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COVER NOTE

from:	Mr Jonas Bering LIISBERG, Ambassador, Permanent Representation of Denmark to the European Union
to:	Mr. Rafael Fernández-Pita y González, Deputy Director-General, Council of the European Union
date of receipt :	30 January 2012
Subject :	Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions - Notification of the implementation of the Council Framework Decision by Denmark

Implementation by Denmark of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

Pursuant to Articles 3(1) and 25(2) of the Council Framework Decision of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (hereinafter referred to as "the Framework Decision"), the Danish Government hereby informs the General Secretariat of the Council and the Commission respectively of the following:

1. Transposition into Danish law (Article 25)

Pursuant to Article 25(1) of the Framework Decision, Member States are to take the necessary measures to comply with the provisions of the Framework Decision by 6 December 2011.

Pursuant to Article 25(2) of the Framework Decision, Member States are to transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under the Framework Decision.

In that connection, the Danish Government can confirm that the Framework Decision was transposed into Danish law by Act No 271 of 4 April 2011 amending the Act on the execution of certain decisions in criminal matters in the European Union and the Act on the extradition of offenders.

A copy of that Act is attached (*Annex 1*).

It should be noted that the Act entered into force on 5 December 2011. Notification of its entry into force is attached (*Annex 2*).

A copy of the proposal for an Act amending the Act on the execution of certain decisions in criminal matters in the European Union and the Act on the extradition of offenders (L 103), submitted on 15 December 2010, is also attached (*Annex 3*).

Finally, a copy of the Act on the execution of certain decisions in criminal matters in the European Union, as drawn up after 5 December 2011, is attached (*Annex 4*).

2. Designation of competent authorities (Article 3(1))

As regards the designation of competent authorities (cf. Article 3(1)), Denmark hereby states that the Minister for Justice or his or her authorised representative decides on requests to recognise the assumption of responsibility for supervising decisions on obligations or instructions in connection with cases in which the imposition or execution of a sentence has been deferred, as an alternative sanction or by way of conditional release (cf. Section 54(1) of the Act on the execution of certain decisions in criminal matters in the European Union (Annex 4)).

Furthermore, the Minister for Justice or his or her authorised representative may ask another Member State to recognise and supervise a judgment or decision referred to in Section 29(1) in cases where the sentenced person is returned to that Member State or wishes to return there (cf. Section 60 b (1) of the Act).

It may also be pointed out that, pursuant to the proposal for an Act on the execution of certain decisions in criminal matters in the European Union and the Act on the extradition of offenders (cf. Annex 2, point 2.3.4 on competent authorities and the handling of cases), decisions to adapt *inter alia* obligations and instructions as laid down in a judgment or decision of the issuing State are taken by the Department of Prisons and Probation.

The relevant obligations and instructions would have to be supervised by the authority normally responsible for supervising obligations and instructions of the type in question. In most cases, therefore, the duty of supervision lies with the Department of Prisons and Probation or – in cases where the relevant obligations and instructions constitute social measures – with the competent municipality.

In such cases, any decision adapting a social measure laid down pursuant to a judgment or decision issued by another Member State is taken by the Department of Prisons and Probation after consulting the supervising municipality.

Decisions on the execution or imposition of a term of imprisonment for conditional sentences are taken by the courts (cf. Sections 60-61 of the Penal Code). Pursuant to Section 40 of the Penal Code, decisions on the reinstatement of a custodial sentence in respect of persons granted conditional release are taken by the courts in cases where such reinstatement is the result of the sentenced person having committed a new offence during the probationary period and where charges have been brought in that connection (cf. paragraph 1). Where such reinstatement is a result of the sentenced person violating the terms of his probation or committing an offence in respect of which no charges have been brought pursuant to paragraph 1, the Department of Prisons and Probation takes an administrative decision (cf. Section 40, paragraphs 2 and 3 of the Penal Code and Section 86, paragraph 4 of the Act on the execution of sentences). Administrative decisions on the reinstatement of a custodial sentence in respect of persons granted conditional release with a view to them serving the remainder of their sentence may be brought before the courts (cf. Section 112(7) of the Act on the execution of sentences).

