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EVALUATIONS "THE PRACTICAL APPLICATION OF THE EUROPEAN  
ARREST WARRANT AND CORRESPONDING SURRENDER  
PROCEDURES BETWEEN MEMBER STATES"  
REPORT ON DENMARK

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The text of this document is identical to the previous version.

# RESTREINT UE



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**EVALUATION REPORT ON THE**  
**FOURTH ROUND OF MUTUAL EVALUATIONS**  
**"THE PRACTICAL APPLICATION OF THE EUROPEAN ARREST WARRANT AND**  
**CORRESPONDING SURRENDER PROCEDURES BETWEEN MEMBER STATES"**

**REPORT ON DENMARK**

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## 1. INTRODUCTION

1.1. Following the adoption of the Joint Action of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.

1.2. Following the discussion of a proposal introduced by the Luxembourg Presidency concerning the topic of the fourth round of mutual evaluations<sup>1</sup>, the MDG of 11 July 2005 adopted the topic as proposed, namely "the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States". It was also agreed at the MDG of 11 July that the evaluation questionnaire was to be prepared by the UK Presidency.

1.3. Experts with substantial practical knowledge of the European Arrest Warrant were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG on 9 September 2005.

1.4. At its meeting on 28 October 2005 the MDG approved the evaluation questionnaire for the fourth round of mutual evaluations. The objectives of the evaluation exercise and the questionnaire itself are set out in document 14272/05 CRIMORG 131 COPEN 175 EJM 57 EUROJUST 77.

1.5. Also at its meeting on 28 October 2005 the MDG discussed and approved document 13824/05, the revised sequence for the mutual evaluation visits. Denmark is the second Member State to be evaluated during the fourth round of evaluation.

1.6. The experts charged with undertaking this evaluation were: Christian JOHNSON (Legal adviser, Ministry of Justice, Germany), Henriett NAGY (Section Head, International Criminal Law Division, Ministry of Justice, Hungary) and Johanna HERVONEN (District Prosecutor, Finland). Two observers were also present: Donatella FREMDO DIMECH (Eurojust) and Thomas LJUNGQUIST (Commission), together with the General Secretariat of the Council.

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<sup>1</sup> Document 9602/05 - Orientation debate on a proposed Mutual Evaluation exercise.



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1.7. This report was prepared by the expert team with the assistance of the Council Secretariat, based upon findings arising from the evaluation visit of 3 - 5 May 2006, and upon Denmark's detailed and helpful responses to the evaluation questionnaire and a written request for further information.

1.8. The report makes reference to differing processes in respect of custody and prosecution cases only insofar as there is a divergence of practice between the two procedures.

1.9. The expert team's overarching purpose was to evaluate the distinct practical processes operated and encountered by Denmark both in its role as issuing and executing Member State, to assess relevant training provisions and the views of the defence, before moving on to conclude and to make such recommendations as they felt were appropriate to enhance the means by which the EAW and its corresponding surrender provisions may be further streamlined and improved.

## 2. THE AUTHORITIES AND THE LEGAL BASIS

### 2.1 THE AUTHORITIES

Denmark's traditional criminal justice system was taken as the model for its practices and procedures under the EAW regime. In accordance with those precursors, Denmark has designated its Ministry of Justice as its Judicial Authority ("JA")<sup>1</sup>, save for cases of Nordic surrenders, whereby the Police Districts are competent to determine surrender without recourse to the Ministry.

The Danish authorities were keen to outline to the evaluation team that under Danish law the term "Judicial Authority" customarily covers the courts and the public prosecutors, and that in turn, the public prosecutors comprise: the Ministry of Justice, the Attorney General, district prosecutors, the Copenhagen Police Commissioner and all police Chief Constables.

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<sup>1</sup> SS15 and 18(b)(4) Consolidation Act, No. 833 of 2005 – designate the Minister as Judicial Authority in surrender cases outside and within the EU, notwithstanding this express reference, the tasks undertaken in this regard are undertaken by officials at the Ministry.

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- The Minister of Justice – Is the immediate superior of the public prosecutors and of the police<sup>1</sup>. The Minister is competent to direct public prosecutors or the police as to the conduct, continue or discontinuance of individual cases. Although should such discontinuance be ordered, the Minister must submit a written note concerning that direction, and the supporting reasons, to the president of the Parliament. The Minister herself has on three occasions, where novel situations presented themselves in EAW cases, received the specific files in question. In each instance to date the Minister has endorsed the advice of her MOJ staff in respect of the surrender decision.
- The Ministry of Justice (International Division) – “the MOJ” –The International Division comprises a Head of Division, a Legal Adviser (the Deputy Head of Division) and 6 Legal Associates – all of whom have operational legal experience. The Unit has a range of further competencies such as Mutual Legal Assistance, transfers of sentenced persons and EU level negotiations, it therefore allocates its time in accordance with ongoing operational needs. The six Associates receive an equal allocation of EAW files, but it is the Head of Division or the Legal Adviser who ultimately examines each case to approve and authorise the decision to issue an EAW or to surrender a requested person<sup>2</sup>. The first instance decision to surrender is in all cases undertaken by the MOJ but may be the subject of (up to) 3 levels of independent judicial scrutiny. The International Division maintains, and has utilised to good effect, a 24/7 on call rota. Appropriate mobile phone numbers for key officials have been posted at the national communication centre (see below).
- The Danish Prosecution Service - This service falls under the governance of the Minister of Justice, as per the Administration of Justice Act. It has a hierarchical structure and is comprised as follows:
  - The Director of Public Prosecutions (the “DPP”) – In addition to undertaking the superintendence of all public prosecutors, the DPP manages EAW appeals (and those in domestic criminal cases) before the Supreme Court. The DPP is competent to direct regional and local prosecutors in respect of specific files, but is not involved in the issue or first instance execution of EAWs.

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<sup>1</sup> S. 98 in the Administration of Justice Consolidation Act no. 910 of 27 September 2005.

<sup>2</sup> This authority is certified by the signature of the Head of Division/Legal Advisor, who sign in their own capacity rather than, for example, "by order of the Minister of Justice".

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- 8 District Public Prosecuting Units (45 District lawyers) – Conduct cases before the High Courts (both EAW and domestic appeals from City Courts). They have a supervisory function in respect of the issue of EAWs and the conduct of serious domestic criminal cases (i.e. jury cases). They are competent to direct local prosecutors and police officers.
- 54 Local Police District Prosecution services (571 lawyers), headed by the corresponding 54 Chiefs of Police – Advise on and conduct contested surrender hearings before the District City Courts (uncontested surrenders will not receive a judicial hearing). The local prosecutors work jointly with the police to obtain all necessary coercive orders, such as detention orders and search warrants, from the City Courts (both in EAW and domestic matters).
- Denmark operates one national Police force which is currently composed of 54 Police Districts<sup>1</sup> (Greenland and the Faroe Islands forces are independent districts which are integrated into the Danish Police services, but these two parts of the Kingdom of Denmark fall outside of the EU) – The Chiefs of Police have a dual function as head of both the police (circa 10,000 officers and 2,300 administrative staff) and of the local prosecutors. Chiefs of Police and deputy Chief Constables must always be lawyers. It is the function of the Chief of Police to decide as to whether or not an EAW arrest/preliminary detention<sup>2</sup> (or in domestic cases a prosecution) is merited. As Denmark does not operate a specialist EAW operational unit, it is for each police district to process EAW files in accordance with standardised national guidelines, as they arise within their operational areas.
- National Commissioner's Office (Communication Centre) "the CC" - Is an integrated sub division of the Serious and Organised Crime Agency "SOCA". The CC is staffed by 27 police and civilian personnel selected in part by reference to their linguistic competencies. Organisationally SOCA sits outside of the 54 police districts but is on line to each and is manned and accessible on a 24/7 basis (this includes the Detective Chief Superintendent who heads the Agency).

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<sup>1</sup> The organisation of the police districts has been the subject of reform and following the evaluation visit the Danish Parliament approved measures to reduce the number of police districts to 12 as of 01 January 2007. See Annex F.

<sup>2</sup> Where appropriate requested persons may be detained for periods of up to 24 hours before an application to the court is necessary. Thereafter judicial scrutiny must be applied.

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- The CC is the national contact point for all international communications and will therefore be copied on all incoming and outgoing correspondence. To underline its communication primacy the Danish police provide a single 24/7 telephone number as a point of incoming contact (that of the CC) irrespective of the police district with conduct of the matter. The CC covers all Sirene, Interpol and Europol communications, it also ensures that the central computer systems to which all police districts have access, including the criminal register, are kept up to date.
  
- The Danish Court system - is regulated by sequential Administration of Justice Acts (from 1916) and the Danish Constitution. Pursuant to a reforming/transparency exercise conducted in 1999, the Minister of Justice no longer administers the Danish Courts, which are comprised as follows:
  - The Supreme Court - Resides in Copenhagen and is the Court of Appeal for judgements of the High Courts.
  - 2 High Courts (Eastern Denmark and Western Denmark) - In respect of EAW matters these are the appellate Courts for District/City Court decisions, both in terms of surrenders and in respect of remands in custody.
  - 82 District/City Courts<sup>1</sup> – In EAW matters the District/City Courts (the terminology being entirely interchangeable) determine surrender in first instance (contested) cases. They also adjudicate on applications made by local prosecutors for the application or continuance of coercive measures necessary in the early stages of an EAW consideration/arrest.
  
- The Appeals Permission Board - The body which considers leave applications to the Supreme Court. This body is the responsibility of the Court Administration but is itself independent of the courts and of public administration; its decisions may not therefore be appealed to the Minister of Justice or the Parliamentary ombudsman.

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<sup>1</sup> Judicial reform is being conducted in parallel with the ongoing police reform and, following the evaluation visit the Danish Parliament approved measures to reduce the number of City/District Court Districts from 82 to 24, as of 1 January 2007.

