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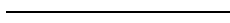
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NOTE

from:	Danish delegation
to:	Working Party on Judicial Cooperation in Criminal Matters (European Arrest Warrant Experts)
Subject:	Guide for dealing with requests for extradition of offenders on a European arrest warrant

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1. Introduction

On 4 June 2003 the Danish Parliament passed a bill amending the Act on extradition of offenders ("the Extradition Act") and the Act on extradition of offenders to Finland, Iceland, Norway and Sweden ("the Nordic Extradition Act") (see the resulting Act No 433 of 10 June 2003). The purpose of the bill was to amend the Extradition Act as necessary in order for Denmark to comply with the Council Framework Decision on the European arrest warrant ("the Framework Decision"). The passing of the bill also signified Parliament's consent to the Government's participation, on Denmark's behalf, in the adoption of the Framework Decision by the Council of the European Union.

The Framework Decision was adopted at a Council meeting on 13 June 2002 and came into force on 7 August 2002. Under Article 34 of the Framework Decision, Member States are to take the necessary measures to comply with its provisions by 31 December 2003. The Act adopted accordingly makes a number of amendments to the existing provisions of the Extradition Act; those amendments come into force on 1 January 2004 and apply to extradition requests submitted after that date. The amending Act and the Framework Decision are attached as [Annex 1](#) and [Annex 2](#) respectively.

In accordance with the Framework Decision, the Act extends the scope and simplifies the procedure for extradition, between EU Member States, of persons charged with, indicted for or convicted of an offence.

Under the Act, as from 1 January 2004, extradition to other EU Member States is to be based on a "European arrest warrant". That instrument involves both a request for arrest and custody for extradition purposes and a request for extradition.

As stated in the explanatory memorandum accompanying the bill (page 17), the Framework Decision uses a number of new terms in order to highlight the principle of mutual recognition and the difference between extradition from one Member State to another and extradition to or from non-member countries. The Framework Decision, for instance, uses the term "surrender" instead of "extradition". Both terms involve the actual handing over of a wanted person to the requesting country. As none of the new terms used in the Framework Decision differs substantively from the current terms in meaning, the current terms have been retained in implementing the Framework Decision in Denmark.

The purpose of this guide is to describe procedures for dealing with a European arrest warrant received from another EU Member State or to be issued by Denmark.

The guide also outlines the Act's provisions concerning extradition on a European arrest warrant.

The guide has been produced in cooperation with the Attorney-General, the National Police Commissioner, the Copenhagen Police Commissioner, the Danish Chief Constables' Association, the Magistrates' Association and the Court Service.

2. *Extradition from Denmark to another EU Member State*

2.1. General points

The new rules concerning extradition from Denmark to another EU Member State on a European arrest warrant are contained in Chapter 2a (conditions for extradition) and Chapter 3a (procedures for dealing with such cases) of the Extradition Act.

The rules involve a number of changes in the arrangements previously applicable to extradition for prosecution or service of sentence in another EU Member State. Attention should be paid to the following points, in particular, in dealing with a European arrest warrant:

- Double criminality is no longer required in the case of extradition for a large number of offences, specified in a "positive list", including terrorism, trafficking in human beings and drug trafficking.
- Danish nationals will basically be extraditable in the same way as foreign nationals, although reference should be made to section 10b of the Act.
- Extradition will no longer be refusible on the grounds that the offences involved are political or that there is insufficient evidence to support the charge or conviction for an act for which extradition is sought.
- In the light of the removal of the double criminality requirement in particular, a number of new grounds for refusal have been introduced, some of which are mandatory (i.e. extradition has to be refused), while others are optional (i.e. it may be refused, following individual appraisal).
- Issue of a European arrest warrant will in itself provide the basis on which to secure a person's extradition for prosecution or service of sentence, so that it is no longer possible, for instance, to require the underlying arrest or custody warrant for that person to be supplied.

- A European arrest warrant has to be dealt with within shorter time limits than in the past and the Act includes deadlines for processing time, for a decision on extradition and for any judicial review of that decision.

In dealing with cases involving extradition from Denmark to another EU Member State, it should be borne in mind that extradition in response to requests received after 1 January 2004 is possible under the European arrest warrant rules only. In accordance with Article 31 of the Framework Decision, the relevant conventions previously applicable, in particular the European Convention on Extradition of 13 December 1957 and its additional protocols (hitherto the basic extradition convention in Europe), will thus no longer apply between EU Member States. In other words, extradition on a European arrest warrant will not in future be refusible on account of any provisions in or reservations in respect of the extradition conventions previously applicable.

In the particular case of extradition of offenders from Denmark to Finland or Sweden, it is important to note that extradition will basically still have to follow the rules in the Act on extradition of offenders to Finland, Iceland, Norway and Sweden. The new European arrest warrant rules will, however, be applicable in relation to Finland and Sweden insofar as those rules go further, which will in practice normally mean in cases involving extradition of Danish nationals or extradition for political offences, save where it is possible to extradite under the Nordic arrangements in any particular case.

2.2. Conditions for extradition on a European arrest warrant

2.2.1. Nature of the offence

Under section 10a of the Act, an individual (whether a Danish or a foreign national) may be extradited from Denmark to another EU Member State for prosecution or service of sentence in the following cases:

Extradition for prosecution or service of sentence is possible if the relevant offence is included in the positive list of criminal offences in section 10a(1) of the Act and, under the requesting EU Member State's law, the offence is punishable by imprisonment, etc. for at least three years. In such cases, then, extradition does not require double criminality, i.e. punishability of a similar act under Danish law.

