



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Denmark

Review by Austria and Tanzania
of the implementation by Denmark of articles 15 - 42 of
Chapter III “Criminalization and law enforcement” and
articles 44 - 50 of Chapter IV “International cooperation”
of the United Nations Convention against Corruption
for the review cycle 2010 - 2015

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Denmark of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Denmark and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Austria and Tanzania and Denmark, by means of telephone conferences, e-mail exchanges and a country visit.
6. The country visit, agreed to by Denmark, was conducted from 9 to 11 June 2015 and involved Mr. Christian Manquet, Ms. Verena Wessely and Mr. Andreas Wieselthaler from Austria and Ms. Janet Ishengoma and Mr. Edward G. Hoseah of Tanzania. A meeting with representatives of civil society and the private sector was also held. From the Danish authorities, meetings with representatives of the Ministry of Justice, the Director for Public Prosecution, the State Prosecutor for Serious Economic and International Crime, the Danish National Police and the Copenhagen Police were held.

III. Executive summary

Denmark

1. Introduction: Overview of the legal and institutional framework of Denmark in the context of implementation of the United Nations Convention against Corruption

Denmark signed the United Nations Convention against Corruption (the 'Convention') on 10 December 2003, and deposited its instrument of ratification with the Secretary-General on 26 December 2006. The Convention entered into force for Denmark on 25 January 2007. The Convention does not apply to the Faroe Islands or Greenland.

Denmark is a constitutional monarchy, where the monarch cannot perform political acts independently. The Danish system of government is called “negative parliamentarism”, where the Government may not have a majority against it in Parliament, while not requiring the confirmed support of the majority.

The Danish constitution is embodied in the Constitutional Act of 1953. This Act divides power into three branches: the legislative branch (Parliament, the ‘Folketinget’, and the Government jointly), the executive branch (Government), and the judicial branch comprising the courts.

The conventions that Denmark ratifies are implemented either by: (1) noting “harmony of laws”, which means that Danish law is already in conformity with the convention and no further measures are considered necessary; (2) transforming the contents of the convention into Danish legislation; or (3) incorporating the convention. Danish ratification of the Convention did not entail legislative consequences as the legislation was already deemed to be in conformity.

Multiple specialized acts regulate the provisions of the Convention under review, and include the Constitutional Act, the Criminal Code (CC), the Administration of Justice Act, the Public Administration Act, the Act on Measures to Prevent Money-Laundering and Financing of Terrorism.

Denmark is a member of the European Union (EU), the Council of Europe’s Group of States against Corruption (GRECO), and the Organisation for Economic Co-operation and Development (OECD).

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery are criminalized in sections 122 and 144 of the CC, respectively. The definition of “public official” is provided within these sections and concerns not only public officials, but also persons exercising functions to which they have been elected and appointed, such as members of Parliament and jurors.

The elements covering third party benefits, “directly or indirectly” and “undue advantage” in relation to active and passive bribery in the public sector, while not explicitly mentioned in sections 122 and 144, are explained in the *travaux préparatoires*.

Bribery of foreign public officials is criminalized through CC section 122 including “someone exercising a Danish, foreign or international public function or office”. While the original commentary accompanying the CC, which forms part of the *travaux préparatoires*, stated that “token gratuities” (small facilitation payments) should in exceptional circumstances not be considered “undue”, Denmark has since clarified its position following criticism from the OECD Working Group on Bribery. In February 2014, the Danish Director of Public Prosecutions instructed all police districts and state prosecutors that, henceforth, “Small facilitation payments will [...] as an absolute main rule be ‘undue’ and thus constitute criminal bribery.”.

Trading in influence is partially criminalized (CC part 16, sections 21 and 23) and presumes a punishment and penalties which apply to everybody who is complicit in the act.

Bribery in the private sector is criminalized (CC section 299 (2)) in line with the concept of breach of trust and followed amendments in 2000 and 2013 that broadened the scope of the provision, which brought it in line with the Convention. The provision applies to both active and passive bribery.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering (CC section 290) as well as attempt (including acts aimed at inciting or assisting in the commission of an offence), and complicity (incitement, aiding and abetting) to money-laundering are criminalized (CC sections 21 and 23).

Denmark applies a very wide interpretation for predicate offences, which are not restricted to cases where the predicate offences have a connection to Denmark. In addition, a person cannot be punished both for violation of section 290 of the CC and for having committed the predicate offence, and the predicate offences are given priority for prosecution.

Section 290 of CC is also applicable to the offence of concealment.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Embezzlement is criminalized in sections 278 and 280 of the CC, and is sanctioned pursuant to sections 285, 286 and 287 of the CC. These provisions cover also embezzlement of property in the private sector.

Denmark has criminalized not only the abuse of position to infringe a right of an individual or the public, but also the refusal or failure to observe the duties required by the office (sections 155 and 156 of the CC). Offices held by virtue of a public election fall outside the scope of these provisions.

While there is no separate provision on illicit enrichment, Denmark has partly criminalized the offence through part 16 of the CC, concerning offences in public function or office read in conjunction with the general provisions on attempt and complicity in the actions that lead to the illicit enrichment. While Denmark has no asset declaration requirement, the Serious Crime Unit and the Danish tax authorities have well established cooperation in the area. CC section 76a allows for the reversal of the burden of proof.