3. Languages (Article 21)

With regard to languages (cf. Article 21 of the Framework Decision), certificates must be drawn up in Danish (cf. Article 48, paragraph 1 of the Act on the execution of certain decisions in criminal matters in the European Union) (Annex 4).

4. Type of probation measures and alternative sanctions (Article 4(2))

In addition to the probation measures and alternative sanctions referred to in Article 4(1) of the Framework Decision, Denmark undertakes to supervise decisions on intensive monitoring at the sentenced person's place of residence provided that the person concerned has a suitable residence in Denmark where such monitoring may take place and subject to the consent of any fellow residents over the age of 18 years, and on condition that such monitoring is compatible with the work and education of the person concerned.

In general terms it may be pointed out that, pursuant to Section 29 m of the Act on the execution of certain decisions in criminal matters in the European Union, an obligation or instruction which, on account of its nature or duration, is incompatible with the obligations or instructions which may be imposed for an analogous offence under Danish legislation may be aligned with an obligation or instruction which could be imposed in Denmark. The obligation or instruction thus aligned must be as similar as possible to the original obligation or instruction imposed in the issuing State, and must not be any more stringent.

5. Criteria for forwarding a judgment and, where applicable, a probation decision (Article 5(4))

Pursuant to Article 5(4) of the Framework Decision, each Member State shall make a declaration of the determination made under Article 5(3) regarding the conditions under which their competent authorities may consent to the forwarding of a judgment and, where applicable, a probation decision under paragraph 2.

Under Section 59(2) of the Act on the execution of certain decisions in criminal matters in the European Union, certificates which, pursuant to that Act, are forwarded to another Member State with a view to the recognition of and assumption of responsibility for supervising decisions on obligations or instructions in connection with cases in which the imposition or execution of a sentence has been deferred, as an alternative sanction or by way of conditional release, must be issued by the Minister for Justice or by his or her authorised representative.

6. Jurisdiction to take all subsequent decisions and governing law (Article 14(6))

Denmark can confirm that the Penal Code and the Act on the execution of sentences, together with administrative provisions issued in connection with the latter, apply to all subsequent decisions taken in Denmark with regard to supervision (cf. Section 29 n (1) of the Act on the execution of certain decisions in criminal matters in the European Union (Annex 4)).

Pursuant to Section 29 n (2) of that Act, a decision on the execution of a custodial sentence or other measure involving deprivation of liberty or on the reinstatement of a custodial sentence in respect of a person granted conditional release is not taken in Denmark in cases where an offence analogous to that on which the issuing State's judgment is based is not punishable under Danish law, unless it is deemed expedient for the rehabilitation of the sentenced person. If such a decision is appropriate, and if it is not deemed expedient to take that decision in Denmark, jurisdiction for taking such a decision is transferred instead to the competent authority in the issuing State.

Moreover, under Section 29 n (3) of the Act on the execution of certain decisions in criminal matters in the European Union, a decision imposing a custodial sentence or other measure involving deprivation of liberty is not taken in Denmark in cases where an offence analogous to that on which the issuing State's judgment is based is not punishable under Danish law. If such a decision is appropriate, jurisdiction for taking that decision is transferred instead to the competent authority in the issuing State.

In view of those facts, it is hereby declared with regard to Article 14(6) of the Framework Decision that the Danish authorities will not take a decision on the execution of a custodial sentence or measure involving deprivation of liberty, on reinstatement of a custodial sentence in respect of a person granted conditional release or on the imposition of a custodial sentence or measure involving deprivation of liberty in the cases referred to in Section 29 n (2) and (3) of the Act on the execution of certain decisions in criminal matters in the European Union.

Any questions regarding Denmark's implementation of the Directive may be forwarded to:

Christiane Cornett Mygind

Ministry of Justice

Slotsholmsgade 10

DK - 1216 Copenhagen K

Tel: +45 7226 8612

Fax: +45 3392 2689

email: ccm@jm.dk

The Commission has today received an identical notification.

(Complimentary close)

(s.) Jonas Bering LIISBERG