In the case of acts not included in that positive list, extradition for prosecution is possible if the criminal offence may entail imprisonment for at least one year in the relevant EU Member State and a similar act would be punishable under Danish law, in accordance with section 10a(2) of the Act.

Under section 10a(3) of the Act, extradition for service of sentence upon being convicted of acts not included in the positive list is possible if the convicted person has been sentenced to imprisonment or other deprivation of liberty for at least four months and a similar act would be punishable under Danish law.

Extradition for prosecution or service of sentence for a number of criminal offences is possible even if the above conditions are fulfilled for only one of those offences, under section 10a(4) of the Act.

2.2.2. Grounds for refusal

As mentioned in 2.1 above, the Act involves a number of changes in the existing scope, under the Extradition Act, for rejecting an extradition request from another EU Member State.

The list of grounds for refusal in sections 10b to 10j of the Act is exhaustive. Among other things, this means that a European arrest warrant cannot be rejected on the grounds that the offences involved are political or that there is insufficient evidence to support the charge or indictment for an act for which extradition is sought. In those provisions, on the other hand, the Act introduces a number of new grounds for refusal, some of which are mandatory (i.e. extradition has to be refused), while others are optional (i.e. it may be refused, following individual appraisal).

The *mandatory grounds for refusal* under the Act concern cases in which:

- at the time of the offence, the person concerned was under the age of criminal responsibility (section 10c);
- in respect of the same criminal offence, the person concerned has been convicted or acquitted in Denmark or in another EU Member State, or pardoned in Denmark (section 10d(1), first and second sentences);
- a decision has been taken not to charge the person concerned in Denmark and the case cannot be reopened (section 10d(2), first sentence);
- the act in question was carried out, in whole or in part, in Denmark and is not punishable under Danish law (section 10f(1));

- under specified circumstances, the person concerned has been sentenced to imprisonment in a default judgment (section 10g(1) and (2)), and
- there is a danger that, on being extradited, those concerned will face serious persecution on account of their origins, membership of a particular community, religious or political beliefs or other political factors, or there is a risk of torture or other inhuman or degrading treatment or punishment (section 10h).

The *optional grounds for refusal* under the Act concern cases in which:

- a foreign authority will not agree to a condition that someone who is a Danish national or permanently resident in Denmark can be extradited only if sent back to Denmark to serve any prison sentence, etc. (section 10b(1));
- it is considered that someone who is a Danish national or permanently resident in Denmark should serve a sentence in Denmark (section 10b(2));
- the person concerned has been convicted or acquitted in a non-EU country in respect of the act (section 10d(1));
- charges against the person concerned have been withdrawn and the case cannot be reopened (section 10d(2), second sentence);
- the person concerned is being prosecuted in Denmark for the act for which extradition is sought and prosecution in Denmark is in fact considered appropriate (section 10d(3));
- the offence in question comes within Denmark's criminal jurisdiction and any criminal liability or enforcement of sentence for the offence would be time-barred under Danish law (section 10e), and
- the act in question was carried out outside the EU Member State seeking extradition and a similar act carried out outside Denmark would not come within Denmark's criminal jurisdiction (section 10f(2)).

In addition, section 10i of the Act stipulates that, if in special cases, particularly in view of a person's age, state of health or other individual circumstances, extradition is to be regarded as incompatible with humanitarian considerations, extradition must be postponed until the special circumstances standing in its way have ceased to obtain.

Under section 10j of the Act, moreover, the current provisions in section 10 of the Extradition Act (permission from the Minister for Justice for further prosecution or extradition to a third country, permission from the Minister for Justice for the person to be tried by a special court and prohibition of enforcement of the death penalty for the act in question) are applicable *mutatis mutandis*, with some restrictions, in the case of extradition to another EU Member State on a European arrest warrant.

In considering whether a request for extradition on a European arrest warrant can be met, it should be borne in mind that extradition is not possible if it would conflict with Denmark's international human-rights obligations, in particular the European Convention on Human Rights, as incorporated into Danish law by Act No 285 of 29 April 1992, which includes provisions concerning a fair trial (see Article 6 of the Convention).

2.3. Procedure for dealing with a European arrest warrant

2.3.1. Contents of a European arrest warrant

Under section 18a of the Act, a European arrest warrant has to contain the following information if it is to serve as a basis for arrest and extradition to another EU Member State for prosecution:

- (1) the identity and nationality of the wanted person;
- (2) the time and place of commission of the criminal offence;
- (3) the nature of the criminal offence and the criminal law provisions applicable;
- (4) whether an arrest or custody warrant has been issued, and
- (5) the penalty imposable for the offence under the relevant EU Member State's law.

In the case of extradition for service of sentence, a European arrest warrant has to contain the information in (1) to (3) above, as well as showing that a conviction has been secured and giving details of the sentence or other legal consequences imposed.

The Act does not require a European arrest warrant to be issued in the form of the certificate annexed to the Framework Decision. The determining point under the Act is thus provision of the information to be contained in a European arrest warrant.

It should be noted here that it will not, as at present, be possible to require the underlying arrest or custody warrant or the judgment behind a European arrest warrant to be supplied together with it. A representative of the competent judicial authority will instead have to certify the information given in the European arrest warrant, which will contain the same information as can normally be obtained directly from the underlying arrest or custody warrant or judgment.

2.3.2. General rules for dealing with a European arrest warrant

General rules for dealing with a European arrest warrant are laid down in section 18b of the Act.

Under that provision, unless the European arrest warrant can be rejected out of hand on the basis of the information available, e.g. as the act to which it relates cannot entail imprisonment for at least one year under the law of the requesting EU Member State, the Ministry of Justice has to send the European arrest warrant to the police at the place where the person to be extradited is living.