Obstruction of justice (art. 25)

Obstruction of justice is partially criminalized through sections 122, 123, 125, 158 (in conjunction with section 23), 164, 171 and 172 of the CC. However, bribing a private person (not in the exercise of a public function or office) to refuse to give testimony is not criminalized in Denmark.

Threats and intimidation of law enforcement officials are criminalized through section 119 of the CC.

Liability of legal persons (art. 26)

The liability of legal persons requires the prosecution of the legal person, in addition to the natural persons who committed the offences (CC sections 306 and 25 to 27). Since 1 January 2016, Denmark has also strengthened its provisions in relation to public procurement. The sanctions are available ranging from fines to the prohibitions of exercising certain commercial activities, and take into account the gravity of the offence (CC section 80).

Participation and attempt (art. 27)

Under Danish legislation, participation in an offence and attempt to commit an offence are covered in sections 21 and 23 of the CC. The provision on attempt also extends to preparatory acts and is therefore also covered by sections 21 and 23. The penalty for attempt may be reduced, especially where an attempt reflects little strength or persistence of criminal intent, and attempts are only punished when the offence is punishable by imprisonment for a term exceeding four months.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

In terms of corruption offences, Denmark offers a range of sanctions and the general provisions on principles of sentencing (sections 80-83 of the CC) also apply to corruption offences. A list of aggravating circumstances is established (CC section 81). Voluntary reporting can be considered a mitigating circumstance (CC section 81 (ix)).

Generally, public officials do not enjoy immunities or jurisdictional privileges under Danish law. However, members of Parliament cannot be prosecuted or imprisoned without the consent of the Parliament. Articles 59 and 60 of the Constitutional Act give the Court of Impeachment jurisdiction over cases against Government ministers concerning offences committed in the exercise of their official duties. The immunity of the Monarch stems from section 13, 1st clause of the Constitutional Act.

Section 96 of the Administration of Justice Act (AoJA), enshrines the principle of impartiality of the prosecution service, and sections 762, 765 and 769 relate to detention and rights of the defendant. Early release and parole are governed by CC sections 38 – 40a.

The working terms and conditions of public officials are increasingly governed by private sector labour law. However, sanctions for a limited number of public officials who have the status of 'statutory civil servants' are outlined in part 4 of the Act on Statutory Civil Servants and include suspension and other disciplinary measures. Although the provisions are directly applicable only to statutory civil servants, broadly similar measures can be applied to other public employees within the Public authority's discretionary powers. The imposition of disciplinary measures does not preclude criminal sanctions.

The disqualification from holding public office of persons convicted of offences are established through sections 30 and 33 of the Constitutional Act on eligibility of members of Parliament; and the eligibility for local and regional elected authorities is governed by the Local and Regional Government Elections Act (sections 4, 101 and 105).

The reintegration into society of persons convicted of crimes remains a fundamental principle of criminal policy in Denmark (section 3 of the Act on the Enforcement of Sentences).

Protection of witnesses and reporting persons (arts. 32 and 33)

Witness protection is established through section 123 of the CC and sections 741E and 741G AoJA. A range of witness protection measures are available, including the change of identity, relocation, etc. These measures concern not only victims and witnesses, but also their families and relatives. The National Witness Protection Service inside the Danish Security and Intelligence Unit is responsible for the Witness protection programme. Denmark is also a member of the EUROPOL Network on Witness Protection.

A wide range of measure surrounding the safeguarding of a witness's identity and physical security are also established (AoJA sections 29-31b). Non-disclosure of information in court proceedings (AoJA sections 838 (2) and 856) and the possibility for police and prosecution services to inform the court of special protection requirements for the witness's or victim's presence in court (AoJA section 193) are also available.

While there is no specific whistleblower act in Denmark, there is a duty to report wrongdoing in the public sector, the basis for which can be found in

the Code of Conduct in the Public Sector adopted by the Agency for the Modernisation of Public Administration in 2007, and in the report published in 2015 by the Committee on Public Employees' Freedom of Speech and Whistleblower Schemes. The Act on the Legal Relationship between Employers and Salaried Employees protects against unjustified dismissal in the private sector, and as outlined above, many of these provisions also apply to public officials who are not statutory civil servants. Provisions on unjustified dismissal can also be found in many collective labour agreements. However, companies in the financial sector must establish a whistleblower system, as of 2014.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The Danish legal framework on confiscation of proceeds of crime (CC sections 75-77a) is broader in scope than the corresponding provisions of the Convention, while the identification, tracing, freezing or seizure of proceeds of crime is outlined in AoJA section 804.

The administration of seized property falls within the duties of the police and is governed by circular no. 94 of 13 May 1952 on the police's administration of seized or deposited sums of money or securities. There is no special asset management office established within the Danish authorities, leaving the police to seek different ad hoc solutions for each case. This raised concerns, as the police authorities may face difficulties in seeking to establish the appropriate measures and conditions in which to preserve and administer seized assets.

The confiscation through CC section 76a constitutes an extended possibility to confiscate proceeds of crime by allowing the reversal of the burden of proof, but only in cases where a person is found guilty of committing a very serious criminal offence that normally generates considerable proceeds.