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## 2.2 THE LEGAL BASIS

- Law number 433 of 10 June 2003 - Denmark's implementing legislation which entered into force on 1 January 2004. Danish legislation adopts the drafting model of the Framework Decision on the EAW ("FD") to the extent that it does not prescribe the procedures which should be followed when acting in the capacity of issuing Member State.<sup>1</sup>
- Consolidating Act number 833 of 25 August 2005 - Denmark's consolidating Act on the extradition of offenders, the primary amendments introduced by this legislation concern both substantive and procedural measures pertaining to the operation of the EAW regime.
- The Danish Administration of Justice Act - Consolidating Act number 910 of 27 November 2005 - This consolidating legislation delineates, inter alia, the form and function of the prosecution service and the police authorities (including the role of the Minister of Justice).
- Order number 30 of 14 May 1987 - By which Denmark implemented the European Convention of 21 March 1983 on the Transfer of Sentenced Persons. The initiative to commence surrender in all instances lies with Denmark rather than the requested person themselves although clearly, in accordance with the legal basis of that convention, an examination of double criminality remains a condition associated with any such surrender.
- Denmark's guide<sup>2</sup> for dealing with EAW matters, dated 19 December 2003, "the guide" - This mandatory guide sets out (with the addendum from 14 December 2004) the EAW practices to be adopted by the MOJ, the police authorities and prosecution service. The guide itself is also available on the police "POLNET" information system.
- Denmark's addendum guide for dealing with EAW matters, dated 14 December 2004 ("the guide" - This mandatory guide sets out (together with the guide from 19 December 2003) the EAW practices to be adopted by the MOJ, the police authorities and prosecution service.

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<sup>1</sup> Law 433 amended the pre existing extradition legislation by the specific addition of chapters 2a "Requirements for extradition to Member States of the EU" and 3a "Processing of cases involving extradition to Member States of the EU".

<sup>2</sup> Number 9498.

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In an attempt to standardise practices, the document sets out a specimen domestic arrest order form and specimen arrest warrants in both conviction and prosecution cases (these latter specimens being signed as issued by the MOJ Deputy Head/Legal Adviser). The guide itself is also available on the police "POLNET" information system.

The expert team noted that the narrative of that guide is, of itself, a clear instruction on the nature and scope of information that should be included on the draft EAW (including the seizing and handling of evidence), in addition it contains a clear prohibition on deletions or alterations of any printed headings<sup>1</sup>.

- Member States may also refer for assistance to Denmark's "Fiche Française" - Published 16 January 2004 which sets out the practices issuing Member States must adopt when seeking to obtain a surrender from Denmark.
- Law on Translators and Interpreters, amended by Law No 227 of 21 April 1999 - Which sets out domestic provisions for the appointment of linguistic assistance.

### 3. ORGANISATION AND PRACTICES - ISSUING MEMBER STATE ROLE

During the calendar year 2005 Denmark issued 64 EAWs (4 of which were subsequently replaced by extradition requests<sup>2</sup>). Of the 22 cases determined at the time of the evaluation visit: 19 surrenders had been executed, 2 requested persons had been surrendered pursuant to Nordic extradition law and 1 surrender decision was rendered ineffective by virtue of the requested persons arrest in Denmark<sup>3</sup>.

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<sup>1</sup> Although at the time of the evaluation visit the MOJ itself did not have access to POLNET as was envisaged in the addendum guide.

<sup>2</sup> The EAW requests in question relating to DE, see section 3.7.

<sup>3</sup> See the matter of the Greek Supreme Court reference at section 3.7.



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## 3.1. THE DECISION TO ISSUE

The initiative in seeking the issue of an EAW in respect of suitable offence(s) vests with the relevant police chief. In cases where the alleged criminality spans two or more police districts (a factor which will be revealed by a mandatory review of the criminal register), there is internal police discussion whereby a lead district is nominated to proceed with the surrender application and the subsequent prosecution(s)<sup>1</sup>.

The Danish implementing and amending Acts do not prescribe the situations in which an EAW may be issued and so practitioners give due regard to Denmark's "guide".

- In prosecution cases - the police chiefs will direct their officers to prepare a package of evidence sufficient to satisfy a City/District Court judge that the domestic conditions for a remand in absentia are fulfilled<sup>2</sup>, e.g. reasonable grounds for belief that the requested person has committed the alleged offence(s). Given that it is the local prosecutor who will in fact make the ultimate application for the remand order, the police officers consult their prosecutorial colleagues closely at this stage of the process. The local prosecutor also undertakes an evidential review and an assessment of the suggested prosecution offence(s) so that the appropriate (domestic) case may be proceeded with should a surrender occur.
- In cases concerning the execution of a sentence - rather than preparing the evidential package, the police chiefs will direct their officers to conduct an investigation into the circumstances of the case. This will include an examination of why the person concerned did not surrender for imprisonment.

The police chief will in parallel (but in any event, not later than the time at which the decision to apply for the remand is made) inform the MOJ of the pending application.

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<sup>1</sup> EAWs may be issued in respect of one or more offence.

<sup>2</sup> S 762 Administration of Justice Act.

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## 3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE INVESTIGATIONS

The police authorities will verify any potential domestic overlap of current or historical investigations into the same requested person by an examination of their central register prior to advancing the issue process<sup>1</sup>.

## 3.3. THE COMPLETION OF THE FORMS

Once the local prosecutor has obtained the necessary judicial order/police report they, together with the police officer concerned, prepare a draft EAW in accordance with the guide and the specimen forms appended thereto (those specimens being the forms annexed to the FD). The draft, which will be substantively completed<sup>2</sup>, is transmitted to the MOJ from the police district.

Denmark will issue requests for surrender in respect of accessory offences (as set out in Article 2 of the 1957 Council of Europe Convention on Extradition<sup>3</sup>). Should this be undertaken, the EAW form will be completed in such a manner that there is a clear delineation on the face of the form so that distinct decisions may be arrived at by the executing Member State in respect of each offence particularised (i.e. in multiple conviction cases all sentences will be cited, and in prosecution cases each offence will be particularised so that it is clear in respect of which double criminality/FD scope applies).

The expert team observed that by virtue of the small size of certain of Denmark's police districts some officers/local prosecutors were unaccustomed to dealing with EAW matters on a regular basis. From a practical perspective this meant that the quality of the initial drafting could vary. On one occasion the expert team discovered that operational restrictions had led to police officers completing the form without effective recourse to their local prosecutors, consequently the guide (which at the time of the evaluation visit was located in the prosecutors POLNET computer domain rather than the police area of POLNET) was not followed.

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<sup>1</sup> Enabling them to unify ongoing proceedings where that is merited.

<sup>2</sup> Sections (a) through (h) - including selection, in respect of the appropriate list offence.

<sup>3</sup> "If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting party and the requested party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested party shall also have the right to grant extradition for the latter offences."



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The draft form is transmitted to the MOJ from the police district electronically via the CC or, if transmitted directly, on a diskette for consideration (in all cases of direct transmission to the MOJ a copy must be submitted to the CC for information). Detention orders/reports on custody cases must always accompany the submission and will in general be made by fax.

In respect of cases which arise outside of office hours (and which are urgent) the MOJ has been contacted via the CC on their mobile numbers to assist and advise as required.

### 3.4. THE APPLICATION PARTIES/PROCESS

As the MOJ itself is the competent JA in respect of the issue of EAWs, there is no further court process in the appraising or issuing of an EAW. The issue of the EAW being complete when the appropriate official at the MOJ (the JA) completes the draft at section (i) and signs the EAW form.

The MOJ will however scrutinise the entire form in every instance, this scrutiny will invariably include a consideration of the classification of a positive list offence<sup>1</sup>.

Although the MOJ will endeavour to conclude its review of the police district file within 7 days of receipt, it is under no statutory obligation to do so. The expert team were advised that in the majority of cases this self imposed 7 day limit is satisfied and, should the police district classify the matter as urgent, the MOJ will seek to conclude the file review on the day of transmission.

In cases where the police district file is found to be deficient, the MOJ may return the draft EAW to the relevant police district, together with a direction that further information be included. If the matter is time critical and if they were seized of sufficient information to do so, the MOJ may repair any drafting defects on the warrant. The MOJ stated that it was comfortable with the general quality of receipts of draft EAWs, and with the fact that with their input, the quality of those drafts was improving over time.

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<sup>1</sup> Denmark takes the view that in any case of doubt an offence should be referred to as one to which double criminality applies.

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If the MOJ refuse to issue an EAW that decision will be final. Although no such refusals have been experienced to date, it was indicated that a fresh application based upon additional evidence could be considered on its own merits in appropriate circumstances.

On issue the MOJ sends the original EAW to the requesting police district by post<sup>1</sup> (save in cases of urgency when the warrant will be faxed) it will also send a copy to the CC for entry into the SIS and, if necessary, for the issue of an Interpol alert. The MOJ will not receive a translated version of the completed EAW once that function has been subsequently undertaken by the police district.

The MOJ will always retain a copy of each EAW for its records. The expert team examined one such file and noted in particular that the standard top sheet to the file had been created and completed in such a manner as to provide the MOJ with convenient access to all key statistical data of the cases progression.

Denmark has reserved to the Chief Constables of each individual police district the competence to decide whether any pre-existing alerts pertaining to EU surrenders should be converted into EAWs. Where such a conversion is deemed to be merited the police will undertake the necessary investigation/obtain the necessary in absentia order and forward the file to the MOJ in the normal way<sup>2</sup>.

## 3.5. TRANSLATION OF THE EAW

If at the time of the issue of the EAW the whereabouts of the requested person is known, the police district will refer to Annex 3 of the addendum guide<sup>3</sup> and transmit the EAW to an external translation service so that translation into the appropriate language may be undertaken. As a general principle Denmark will always default to an English language translation if the executing Member State has designated English as one of its suitable linguistic options.

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<sup>1</sup> The original EAW being retained by the local police district until such time as the requested person is located.

<sup>2</sup> Sections 3.1 and 3.3 ante.

<sup>3</sup> Extracted from Council document 12736/1/04 REV 1. Detailing acceptable language regimes and associated time-limits.

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In cases where at the time of the issue of the EAW the whereabouts of the requested person are not known (the most frequent circumstance), notification that an arrest has been made in respect of an EAW/alert will be made to the CC or to the MOJ. That information will then be routed to the police district who will undertake the necessary outsourcing translation exercise. Again the CC will be copied should that information have been received by the MOJ.

The addendum guide also sign-posts where all language electronic versions of the EAW form may be obtained, although the experts noted that a lack of familiarity with EAW procedures ("the guide") had resulted in one instance of the existence of the translated form not being discovered by the police district, who in turn proceeded to have the body of the EAW form itself translated.

Denmark has not experienced any significant difficulties in respect of translating and transmitting EAWs to executing Member States in respect of foreign national time limits. Denmark's authorities work well with a number of domestic translation services which enables them to deal with even complicated documentation within a very short time (specifically translations to English, German, Spanish and French). The experts noted Denmark's concern that very short translation deadlines combined with a specific requirement to translate into a less commonly spoken EU Member State language might, in future cases, cause them temporal compliance issues.