The police must then, without delay, carry out the investigation required to determine whether the conditions for extradition are fulfilled. That investigation is subject to the provisions of the fourth part of the Administration of Justice Act, with the necessary adjustments, i.e. rules on investigation procedures and rules on compensation for wrongful arrest and imprisonment.

In order to assist in the police investigation of the case and secure extradition, use may be made of measures such as those in Chapter 69 (arrest) and Chapter 70 (custody) of the Administration of Justice Act, where the European arrest warrant has been issued for an offence which, according to the circumstances, may entail extradition under the rules in Chapter 2a of the Act, on which see 2.2 above.

The provision concerning appointment of defence counsel in section 14 of the Extradition Act is applicable *mutatis mutandis* to the police investigation, which means that defence counsel should normally be appointed for the person whose extradition is sought.

Once the police investigation has been completed, extradition is referred to the Ministry of Justice for a decision. If it is decided to extradite, the person concerned has to be advised of the possibility of judicial review in accordance with the current provisions in sections 15(2) and 16 of the Extradition Act.

The procedure outlined above, which under section 18b of the Act is to be followed in dealing with a European arrest warrant, is broadly similar to that previously applicable under section 12 of the Extradition Act. It will thus, as before, be the Ministry of Justice which decides whether a wanted person can be extradited, whereas use of powers of arrest and custody, etc. in the course of police investigation of whether the conditions for extradition are fulfilled will continue to be considered by the relevant police chief.

It should be pointed out that the wanted person's consent to extradition, under section 18c of the Act, does not basically affect the procedure to be followed and can freely be withdrawn at any time up to extradition itself.

As mentioned earlier, a European arrest warrant involves not only a request for extradition but also a request for arrest and custody for that purpose. In view of this, the Ministry of Justice considers that the following procedures should be followed in dealing with a European arrest warrant:

2.3.2.1. Procedure if the wanted person's whereabouts (in Denmark) are known

In cases in which the wanted person's whereabouts in Denmark are known, in accordance with Articles 9 and 10 of the Framework Decision, a European arrest warrant may either be sent straight to the Ministry of Justice (as the designated competent authority in Denmark) or be forwarded via the Schengen Information System or alternatively via Interpol.

A. Direct submission to the Ministry of Justice (as the executing authority)

The issuing judicial authority in the relevant EU Member State may send the European arrest warrant straight to the Ministry of Justice (which, as pointed out, is the executing judicial authority in Denmark).

In that event, the Ministry of Justice will check that the European arrest warrant contains the necessary information to serve as a basis for extradition. If it does not, the Ministry of Justice will ask the issuing judicial authority to supply the missing information, in accordance with Article 15(2) of the Framework Decision.

When the necessary information is available, the Ministry of Justice will make a preliminary appraisal of whether the person's extradition should be refused straight away, on the basis of the available information. If not, the European arrest warrant will be sent to the police at the place where the person to be extradited is living, in accordance with section 18b(1) of the Extradition Act. A copy of the arrest warrant received will also be sent to the National Police Commissioner's Office (Communications Centre), for the necessary updating of central information systems.

The police must then, without delay, carry out the investigation required to determine whether the conditions for extradition are fulfilled. Since a European arrest warrant, as pointed out, involves a request for arrest and custody for extradition purposes, a decision will have to be taken, in the course of the investigation, as to whether the person should be arrested and brought before a magistrate, for remand in custody.

If the wanted person is arrested and taken into custody, the foreign judicial authority which issued the arrest warrant should be so notified, in accordance with Article 22 of the Framework Decision. Such notification may be sent directly to the National Police Commissioner's Office (Communications Centre), with a copy to the Ministry of Justice.

Police investigation of whether the conditions for extradition are fulfilled in a particular case should be completed as soon as possible and, if at all feasible, within three days following receipt of the European arrest warrant. As soon as the investigation has been completed, a recommendation concerning extradition should be submitted to the Ministry of Justice, so that the Ministry can take a decision on the case within the ten-day limit set in section 18d of the Act, on which see 2.3.4.1 below.

Apart from considering whether the conditions for extradition are fulfilled, the police recommendation in the case must show how long the person concerned has been detained in Denmark, as that information will have to be passed on by the Ministry of Justice to the issuing foreign judicial authority in the event of the person's extradition, in accordance with Article 26(2) of the Framework Decision.

The Ministry of Justice will inform the relevant police chief of the decision taken on the case. The police chief will then notify the person concerned of the Ministry's decision and, if this is to extradite, of the possibility of judicial review and the three-day time limit, under section 18b(4) (referring to sections 15(2) and 16) of the Extradition Act, within which to request it. If the person declines to seek judicial review or fails to request it within the time limit, the Ministry of Justice should be informed. Where a request is made for the matter to be referred to the courts, the Ministry of Justice should likewise be informed, as it should also once a final judicial ruling on the case is available.

The police will reach agreement with the issuing authority on practical arrangements for the person's surrender. This may be done via the National Police Commissioner's Office (Communications Centre).

For particularly urgent cases, see D below.

B. Entry of an alert in the Schengen Information System

As an alternative to direct submission of a European arrest warrant to the Ministry of Justice (see A above), or possibly in addition to it, the issuing judicial authority may decide to enter an alert for the wanted person in the Schengen Information System.

Under Article 9(3) of the Framework Decision, such an alert, based on Article 95 of the Schengen Convention, is to have the same legal force as a European arrest warrant.

Consequently, the present practice of entering flags in the data file of the national section of the Schengen Information System, to show that Danish nationals may not be arrested in response to alerts issued by other contracting states ("flagging"), cannot continue.