Statute of limitations; criminal record (arts. 29 and 41)

The statute of limitation period for most corruption-related offences is ten years. The statute of limitation does not start until the last criminal act has been committed in cases where there are several related consecutive acts over time (e.g. the last bribe paid). The statute of limitation can be suspended when the Prosecution services requests legal proceedings even provisionally (part 11 of the CC, in particular sections 93, 93a, 93b, 94 and 96).

Previous convictions of an offender can be considered as an aggravating circumstance, subject to a concrete assessment of the crime committed in the present as well as in the prior case. The court may refer equally to judgments rendered outside of Denmark (CC section 84 (2)).

Jurisdiction (art. 42)

Acts committed within Denmark or on board a Danish vessel or aircraft (CC section 6) fall within Danish jurisdiction. Furthermore, criminal acts that are covered by an international instrument "obliging Denmark to have criminal jurisdiction" (section 8 (v) of CC), are subject to Danish jurisdiction irrespective of the home country of the offender.

The active and passive personality principles are partially implemented (sections 7 and 7a of the CC). If the criminality of an act depends on or is influenced by an actual or intended consequence, the act is also deemed to have been committed at the place where the effect occurred, or where the offender intended the effect to occur (section 9 (2) of the CC). The acts that violate the independence, security, Constitution or public authorities are also subject to Danish jurisdiction (section 8 (i) of the CC).

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

An agreement can be declared invalid or non-binding in cases where the conclusion of an agreement was, for example, subject to bribery (section 30 of the Contracts Act). It is also possible to order a public authority to pay compensation to other bidders where the conditions for the imposition of tortious liability have been met. Furthermore, also natural persons who believe they have suffered a loss due to corruption can claim compensation in civil proceedings. Civil claims can also be considered during criminal proceedings (AoJA section 991).

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The State Prosecutor for Serious Economic and International Crime (SØIK) is a specialized unit within the prosecution service that handles cases of serious economic crime, including corruption. The staff in SØIK comprises lawyers, police officers, legal advisors with a specialized economic background, analysts and executive staff. However, there is no permanent section within SØIK that deals with corruption matters. Instead, SØIK must rely on a number of specialized professional groups that are operationalized as and when required.

The Danish audit institution “Rigsrevisionen” audits public spending and seeks to strengthen the accountability of public administration to the benefit of the citizens.

Cooperation between national authorities is regulated in section 31 of the Public Administration Act. In addition, the general principles of administrative law state that public officials are obliged to report cases of corruption to their superiors.

In September 2014, the Ministry of Justice launched an “Anti-Corruption Forum” with a view to ensuring coordination and information sharing among all relevant authorities in connection with the fight against bribery and corruption.

In December 2014, the Director of Public Prosecutions, the National Commissioner of Police and the Customs and Tax Administration entered into a general cooperation agreement. The purpose of the agreement is to ensure an effective, correct and uniform handling of cases and to enhance their coordination efforts.

Cooperation between national authorities and entities of the private sector is addressed in the Act on Measures to Prevent Money-Laundering and Financing of Terrorism (sections 6-7) and the Act on Approved Auditors and Audit Firms (section 22). The Danish Money Laundering Secretariat (FIU) has established a special telephone helpline which receives calls mainly from the reporting entities who want to discuss possible suspicious transactions, but also calls from the private sector.

A Money-Laundering Forum has been established to enhance cooperation between authorities combatting money-laundering and the financing of terrorism. The responsibilities of the Money-Laundering Secretariat include collecting, recording, transferring, coordinating and processing information regarding the laundering of proceeds of crime and the financing of terrorism, as well as undertaking preliminary investigations. The Asset Recovery Group is an interdisciplinary unit within SØIK which assists the police in tracing the proceeds of crime and investigates the financial flows in cases of complicated economic crime.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- The wide interpretation of predicate offences in regard to money-laundering (art. 23 paragraph 2 (a));
- The inclusion of electronic forms of verification as possible means of forgery (art. 25 para. 1);
- The possibility to confiscate proceeds of a criminal act, which is time-barred, following the rule “crime must not pay”. (art. 31);
- The establishment of the Anti-Corruption Forum and the intent to strengthen cooperation among national authorities was found to be a positive development, as is the establishment of the Office of the Prosecutor for Serious Economic and International Crime (SØIK), which houses officials from a range of national authorities and which facilitates free exchange of information and inter-institutional cooperation. (art. 38).

2.3. Challenges in implementation

The following actions are recommended to further strengthen the existing anti-corruption framework:

- Seek to extend the application of the Convention also to Greenland and the Faroe Islands;
- Continue strengthening Denmark’s response to the bribery of foreign public officials and officials of public international organizations, and monitor the application of the legislation in line with the instructions sent by the Director of Public Prosecutions in February 2014 (art. 16);
- Widen the national provisions relating to obstruction of justice to also cover acts of corruption in relation to the refusal to give testimony and, for the sake of legal clarity, consider making specific reference to the “promise, offering and giving of an undue advantage” in relation to the obstruction of justice. (art. 25 para. 1);
- Consider establishing a dedicated asset administration and management office (art. 31 para. 3);
- Consider establishing a permanent structure within the national authorities to act as the lead institution in the fight against corruption; and, extend specialized anti-corruption training to police and prosecution drawing on existing knowledge from economic crime investigations (art. 36)

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is regulated by the amended Extradition Act (EA no 833) of 2005. Denmark does not make extradition conditional on the existence of a treaty, but if the requesting State requires one, Denmark would consider the Convention as a legal basis. Although reciprocity is not a formal requirement, it is considered a guiding principle. Denmark is a party to the European Convention on Extradition and its first and second protocols; the Council Framework Decision on the European arrest warrant (EAW) and the surrender procedures between Member States; and the Convention on the

Nordic Arrest Warrant. It has bilateral extradition agreements with Canada and the United States of America.