## 3.6. TRANSMISSION OF THE EAW

In all cases the general prohibition of direct police to police contact applies and consequently the CC must be used as the conduit for any form of external Member State communication (be that in respect of EAW matters or general police business). The MOJ reserves the right to transmit EAWs directly to identified executing Member States if it feels that that mode would be of assistance (copy to the CC).

The CC undertakes the following forms of EAW circulation dependant on the circumstances surrounding the requested person:

- Direct transmission of the EAW and a translated copy thereof will take place where the location of the requested person is known, this may take place in addition to the following modes of circulation,

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- Schengen - The CC inserts the details of the requested person into SIS and creates A and M forms within the Sirene system, which will of course advise of suspected whereabouts in any event (if known),
- Interpol - The CC first opens an electronic case file in the police intelligence database. A copy of the EAW certificate will be kept in this case file. Thereafter an Interpol Notice is generated (again potential locations will be recorded on the Notice, if known).

## 3.7. ISSUES RAISED BY OR REQUESTS FOR INFORMATION FROM EXECUTING MEMBER STATES AND THE COMMUNICATION CHANNELS RELIED UPON

The MOJ will be notified by the CC (as the communication conduit) of any requests for further information from the executing Member State. Although in general the provision of such information will be a matter for the police district to resolve, the MOJ monitors and logs requests with a view to ensuring that the quality of issued EAWs remains uniform<sup>1</sup>.

The Danish authorities experiences regarding the differing benchmarks applied by executing Member States in respect of requests for further information may be summarised as follows:

- UK

Issue 1 - The UK's view of the importance of the EAW form itself differs from that of Denmark. It is Denmark's view that it is the information, rather than the form itself, which is of paramount importance. The UK however requires that the EAW cover page forms part of the request. Notwithstanding this divergence of opinion Denmark has amended its issue processes to ensure that refusals on this basis are avoided.

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<sup>1</sup> Once the original EAW has been transmitted to the relevant police district, that police district takes charge of all practical aspects of the surrender case.

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Issue 2 - The UK requires the receipt of original EAWs before its authorities will seek to establish that the requested person is on its territory. Denmark sees this as a direct contradiction of the FD and a practice that could leave Denmark unable to comply with onerous temporal requirements should the requested person be discovered elsewhere. By virtue of this real logistical risk Denmark will comply with this requirement only when it feels it is prudent to do so<sup>1</sup>.

- Ireland - Denmark issued an EAW in respect of a 1994 case in respect of which the Irish Supreme Court had previously refused extradition. The Irish Central Authority requested information, prior to submitting the matter to its own JA, detailing inter alia: why there had been a delay from 1 January 2004 until 2005 in respect of the issue of the EAW, the appropriate Danish criminal code and, further evidence in respect of a number of aspects of the domestic Danish offences.

The experts were advised that Denmark's responses were transmitted to the Irish Central Authority in February of 2006 but at the time of the evaluation visit no reply had been forthcoming. The matter therefore remained unresolved.

- Greece - A Greek first instance court held a Danish EAW to be invalid on the basis that the Danish MOJ could not, in the view of that Greek Court, be a JA for the purposes of the issue of an EAW. The requested person was not remanded in custody and had absconded prior to the Greek Supreme Court overturning the first instance ruling. The person subsequently returned to Denmark and surrendered of his own volition.

- Germany - The evaluation team noted that Denmark had experienced difficulties with the operation of the EAW process with Germany. It was accepted that the German authorities were taking steps to remedy the voiding ab initio of the German Act to implement the FD<sup>2</sup>, however Denmark was unable to apply a uniform practice in respect of EAWs to Germany by virtue of the fact that, within Germany itself, different authorities applied starkly different regimes to the process.

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<sup>1</sup> Namely where the requested person is suspected to be in the UK.

<sup>2</sup> Judgement of the Constitutional Court of the Federal Republic of Germany dated 18 July 2005.

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Denmark had first hand experience of three authorities (Ministerium für Justiz, Arbeit und Europa in Kiel, Generalstaatsanwaltschaft in Schleswig-Holstein and Generalstaatsanwaltschaft in Berlin) requiring the issue of extradition papers, rather than EAWs, for all surrenders, irrespective of the nationality of the requested person.<sup>1</sup>

General communication channels were judged by Denmark to be adequate, however in respect of the EAW actioned by the Greek authorities, key aspects of the cases progression were not provided by the Greek authorities with conduct of the case (or readily ascertainable from them)<sup>2</sup>. In that instance therefore Denmark sought the assistance of both the Danish and the Greek National Members of Eurojust to obtain essential information on the case. Denmark noted that Eurojust was able to successfully intervene to assist the flow of information in that instance.

## 3.8. THE RETURN OF OWN NATIONALS FOR THE ENFORCEMENT OF A SENTENCE

As stated, Denmark applies the European Convention of 21 March 1983 on the Transfer of Sentenced Persons<sup>3</sup>, cf. Consolidating Act No. 740 of 18 July 2005 on international execution of sentences etc. Denmark itself may initiate such a procedure and has not, at this time, experienced difficulties with the application of this regime. The Danish authorities however were alive to the concept that, in respect of such surrenders, they must consider the issue of double criminality. Denmark is of the view that resolution of this issue lies with the draft Council FD on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU between Member States of the EU.

The MOJ is the competent authority to provide any necessary undertakings in respect of the return of executing Member State nationals and own nationals and it has not experienced any issues in respect of the provision or the acceptance of such undertakings.

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<sup>1</sup> At the time of the evaluation visit the surrender of German nationals was not possible. The expert team note however that German Parliament adopted a new act implementing the FD, effective 2 August 2006, and as such this issue is to be viewed in a purely historical context.

<sup>2</sup> For example the fact of the appeal to the Supreme Court itself.

<sup>3</sup> By order No 30 of 14 May 1987.



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## 3.9. YOUTH SURRENDERS AND CORRESPONDING GUARANTEES

The age of criminal responsibility in Denmark is 15 years (no derogations are possible). At this time no issues have been encountered in respect of requests for youth surrenders.

## 3.10. EVOLVING BEST PRACTICES

It was evident to the experts that Denmark had firm view on the legitimacy of certain requests for further information made to it by certain Member States (in respect of the principle that the EAW was a vehicle of mutual judicial recognition). The Danish authorities had however adopted a pragmatic stance to such requests from other Member States, in order to facilitate the surrender process.

The experts regarded the degree of flexibility in adopting their practices to be commendable, they were however concerned that there appeared to be such a large degree of diversity within Member States as to what was acceptable practice in this regard.

## 3.11. GENERAL COMMUNICATIONS WITH THE EXECUTING MEMBER STATE

Should an arrest be made pursuant to a Schengen alert the CC will, in accordance with standard practices, receive a G form generated by the executing Member State or, in the case of an Interpol Notice, a notification of arrest. CC staff will immediately consult Annex 3 of the Danish mandatory "guide" in respect of linguistic and general transmission regulations and, once these key practical issues have been ascertained, will advise the relevant police district of all facts pertinent to the case via the secure police network (and will act as a conduit for all ensuing correspondence).

The CC will also copy all notifications and correspondence on the file to the MOJ by fax.

In Schengen matters all case documentation is filed within SIS in the normal way. In Interpol matters the police intelligence database will be the designated data repository.

In cases where the executing JA or Central Authority advise the Danish JA directly of the fact of an arrest, that notification will be transmitted by the MOJ to the appropriate police district, again with a copy notification being made to the CC, so that all participants are possessed of the same information. It will be for the police district to discover all additional information requested and to obtain required translations where appropriate.

# RESTREINT UE

The experts noted that in addition to these various routes, it was commonplace for the executing Member State authorities to seek to advise the relevant police district directly of any key case developments. Should this occur, the local police district would refer the executing Member State authorities to direct all future correspondence to the CC. A review of communication statistics confirmed that there were no systematic failures/difficulties in communications during the entirety of the process.

## 3.12. THE MECHANICS OF THE SURRENDER/TEMPORARY SURENDER

Once the local police district has been appraised of the fact of the arrest it will, via the CC, begin to liaise with the executing Member State to determine when the final surrender decision was likely to be made.

The district police will, again via the CC, create the escort itinerary and submit this to the executing Member State for approval. Once the requested person was under the control of the district police, they would advise both the MOJ and the CC accordingly. The MOJ then updates its internal records for administrative and statistical purposes and the CC deletes the SIS alert and/or the Interpol diffusion.

On arrival in Denmark the requested person will be remanded in custody (pursuant to the domestic detention order) for a period of up to 24 hours, thereafter the local prosecutor will apply for further detention as necessary and progress the prosecution/remand in accordance with domestic practices.

## 3.13. THE MECHANICS OF SURRENDER IN RESPECT OF REQUESTED PROPERTY

In instances where Denmark has a seizure order in respect of material (granted by the domestic courts pursuant to an application of the local prosecutor) it may request the executing Member State to seize and surrender specified evidential items.

Such requests have been made and from both a practical and an evidential perspective have proceeded without issue. Possession of the evidence generally being taken at the same time as the requested person is surrendered.

## 3.14. CONFLICT OF EAWS/EXTRADITION REQUESTS/ONWARD SURRENDER

Such a conflict has yet to occur and therefore the Danish Authorities were unable to comment on the practices deployed by executing Member States.



# RESTREINT UE

## 3.15 EXPENSES

Denmark has not experienced any untoward practices in respect of the expenses regime set out in Article 30 of the FD.

## 4. ORGANISATION AND PRACTICES - EXECUTING MEMBER STATE ROLE

Denmark received 33 EAWs during the calendar year 2005, of those: 4 original warrants were not received (either at all, or not in accordance with Denmark's prescribed language regime)<sup>1</sup>, 2 were withdrawn, 19 surrender orders were made by the MOJ, of which 7 were (unsuccessfully) challenged by the requested person<sup>2</sup>, 8 cases are in progress. Of the 19 cases in which surrender orders were made, the 10 day time-limit set down by Article 17 of the FD was adhered to<sup>3</sup>.

### 4.1. RECEIPT PROCEDURES

Denmark's receipt procedures vary according to the following practical scenarios.

- Where the location of the requested person is known to the issuing Member State.

The MOJ will (in all cases) accept direct transmission of EAWs issued in, or accompanied by, a translation into Danish, Swedish or English<sup>4</sup>. There is no strict requirement that the form of the EAW itself be adhered to as the Danish authorities give priority to the provision of the information requested by the EAW form. In consequence Denmark has experience of accepting EAWs in respect of which the body of the form itself had been translated.

- Where the location of the requested person is not known to the issuing Member State.