When an Article 95 alert is entered in the national section of the Schengen Information System, it will thus only be possible to check that the alert in question (as explained, constituting a European arrest warrant) includes the necessary information to serve as a basis for extradition under the new European arrest warrant rules, pursuant to section 18a of the Act, as described in 2.3.1 above. Such checking of a European arrest warrant should be carried out by the National Police Commissioner's Office (Communications Centre), which should also ensure that any missing information is obtained from the issuing judicial authority, in accordance with Article 15(2) of the Framework Decision.

As soon as the necessary information is available, the National Police Commissioner's Office (Communications Centre) should notify the Ministry of Justice of the Article 95 alert received for a person whose whereabouts in Denmark are known.

The Ministry of Justice will then make a preliminary appraisal of whether the person's extradition should be refused straight away, on the basis of the information available. The Ministry will inform the National Police Commissioner's Office (Communications Centre) of the result of that preliminary appraisal, in order for the wanted person to be entered in the data file of the national section of the Schengen Information System as soon as possible.

The Ministry of Justice will also ask the relevant police chief to carry out, without delay, the investigation required to determine whether the conditions for extradition are fulfilled. In so doing, the police should follow the procedure described in A above. Among other things, this means that police investigation of whether the conditions for extradition are fulfilled in the particular case should be completed as soon as possible and, if at all feasible, within three days following receipt of the European arrest warrant, so that the Ministry of Justice can take a decision on the person's extradition, in the light of the police recommendation, within the ten-day limit set in section 18d of the Act.

The Ministry of Justice will inform the relevant police chief and the National Police Commissioner's Office (Communications Centre) of the decision taken on the case. The police chief will then notify the person concerned of the Ministry's decision and, if this is to extradite, of the possibility of judicial review and the three-day time-limit, under section 18b(4) (referring to sections 15(2) and 16) of the Extradition Act, within which to request it. For further details, see also A above.

The police will reach agreement with the issuing authority on practical arrangements for the person's surrender. This may be done via the National Police Commissioner's Office (Communications Centre).

For particularly urgent cases, see D below.

C. Submission via Interpol

In accordance with Article 10(3) of the Framework Decision, those EU Member States which do not participate in the Schengen Information System, viz. the United Kingdom and Ireland, may ask Interpol to forward a European arrest warrant.

In that event, as with an alert in the Schengen Information System, the European arrest warrant will be received by the National Police Commissioner's Office (Communications Centre), which should then check that it is a European arrest warrant which can serve as a basis for extradition.

The European arrest warrant received should subsequently be sent to the Ministry of Justice, which will make a preliminary appraisal of the basis for extradition. If the Ministry does not consider that the European arrest warrant should be rejected, the National Police Commissioner's Office (Communications Centre) will be informed accordingly.

The Ministry of Justice will also ask the relevant police chief to carry out, without delay, the investigation required to determine whether the conditions for extradition are fulfilled. In so doing, the police should follow the procedure described in A above.

The Ministry of Justice will inform the relevant police chief and the National Police Commissioner's Office (Sirene and Communications Centre) of the decision taken on the case. The police chief will then notify the person concerned of the Ministry's decision and, if this is to extradite, of the possibility of judicial review and the three-day time limit, under section 18b(4) (referring to sections 15(2) and 16) of the Extradition Act, within which to request it. For further details, see also A above.

The police will reach agreement with the issuing authority on practical arrangements for the person's surrender. This may be done via the National Police Commissioner's Office (Communications Centre).

For particularly urgent cases, see D below.

D. Particularly urgent cases

In particularly urgent cases, i.e. where there is a perceived need for rapid arrest in order to ensure the person's availability for extradition, the National Police Commissioner's Office (Communications Centre) may, at the same time as it forwards the European arrest warrant received to the Ministry of Justice, send the warrant straight to the police district in which the wanted person is said to be living.

On the basis of the European arrest warrant received, the relevant police chief will then have to decide whether to make an arrest in the case. The Ministry of Justice is to be informed of any arrest straight away so that, should a preliminary appraisal of the basis for extradition not already have been made, the Ministry can take a decision on this as soon as possible, before the person has to be brought before a magistrate.

If the Ministry of Justice cannot be contacted directly (outside normal office hours), the National Police Commissioner's Office (Communications Centre) may be contacted in such cases and will then get in touch with the Ministry. The phone number, etc. to which the result of the Ministry's preliminary appraisal of the case can be reported should be given.

If the Ministry of Justice does not consider that the European arrest warrant should be rejected out of hand, the procedure described in A above should be followed. Among other things, this requires the police to carry out, without delay, the investigation required to determine whether the conditions for extradition are fulfilled and, in the light of this, to submit a recommendation to the Ministry of Justice in sufficient time for the Ministry to take a decision concerning extradition within the ten-day limit set, as pointed out, in section 18d(1) of the Act.

Once it has some practical experience of applying the urgent procedure outlined above, the Ministry of Justice will consider whether any changes need to be made to it.

2.3.2.2. Procedure if the wanted person's whereabouts are unknown

In cases in which the wanted person is not known to be living at any particular location in Denmark, a European arrest warrant may be received either as an alert in the Schengen Information System or alternatively via Interpol, in accordance with Articles 9 and 10 of the Framework Decision.

A. Alert in the Schengen Information System

As mentioned in 2.3.2.1 above, under Article 9(3) of the Framework Decision, an alert based on Article 95 of the Schengen Convention is to have the same legal force as a European arrest warrant.

This means in particular, as pointed out, that the present practice of entering flags in the data file of the national section of the Schengen Information System, to show that Danish nationals may not be arrested in response to alerts issued by other contracting states ("flagging"), cannot continue.

