



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 2 September 2011 (07.09)
(OR. da)**

13702/11

**CRIMORG 125
COPEN 201
EJN 101
EUROJUST 123**

NOTE

from:	Danish delegation
to:	delegations
Nos prev. docs.:	13801/2/06 REV 2 CRIMORG 149 COPEN 106 EJN 23 EUROJUST 47 8302/4/09 REV 4 CRIMORG 55 COPEN 68 EJN 23 EUROJUST 19 + COR 1
Subject:	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 and final evaluation report

In a letter dated 2 July 2009, following the fourth round of mutual evaluations on the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States, the General Secretariat of the Council asked Denmark to describe its follow-up to the recommendations made to the Danish authorities in the evaluation report on Denmark (13801/2/06 REV 2 CRIMORG 149 COPEN 106 EJN 23 EUROJUST 47) and the recommendations made to Member States in the final evaluation report (8302/4/09 REV 4 CRIMORG 55 COPEN 68 EJN 23 EUROJUST 19 + COR 1) (see also recommendation 20 in the final evaluation report).

The Ministry of Justice wishes to communicate the following information in that regard:

Re recommendation 1 in the evaluation report on Denmark: "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)"

On 26 May 2006, the forms for issuing a European Arrest Warrant were made available to all employees of the Danish police force via its internal electronic network POLNET, on a dedicated page concerning the European Arrest Warrant. In addition, a letter to the country's police districts concerning the European Arrest Warrant was published on the network on 8 May 2006, while additional guidance was made available on 16 May 2006. As far as the Danish National Police is aware, no practical problems have been experienced by users of the material in question as a result of those additions.

Forms for issuing a European Arrest Warrant are also available in all languages on the Prosecution Service's Intranet "Anklagernet". "Anklagernet", which is the Prosecution Service's joint platform for the internal dissemination of information, was launched in September 2007.

Re recommendation 2 in the evaluation report on Denmark: "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)"

Forms for issuing a European Arrest Warrant are available via the dedicated page on POLNET in Danish, English, German, Spanish, French and Italian. Experience has shown that these translations meet the requirements which have emerged in practice.

Forms for issuing a European Arrest Warrant are also available in all languages on the Prosecution Service's Intranet "Anklagernet".

Re recommendation 3 in the evaluation report on Denmark: "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)"

In the opinion of the Danish National Police, POLNET is not a suitable instrument for disseminating information about criminal cases involving the use of European Arrest Warrants.

It should be noted that, on 1 January 2007, the number of police districts was reduced from 54 to 12. As a result of those police reforms, the relevant legal expertise relating to the European Arrest Warrant has been accumulated in units which, in the opinion of the Danish authorities, are sufficiently large to ensure that EAWs are utilised swiftly and efficiently in practice.

It may also be pointed out that, where relevant, exchanges of experiences concerning the European Arrest Warrant may take place within the forum of the Director of Public Prosecutions' specialist committee on international affairs, whose members include representatives of the Prosecution Service and all the police districts (for more details, see below regarding recommendation 4).

Re recommendation 4 in the evaluation report on Denmark: "To reassess police district EAW training requirements once the new structures of the forthcoming police reform are in place. (See 7.2.1.3)"

The Danish National Police helps to train the relevant staff in the police districts in the use of the European Arrest Warrant. It also provides, on a round-the-clock basis, the necessary guidance and specialist support in connection with the management of such cases by the police districts wherever a specific need arises.

With regard to the Prosecution Service, training in the use of European Arrest Warrants and the handling of extradition procedures involving an EAW takes place continuously via the individual prosecution authorities.

At the same time, the Director of Public Prosecutions' specialist committee on international affairs deals with general issues relating to the handling of specific cases, including the application of the rules concerning the European Arrest Warrant. The members of the specialist committee include representatives of the local prosecution authorities and the regional public prosecutors, who are continually updated on any changes to the rules and practices relating to the European Arrest Warrant. In that connection there is an assumption that the member of that committee will act as a point of reference in their local prosecution authority for the handling of international cases, including those involving the use of European Arrest Warrants.

The task of the specialist committee is to discuss the need for ongoing preparation of guidance and collections of examples, and to examine opportunities to share knowledge via the Prosecution Service's Intranet. The committee must endeavour to disseminate knowledge of international cooperation and the opportunities for taking part in such cooperation. The committee must also decide for itself which tasks it wishes to undertake.

As part of the standard in-service training provided to prosecutors, the Director of Public Prosecutions also offers a course on international judicial assistance which includes training in extradition-related matters against the background of the European Arrest Warrant. This course is open to all prosecutors.

