principle have

been carried out on the basis of the available written material, but the commission also had the opportunity to question witnesses if - as stated in the law - it was not possible to clarify a question otherwise. In the commission's assessment, such hearings were strictly necessary for an adequate investigation of the case.

The commission's investigation has, among other things, included an assessment of issues that have been of importance to, among other things, five FE employees who have been suspended from service. They are the head of the FE, Lars Findsen, and the former head of the FE, Thomas Ahrenkiel, as well as three other employees of the service.

As stated, the commission's investigation has, among other things, addressed the *question of possible collection and disclosure of information about Danish citizens*. In its investigation, the commission has found no basis for assuming that the FE has generally obtained and passed on information about Danish citizens in violation of the law.

The commission also found that for the part of the investigation which dealt with the FE's *briefing of subsequent defense ministers* and on the service's *possible withholding of information and submission of incorrect information to the Oversight Board for the Intelligence Services*, there is no basis for criticizing the service, including for deeming the service or individual employees to have breached obligations in relation to ministers or the Oversight Board.

The part of the investigation that has dealt with the question of the *Defense Intelligence Service's unjustified processing of information about an employee of the Oversight Board for the Intelligence Services* is about two cases where information has been passed on orally in the FE during conversations between two employees about an employee in the Oversight Board in connection with the Board's finding that the service had committed an error during the handling of classified information (a security incident).

On the basis of the investigation, the commission has concluded that the information about the security incident was lawfully made available to the FE, that the service's disclosure of the information to one of the two FE employees had been justified and objectively justified, but that the internal, oral disclosure to the other employee had been

unjustified. The commission's investigation has not provided any basis for considering the unjustified disclosure to be representative of the service's handling of personal data. It is the commission's assessment that it is not relevant to consider official reactions in connection with the unauthorized disclosure made by the FE employee - who is not one of the five suspended employees.

Overall conclusion of the commission's investigation

On the basis of the investigation that has been carried out, the commission finds that there is no basis for the state to hold anyone accountable, including Lars Findsen, Thomas Ahrenkiel or the three FE employees, who have been suspended from service.

Following the investigation, the commission has found that there is also no reason for critique - neither in relation to the service nor to the aforementioned five people.

No information has emerged from the investigation that has given the commission a basis for considering a request to the Minister of Justice to extend the issues or the period that the commission has had to investigate. The members of the commission have agreed on the content of the report, including on all assessments and conclusions.

Thomas Jønler
(Chairman)

Hans-Jørgen Nymark Beck

Jens Hartig Danielsen