When an Article 95 alert is entered in the national section of the Schengen Information System, it will thus only be possible to check that the alert in question (as explained, constituting a European arrest warrant) includes the necessary information to serve as a basis for extradition under the new European arrest warrant rules, pursuant to section 18a of the Act, as described in 2.3.1 above. Such checking of a European arrest warrant should be carried out by the National Police Commissioner's Office (Communications Centre), which should also ensure that any missing information is obtained from the issuing judicial authority as soon as possible, in accordance with Article 15(2) of the Framework Decision.

Once the necessary information is available, the National Police Commissioner's Office (Communications Centre) should enter the wanted person in the national section of the Schengen Information System.

If found, a wanted person (with no known address in Denmark) for whom an alert has been entered in the Schengen Information System may be arrested, with the relevant police chief immediately notifying the Ministry of Justice, via the National Police Commissioner's Office (Communications Centre), so that the Ministry can make a preliminary appraisal of whether the person's extradition should be refused straight away, on the basis of the information available, under section 18b(1) of the Extradition Act. The Ministry of Justice will inform the relevant police chief and the National Police Commissioner's Office (Communications Centre) of the result of such appraisal and will also, if appropriate, ask the relevant police chief to carry out, without delay, the investigation required for final determination of whether the conditions for extradition are fulfilled.

That investigation should follow the procedure outlined in 2.3.2.1(A) above. Among other things, this means that the police must, as soon as possible and, if at all feasible, within three days following receipt of the European arrest warrant, complete the investigation and submit a recommendation concerning extradition, so that the Ministry of Justice can take a decision on the case within the ten-day limit set in section 18d(1) of the Act.

The Ministry of Justice will inform the relevant police chief and the National Police Commissioner's Office (Communications Centre) of the decision taken on the case. The police chief will then notify the person concerned of the Ministry's decision and, if appropriate, of the possibility of judicial review and the three-day time limit, under section 18b(4) (referring to sections 15(2) and 16) of the Extradition Act, within which to request it. For further details, see also 2.3.2.1(A) above.

The police will reach agreement with the issuing authority on practical arrangements for the person's surrender. This may be done via the National Police Commissioner's Office (Communications Centre).

For particularly urgent cases, see C below.

B. Forwarding via Interpol

A European arrest warrant received via Interpol, i.e. one issued by the United Kingdom or Ireland, should be dealt with in accordance with the procedure to be followed for an alert in the Schengen Information System, as outlined in A above.

C. *Particularly urgent cases*

In particularly urgent cases, especially for arrests at weekends or on public holidays, the Ministry of Justice should be informed so that, if a preliminary appraisal of the basis for extradition has not already been made, the Ministry can take a decision before the person has to be brought before a magistrate.

If the Ministry of Justice cannot be contacted directly (outside normal office hours), the National Police Commissioner's Office (Communications Centre) may be contacted in such cases and will then get in touch with the Ministry. The phone number, etc. to which the result of the Ministry's preliminary appraisal of the case can be reported should be given.

If the Ministry of Justice does not consider that the European arrest warrant should be rejected out of hand, the procedure described in A above should be followed. Among other things, this requires the police to carry out, without delay, the investigation required to determine whether the conditions for extradition are fulfilled and, in the light of this, to submit a recommendation to the Ministry of Justice in sufficient time for the Ministry to take a decision concerning extradition within the ten-day limit set, as pointed out, in section 18d(1) of the Act.

Once it has some practical experience of applying the urgent procedure outlined above, the Ministry of Justice will consider whether any changes need to be made to it.

2.3.3. Languages

Under Article 8(2) of the Framework Decision, the European arrest warrant must be accompanied by a translation in the official language(s) of the executing Member State. Any Member State may, at the time of adoption or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the institutions of the European Communities.

The Act does not lay down any particular requirements as to the language(s) usable by other EU Member States in submitting a European arrest warrant to Denmark. The Ministry of Justice accordingly intends to send the General Secretariat of the Council a declaration that Denmark will accept European arrest warrants drawn up in Danish, Swedish or English.

The relevant police chief will, where necessary, have a European arrest warrant received in Swedish or English translated into Danish, particularly for use in court proceedings.

2.3.4. Processing-time requirements

2.3.4.1. Time taken to deal with a European arrest warrant

Under Article 17 of the Framework Decision, a European arrest warrant has to be dealt with and executed as a matter of urgency. The Article also sets some processing-time limits for cases involving extradition on a European arrest warrant.

That provision in the Framework Decision requires Denmark, as far as possible, to comply with the time-limits set as a guide and, if it cannot meet them, to notify both the requesting Member State and, depending on circumstances, Eurojust. The Ministry of Justice has accordingly considered how best to ensure that the time-limits set by the Framework Decision and the Act for cases involving extradition on a European arrest warrant are actually complied with.

The Ministry of Justice has discussed the time-limits under the Framework Decision at meetings with the Magistrates' Association, the Court Service, the Attorney-General, the District Prosecutors' Association, the Chief Constables' Association, Copenhagen Police, the Bar Council and the National Association of Court-Appointed Counsel. Among other things, discussions brought agreement on the time-limits given below for processing European arrest warrants, as reflected in section 18d(1) and (2) of the Act.

As far as possible, the Ministry of Justice should take a decision concerning extradition on a European arrest warrant within ten days after the person to whom it relates has been arrested in Denmark or has consented to be extradited. If the Ministry of Justice decides that the person is to be extradited and the case is then referred to the courts, a final judicial ruling on it should, as far as possible, be given within 50 days following the Ministry's decision, so that the total processing time does not exceed 60 days, in accordance with section 18d of the Act and Article 17 of the Framework Decision.