In such circumstances the EAW may be received either as an alert in the Schengen Information System or alternately via Interpol, as foreseen by Articles 9 and 10 of the FD. In such cases Denmark does not require that the original EAW be delivered. If the issuing Member State has entered equivalent information in the SIS or upon an Interpol Notice, and that information is deemed to be sufficient, the MOJ can proceed to take the surrender decision (i.e. EAWs may only be required in Danish, Swedish or English to clarify insubstantial alerts/notices).

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<sup>1</sup> UK, PL, DE and HU.

<sup>2</sup> But the final decision was, in all instances, made within the 60 days (from detention) period stipulated by section 18d(2) of the Consolidation Act No.833 of August 2005.

<sup>3</sup> Denmark commences the counting of this ten day period when all necessary information requested has been received in an acceptable language.

<sup>4</sup> It then falls to the relevant police district to obtain a Danish translation of EAWs received in English or Swedish (for the purposes of the court process).

# RESTREINT UE

## 4.2. THE FORM OF THE WARRANT, REVIEW PROCEDURES AND ARREST

- Where the location of the requested person is known

### 4.2.1

EAWs received by the MOJ are subjected to an initial scrutiny by the allocated lawyer to determine if, on the face of the document itself, the request falls within the scope of the FD<sup>1</sup> (that is to say that it was issued in respect of offences or custodial sentences as delineated by Article 2). If it is felt that further information is required the MOJ will issue a direct request to the issuing authority pursuant to Article 15(2) of the FD.

Once the scope provisions of the FD are established to the satisfaction of the MOJ<sup>2</sup>, the EAW is transmitted to the relevant police district, with a copy being transmitted to the CC so that the central police database may be updated accordingly.

On receipt of the EAW the local police district (there being no specialised EAW police units in Denmark) have a three day target to conclude an investigation into the warrant. This investigation will concern a verification of the address of the requested person and thereafter, if appropriate, an arrest and preventative detention<sup>3</sup>. Whether or not an arrest is merited the police will interview the requested person (who is entitled to legal representation) to further establish their identity, to discover if consent is to be forthcoming<sup>4</sup> and to obtain their comments on the basis of the EAW<sup>5</sup>.

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<sup>1</sup> Section 18b of Law 433 of June 2003.

<sup>2</sup> S10a(4) A person can be extradited for prosecution or execution of a judgment for a number of offences although the conditions in paragraphs 1-3 (i.e. the scope provisions which mirror those of the FD) are met in the case of only one of those offences.

<sup>3</sup> Where arrests occur the CC is notified and will in turn advise the MOJ and the issuing Member State.

<sup>4</sup> Consent may be revoked at any time prior to surrender being undertaken, cf. Denmark's declaration to the framework decision on the European Arrest Warrant.

<sup>5</sup> For example: in a conviction case, there may be a representation that the sentence has already been served. In a prosecution case, that the dates do not correspond to the time spent in that Member State.

## RESTREINT UE

The local prosecutor<sup>1</sup> will be informed of the investigative facts by the police officers and will then prepare a brief report on the case. This report will summarise the representations of the requested person and note any omissions in the detail of the warrant that will need to be addressed prior to a decision being reached as to surrender (i.e. confirming conformity with Article 8 of the FD)<sup>2</sup>. That file is transmitted back to the MOJ for a decision to be made in respect of the appropriateness of a request for further information and on the surrender itself.

The MOJ is under a statutory imperative to deliver that decision "at the earliest opportunity and, as far as is possible, within 10 days ...arrest...consent"<sup>3</sup>. Although the evaluation team noted that the time limits set down are merely indicative and so any breach will not, of themselves, have a detrimental impact on the surrender decision nor upon the decision to have a person preventatively detained. By virtue of the fact that consent may be withdrawn at any time prior to the surrender the same decision making process is applied by the MOJ in all cases.

The expert team noted that the MOJ was fully aware that their domestic legislation had entirely abolished double criminality in respect of the Article 2 list of offences<sup>4</sup>, however it accepted that on one occasion they had pre-empted potential questions from their judiciary and had made enquiries "behind the ticked box" before ordering the surrender of the requested person<sup>5</sup>.

The MOJs surrender decision is communicated to the police district and thereafter to the requested person by the police, who also provide information on the methods of appeal available to a surrendered person.

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<sup>1</sup> As in the majority of domestic matters investigations are commenced by police officers with Prosecutors exercising legal control.

<sup>2</sup> But no requests will be generated and transmitted to the issuing State by the local prosecutors themselves.

<sup>3</sup> S18d(1) The Consolidation Act No.833 of August 2005.

<sup>4</sup> Section 10a(1) The Consolidation Act No.833 of August 2005.

<sup>5</sup> The single case in question being a case of fraud submitted by Germany, there being overlap between the two jurisdictions in this general area of criminal practice.

## RESTREINT UE

### 4.2.2.

The issuing Member State may, in substitution or addition to the direct transmission described above, enter an alert for the requested person in the SIS. Procedurally similar steps are followed in cases in which Interpol Red Notices are raised.

The staff at the CC assess the alerts/notices to ensure that they contain all of the requisite information required by Denmark to form the basis of an EAW<sup>1</sup>. Should they discover deficiencies they are domestically competent to contact the issuing Member State authorities directly to seek the additional information deemed by them to be required. The staff member selected by the evaluation team to be interviewed at her workstation was able to communicate effectively in three additional languages, namely: English, Spanish and German.

On receipt of all necessary information the CC will advise the MOJ of the fact of the alert and that the requested person resides in Denmark.

The MOJ will undertake the same preliminary assessment as described above in respect of the A and M forms faxed to it by the CC. Should it come to the view that surrender should not be refused immediately the MOJ will instruct the CC that it may enter the details of the alert in the national database of the SIS (or in the case of Interpol Notices that they open a case in the national police database and copy the request as an attached document).

Should the MOJ determine that surrender should be refused (for example, in respect of non list offences which do not meet the double criminality test) it will direct that the CC post validity flags on the SIS.

In cases where surrender is to proceed, the MOJ will at the same time as communicating with the CC, advise the appropriate police district to commence an investigation so that a view may be reached as to whether the conditions of surrender have been met. The same procedures and time limits apply as in direct transmission cases (as above).

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<sup>1</sup> Staff at the CC have dual screen workstations and access both systems throughout the day.

## RESTREINT UE

### 4.2.3.

Urgent cases.

If an issuing Member State indicates that a case is urgent the CC is empowered to transmit the EAW/notice/alert to the relevant police district at the same time as the MOJ. It will then be a matter for the Chief Constable to determine whether to proceed with an arrest<sup>1</sup>. A decision to arrest is notified to the MOJ either directly or, if out of office hours, via the CC which maintains 24/7 contact numbers of key MOJ staff. The corresponding MOJ decision (whether or not surrender ought immediately be refused) will be expedited and will be made prior to the 24 hour judicial examination of the local police districts decision to initially remand the requested person in preventative custody.

Thereafter the practice proceeds as set out above.

- Where the location of the requested person is not known by the issuing State

### 4.2.4.

The evaluation team were advised that approximately 30 SIS and 10 Interpol "EAWs" were received daily. This then was the most commonplace scenario. Again the practical treatment of alerts and notices is very similar.

The expert team noted with interest that key aspects of each and every notice/alert received by Denmark would automatically be processed through the police and intelligence databases accessible by the CC to establish whether the requested person was in fact linked to Denmark (if so the procedures outlined at 4.2.2 would immediately be substituted). Article 95 Alerts would be validated within a day of receipt and Interpol Notices processed within 30 minutes of receipt. The duty officer maintained a log of the review times taken by the desk officers to undertake these designated checks. The Danish authorities were therefore conducting electronic database (hit/no hit) traces on approximately 14,000 individuals each year.

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<sup>1</sup> A Chief Constable may arrest prior to the receipt of a language compliant EAW should he judge that the situation merits that course.

# RESTREINT UE

In all cases the CC staff would perform the same verification as described above before placing the details of a requested person on the national section of the SIS or the criminal register.

When such a person was found they would be arrested on the basis of the alert/notice<sup>1</sup> at which time the Chief Constable of the appropriate police district would advise the MOJ via the CC (who also advises the issuing Member State of the fact of the arrest). The MOJ would then direct the police district to undertake the investigations set out above into the EAW surrender conditions.

4.2.5.

Urgent cases.

In all out of office hours matters the MOJ would be advised via the CC of the fact of an arrest so that it could assess whether or not the surrender should be immediately refused.

## 4.3. REQUESTS AND RESPONSES TO REQUESTS, FOR FURTHER INFORMATION/CLARIFICATION

Any attempts to contact the issuing JA will be made via the MOJ or the CC. To date such contacts have been initiated, and frequently actioned, in English.

The Danish JA will endeavour to issue a single request to the issuing JA, that being prior to the forwarding of the file to the police district to commence the initial investigation. Due to the layered nature of the process however the expert team considered that multiple/repeat requests, even if not commonplace, could not be ruled out.

In all cases it is the MOJ which communicates the fact of the final surrender decision to the appropriate authority within the issuing Member State.

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<sup>1</sup> Any Danish police employee with police powers may conduct an arrest and all police districts and operational departments have access to the on line criminal register.

# RESTREINT UE

## 4.4. ARREST PROCEDURES/FIRST HEARING

The requested persons first court appearance is likely to be a hearing convened within 24 hours of a preventative detention (being initiated by the police) to review that detention and, if appropriate<sup>1</sup>, to order its continuance. In urgent cases arrest and detention may, exceptionally, take place prior to the issue of an EAW.

A section of the Copenhagen District Court is itself located in the same building as the police district headquarters and is staffed by a rota of 10 judges. That section is experienced in EAW matters and is competent to deal with all preliminary hearings (e.g. search, telephone tapping and detention applications). In general court proceedings will be in public however, when appropriate, the local prosecutor may request that any application be made in private.

The requested person is entitled to legal and interpretive advice<sup>2</sup> and will either nominate their own counsel (subject to that appointee being available to conduct the case without interference with the EAW time limits) or must have defence counsel appointed by the court<sup>3</sup>.

The District Court judge interviewed indicated that it would be preferable to have the EAW at this preliminary hearing, however the courts approach was not fundamentalist and the priority was that the EAW had been issued and that the court be seized of the information on the form, whether that be that sourced from the EAW itself, A and M forms, or elsewhere.

## 4.5. THE SURRENDER DECISION

As stated above, the first instance surrender decision in all cases will be made by the MOJ with the requested person having recourse, as of right, to appeals to the District and High Courts.

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<sup>1</sup> Normal domestic detention indicators are applied, e.g. risk of absconding, fear of the commission of an offence while on bail, the strength of the evidence or a fear that the persons liberty presented a risk to the Danish population.