Re recommendation 5 in the evaluation report on Denmark: "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. (See 7.3.1.1)"

The Ministry of Justice can state that, since Denmark was evaluated in 2006, no changes have been made to the legislation designating the Ministry of Justice as the competent judicial authority in issue and execution cases concerning the European Arrest Warrant.

The Ministry of Justice notes that, according to paragraph 7.3.1.1 of the evaluation report on Denmark, the evaluation team could not identify any consequential weaknesses resulting from the designation of the Ministry of Justice as the judicial authority, and that Denmark's judges and the Danish Bar and Law Society are entirely at ease with the Ministry of Justice being designated as the competent administrative authority.

However, the evaluation team thinks that the arrangement runs the risk of allowing political pressure to be applied to what should be exclusively a judicial decision.

It is the Ministry of Justice's view that this is not the case.

It should be noted here that the issuing of an EAW in Denmark always occurs in the context of a court decision on detention in custody, even if the actual issuing of an arrest warrant is done by the Ministry of Justice.

As for cases where Denmark is the executing Member State, it should be noted that the Ministry of Justice's decision on extradition is based on the public prosecutor's preliminary examination of the arrest warrant received and that the decision on extradition may in any case be submitted to the courts by the person concerned.

Re Recommendation 6 in the evaluation report on Denmark: "To underline in a manner felt appropriate, for example at judicial/MOJ training seminars, the primacy of the positive list set out in Article 2(2) of the Framework Decision (see 7.3.1.2)"

It is the Ministry of Justice's view that the question of differences in Member States' definitions of certain offences on the positive list does not in practice give rise to problems.

Re Recommendation 7 in the evaluation report on Denmark: "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, [with a view] to a single unified communication issued by the JA (see 7.3.1.3)"

Owing to the close and ongoing cooperation between the Ministry of Justice and the Danish National Police's NEC Communication Centre on matters concerning the EAW, it is extremely seldom that a need for additional information arises a number of times in the same case. Moreover, the Communication Centre is the Danish police's Single Point of Contact (SPOC) for international communication and the Communication Centre updates all cases relating to the EAW in an investigation database which is searched before initiating international communication. This means that duplication of enquiries in the same case will not in principle occur.

Re Recommendation 8 in the final evaluation report: "The Council, however, calls upon Member States to review their legislation in order to ensure that only grounds for non-execution under the Framework Decision may be used as a basis for refusal to surrender"

In connection with implementation of the Framework Decision in Danish law, the Ministry of Justice - taking into account the widening of the obligation to extradite persons, including Danish nationals, to other EU countries - chose to transpose all the optional grounds for non-execution resulting from the Framework Decision into the Danish Extradition Act. When doing so, the Ministry of Justice gave careful consideration to whether each of the individual grounds for non-execution should be transposed into the Extradition Act as a binding provision or as a provision under which it is practical discretion which determines whether or not extradition is refused. The optional grounds for non-execution which the Ministry of Justice chose to transpose into the Danish Extradition Act as binding provisions are, firstly, where the double-criminality requirement is not met for offences which are not included on the positive list (Extradition Act, Section 10a(2) and (3)), secondly, where there is notification in Denmark of no action (Extradition Act, Section 10d(2), point 1) and, thirdly, where the act is committed wholly or partly in Denmark and the act is not punishable under Danish law (Extradition Act, Section 10f(1)). The other optional grounds for non-execution resulting from the Framework Decision are declared in the Extradition Act to be discretionary. The Ministry of Justice has not since found any reason to revise the Extradition Act's provisions on grounds for non-execution.

Re Recommendation 11 in the final evaluation report: "The Council encourages Member States to analyse their practice with a view to identifying means of resolving problems associated with the practical application of the speciality rule. The coordination within Member States should be improved. Consideration should also be given to the possibility of making the notifications envisaged in Article 27(1) and 28(1) of the Framework Decision"

Regarding the possibility of making the notifications envisaged in Article 27(1) and 28(1) of the Framework Decision, the Ministry of Justice took the view that in implementing the Framework Decision in Danish law – notably because extradition to other Member States was more widely allowed - there was no need to propose amendments to the existing rules allowing the requesting Member State to prosecute, sentence, detain or further extradite the person concerned for offences other than the offence for which the arrest warrant concerned was issued. The Ministry of Justice continues to think it unnecessary to amend the relevant rules.

(Complimentary close)

Morten N. Jakobsen
