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NOTE

from:	Mr. Jeppe Tranholm-Mikkelsen, Ambassador, Permanent Representation of Denmark to the European Union
to:	Mr. Rafael Fernández-Pita y González, Director-General, Council of the European Union
date of receipt :	28 February 2013
Subject :	Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention - Notification of the implementation of the Council Framework Decision by Denmark

Concerning in particular Articles 6(1) and 27(2) in conjunction with Article 27(1) of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (hereinafter "the Framework Decision"), the Ministry of Justice hereby informs the Council and the Commission of the following:

1. Implementation in Danish law (cf. Article 27)

Under Article 27(1) of the Framework Decision the Member States are to take the necessary measures to comply with the provisions of the Framework Decision before 1 December 2012.

Under Article 27(2) of the Framework Decision, Member States are to transmit to the Council and to the Commission the text of the provisions transposing into their national laws the obligations imposed on them under the Framework Decision.

The Danish Government states in this connection that the Framework Decision is transposed into Danish law by Act No 1375 of 28 December 2011 amending the Act concerning the execution of certain decisions in criminal matters in the European Union.

A copy of the Act is attached (*Annex 1*) [Not included].

It should be noted that the Act entered into force on 1 December 2012 (cf. paragraph 2 thereof).

Also annexed is the proposal for the Act amending the Act concerning the execution of certain decisions in criminal matters in the European Union (L5), submitted on 26 October 2011 (*Annex 2*) [Not included].

Lastly, we attach the Act concerning the execution of certain decisions in criminal matters in the European Union, as it stands since 1 December 2012 (*Annex 3*) [Not included].

2. Designation of competent authorities (cf. Article 6(1))

(a) Regarding designation of the competent authorities as referred to in Article 6(1), Denmark gives notice that the Minister for Justice or the person duly authorised by the Minister acts on requests for *recognition* of decisions on measures as an alternative to provisional detention, and that decisions on *execution* of such measures - including any adjustment of the measures - are taken by the courts.

We refer in this respect in particular to Section 29v(3) and Sections 54(1) and (3) of the Act concerning the execution of certain decisions in criminal matters in the European Union (Annex 3), together with point 4.4.1 in the proposal for the Act amending the Act concerning the execution of certain decisions in criminal matters in the European Union (Annex 2).

Cases regarding the execution of measures as an alternative to provisional detention are referred by the public prosecutor to the court in the place of residence of the person concerned by the decision, cf. Section 54(d)(1), point 1 of the Act on execution of certain decisions in criminal matters in the European Union.

On the abovementioned basis the Ministry of Justice accordingly gives notice that it, the public prosecutor and the courts are competent authorities with regard to implementation of the Framework Decision in Denmark.

b) Furthermore, the Minister for Justice or the person duly authorised by the Minister can request another Member State to execute a decision on measures as an alternative to provisional detention, when the individual concerned who is the subject of the decision is lawfully and ordinarily residing in that Member State and has, after being informed of the measures, consented to return to the Member State in question, cf. Section 60c(1) of the Act.

The Ministry of Justice or the person duly authorised by the Minister may also request a Member State, other than the State in which the individual concerned is lawfully and ordinarily residing, to execute the decision if the individual concerned so wishes and the Member State has given its consent to this, cf. Section 60c(2) of the Act.

c) It is noted that Denmark has not found it necessary to designate a central authority as referred to in Article 7 of the Framework Decision (cf. point 4.4.1 of the proposal for an Act amending the Act on execution of certain decisions in criminal matters in the European Union (Annex 2)).

3. Types of supervision measures (cf. Article 8(2))

a) Under Article 8(2) of the Framework Decision each Member State must notify the General Secretariat of the Council regarding which supervision measures apart from those referred to in paragraph 1 it is prepared to monitor.

Denmark, in addition to the supervision measures referred to in Article 8(1) of the Framework Decision, also wishes to be able to execute decisions relating to other measures which are less severe than provisional detention, including all the measures listed in Article 8(2) of the Framework Decision, cf. Section 29u of the Act on execution of certain decisions in criminal matters in the European Union (Annex 3).

b) Furthermore it may be stated generally that it follows from Section 29v(3) of the Act that a measure which by its nature is incompatible with the measures that could be prescribed under Danish legislation for a corresponding criminal act can be adjusted in line with one which could be prescribed in Denmark. The measure as adjusted must be as close as possible to the original measure laid down in the issuing state, and must not represent an intensification of that measure.

c) We note that there is no basis in Denmark for the use of electronic surveillance for the supervision of persons subjected to measures as an alternative to provisional detention.

4. Criteria for the forwarding of decisions on supervision measures to Member States in which the person concerned is not lawfully and ordinarily residing (cf. Article 9(2))

Under Article 9(4) of the Framework Decision, each Member State must inform the General Secretariat of the Council of the determination made under Article 9(3) as to the conditions under which the Member State's competent authorities may consent to the forwarding of a decision on supervision measures in cases pursuant to paragraph 2.

As regards Denmark, a decision on measures as an alternative to provisional detention on request from the issuing state and in accordance with the wish of the person concerned by the decision can be recognised and executed in Denmark even where the person is not at the time of the request lawfully and ordinarily residing in Denmark, if it is deemed appropriate in consideration of the possibility for the person concerned of leading a normal life (cf. Section 29v(2) of the Act on the execution of certain decisions on criminal matters in the European Union (Annex 3)).

The consideration of leading a normal life may arise e.g. where the person concerned is a Danish national and wishes to be subject to measures in Denmark, or where a foreign national who is under investigation in another country wishes to move (lawfully) to Denmark for family, work or study reasons.

The consideration will be particularly relevant in cases in which the investigation in the issuing state may be expected to be lengthy and in which the measures represent a real obstacle to the possibility for the person concerned of residing in Denmark until such time as criminal proceedings may be brought in the issuing state.

We refer in addition to points 4.1.2 and 4.2.2 of the proposal for an Act amending the Act on the execution of certain decisions on criminal matters in the European Union (Annex 2).

5. Application of Article 2(1) of the Framework Decision on the European Arrest Warrant in the context of decisions on surrender of the person concerned to the issuing state on the basis of a European Arrest Warrant (cf. Article 21(3))

With regard to subsequent surrender of the person concerned to the issuing state on the basis of a European Arrest Warrant, Denmark will also apply Article 2(1) of the Framework Decision on the European Arrest Warrant in cases of surrender of persons who have been subject to measures in Denmark, cf. Article 21(3) of the Framework Decision.

The Danish authorities accordingly will not be obliged to take a decision on surrender in cases concerning criminal offences which do not fulfil the conditions for the issue of an arrest warrant under Article 2(1) of the Framework Decision on the European Arrest Warrant.

6. Language regime (cf. Article 24)

With reference to Article 24 of the Framework Decision on the language regime, certificates will have to be completed in Danish (cf. point 2 of Section 48(1) of the Act on execution of certain decisions on criminal matters in the European Union (Annex 3).

The Danish Government will lodge a complaint in the case of late submission.

Any questions concerning Denmark's implementation of the directive may be addressed to:

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We also inform you that the Commission has today received an identical communication.

(Complimentary close)

(s.) Jeppe Tranholm-Mikkelsen