<sup>2</sup> SS18b(3) and 14 of the Consolidation Act, No.833 of August 2005 re Legal provision. Also general administrative principles in respect of legal and linguistic provision.

<sup>3</sup> S18c The Consolidation Act, No. 833 of August 2005.



## RESTREINT UE

The expert team questioned all parties in respect of their thoughts on the style of Denmark's EAW organisation and without exception the views expressed were that the guarantees of judicial scrutiny, prior to surrender, ensured that the rights of the requested person were safeguarded. All parties therefore considered the overall process to be a judicial one.

The requested person will as part of the initial police district investigation be asked whether they wish to consent to surrender, in all consent cases that consent must be reiterated in court. It will then be for the judge to provide guidance as to the consequences of that consent (and, if appropriate, to any further consent made in respect of onward surrender).

In contested matters, and pursuant to general domestic practices, the police retain a degree of discretion as to how much of the documentation submitted should be translated for the appeal hearings. The police are of course mindful of the wishes of the court in this regard.

### 4.6. REFUSALS TO SURRENDER

To date Denmark has not refused any EAW surrenders.

The expert team engaged with the Danish judiciary in some detail concerning problematic circumstances which may be envisaged in respect of foreseeable but currently theoretical EAW requests.

First and foremost the judges considered themselves bound by the decisions taken by their legislature as expressed by the passing of primary legislation. Having expressed that view they postulated that concerns of principle may be unavoidably raised by the adoption of the positive list of offences in the FD prior to all Member States coming to a harmonised view in respect, at least, of certain of those definitions.

The observation was made by the judiciary that issuing Member States themselves might wish to consider taking the initiative at the early stages of proceedings, by reaching policy decisions as to the merits of proceeding to issue EAWs in cases where unified definitions are simply absent.



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In illustration of this point the following examples were discussed:

- The act of an abortion being categorised by an issuing Member State as murder, and
- The act of an assisted suicide being categorised by an issuing Member State as murder.

In respect of these specific examples the judges were concerned that they were prohibited from an examination of double criminality. When pressed, and in respect of these specific examples, it was accepted that as a matter of conscience in such cases they may well make an enquiry into the "ticked box" and could not rule out the possibility of a refusal. In such an instance it was accepted that the Prosecution Service would appeal to a higher Court to set the initial appellate decision aside.

Given their ultimate review of the decision of the MOJ in contested matters the judges were entirely unconcerned by the fact that the Minister of Justice herself had been presented with three EAW files and had been invited to endorse the view of her staff.

Interestingly the team noted that the judges, while generally comfortable with the concept of mutual recognition, considered that it would be inappropriate to initiate direct communication with an issuing JA. Denmark's judiciary is not inquisitorially based and the firm view expressed was that a more appropriate and transparent approach (within Denmark) would be for them to direct the MOJ, in open court, to make such enquiries as were deemed appropriate, and in due course to receive responses to those questions in open court.

### 4.7. APPEALS PROCEDURES AND THEIR IMPACT ON TIME-LIMITS

As stated, on being advised of a decision to surrender by the police, the requested person has an unconditional right to lodge an appeal or a judicial review of the lawfulness of the decision to surrender to the City/District Court within three 3 days<sup>1</sup>. The notification of the fact of the appeal/review and the hearing date (or waiver thereof) are passed by the police to the MOJ who in turn relay that detail to the appropriate authority of the issuing Member State.

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<sup>1</sup> S16 and 18(e) The Consolidation Act, No. 833 of August 2005.

## RESTREINT UE

The Danish Courts maintain a highly flexible language regime and both District and High Court judges confirmed to the evaluation team that they would proceed to hear matters without an interpreter, if they considered that all parties sufficiently conversant with the foreign language in question, (practically speaking this would generally be in German, French or English).

Further appeals from the first instance City/District Court decision, lie to the High Court and are also subject to a three day notification period.

Further appeals to the Supreme Court can only take place if special conditions are fulfilled, together with the leave of the Danish Court of Appeal<sup>1</sup>. Request for appeals to the Supreme Court should in theory be filed with the Danish Court of Appeal up to two weeks from the offending decision<sup>2</sup> however, in practice surrender will have taken place no later than ten days from the final High Court decision (should there have been one). As a matter of practice it will be for the requested person to apply to postpone the surrender. The experts noted that in one 2004 case an appellant successfully applied to the High Court to delay the effect of the surrender decision so that leave to appeal to the Supreme Court could be heard by the Board of Appeal. In that case the surrender decision was deferred until the leave decision was considered. The decision was in fact refused and thereafter the requested person was surrendered pursuant to the original High Court order.

The expert team noted that there appeared to be no specific automated fast track style procedure to specifically expedite EAW related appeals, rather it would be a matter to be initiated by the prosecutor in each instance. The MOJ considered that this initiative would be taken as a matter of course in all EAW related cases.

In terms of the time limits set out in Denmark's implementing Act it is stated that in all cases, "...the final court ruling as far as possible, be given within 60 days following the persons arrest in Denmark."<sup>3</sup> That is to say no more than 10 days for the MOJs initial surrender decision and no more than 50 days for all other avenues of judicial appeal.

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<sup>1</sup> The Danish Court of Appeal can admit the appeal of judgements, if a case is fundamental or other specific ground arise , cf. S 962 (3).

<sup>2</sup> S 962(3)Administration of Justice Act.

<sup>3</sup> S18d(2) Consolidation Act, No. 833 of August 2005.

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The expert team noted that the MOJ commences counting the ten day deadline for the surrender as from the expiry of the three day appeal notification date (i.e. the date when the ruling becomes final) and, by this yard-stick, the Danish authorities have not exceeded the 10 day or the 60 day time-limits<sup>1</sup> during 2005. These limits were exceeded on one occasion in 2004 and in that case Eurojust was notified as mandated by the FD.

## 4.8. OWN NATIONAL, YOUTH ARREST AND SURRENDER ISSUES

Denmark's implementing legislation permits it to require the issuing Member State to make it a condition of surrender that the requested person, being a Danish national or a person permanently resident in Denmark, must be returned for the service of any sentence. In practice Denmark will always enforce this condition if such a demand is expressed by the requested person.

In the case of requests for surrender in conviction cases, Denmark will refuse surrender in respect of any own nationals/permanent residents who wish to serve their sentence in Denmark.<sup>2</sup>

Denmark has no experience of surrender requests made in respect of minors.

## 4.9. ACCESSORY OFFENCES

As reported in section 4.2.1, as an executing Member State, Denmark can surrender in prosecution or conviction cases even where the scope of the FD offences are met in respect of a single offence particularised on the EAW<sup>3</sup>.

Denmark has no experience of issues arising from this practice.

## 4.10. ONWARD SURRENDER/EXTRADITION

Denmark has no current experience of cases involving onward surrender/extradition.

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<sup>1</sup> Article 17(2)(3) of the FD.

<sup>2</sup> S10b Consolidation Act. No 833 of August 2005,

<sup>3</sup> S10a(4) Consolidation Act, No. 833 of August 2005.

# RESTREINT UE

## 4.11. AD HOC ISSUES SURROUNDING UNDERTAKINGS

As was demonstrated by the fact that Denmark had not refused an EAW surrender during 2005, no insurmountable issues had arisen in this regard (although the expert team noted that in several requests for the purpose of service of a sentence awarded in absentia, the necessary case detail was found to be lacking and in need of further clarification).

## 4.12. ARTICLE 32 EXPERIENCES

Denmark has no current experience of cases involving Article 32 derogations.

## 4.13. CONDITIONAL SURRENDER

Denmark is currently progressing its first case in respect of which a temporary surrender is being negotiated. That case concerns a person wanted in Germany in respect of a murder, the trial of which is ready to proceed, but who is also wanted in Denmark in respect of an unconnected murder which is some way from being ready for trial.

The Danish MOJ have invited the German authorities to set out the facts of their case and the detail of the proposed return of the requested person, in due course, to stand trial in Denmark.

The Danish authorities are of the view that the communications between authorities is acceptable and that the unregulated nature of the process is assisting both sides to gain access to the requested person in the interests of both sets of proceedings.

## 4.14. THE MECHANICS OF SURRENDER (INCLUDING CONDITIONAL SURRENDER) OF REQUESTED PERSONS AND PROPERTY

In all cases local police districts are responsible for the logistical arrangements surrounding the surrender of persons and evidence, all such arrangements are communicated via the CC. The police districts are under an obligation to advise the MOJ if it becomes apparent that surrender cannot take place within 10 days of the final decision being reached. The MOJ will inform the issuing JA of this, with a copy being forwarded to the CC.

Each of the 19 surrenders undertaken during 2005 took place within the prescribed time-limits.

# RESTREINT UE

## 4.15. CONFLICT OF EAWS/EXTRADITION REQUESTS

Such a conflict has yet to occur. The expert team were advised that should these circumstances arise, the practice would be for the MOJ to examine the conflicting EAWs/extradition requests with due consideration being given to the seriousness of the allegations, whether the request was for a prosecution or a conviction case and the location of the offences, before forming a view as to priority.

## 4.16. EXPENSES

Denmark has no experience of any practices in contravention of the FD.

## 5. TRAINING PROVISION

The experts found that a wide range of training options were available to personnel engaged at all levels of the administration of the EAW process.

That training provision may be summarised as follows:

- Each of the legal associates at the MOJ may spend up to 20% of their time conducting concrete cases before the Courts, either at District or High Court level. In several instances permission was granted for a lawyer to gain experience of defence files at an established defence firm one day each week. Thus front line operational experience continues to accrue (and importantly, remain current) whilst performing MOJ duties.
- All MOJ staff are able to partake in language training offered by the Ministry's language school (the predominant courses undertaken being in English and French).
- Professional internal module based courses concerning e.g. International law, The European Human Right Convention, Administrative law and Constitutional law, are a mandatory requirement for all legal staff during the first three years of their employment with the MOJ. These courses cover a range of legal issues pertinent to the work of the International Division.
- Staff at the CC have attended, and are scheduled to attend, domestic training courses and international seminars on the EAW (Rome and Vienna).
- Staff at the CC, already selected in part due to their linguistic competence, are also able to undertake additional language training courses.
- Individual police districts also run ad hoc courses on the practical application of the EAW.

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- Both police and prosecutorial staff in the local police districts have electronic access, via the POLNET IT-system, to Denmark's implementing legislation, the practical guide and to a weekly newsletter issued by the MOJ on current law issues.
- Prosecution staff (lawyers) have, during their education with the police, received instruction on the handling of international cases, cases concerning the European Arrest Warrant and other extraction cases.

