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**From:** Ms Anne Vibe Bengtsen, Attaché for judicial affairs, Permanent Representation of Denmark to the European Union

**On:** 14 April 2015

**To:** Mr Rafael Fernández-Pita y González, Director-General, Council of the European Union

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**Subject:** Implementation of the Council Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings  
- Notification by Denmark

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Dear Sir,

The Danish Ministry of Justice would like to inform the Council and the Commission of the following:

**1. General**

The Council Framework Decision of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings is intended to introduce a mechanism to address cases in which two or more Member States have jurisdiction over an offence and wish to exercise that jurisdiction in order to conduct legal proceedings (conflicts of jurisdiction).

The Framework Decision comprises rules on the exchange of information in cases where there is reason to believe that parallel proceedings are being conducted and on direct consultations when it is established that parallel proceedings exist.

The adoption of the Council Framework Decision on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings has not led to amendments in Danish law, since the existing Danish provisions are considered to be perfectly adequate with regard to implementing the Framework Decision.

Since the Framework Decision came into force, Denmark has thus complied with the obligations thereof. However, through a regrettable error, Denmark has not transmitted to the General Secretariat of the Council and the Commission the text of the relevant Danish legal provisions in due time, in accordance with Article 16 of the Framework Decision.

It should be noted that the Ministry of Justice has, as of this date, asked the Director of Public Prosecutions to ensure that the prosecution service follows the procedures set out in the provisions of this Framework Decision. Once the Director of Public Prosecutions has done so, the General Secretariat of the Council and the Commission will be informed thereof.

Having regard, for instance, to Articles 4 and 16 of the Framework Decision, the Ministry of Justice can inform the General Secretariat of the Council and the Commission of the following:

## **2. Transposition into Danish law, as referred to in Article 16**

Under Article 16 of the Framework Decision, Member States must take the necessary measures to comply with the Framework Decision by 15 June 2012, and by the same date transmit the text of the provisions transposing into their national law the obligations imposed on them under the Framework Decision.

In this regard, the Danish Government can report that the Framework Decision has not led to amendments in Danish legislation. The current provisions in this area are described briefly below:

### *Jurisdiction in criminal proceedings*

Sections 6 to 12 of the Danish Penal Code contain the general provisions on instances where a criminal offence is subject to Danish criminal jurisdiction. These provisions specify, for instance, the criminal proceedings that Danish courts have jurisdiction over.

The general rule as regards Danish jurisdiction is the so-called principle of territoriality, as described in Section 6 of the Danish Penal Code, which states that acts committed in Denmark are subject to Danish criminal jurisdiction. In addition, it follows from Sections 7 to 8b of the Danish Penal Code that acts committed outside Denmark are, in a number of specific cases, subject to Danish criminal jurisdiction. This applies, for instance, when an offence is committed abroad by a Danish national or is aimed at a Danish national (see Sections 7 and 7(a) of the Danish Penal Code on the active and passive personality principle, respectively).

In principle, the Danish Penal Code contains no provisions specifically governing the possibility of exercising Danish criminal jurisdiction where other countries also have jurisdiction over a specific offence, i.e. in an instance where there is a conflict of jurisdiction.

However, with regard to instances where another country also has jurisdiction and has exercised that jurisdiction in order to conduct criminal proceedings, attention should be drawn to Section 10a of the Danish Penal Code, which states that a person who has been subject to a criminal conviction outside the territory of the Danish state may not, in principle, be prosecuted in Denmark for the same act. The provision reflects the '*ne bis in idem*' principle, according to which a person may not be tried twice for the same crime.

A copy of Sections 6 to 12 of the Danish Penal Code is attached (see enclosure 1).

### *Conflicts of jurisdiction*

Danish legislation does not specify whether Denmark or another country should initiate legal proceedings in relation to an offence that is covered by both Danish and foreign jurisdiction (conflict of jurisdiction). If there is disagreement over whether Denmark or another country should prosecute in a given case, the conflict of jurisdiction would, in the event, be resolved on an informal basis through informal contact between the Danish public prosecutor's office and the authorities of the other country.

With regard to a possible conflict of jurisdiction between Denmark and other Member States, there is the option of involving Eurojust in accordance with the Eurojust Decision.

*Transfer of proceedings in criminal matters*

Offences covered by the European Convention of 15 May 1972 on the transfer of proceedings in criminal matters can be prosecuted in accordance with the rules laid down in Parts I to IV of the Convention and the provisions of Law No 252 of 12 June 1975 on the transfer to another country of proceedings in criminal matters. A copy of the law is attached (see enclosure 2).

Under Section 5 of the Law, the Minister for Justice can decide that the law may also be applied in relations between Denmark and a state that is not a party to the Convention.

The European Convention of 15 May 1972 on the transfer of proceedings in criminal matters is supplemented by a 1970 cooperation agreement between the Nordic Directors of Public Prosecutions on legal proceedings in a Nordic country other than that in which a given offence was committed.

**3. Determination of competent authorities, as referred to in Article 4(2)**

Pursuant to Article 4(2) of the Framework Decision, each Member State must inform the General Secretariat of the Council which authorities under its national law are competent to act in accordance with this Framework Decision.

In this regard, the Ministry of Justice can report that the Danish prosecution service will, in practice, be the competent authority with regard to the implementation of the Framework Decision in Denmark.

It should be noted that, as specified in Article 4(3) of the Framework Decision, Denmark has designated the Director of Public Prosecutions as a central authority responsible for the transmission and reception of requests for information in relation to Article 5 of the Framework Decision and/or for the purpose of assisting the competent authorities in the consultation process.

#### **4. Languages, as referred to in Article 14**

With regard to the languages referred to in Article 14 of the Framework Decision, please note that Danish and English may be used in the procedure for establishing contact in accordance with Chapter 2 of the Framework Decision.

The Ministry of Justice would like to apologise for the late communication of this information.

Please send any queries concerning Denmark's implementation of the Framework Decision to:

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Please note that Commission has, as of today, received the same information.

(Complimentary close)

(s.) Anne Vibe Bengtsen