Since 1 June 2016, the Director of Public Prosecutions is the central authority for extradition requests from and to States outside the Nordic countries (Finland, Iceland, Norway and Sweden), whereas requests from and to the Nordic countries are sent to and received by the relevant police district. The procedure for extradition is governed by EA chapters 3 (outside of the EU and the Nordic States), 3a (EU) and 3b (Nordic countries).

Denmark can extradite its nationals and foreign nationals where the corresponding act is punishable under Danish law, cf. below.

Extradition for prosecution within the EU is granted if the act is punishable in the requesting States by at least one year imprisonment. Extradition for enforcement within the EU is possible where the sentence to prison or other custodial measure amounts to not less than four months (EA Ch.2a Sect.10a (2-3)). The extradition within the EU can also be done for offences where the corresponding act is not punishable under Danish law when it carries a sanction of imprisonment of a minimum of three years under the law of the requesting State (including corruption) (EA Ch.2a Sect.10a(1)).

Extradition of Danish and foreign nationals to the Nordic countries can be granted if the act is punishable under the law of the requesting State by imprisonment or if the person has been sentenced to prison or other custodial measures. Extradition to the Nordic countries can take place in the absence of dual criminality (EA Ch.2b Sect.10k (1-2)).

Denmark foresees the extradition of its nationals for prosecution outside the EU and the Nordic countries if (i) the Danish national has been resident in the requesting State for at least two years prior to the criminal offence and the act would be punishable under Danish law by imprisonment for at least one year; or (ii) if such act would be punishable under Danish law by more than four years imprisonment. Extradition of Danish nationals can be based either on a treaty or the decision of the Director of Public Prosecutions (EA Ch.2 Sect.2(1-2)). Danish nationals are not extradited for enforcement to countries outside the EU and the Nordic countries. Danish nationals or a person with permanent residency in Denmark are not extradited for enforcement within the EU when the punishment is enforced in Denmark (EA Ch. 2a Section 10b(2)).

Foreign nationals may be extradited outside the EU and the Nordic countries if the act is punishable under Danish law by imprisonment for at least one year, or on a treaty-basis. (EA Ch.2 Sect.2a)

In all above cases, extradition for several criminal acts shall be granted even if the conditions for extradition have been fulfilled in respect of one of the acts only (EA Ch.2 Sect.3(3), Ch.2a Sect.10a(4), Ch.2b Sect.10k(3)).

For extradition to the Nordic countries or the EU, no independent appraisal of evidence submitted is performed. However, in other cases, lack of evidence (EA Ch.2 Sect.3 (4)) as well as political offences (EA Ch.2 Sect.5 (1)) and the risk of discriminatory or inhumane treatment in the requesting State (including the EU and the Nordic countries) are included in the grounds for refusal of extradition. These grounds for refusal do not include fiscal matters (EA Ch.2 Sect.4-9, Ch.2b Sect.10b-10i, Ch.2b Sect.10k-10o).

The AoJA (Part 4 Ch.69-70), in order to assist investigations and expedite extradition, foresees arrest and preventive detention (EA Ch.3 Sect. 13, Ch.3a Sect.18b (2), Ch.3b Sect.18h (2)) pending extradition to all countries. Guarantees of fair treatment are provided through the implementing law of the European Convention on Human Rights (no. 285) and the EA (EA Ch.3

Sect.13, 14(1) and 16(1-3); Ch.3a Sect.18b (2-4); Ch.3b Sect.18h (2-3)), which allows for the application of the AoJA.

As regulated in the CC, Danish nationals whose extradition is declined with reference to their nationality may be submitted for prosecution in Denmark. Acts committed abroad are subject to Danish jurisdiction in various situations (Criminal Code Sect. 8 (vi))

Denmark can transfer sentenced persons in line with the Consolidated Act on the Cooperation with Finland, Iceland, Norway and Sweden Concerning the Enforcement of Sentences (no 555) of 2011; Consolidated Act on International Enforcement of Sentences (no 740) of 2005; and Consolidated Act on the Enforcement of Certain Judgments in Criminal Matters in the European Union (no 213) of 2013.

The extradition of a Danish national or a permanent resident of Denmark may be made conditional on their return to Denmark to serve any prison sentence or other period of detention. The request for a transfer within the EU or to a Nordic country of a sentenced person who is a Danish national or a permanent resident in Denmark for the purpose of serving a prison sentence can be refused if the punishment can instead be served in Denmark. (EA Ch.2a Sect.10b (1), Ch.2b Sect.10l (1)). Although there is no explicit legal provisions governing it, Denmark reported that extradition of a Danish national from Denmark to a country outside the EU and the Nordic countries would follow a similar approach (item 4.1.2.2. of the travaux préparatoires of 2002 regarding extradition of Danish nationals).