Since the time-limits in section 18d of the Act are only intended as a guide, any failure to meet them in a particular case will have no direct effect on the handling of the extradition request or on the issue of custody. In order to ensure that the time-limits are, as far as possible, complied with, the Ministry of Justice will constantly monitor processing-time trends in cases involving extradition to other EU Member States.

The Ministry of Justice will keep a record of the extent to which the ten-day limit in section 18d(1) of the Act is complied with. It will notify the issuing judicial authority where, in exceptional cases, a decision on extradition is not taken within the ten-day limit. In that event, under Article 17(4) of the Framework Decision, the time limit may be extended by a further 30 days.

If, in exceptional circumstances, it is not possible to take a final decision on a case within 60 days following arrest, the issuing judicial authority should be notified. In that event, the 60-day limit may also be extended by 30 days. In practice, notification should involve the public prosecutor immediately informing the Ministry of Justice when it becomes clear that the 60-day limit cannot be complied with. At the same time, the public prosecutor should explain to the Ministry the reasons for such inability to meet the time limit. In the light of the information given by the public prosecutor, the Ministry of Justice will then notify the requesting Member State's authority.

In order for these targets to be met, the Ministry's decision concerning extradition on a European arrest warrant should be presented to the person concerned as quickly as possible and, if judicial review is sought, the case should be submitted to the courts at the earliest opportunity, asking them to hear it without delay. It is worth noting here that the courts may reject the defence counsel chosen or decline to appoint a particular lawyer as defence counsel if that person is unable to cooperate in ensuring that the case is dealt with within the 50-day limit.

It should be pointed out that the bill behind the amending Act is subject to legislative monitoring. This will focus on compliance with time limits under the Act for processing, etc. of cases involving extradition to other EU Member States on a European arrest warrant. It is therefore important for such a record of processing time for European arrest warrants to be kept, including as regards the time scale for actual extradition, on which see 2.3.4.2 below.

2.3.4.2. Time limit for actual extradition

In the light of Article 23 of the Framework Decision, section 18e of the Act includes a stipulation that any custody is to be terminated if extradition has not been carried out within ten days following a final decision on extradition.

If the person has not declined to challenge the decision by the Ministry of Justice in the courts, that ten-day limit does not begin to run until the end of the three-day period permitted by the Act for the Ministry's decision to be referred to the local court. Under the provision in question, the same applies with regard to the three-day limit for appealing against a judicial ruling on extradition. The ten-day limit thus does not begin to run until the extradition decision has been held lawful in a final judicial ruling, including in cases in which leave is granted for further appeal.

The courts may, however, extend the extradition time limit in special cases, under section 18e(3) of the Act, one effect of this being that anyone in custody may, depending on the circumstances, continue to be held.

In accordance with Article 23 of the Framework Decision, the Danish police have to notify the issuing judicial authority if the person to be extradited from Denmark cannot be surrendered within the ten-day limit. In that event, a new date will be agreed for actual extradition, which may not be extended by more than ten days.

2.3.5. Rights of the wanted person

Under Article 11 of the Framework Decision, a wanted person who is arrested has to be informed of the European arrest warrant, of its contents and of the possibility of consenting to extradition. The arrested person is also entitled to be assisted by a lawyer and an interpreter, in accordance with the requested country's law.

Danish legislation already fulfils the requirements imposed by the Framework Decision in this respect and there has thus been no need to introduce any special provisions in order to comply with the Framework Decision.

Section 18b(3) of the Act accordingly makes applicable, in accordance with the current provision in section 14 of the Extradition Act, rules on appointment of defence counsel, on which see also 2.3.2 above. The Act does not make any specific provision for the assistance of an interpreter, but under general principles of administrative law an interpreter will always be used if the person to be extradited does not fully understand or speak Danish. Reference should also be made to Circular No 12154 of 12 June 2001 from the Ministry of Justice to the police and public prosecutors concerning the rights of those arrested, including the possibility of being assisted by an interpreter.

It should be pointed out that, in carrying out the investigation into whether to extradite, the police have to provide the wanted person with information as required by the Framework Decision, including the possibility of consenting to extradition, on which see also section 18c of the Act.

2.3.6. Hearing of the wanted person

In cases involving extradition on a European arrest warrant, as in other extradition cases, there will be a clear presumption that the police should, as far as possible, interview the wanted person.

Under Article 14 of the Framework Decision, an arrested person who does not consent to extradition is entitled to be heard. The police should accordingly, in the course of the investigation, inform the person of that right and, if the person so wishes, arrange for a hearing. The hearing may be held either in court or out of court. Consent to extradition may only be given in court, under section 18c of the Act.

The record of the hearing is to be sent to the Ministry of Justice, together with the police recommendation concerning extradition.

2.4. Entry into force

Extradition requests received from another EU Member State after 1 January 2004 have to be dealt with under the new European arrest warrant rules, in accordance with section 3 of the Act.

One implication of the above is that extradition of anyone arrested in Denmark before 1 January 2004 on the basis of an alert in the Schengen Information System will have to be considered under the new European arrest warrant rules if the extradition request in the case (i.e. a European arrest warrant) is received after 1 January 2004.

If the extradition request has been received before 1 January 2004, on the other hand, processing has to be completed under the existing rules, unless the request is subsequently superseded by a European arrest warrant. In cases involving arrests based on an "old" alert in the Schengen Information System, the National Police Commissioner's Office (Communications Centre) should therefore contact the issuing judicial authority, in order to ascertain whether a European arrest warrant has been or is to be issued.

The above applies even if, at the time of issue of a European arrest warrant, the relevant Member State has not transposed the Framework Decision into national law, i.e. that Member State will not itself be able to deal with an extradition request under the new European arrest warrant rules. In other words, the Act does not require reciprocity.