The expert team did however note that EAW specific training in the smallest police district visited<sup>1</sup> was felt, by the incumbent police and prosecutorial staff, to be minimal and in any event inadequate to be of significant practical assistance when such cases arose. The expert team noted also that this police district was one of those that would likely be subsumed in the proposed restructuring exercise<sup>2</sup> and would therefore gain greater practical experience of EAWs as its operational area increased.

## 6. DEFENCE PERSPECTIVES

The expert team was afforded the opportunity of meeting with two members of Denmark's unified Bar and Law Society, membership of which is currently mandatory for all practitioners.

The view of the Bar, expressed without rancour, was that the loss of each of the seven cases appealed during 2005 demonstrated the inflexibility of Denmark's Courts in matters concerning the surrender of requested persons. They remarked that the longstanding tradition not to surrender Danish nationals had been swept aside and that the Courts were entirely satisfied, on the basis of Article 5 paragraph 3 guarantees, that such surrenders were now permissible.

Public reaction to this and other changes wrought by the EAW was described as muted, partly aided by the lobbying activities undertaken by the Bar and Law Society, to ensure that procedural safeguards were seen not to be eroded.

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<sup>1</sup> Which covered an area of just 8 square km, and had experience of just 2 EAW matters during 2005.

<sup>2</sup> See Annex F.



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They reported no experience of the Court fettering the choice of counsel in any way, either by reference to approved lists or diary availability, and confirmed that their rates of remuneration were entirely in keeping with equivalent domestic criminal matters.

The experts noted with interest that the issue of greatest concern to the bar did not relate to the surrender decision or the appeal processes available, rather the likelihood that a person once surrendered would be remanded in custody by the issuing Member State pending determination of the criminal proceedings there. Such detentions could in many cases be entirely disproportionate to the criminal offence and possible sanctions available but, give the fact that alternative bail remedies such as reporting to police stations etc could not be transferred/enforced in the executing Member State, remands in custody were seen as being the only available option.

The Bar felt that the current remand procedures resulted in a clear and demonstrable inequity in that they were based not upon the evidence of a particular case, but upon the nationality/domicile of the surrendered person. It was their clear view that the EU should focus some attention on creating measures which would broaden the range of options available to issuing Member State courts so that fears of such discriminatory treatment could be allayed.

## 7. CONCLUSIONS

### 7.1 General conclusions

7.1.1. The expert team were left with the clear impression that, notwithstanding the fact that experience of EAW matters is necessarily limited, the Danish system is successful in terms of the efficiency by which these matters are progressed. The experts would like to take this opportunity to express their thanks to the Danish authorities for the open manner in which all questions pertaining to the evaluation were discussed.

7.1.2. As stated, the organisation of the Danish police and courts systems are the subject of current reforms and, should the perceived timetables be adhered to, the number of police and City Court districts should be greatly reduced as at 01 January 2007.<sup>1</sup> Such developments could, in the opinion of the expert team, serve to improve and better disseminate the EAW knowledge base and further streamline the handling of cases.

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<sup>1</sup> See Annex F - the proposed reforms were adopted by the Danish Parliament on 2 June 2006 and will enter into force on 1 January 2007.

# RESTREINT UE

7.1.3. The experts also wish to relay Denmark's concern that, in due course, the lack of a series of agreed vehicular languages within the EAW framework was likely to have a negative impact on the ability to comply with strict temporal limits in respect of the delivery of original documents or further information. This in turn could foreseeably result in the release of requested persons who would otherwise have been subject to the due process of the criminal law.

7.2 Conclusions in respect of Denmark's activities as an issuing Member State

7.2.1 Issues

7.2.1.1. Dissemination of EAW guidance

To facilitate the circulation of EAW knowledge throughout the 54 police districts, in existence at the time of the evaluation visit, relevant and instructive information has been posted on the police POLNET IT system. The experts found that the partitioning of POLNET domains (as between the police and prosecution users) together with less than obvious electronic signing, meant that a user unaccustomed to the topic<sup>1</sup> could easily overlook relevant guides or items of assistance.

In one case an officer was unaware of the existence of the MOJ guide and relied instead upon a locally produced police note on the subject. In that instance he caused the Danish language form itself to be translated, in addition to the information thereon, (the inaccuracies of this translated form were not challenged by the executing Member State on that occasion). The MOJ was present during this interview and noted the specific areas in which electronic signposting could be enhanced, the expert team believes that this weakness has already been addressed.

7.2.1.2. Accessing historic EAW cases

The expert team also determined that the POLNET database, although generally efficient, does not contain a flagging marker or similar descriptive field which would enable an officer to discover an earlier case file and so mimic proven practices. The police confirmed that, unless they knew of a specific named case, they would not be able to interrogate the system for this purpose.

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<sup>1</sup> The experts acknowledge that during 2005 Denmark's 54 police districts had undertaken just 64 issued and 33 executed EAWs between them.



# RESTREINT UE

## 7.2.1.3. Front line training

It was clear that the current structure of the Danish police force is such that many police districts have little or no concrete experience of dealing with EAW matters. The expert team recognised therefore that a balancing exercise needed to be undertaken in respect of the time and resources that should be allocated to bespoke EAW training and updating measures. Notwithstanding this difficulty however the experts noted that the police and the prosecutors alike in one police district were themselves of the view that their EAW specific training had not equipped them with sufficient knowledge to progress such cases with confidence.

## 7.2.1.4 Reliance upon the 1983 Convention on the Transfer of Sentenced Persons

The expert team notes that the Danish authorities themselves are concerned over their reliance upon this Convention and the corresponding necessity to examine double criminality at the point of surrender. The team noted Denmark's wish to advance the progress of the draft Council FD on the Application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU and the Transfer of Sentenced Persons between Member States of the EU.

## 7.2.2 Good practices

### 7.2.2.1. Verification of linked domestic investigations

The expert team felt that the mandatory and systematic review of the police investigation database to ascertain whether linked matters existed for the purpose of issuing a unified application was, practically speaking, a simple yet potentially time saving stage in the issue process.

### 7.2.2.2. MOJ training

The expert team were particularly impressed by the foresight and flexibility demonstrated within the MOJ in respect of seeking to make provision to allow its Legal Associates up to one day a week working outside of the Ministry on concrete prosecution or defence cases. It seemed to the team that this was a benefit to the process as a whole and a clear benefit to the lawyers themselves who decide on and action EAW files on a weekly basis.

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## 7.2.2.3. MOJ record keeping

The expert team were afforded the opportunity to examine an MOJ file in some detail and were of the view that the use of a distinct coversheet, created specifically to provide a standardised record of statistical and time critical data, was a simple but highly effective tool in terms of case tracking and maintenance of statistical records.

## 7.2.2.4. 24/7 rotas

24/7 Contact numbers for the MOJ (Head of Division, Legal Adviser and Senior Legal Associate) were posted with the CC. That these contact numbers had been used to good effect during the preceding year was, in the opinion of the expert team, testament to the benefits that such a practice lends to the EAW system.

## 7.2.2.5. Pragmatic approach to requests for further information

Despite doubts over the propriety of certain requests Denmark as issuing State had taken the view that, at this time, it would seek to accommodate the diverging practices of the different executing States across the EU and, wherever possible, would supply the additional information requested even when such requests appeared to fall clearly outside of the provisions of the FD. The expert team were however concerned that such diverse practices were still prevalent over two years after first implementations of the FD took place.

## 7.2.2.6. CC as centralised communication conduit

Although the expert team noted that there were ad hoc instances of the occurrence of direct police to police contact (initiated by foreign Member State Authorities), it was clear that the central role of the communication centre was well understood and very heavily utilised by the Danish Authorities. The technical and linguistic competencies of CC staff made this conduit the natural choice for external communications.

## 7.3 Conclusions in respect of Denmark's activities as an executing Member State

### 7.3.1 Issues

#### 7.3.1.1 Designation of the JA

The evaluation team were impressed with Denmark's overall organisation and by the mechanisms which had been implemented to ensure what they considered to be an efficient means of progressing EAW matters.

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Denmark's authorities were acutely aware that the decision to designate the Minister/Ministry of Justice as the competent JA in issue and execution cases has been a cause for comment at Member State and Council level<sup>1</sup>. That decision was the object of considerable discussion during the evaluation visit, with Denmark maintaining throughout that the judicial scrutiny to which all cases may avail themselves of demonstrates that to all practical purpose this organisation was indeed in keeping with the letter of the FD.

From a practical perspective the evaluation team could not identify any consequential weaknesses flowing from the appointment decision. They acknowledge also that Denmark's Judges and its Defence Bar were entirely at ease with the said allocation of powers. The fact remains however that three EAW files have been submitted to the Minister<sup>2</sup> in person thus raising the spectre that political pressure may potentially impact upon what should be a purely judicial decision.

The expert team found the rationale behind this designation to be at odds with the concern for transparency expressed by Denmark in respect of its 1999 reorganisation of the Courts system, in respect of which it was stated inter alia that:

*"The decision that the courts no longer be administered by the Ministry of Justice was taken by a unanimous Parliament. It was not possible to prove that the structure then in force had any negative consequences for the independence of the courts, but the Parliament wanted to prohibit the theoretical possibility that the independence of the courts might be questioned."<sup>3</sup>*

The team also noted with some concern that the Ministers/MOJ's decision as issuing Member State not to issue an EAW, or as executing State, not to surrender a requested person, was not the subject of any form of judicial scrutiny whatsoever. In such theoretical cases therefore the Minister's dual Administrative and Political function could clearly be questioned in respect of a decision which might, on its face, be politically charged. It seemed to the team that any and all substantive EAW decision making should be tempered by the recourse to effective judicial scrutiny to remain within the ratio legis of the FD.

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<sup>1</sup> The originating legal basis for which is stated by the Danish authorities as being Article 6 of the FD - Under Danish Law the concept of Judicial authority includes prosecutors, who in turn form part of the MOJ, the highest prosecutor in Denmark.

<sup>2</sup> In each instance the Minister confirmed the decision of her MOJ officials.

<sup>3</sup> Page 5 "Courts of Denmark an organisation in development".

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In consequence of these findings the expert team considered that it would clearly be in the interests of the wider acceptance of the EAW and expansion of the principle of mutual recognition, for Denmark to take steps to reconsider its internal organisation, applying the same guiding principles as were so helpfully brought to bear during the reorganisation of the Courts. They further speculated that the designation of, say, the Copenhagen City/District Court<sup>1</sup> as being the competent JA for the purposes of EAW proceedings would be a natural and neutral alternative to the present system. This potential solution would also encourage the court to develop enhanced specialisation in this area.