As per the amended Act on the Transfer of Criminal Proceedings to other Countries (no 252) of 1975, criminal offences under the European Convention on the Transfer of Proceedings in Criminal Matters can be prosecuted in Denmark. Following a decision by the Minister of Justice and based on reciprocity, the amended Act can also be applied to States that are not parties to that Convention.

Mutual legal assistance (art. 46)

Denmark has no legislation on mutual legal assistance (MLA) in criminal matters. Instead, Denmark applies its national laws by analogy to MLA requests, using the Council of Europe Convention on Mutual Legal Assistance as the guiding principle. Requests are executed in accordance with the AoJA and, if applicable, with relevant international instruments such as the Council of Europe Convention and Agreements between the Nordic countries. Dual criminality is not required for assistance that does not involve coercive measures.

Denmark has signed two bilateral MLA agreements (with the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the United States of America).

The Director of Public Prosecutions is the central authority for MLA requests and submits them to the relevant prosecutor who treats a request as if it were a Danish criminal case. MLA requests regarding natural and legal persons are treated equally. The response will again be channelled through the Director of Public Prosecutions. Denmark has not informed the Secretary-General on the languages acceptable for MLA requests.

An initial formal request is required only from countries outside of the EU and Nordic countries, after which the communication follows directly at working level between the two countries. Denmark is able to transmit information on criminal conduct spontaneously and without a formal request.

In line with article 2 of the European Convention on MLA in Criminal Matters, Denmark may refuse MLA if the request is deemed likely to prejudice the sovereignty, security, ordre public or other essential interests. Following Denmark's reservations to Article 2 of the same Convention, assistance can also be refused if legal proceedings have already been instituted against the accused for the same offence for which the person is being sought; if the accused person has been convicted or acquitted by a final judgment in Denmark or a third State for the same offence; or, if a decision has been taken to waive or discontinue proceedings by Danish or a third State's authorities. Requests cannot be refused on the ground that it is considered to involve fiscal offences. According to the authorities, Denmark provides reasons for any refusal of mutual assistance, and prior to refusing requests seeks to consult with the requesting State.

According to the authorities, Denmark would comply with a request for confidentiality from a requesting State in line with basic principles on confidentiality in the Danish law.

Article 11 of the European Convention provides for the temporary transfer of detained persons. In line with the Administration of Justice Act, a detained person abroad may be transferred to Denmark if the person consents thereto in order to give evidence or participate in another investigative measure in criminal proceedings in Denmark or for use in criminal proceedings abroad (section 191). There is no specific national provision regulating the transfer from Denmark to another State.

Danish authorities have not provided any timeline for the execution of MLA but noted that requests are dealt with as quickly as possible.

Denmark bears the ordinary costs of executing MLA requests and consults the requesting State in relation to more substantial expenses.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The Communication Centre at the Danish National Police acts as the single point of contact for international law enforcement cooperation and passes on the information to its national counterparts for further action and information. Denmark cooperates through organizations and networks such as the International Criminal Police Organization (INTERPOL) and the European Police Office (Europol), where it has liaison officers. Denmark has bilateral police cooperation agreements with China, Germany, the Russian Federation and Sweden. In addition, Denmark has multilateral agreements with the other Nordic countries and is party to a number of police cooperation agreements, such as via the Europol and Schengen agreements. Denmark has liaison officers in Albania, China, Thailand and Turkey, INTERPOL and Europol. An agreement with Nordic countries allows Denmark to draw on the assistance of liaison officers from other Nordic countries and it can at times also allow for the seamless continuation of investigations with other countries. Denmark considers the Convention as the basis for law enforcement cooperation in respect of the offences covered by it. The National Cyber Crime Centre of the Danish National Police provides specialized assistance to the Danish law enforcement on the investigation of corruption.

Denmark can establish joint investigations on a case-by-case basis without formal agreements. The EU Convention on Mutual Assistance in Criminal Matters also allows for the establishment of joint investigation teams.

Special investigative techniques such as controlled delivery, electronic and other forms of surveillance and undercover operations are allowed in

Denmark and can be used as evidence. Pursuant to the AoJA, the police can use wiretapping and observation when the conditions for such investigative actions are met (section 71). The second additional protocol to the European Convention on Mutual Assistance, ratified by Denmark, contains provisions on controlled delivery and covert investigations.

3.2. Successes and good practices

- Despite MLA not being regulated by law, Denmark appears to be able to respond to requests in a timely, constructive and effective manner by applying national legislation by analogy (art. 46);
- The Single Point of Contact system established by the Danish National Police provides for a very rapid and efficient exchange of information with other police authorities (art. 48).