3. *Extradition to Denmark from another EU Member State*

3.1. General points

The Extradition Act does not deal with the conditions under which a person may be extradited to Denmark from another EU Member State for prosecution or service of sentence in Denmark. Nor is this point dealt with by Act No 433 of 10 June 2003 concerning the European arrest warrant. Whether a wanted person is extraditable to Denmark in a particular case will therefore depend on the rules in the Framework Decision and on the implementing legislation in the EU Member State from which extradition is sought. It should be noted here that not all Member States are expected to have transposed the Framework Decision into national law by 1 January 2004.

According to preliminary information received by the Ministry of Justice, the Framework Decision will not be fully implemented in all Member States until the summer of 2004 (see 3.2.6 below on entry into force). Reference may also be made to the web page given in 4 below, where the General Secretariat of the Council is expected, in due course, to post details of EU Member States' progress in implementing the Framework Decision.

Hence, as the preliminary information received by the Ministry of Justice from other Member States suggests that individual Member States will make different use of the options available under the Framework Decision, it cannot be clearly established at present under what conditions and procedures extradition to Denmark from other EU Member States for prosecution or service of sentence will be possible.

In order to ensure as far as possible that a European arrest warrant issued in Denmark is not rejected by other EU Member States, the Ministry of Justice considers that the following guidelines should be followed, for the time being, in issuing and forwarding a European arrest warrant:

3.2. Issuing and forwarding a European arrest warrant

3.2.1. Contents of a European arrest warrant: any formal requirements

Article 8(1) of the Framework Decision requires a European arrest warrant to give a number of specified details, in accordance with the form annexed to the Framework Decision (see Annex 2 to this guide).

Even though this cannot be regarded as a requirement under the Framework Decision, it may be assumed, from the preliminary information received by the Ministry of Justice concerning other EU Member States' implementation of the Framework Decision, that a number of Member States will require supply of the actual certificate (a hard copy). The Ministry therefore considers that, when a European arrest warrant for a wanted person is issued, an actual certificate containing the relevant information should be drawn up, so that the certificate can be sent straight to the appropriate executing judicial authority in the EU Member State in question.

There has been some uncertainty among EU Member States as to whether a European arrest warrant can be issued for more than one offence. That uncertainty now seems to have been resolved, however, with all Member States expressing a willingness to deal with a European arrest warrant involving a number of offences.

3.2.2. Procedure for issuing and forwarding a European arrest warrant

A. General procedure (for non-urgent cases)

In tabling the bill to implement the European arrest warrant under Danish law (see 1 above), careful consideration was given to whether the introduction of the arrest warrant might call for amendments to the rules for dealing with extradition requests in these new cases. The Ministry of Justice discussed the matter with, among others, representatives of the Magistrates' Association, the Court Service, the Attorney-General, the District Prosecutors' Association, the Chief Constables' Association and Copenhagen Police. Discussions brought agreement that responsibility for initial examination of cases involving extradition on a European arrest warrant (both in issuing an arrest warrant and in dealing with an arrest warrant issued by another Member State) should, for the time being, lie with the Ministry of Justice, which in fact bears the main responsibility for extradition matters.

Denmark accordingly stated that the Ministry of Justice is to be regarded as the Danish judicial authority competent to issue a European arrest warrant, in accordance with Article 6(3) of the Framework Decision.

The need for a European arrest warrant to be issued (signed) by the Ministry of Justice, as the competent judicial authority, is unaffected by the fact that the initiative in requesting a person's extradition on a European arrest warrant will, as in the past, have to come from the public prosecutor (the police chief).

In the interests of the further conduct of the case, the relevant police chief should inform the appropriate district prosecutor and the Ministry of Justice, at the earliest opportunity, of the wish to issue a European arrest warrant for a wanted person; at the latest, this step should be taken when the police decide to apply (to a Danish court) for remand in custody *in absentia*, with a view to issue of a European arrest warrant.

As under existing arrangements, the public prosecutor will have to supply the information required for issue of a European arrest warrant, on which see 3.2.1 above. The public prosecutor should accordingly prepare a draft European arrest warrant, while leaving section (i) of the certificate, concerning the issuing authority, to be completed by the Ministry of Justice. For this purpose, the Ministry needs to be told who in the police district is to be given as a contact for making practical arrangements for subsequent surrender of the wanted person.

An electronic version of the certificate to be used in issuing a European arrest warrant can be found on the police intranet (POLNET); it will eventually be available in the computerised police case-management system (POL-SAS).

After being submitted to the relevant district prosecutor, the draft European arrest warrant is to be sent electronically to the Ministry of Justice, via the National Police Commissioner's Office (Communications Centre), for approval. It should be indicated whether the wanted person is to be sought in non-EU countries, on which see 3.2.7 below.

Once the Ministry of Justice has approved and signed the European arrest warrant (as the issuing authority), the original of it is to be returned to the relevant police chief. A copy is also to be sent to the National Police Commissioner's Office (Communications Centre), for issue of an alert for the wanted person in the Schengen Information System and of an international wanted-person notice via Interpol.

In cases in which the wanted person's whereabouts are known and the European arrest warrant can therefore be sent straight to the authority required to execute it, the relevant police chief should let the Ministry of Justice know if, in addition to an alert in the Schengen Information System, it is wished to have the warrant sent straight to the executing authority, as should normally be the case.

As soon as notification is received from an authority in another EU Member State that someone wanted by the Danish authorities has been arrested and, if applicable, is being held in custody, that notification should be passed on to the relevant police chief. If the executing judicial authority in the EU Member State in question requires the original European arrest warrant (if necessary, a hard copy), that police chief will have it supplied. It will need to be ensured that the European arrest warrant has been translated into a language acceptable to the Member State concerned, on which see 3.2.3 below.