## 7.3.1.2 Examination of the positive list

The expert team noted that the Danish judiciary considered themselves to be in an unenviable position in respect of circumstances (although theoretical at present) whereby requests could be made for surrenders in cases where there remain polar differences between Member State definitions in respect of certain positive list offences. Highly emotive questions on the issues of abortion and euthanasia being the specific examples discussed. The team felt that there was merit in the judges' plea that Member States discuss the definitions of such offences as a matter of some urgency and also discuss issuing Member State EAW practices during the intervening period.

At this time however the judges accept that in such hypothetical cases they may, as a matter of conscience, enquire behind the list. The expert team noted that the scenarios discussed were hypothetical and that to date the record of the courts was an effective testament to the judges' adherence to the letter of the FD.

In one instance the MOJ also confirmed that the positive list had been the subject of scrutiny, prior to a decision being taken on surrender. Although case specific justifications were made concerning that request, the experts were of the clear view that such practices must not be allowed to develop.

## 7.3.1.3 Organisation of requests for further information

The experts noted that in SIS and Interpol matters the CC would make requests for information which were stated to be based on the premise of Article 15 of the FD. It was accepted that the CC is not a JA for the purposes of the EAW and as such the actual legal basis of such requests were unclear to the expert team. It should be remembered that any such request would probably be actioned by an issuing JA at the other end of the process.

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<sup>1</sup> Which already operates a 24/7 duty rota.

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In respect of EAW requests in respect of non list offences, and where it was evident from past practice that double criminality requirements would not be satisfied, the staff at the CC were empowered merely to flag their systems rather than give effect to the EAW<sup>1</sup>. The legal basis of this practice if undertaken by the MOJ was clear, the fact that the CC undertook this without case specific MOJ prior authority seemed to the team not to be in keeping with the principles of mutual judicial recognition. The expert team were more concerned however by the intimation that such a practice may be applied in respect of list offences, clearly such action would run entirely contrary to a central premise of the FD.<sup>2</sup>

The evaluation team also considered that the organisation and practices of the CC generated the likelihood that multiple requests for further information could be raised, the experts felt this to be an area where consideration could usefully be given to streamlining/unifying Denmark's EAW work flow. As presently organised it was theoretically possible for requests for information to be generated at the following levels of the process:

- By the CC - on receipt of a SIS Alert or Interpol notice,
- By the MOJ - at the first instance proceed/reject review,
- By the MOJ - pursuant to the investigative report undertaken by the police district,<sup>3</sup> and
- By a judge - at each level of appeal (District, High and Supreme Courts).

The expert team felt that it would be preferable to consider routing all CC requests through the MOJ, thereby complying with the authorisations required by the FD and allowing for a more substantive and unified examination of the EAW.

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<sup>1</sup> For example German cases issued in respect of refusal to pay family maintenance orders fall into this category of flagging.

<sup>2</sup> The expert team understands that any abortion surrender requests may also fall into this category.

<sup>3</sup> In theory this request may contain a request for further information originating from the Minister herself.

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## 7.3.2 Good Practice

### 7.3.2.1. Uniform guidance

The addendum guide for dealing with EAW matters ("the guide") was considered by the team to be a concise and well thought through practical document. The existence of worked prosecution and conviction case examples added to its utility.

### 7.3.2.2. Investigation of SIS Alerts and Interpol Notices

The team were also taken by the fact that the CC had put systems in place to electronically investigate whether the subjects of each and every non targeted SIS Alert and Interpol Notice were recorded as having links with Denmark. The combined volume of such requests were estimated as being in the region of 30 SIS and 10 Interpol Notices each day. Further, the CC had created (and monitored) strict time limits surrounding this activity.

### 7.3.2.3. Documentary flexibility

The judges also confirmed that their main concern was to be presented with the appropriate information contained on an EAW (per Article 8 of the FD), they were largely unconcerned by the format that this information took and, in appropriate cases, confirmed that they could proceed to consider cases (i.e. at the preliminary hearing where detention is considered) without sight of the EAW form itself.

The team appreciated the flexibility that this approach might bring, specifically in instances where language compliant forms had not yet been supplied, they did however wish to balance this flexibility with the requirement that in all cases issuing Member States should adhere to the rules and methods set out by the FD.



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## 8. RECOMMENDATIONS

### 8.1 RECOMMENDATIONS TO DENMARK

#### 8.1.1 As issuing Member State

Recommendation 1 - To examine what electronic flagging/cross referencing may be put in place to improve the ease by which police and prosecutorial users may reference EAW forms and procedures on the police POLNET system. (See 7.2.1.1)

Recommendation 2 - To post electronic EAW forms in all languages, and in their unedited entirety, onto the police POLNET IT system, together with a standing instruction that the forms must be utilised in all cases. (See 7.2.1.1)

Recommendation 3 - To implement a simple referencing system whereby the POLNET archive (or other such case management IT system as may be appropriate) can be interrogated by users to deliver listings of all cases in which EAWs have been utilised. Given the low volume of historical cases, all existing EAWs matters should be cross-referenced accordingly. (See 7.2.1.2)

Recommendation 4 - To reassess police district EAW training requirements once the new structures of the forthcoming police reform are in place. (See 7.2.1.3)

#### 8.1.2 As executing Member State

Recommendation 5 - To reconsider the competence of the Minister of Justice, or to put equivalent measures into place, so as to ensure that concrete EAW files may not be referred for consideration/decision making.<sup>1</sup> (See 7.3.1.1)

Recommendation 6 - To underline, in a manner felt appropriate, for example at judicial/MOJ training seminars, the primacy of the positive list set as out in Article 2 paragraph 2 of the FD. (See 7.3.1.2)

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<sup>1</sup> In accordance with the principles of transparency which led to the reorganisation of the Danish court system in 1990. See paragraph 7.3.1.1.



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Recommendation 7 - To consider measures by which the formulation of requests for information may be further streamlined so that all domestic participants are afforded the opportunity to coordinate, if possible, to a single unified communication issued by the JA. (7.3.1.3)

## 8.2 RECOMMENDATIONS TO CERTAIN OTHER MEMBER STATES

Recommendation 8 - To consider whether their internal organisations would allow for policy based lawyers with competence in this area to gain regular operational experience in respect of concrete EAW cases, either at first instance or appellate levels. (See 7.2.2.2)

Recommendation 9 - To discuss at working group level, with a view to issuing a practice note, which categories of requests for clarification are appropriate in cases involving the EAW. (See 7.2.2.5)

Recommendation 10 - That consideration be given to conducting national impact assessments on the merits and resource implications of the introduction of an electronic hit/no hit verification on all Article 95 Alerts and Interpol diffusions. (See 7.3.2.2)

## 8.3 RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 11 - To discuss the merits of adopting a core of vehicular languages in EAW matters, so as to alleviate foreseeable conflicts in the provision of language compliant documentation. (See 7.1.3)

Recommendation 12 - To discuss how best the definitions of the Article 2 paragraph 2 FD list offences may be further harmonised. (See 7.3.1.2)

Recommendation 13 - To afford priority to work on the draft FD into facilitating and simplifying the 1983 Convention on the Transfer of Sentenced Persons. (See 7.2.1.4)

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ANNEX A

## PROGRAMME OF VISITS

### Wednesday 3 May

- 9.45 Transport from the hotel to the Ministry of Justice, Slotsholmsgade 10, 1216 Copenhagen K.  
10.00 - 10.30 Ministry of Justice (Welcome)  
10.30 – 12.00 Ministry of Justice (The International Division)  
12.15 – 13.45 Lunch  
13.45 A short walk to the Ministry of Justice  
14.00 – 15.00 Ministry of Justice (The International Division)  
15.10 Transport from the Ministry of Justice to the Danish Bar and Law Society, Kronprinsessegade 28, 1306 Copenhagen K  
15.30 – 17.00 The Danish Bar and Law Society (Defence lawyers)  
17.10 Transport from Danish Bar and Law Society to the hotel.  
19.00 - Dinner

### Thursday 4 May

- 9.30 Transport from the Ministry of Justice, Slotsholmsgade 10, 1216 Copenhagen K to the hotel.  
9.40 Transport from the hotel to the National Commissioner's Office (Communication centre, SIS, Interpol etc.), Polititorvet 14, 1780 Copenhagen V  
10.00 – 12.00 The National Commissioner's Office (Communication centre, SIS, Interpol etc.)  
12.15 – 13.30 Lunch  
13.40 Copenhagen Commissioner's office, Politigården, 1567 Copenhagen V  
14.00 – 16.30 The Copenhagen Commissioner's office  
16.45 Transport from the Copenhagen Commissioner's office to the hotel

### Friday 5 May

- 9.30 Transport from the hotel to the Police District Frederiksberg, Howitzvej 32, 2000 Frederiksberg  
10.00 – 12.00 Police District Frederiksberg  
12.15 – 13.30 Lunch  
13.30 Copenhagen City Court, Domhuset, Nytorv, 1450 Copenhagen K  
14.00 – 16.00 Copenhagen County Court (County Court Judge and High Court Judge)  
16.00 Transport from Copenhagen City Court to the Ministry of Justice  
16.15 – 16.45 Ministry of Justice - roundtable.  
17.00 – 19.00 Transport to the airport

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ANNEX B

## LIST OF PERSONS INTERVIEWED

<b>Ministry of Justice</b>	Deputy Permanent Secretary Jens Kruse Mikkelsen
<b>(Justitsministeriet</b> Slotsholmsgade 10 1216 København K)	Legal adviser Lene Volke Roesen Head of section Charlotte Lauritsen
<b>The Danish Bar and Law Society</b>	Legal adviser Mads Bundgaard Larsen Lawyer Jacob Juul
<b>Advokatsamfundet</b> Kronprinsessegade 28 1306 Købehavn K Mødelokale 1	Lawyer John Kahlke
<b>The National Commissioner's Office</b>	Detective Chief Superintendent Klaus Munk Nielsen Detective Chief Inspector Ulrik Bang
<b>Rigspolitiet</b> Anker Heegaards Gade 3	Deputy Chief Prosecutor Skipper Pelle Falsled
<b>The Copenhagen Com-missioner's office</b>	Prosecutor Claus Ryberg Hoffmann Detective Inspector Hans Erik Raben
<b>Københavns Politi</b> Politigården 1567 København V	
<b>Police District Frederiksberg</b>	Detective Inspector Kaj Hedegaard Larsen Deputy Chief Constable Gyrithe Ulrich
<b>Frederiksberg Politi</b> Howitzvej 32, 2000 Frederiksberg	
<b>Copenhagen County Court</b>	City Court judge Lene Merete Larsen High Court judge Bertil Frosell
<b>Københavns Byret</b> Præsidentens mødesal Nytorv 24 1450 København K	

## LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
CC	Communication Centre at the National Commissioner's Office
DPP	Director of Public Prosecution
EAW	European Arrest Warrant
FD	Framework Decision
JA	Judicial Authority
MOJ	Ministry of Justice
POLNET	Police Information Database
SOCA	Serious and Organised Crime Agency

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ANNEX D

## STATISTICS PROVIDED PURSUANT TO THE EVALUATION EXERCISE

Table 1 - Issuing statistics

European arrest warrants issued by Denmark in 2005	
Number of EAWs issued:	64
Number of EAWs cancelled:	9 (The reason for cancelling them was that the wanted persons were arrested in Denmark.)
Number of EAWs replaced by extradition requests:	4 (All four cases concern extradition from Germany and are still pending.)
Number of uncompleted cases:	29
Number of completed cases:	22
– Number of completed cases in which the person was not extradited to Denmark:	1 (As the wanted person had left Greece, the Greek Supreme Court's extradition order could not be enforced. The person was subsequently arrested and remanded in custody in Denmark.)
– Number of cases in which the person was extradited to Denmark on another (also available) basis and not on an EAW (see Article 31(2)):	2 (One was extradited from Norway and the other from Finland, under Nordic extradition law.)
– Number of completed cases in which the person was extradited to Denmark from an EU Member State where the EAW should be applicable:	19 (Austria, Belgium, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, Spain, Sweden and the United Kingdom.)
– Number of completed cases (out of 19) in which the person was in fact extradited within the 10-day time limit (Article 23):	14
– Number of completed cases (out of 19) in which the person was not in fact extradited within the 10-day time limit (Article 23):	5

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– Number of completed cases in which an EU Member State refused to extradite the person to Denmark:	0
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Table 2 - Executing Statistics

No. of acceptances for execution of European arrest warrants in 2005 (incl. decisions taken in 2005)	
No. of acceptances of EAWs:	33
No. of AWs cancelled:	2 (Sweden and Germany)
No. of cases in which DK did not receive an AW	4 (UK, Poland, Germany, Hungary)
No. of uncompleted cases:	8
No. of cases in which DK decided to extradite:	19 (Belgium, France, Netherlands, Latvia, Lithuania, Slovenia, Sweden, Germany, Hungary)
– No. of cases in which extradition was carried out:	15*
– No. of cases in which extradition was deferred:	2 (In one case the wanted person was serving a Danish sentence; in the other case the wanted person was remanded in custody in a Danish case)
– No. of cases in which extradition was not carried out for other reasons:	2 (In one case the person was not extradited for want of a passport and in the other case the Netherlands decided that it did not want the person after all)
No. of cases in which DK refused to extradite:	0
No. of cases (out of the 19) in which the Justice Ministry took a decision within 10 days (Section 18(d)(1) of the Extradition Law):	10

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No. of cases (out of the 19) in which the 10-day period was deferred for lack of information:	9 (In all cases DK took a decision within 10 days after it had received all the information under Article 8 of the Framework Decision)
No. of cases (out of the 19) in which the Justice Ministry failed to comply with the 10-day period:	0
No. of cases (out of the 19) in which the Justice Ministry's decision was referred to the courts:	7** (In 6 cases the JM's decision on extradition was endorsed by the courts. In the last case, the JM's decision on extradition was endorsed in part. The requested person was not given leave to refer the case to the Supreme Court)

Table 2a

Case no.	Time between submission of the original (inadequate) request and the surrender decision by the Ministry of Justice
1	27/01/05 – 08/02/05 = <b>12 days</b>
2	27/07/05 – 31/08/05 = <b>34 days</b>
5	14/01/05 – 28/01/05 = <b>14 days</b>
6	30/05/05 – 03/08/05 = <b>64 days</b>
7	23/12/04 – 18/01/05 = <b>26 days</b>
16	29/07/05 – 13/10/05 = <b>46 days</b>
21	16/02/05 – 02/03/05 = <b>14 days</b>
23	23/06/05 – 19/07/05 = <b>26 days</b>
29	24/11/05 – 06/12/05 = <b>12 days</b>
On average	<b>27,5 days</b>



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ANNEX E

## SCHEDULE OF DENMARK'S STATUTORY GROUNDS OF REFUSAL

<b>Statutory Reference</b>	<b>Précis</b>	<b>Corresponding FD Article</b>
Section 10c	Requested person being under the age of criminal responsibility at the time of commission of the offence.	Article 3.3
Section 10d.1	Double jeopardy.	Articles 3.2, 4.5
Section 10d.2	Executing States decision not to prosecute/discontinue proceedings.	Article 4.3
Section 10d.3	Domestic proceedings.	Article 4.2
Section 10e	Passage of time from the commission of the offence.	Article 4.4 where jurisdiction is shared
Section 10f.1	Acts committed wholly/in part within DKs jurisdiction and those acts do not constitute a criminal offence.	Article 4.7 a
Section 10f.1	Commission of the offence outside of the issuing State.	Article 4.7 b
Section 10h.	Fundamental rights.	FD recitals/fundamental rights.
Section 10 i.	Age, health and associated humanitarian concerns.	N/A.

## UPDATING STATEMENT FROM THE DANISH AUTHORITIES CONCERNING PROPOSED POLICE AND JUDICIAL REFORMS

The Ministry of Justice can confirm that the reform of the police and judiciary was adopted by the Danish Parliament on 2 June 2006 (see Law No 538 of 8 June 2006 amending the Administration of Justice Act and various other acts (reform of the police and judiciary)). The Law will enter into force on 1 January 2007.

The Law implements police reform and contains the following main elements:

- *Management and administration of the police and of the Prosecution Service:* Establishment of a conventional "departmental model". The Police Service is given a larger number of specialist powers, while the police commissioners (heads of the new police districts) are given a substantially larger number of administrative powers. Reorganisation of the administrative set-up of the Prosecution Service etc.
- *Larger police districts:* The current 54 police districts are amalgamated to form 12 new police districts.
- *Organisation of the police districts:* Establishment of a unified police authority (no division between the uniformed police and the criminal police) with a strong local police force.
- *Stand-by capability of the police force (24-hour surveillance service) :* Modernisation of the police force's stand-by capability (24-hour surveillance service), *inter alia* in order to ensure a uniform swift response time throughout the country.
- *New technology, etc.:* Substantial reinforcement of police IT systems, etc. Continued development of new technological tools for the police force.
- *Police staff and management policy:* Modernisation of the police staff and management policy, focusing *inter alia* on strengthening specialist skills in the police force.

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- *Police training:* In order to strengthen police training, etc., working groups of wide-ranging composition will be given the task of drafting proposals for reforms to police training.

Under the new reforms, the Director of Public Prosecutions assumes responsibility for the professional basic and in-service training of the Prosecution Service and of the police lawyers, while the National Police Commissioner's Office continues to be responsible for the professional basic and in-service training of police staff.

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## COMMENTS OF THE DANISH AUTHORITIES APPENDED TO EXPERT REPORT PURSUANT TO ARTICLE 7 PARAGRAPH 1 OF JOINT ACTION 97/827/JHA

### Recommendation 5:

In its replies to the questionnaire (see question 1.A.1.) and in connection with the evaluation team's visit to Denmark, the Ministry of Justice provided further details of the background to its designation as a judicial authority pursuant to Article 6(3) of the Framework Decision on the European Arrest Warrant.

In view of those replies, and since it has not received any comments or opinions within the context of its practical cooperation with the other EU Member States indicating a lack of confidence in or recognition of Denmark's handling of EAW cases, the Ministry of Justice sees no reason to change the present structure. In that connection (and as noted by the evaluation team, according to the report), the Ministry would point out that Danish judges and lawyers do not consider the division of powers in Denmark to be problematic.

### Recommendation 6:

As stated in section 7.3.1.2. of the evaluation report, the Ministry of Justice has only once raised additional questions concerning the marking of the positive list by the issuing State.

The Ministry therefore agrees that the key principle is that a mark on the positive list cannot be contested.

### Recommendation 7:

The possibilities for requesting further information from the issuing State are described in sections 2.3.2.1. ("Procedure if the wanted person's whereabouts (in Denmark) are known") and 2.3.2.2. ("Procedure if the wanted person's whereabouts are unknown") of the Ministry of Justice's guide of 19 December 2003.

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According to the above, in cases where requests are submitted directly to the Ministry of Justice, the Ministry will check that the European arrest warrant contains the necessary information to serve as a basis for extradition. If it does not, the Ministry will ask the issuing judicial authority to supply the missing information.

Furthermore, in cases where the issuing judicial authority decides to enter an alert for the wanted person in the Schengen Information System pursuant to Article 95, when an Article 95 alert is entered in the national section of the Schengen Information System, it will only be possible to check that the alert in question (which, under Article 9(3) of the Framework Decision, has the same legal force as a European arrest warrant) includes the necessary information to serve as a basis for extradition under the European arrest warrant rules.

Such checking of a European arrest warrant is carried out by the National Police Commissioner's Office (Communications Centre), which also ensures that any missing information is obtained from the issuing judicial authority as quickly as possible, in accordance with Article 15(2) of the Framework Decision.

The same procedure applies in cases where a European arrest warrant is submitted via Interpol.

The above procedure should be viewed in the context of the fact that the National Police Commissioner's Office is responsible for entering alerts submitted under the Schengen Convention and via Interpol; consequently, it is obliged to check that all the necessary information is available before such information is entered in the national systems, including the national section of the SIS.

When dealing with European arrest warrants, the Ministry of Justice is obliged under the Extradition Act to check that the information necessary to assess a request is available. This may result in the Ministry of Justice being obliged to ask the issuing judicial authority for further information, irrespective of whether the National Police Commissioner's Office has already requested other information.

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In practice, however, it is very seldom that the Ministry of Justice will need to obtain further information in cases where the National Police Commissioner's Office has already requested such information. Even so, this may be necessary for the purposes of a police investigation, e.g. if the wanted person contacts the police with information which the Ministry of Justice considers to be worthy of further examination, *inter alia* by such information being submitted to the issuing judicial authority before a decision is taken concerning extradition.

Furthermore, the Ministry of Justice would point out that, in the vast majority of cases relating to European arrest warrants, the National Police Commissioner's Office will notify the Ministry before requesting further information, just as it will always inform the Ministry if it intends to enter a "flag" in connection with such a warrant.

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