3.3. Challenges in implementation

The following actions are recommended to further strengthen the existing anti-corruption framework:

- Ensure that all offences established in accordance with the Convention are extraditable offences (art 44, paras 1 and 7);
- Consider harmonizing the requirements for extradition for different groups of requesting States (Nordic Countries, EU Member States and other States), in particular regarding the thresholds for imprisonment (art 44);
- Consider granting extradition in the absence of dual criminality also to States that are not EU Member States nor Nordic countries (art 44, para 2);
- Inform the Secretary-General that Denmark can use the Convention as a basis for extradition should the other party make extradition conditional on the existence of a treaty. This would be particularly useful in view of the limited number of bilateral extradition agreements that Denmark has entered into (art 44, para 6);
- Consider translating and making publicly available the guidelines or procedural manuals related to MLA, including for timelines, which might improve the transparency and predictability of procedures for requesting States (art. 46);
- Notify the Secretary-General of the United Nations of the change in Central authority from Ministry of Justice to Director of Public Prosecutions for MLA requests (art. 46 para 13).
- Notify the Secretary-General of the United Nations of the language or languages acceptable to Denmark for the purposes of MLA (art. 46, paras. 13 and 14).
- When updating its guidelines and procedural manual related to mutual legal assistance, Denmark may wish to consider including details contained in the provision under review (art 46, paras 15 and 16).

IV. Implementation of the Convention

A. Ratification of the Convention

7. The Convention was signed on 10 December 2003 and Denmark deposited its instrument of ratification with the Secretary-General of the United Nations on 26 December 2006. Pursuant to article 68(2) of the convention the convention entered into force for Denmark on 25 January 2007. The Convention does not apply to the Faroe Islands or Greenland.
8. Conventions that Denmark ratifies do not automatically become part of Danish law. Conventions are implemented either by (1) noting “harmony of laws” (i.e. further measures are not considered necessary, because Danish law is already in conformity with the convention), (2) transforming the contents of the convention into Danish legislation or (3) incorporating the convention.
9. Before Denmark ratified UNCAC an assessment was made as to whether a Danish ratification of UNCAC would entail legislative consequences. The assessment concluded that a Danish ratification of UNCAC would not entail legislative consequences as Danish law was already in conformity with UNCAC.

B. Legal system of Denmark

10. The Danish Constitution is embodied in the Constitutional Act of 1953. Similar to the model used in other democracies, the Constitutional Act divides power into three branches in order to prevent the abuse of power:
 - The legislative branch (Parliament, the ‘Folketinget’, and the Government jointly).
 - The executive branch (Government).
 - The judicial branch comprising the courts.
11. The Danish system of government is known as negative parliamentarianism, which means that the Government may not have a majority against it in Parliament, but it is not required to have confirmation of the support of a majority.
12. Denmark is a constitutional monarchy, and the monarch cannot independently perform political acts. Although the monarch signs all Acts of Parliament, these only acquire the force of law when they have been countersigned by a Cabinet Minister.
13. Relevant laws:

Annex 1: Part 11 of the Criminal Code (an unofficial translation is attached by separate email)

Annex 2: Part 16 of the Criminal Code (an unofficial translation is attached by separate email)

Annex 3: Part 71 of the Administration of Justice act (unofficial translation available)

Annex 4: Part 74 of the Administration of Justice act (unofficial translation available)

Annex 5: Circular no. 94 of 13 May 1952 (no translation available)

Annex 6: Information pursuant to Article 23(2)(d) of the United Nations Convention Against Corruption

Annex 7: Criminal Liability for Legal Persons: RM 5/1999 – Revised 17 April 2015

Annex 8: Letter from the Director of Public Prosecutions

Annex 9: The Danish Extradition of Offenders Act, i.e. Consolidation Act No. 833 of August 2005 (unofficial translation available)

Annex 10: Guidelines on Processing Requests for Mutual Legal Assistance in Criminal Matters and Transfer of Criminal Prosecution (unofficial translation available)

Have you ever assessed the effectiveness of anti-corruption measures taken by your country?

14. Denmark has ratified the Council of Europe Criminal Law Convention on Corruption and the convention entered into force for Denmark on 1 July 2002.
15. Denmark has also ratified the OECD convention on combatting bribery of foreign public officials in international business transactions and the convention entered into force for Denmark on 4 November 2000.
16. Both conventions imply adherence to a monitoring system which is governed by Council of Europe's Group of States Against Corruption (GRECO) and OECD's Working Group on Bribery (WGB) respectively.
17. Denmark is currently undergoing GRECO's fourth evaluation round and has been examined by GRECO at its plenary meeting in March 2014. The third and fourth round evaluation reports and compliance reports adopted by GRECO can be found here:
 - Third round evaluation: <http://www.coe.int/en/web/greco/evaluations/round-3>
 - Fourth round evaluation: <http://www.coe.int/en/web/greco/evaluations/round-4>.
18. In March 2013 WGB completed its phase 3 report on Denmark's implementation of the convention on combating bribery of foreign public officials in international business transactions and related instruments. The phase 3 report adopted by WGB can be found here: <http://www.oecd.org/daf/anti-bribery/Denmarkphase3reportEN.pdf>

C. Implementation of selected articles

III. Criminalization and law enforcement

Article 15. Bribery of national public officials

Subparagraph (a) of article 15

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

19. Denmark indicated that it has implemented the provision under review and cited the following legal provisions:

Section 122 of the Criminal Code:

Any person who unduly gives, promises or offers to someone exercising a Danish, foreign or international public function or office gift or another benefit to make the relevant person perform or fail to perform such function or office is sentenced to a fine or imprisonment for a term not exceeding six years.