It should be pointed out that, under Article 10(4) of the Framework Decision, a European arrest warrant may be forwarded by any secure means capable of producing written records, under conditions allowing the executing Member State to establish its authenticity.

B. Particularly urgent cases

In particularly urgent cases in which the Ministry of Justice cannot be contacted directly (outside normal office hours), the National Police Commissioner's Office (Communications Centre) may be contacted and will then get in touch with the Ministry in order to agree how, as swiftly as possible, to issue and forward a European arrest warrant for someone who, usually after being arrested in another EU Member State, is to be extradited to Denmark for prosecution or service of sentence.

Once it has some practical experience of applying the urgent procedure outlined above, the Ministry of Justice will consider whether any changes need to be made to it.

3.2.3. Languages

No precise details of the languages to be used in issuing a European arrest warrant are at present available. When forwarding a European arrest warrant to another EU Member State, unless it is known for sure that a different procedure can be followed, it should be ensured that the warrant has been translated into an official language of the country from which extradition is sought, in accordance with Article 8(2) of the Framework Decision.

Reference may also be made to the web page given in 4 below, where the General Secretariat of the Council is expected, in due course, to post details of language requirements for each of the EU Member States.

3.2.4. Processing time

According to information available to the Ministry of Justice, in their legislation, EU Member States will set differing time limits for forwarding a European arrest warrant. Preliminary information suggests that practice will vary widely from one Member State to another, with time limits, which seem to depend in part on whether the country in question requires an actual certificate, likely to be set in such a way that in some countries the arrest warrant has to be received within a very short time (in some circumstances, within 48 hours of arrest), while other countries will accept forwarding of the arrest warrant within a longer period (in some circumstances, up to two months after arrest). Reference may also be made to the web page given in 4 below, where the General Secretariat of the Council is expected, in due course, to post details of time limits for forwarding a European arrest warrant to individual EU Member States.

In order to ensure that a European arrest warrant can be forwarded within any time-limit applicable in the Member State in question, the original of it should be kept in the police district concerned, so that it can be translated into the relevant language as swiftly as possible and then forwarded to the executing judicial authority, if appropriate via the National Police Commissioner's Office (Communications Centre). See also 3.2.2 above.

3.2.5. Expenses

Under Article 30 of the Framework Decision, expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant are to be borne by that Member State, while all other expenses are to be borne by the issuing Member State.

The Danish authorities will accordingly have to meet the expenses involved in executing a European arrest warrant in Denmark. The cost of having a European arrest warrant translated into the language required by the EU Member State in question will, as before, have to be met by the authority which has asked the Ministry of Justice for the person's extradition. Expenses will be charged to the account for expenditure on the administration of criminal justice.

3.2.6. Entry into force

As has been seen in 3.1 above, a number of EU Member States will not have transposed the Framework Decision into national law by 1 January 2004.

In the case of those countries, the question may therefore arise of whether nonetheless to send a European arrest warrant for a person's extradition. According to preliminary information received by the Ministry of Justice from the countries concerned, it seems highly likely that, pending transposal of the Framework Decision into national law, countries will deal with European arrest warrants in accordance with their existing extradition legislation. Even so, the Framework Decision does require a European arrest warrant to be issued and forwarded. Reference may also be made to the web page given in 4 below, provided by the General Secretariat of the Council.

It should be noted that, under Article 32 of the Framework Decision, three Member States have stated that they will not in all cases extradite on a European arrest warrant for offences committed before 1 January 2004.

France has stated that it will not apply the European arrest warrant rules to offences committed before 1 November 1993, while Italy and Austria have stated that they will not apply the rules to offences committed before 7 August 2002. Those countries will instead deal with extradition requests for such offences under the existing rules in their national legislation on extradition of offenders.

One particular question arising is whether, following entry into force of the European arrest warrant (on 1 January 2004), existing alerts under Article 95 of the Schengen Convention should be converted into European arrest warrants. This will depend on a number of factors to be settled in individual police districts. The Ministry of Justice assumes that the necessary certificates will be drawn up in any cases involving conversion to a European arrest warrant (for further details, see 3.2.1 and 3.2.3 above).

3.2.7. International alerts for wanted persons who may be living outside the EU

As has been seen in 3.2.2 above, under the Framework Decision, extradition etc. between EU Member States (as from 1 January 2004) has to be based on a European arrest warrant.

The Framework Decision does not cover extradition between Member States and non-member countries, for which there is thus no need for any change in the procedure followed up to now when the police issue international alerts for wanted persons.

This means that, after obtaining a custody warrant for a wanted person (*in absentia*), the police may ask the National Police Commissioner's Office (Communications Centre) to issue an international alert for the person, via Interpol, to countries outside the EU. In so doing, the police should ensure that the National Police Commissioner's Office (Communications Centre) receives a copy of the custody warrant.

4. Further information

Any queries about dealing with European arrest warrants can be addressed to the International Office at the Ministry of Justice, which will also willingly provide practical assistance with matters such as how to complete a European arrest warrant. In addition, reference may be made to the web page provided by the General Secretariat of the Council, at <http://ue.eu.int/ejn2> (under "Police and Judicial Cooperation": "X. Decisions, framework decisions" and then "(g) European arrest warrant"), where it is expected, in due course, to post details of EU Member States' progress in implementing the Framework Decision and of a number of practical matters of relevance in issuing and forwarding a European arrest warrant. The web page should eventually also include summaries of how individual EU Member States have implemented the European arrest warrant in national law.

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