Section 144 of the Criminal Code:

Any person who unduly receives, demands or agrees to receive a gift or another benefit in the exercise of a Danish, foreign or international public function or office is sentenced to a fine or imprisonment for a term not exceeding six years.

20. The beginning and end of the mandate of members of Parliament are regulated by section 32 of the Constitutional Act (unofficial translation):

Section 32

- (1) The Members of the Folketing shall be elected for a period of four years.
- (2) The King may at any time issue writs for a new election, to the effect that the existing seats shall be vacated upon a new election, except that writs for an election shall not be issued after the appointment of a new Cabinet until the Prime Minister has appeared before the Folketing.
- (3) The Prime Minister shall cause a general election to be held before the expiration of the period for which the Folketing has been elected.
- (4) No seats shall be vacated until a new election has been held.
- (5) Special rules may be provided by statute for the commencement and termination of Faroese and Greenland representation in the Folketing.
- (6) If a Member of the Folketing becomes ineligible his seat in the Folketing shall become vacant.
- (7) On approval of his election each new Member shall make a solemn declaration that he will observe the Constitutional Act.

21. Denmark has provided the following case as example of implementation:

Eastern High Court judgment of 14 March 2007:

A defendant was imprisoned for 20 days after being found guilty of bribing a police officer on duty, see Section 122 of the Criminal Code. Upon exceeding the speed limit by more than 30 %, the defendant unsuccessfully offered the police officer 500 DKK and 750 DKK respectively in an attempt to make him erase the speed offence. With regards to the sentencing the district court emphasized that bribery of a police officer should result in unconditional imprisonment.

22. The issue of “third-party advantage” in relation to active and passive bribery in the public sector is mentioned in the *travaux préparatoires* of sections 122 and 144 of the Criminal Code (extracts from the explanatory note to the bill adopted as Act no. 194 of 21 March 2001) (unofficial translation):

4.6.2. The expression “gift or other advantage” in sections 122 and 144 includes both economic as well as other advantages, e.g. the undertaking of personal return services. Moreover, it is of no consequence whether the advantage is meant to benefit others than the official himself/herself, e.g. his or her spouse, children or others in whose advantage the official has an interest.

23. Please also see the case mentioned in the answer in relation to article 15, subparagraph (b).

24. Denmark has provided the following information regarding statistical data on number of investigations, prosecutions and convictions/acquittals:

Number of reported offences

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 122	0	4	30	14	5	2	9	4	6	5
Criminal Code, Section 144	3	1	11	4	4	0	4	3	1	2

Number of charges

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 122				13	5	1	8	4	5	4
Criminal Code, Section 144				3	4	0	2	2	1	1

Number of Criminal decisions/ convictions

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 122	2	0	2	7	1	2	4	2	2	7
Criminal Code, Section 144	1	1	0	0	0	1	1	0	0	2

Number of acquittals

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 122	1	0	0	0	0	0	0	1	0	0
Criminal Code, Section 144	0	0	0	0	0	0	0	0	0	0

(b) Observations on the implementation of the article

25. The elements “directly or indirectly” and “for the official himself or herself or another

entity” are not mentioned explicitly in the text of the relevant Danish provisions. However, during the country visit, it was clarified that the *travaux préparatoires* intended for these elements to be covered.

26. The example given is of bribery with respect to acting or refraining from acting in violation of the official’s duties (section 122). However, Denmark did not provide other examples of bribery such as refraining to act or not act in line with the official’s duties.
27. During the country visit, it was clarified that all public employees have a Code of Conduct issued by the Agency for Modernisation (Ministry of Finance) and a guide on How to Avoid Corruption issued by the Ministry of Justice. In addition, certain sectors have issued specific guidelines for their employment area, for example has the Association of Judges issued ethical guidelines for judges and the Director for Public Prosecution has issued ethical guidelines for Prosecutors.
28. Denmark is encouraged to seek to extend the application of the Convention also to Greenland and the Faroe Islands.

Subparagraph (b) of article 15

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

29. Denmark indicated that it has implemented the provision under review and cited the following legal provisions:

Section 144 of the Criminal Code:

Any person who unduly receives, demands or agrees to receive a gift or another benefit in the exercise of a Danish, foreign or international public function or office is sentenced to a fine or imprisonment for a term not exceeding six years.

30. The personal scope of both Section 122 and 144 of the Criminal Code comprises not only public employees, but also persons exercising functions to which they have been elected or appointed, e.g. members of Parliament (Folketinget) and jurors and lay judges. This follows from the wording of Sections 122 and 144 of the Criminal Code as referred to under subparagraph (a) of Article 15. Such persons exercise “a public function or office”.
31. It is also described in detail in the *travaux préparatoires* of sections 122 and 144 of the Criminal Code (extracts from the explanatory note to the bill adopted as Act no. 228 of 4 April 2000) (unofficial translation):

“The term 'public function or office' includes both cases where the public function or office is based on election, and where the public function or office is based on contract or statutory duty of service. Among other members of parliament are therefore covered by this term.”

[...]

“The term 'public function' includes judges and other employees at the courts.”

32. Denmark has provided the following case as example of implementation:

Eastern High Court judgment of 16 April 2009:

An entrepreneur and a municipal employee were sentenced to prison for 4 and 6 months respectively for giving and accepting bribes, see Sections 122 and 144 of the Criminal Code. As manager of two private limited companies that performed construction works for the municipality amounting to approximately 780,000 DKK the first defendant paid the other defendant – who was an employee of the municipal department concerned – 100,000 DKK during a period of 3 months with a view to obtaining contracts with the municipality. The district court and the High Court decided that regardless of both the defendants' otherwise good personal relations there were no grounds for suspending the sentences neither for the performance of community service.

33. Denmark has referenced the statistical data provided under subparagraph (a), Article 15

(b) Observations on the implementation of the article

34. Concerning the relevant provision of the Danish Criminal Code (section 144) the same observations can be made as with respect to Criminal Code section 122 (see above).

Article 16. Bribery of foreign public officials and officials of public international organizations

Paragraph 1 of article 16

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

35. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as answer to subparagraph a of article 15, namely Section 122 of the

Criminal Code, which refers to “someone exercising a Danish, foreign or international public function or office”.

36. Denmark has referenced the statistical data provided under subparagraph (a), Article 15
See answer to article 15, subparagraph a.

(b) Observations on the implementation of the article

37. Whereas the wording of the provision does not differentiate between the bribery of national and foreign or international officials, according to the explanatory report to the relevant bill “in some countries with very special conditions” “token gratuities” do not seem to be considered “undue”. This has been seriously criticized by the Council of Europe Group of States against Corruption (GRECO) as well as by the OECD Working Group on Bribery in International Business Relations.

38. During the country visit Denmark explained that the *travaux préparatoires* would also cover facilitation payments. Denmark also explained that several steps had been taken to address the areas where the Danish legal framework was found to have weaknesses. These steps included: in February 2014, the Director of Public Prosecutions shared the OECD WGB evaluation report with all police districts and state prosecutors; in February 2015, the Ministry of Justice issued a booklet entitled “How to avoid corruption” outlining different forms of corruption including a special focus on bribery with legal citations and case examples, and how to report corruption. While the first initiative is encouraging, the second is not likely to have any impact on the interpretation and implementation of the law.

39. Denmark is therefore urged to continue strengthening its response to the bribery of foreign public officials and officials of public international organizations, and monitor the application of the legislation in line with the instructions sent by the Director of Public Prosecutions in February 2104.

Paragraph 2 of article 16

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

40. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as answer to subparagraph (b) of Article 15, namely Section 144 of the Criminal Code, which refers to “someone exercising a Danish, foreign or international public function”.

(b) Observations on the implementation of the article

41. Although this provision of the Convention is not mandatory, Denmark has foreseen it in its Criminal Code.

Article 17. Embezzlement, misappropriation or other diversion of property by a public official

Article 17

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

42. Denmark indicated that it has implemented the provision under review and cited the following legal provisions:

Section 278 of the Criminal Code:

(1) A person is guilty of embezzlement if, to obtain an unlawful gain for himself or others, he -

- (i) appropriates any tangible property in his possession, where the offence does fall within section 277;
- (ii) denies the receipt of a cash loan or other property left in his care for ownership or of any service for which remuneration is payable; or
- (iii) wrongfully spends money entrusted to him even though he was not obliged to keep it apart from his own assets.

(2) The provision of subsection (1)(i) does not prohibit transactions involving goods sold to which the seller has retained legal ownership until payment of the full purchase price.

Section 280 of the Criminal Code:

A person is guilty of breach of trust if, to obtain an unlawful gain for himself or others where the offence does not fall within sections 276-279a, he inflicts a loss on another person:

- (i) by abusing powers vested in him to act with legal effect on behalf of the other; or
- (ii) by acting contrary to the interests of the other in respect of property that has been entrusted to him for management on behalf of the other.

43. Violations of Sections 278 and 280 of the Criminal Code are sanctioned pursuant to Sections 285-287 of the same Code, which read as follows:

Section 285

(1) The offences referred to in sections 276 and 278-283 carry a penalty of imprisonment for a term not exceeding one year and six months. In the cases referred to in section 283(2), the sentence imposed on both the debtor and the preferentially treated creditor may be reduced to a fine.

(2) Theft by finding carries a sentence of a fine or imprisonment for a term not exceeding one year and six months.

Section 286

(1) The sentence may increase to imprisonment for a term not exceeding six years if any of the offences referred to in sections 276, 281 and 282 are of a particularly aggravating nature, especially because of the method used or because the offence was committed jointly by several persons or by a person who was armed with a weapon or other dangerous tool or piece of equipment, or because of the significant value of the property stolen or the conditions under which it was kept, or because the theft was a constituent element of organised burglary, or when several offences have been committed.

(2) The sentence may increase to imprisonment for a term not exceeding eight years if any of the offences referred to in sections 278-280 and 283 are of a particularly aggravating nature, especially because of the method used, because the offence was committed jointly by several persons or due to the scope of the gain made or intended, or when several offences have been committed.

Section 287

(1) If only a minor penalty is deserved for any of the offences referred to in sections 276-283 because of the circumstances in which the act was committed, the insignificant value of the misappropriated property or the small consequence of the property loss or for other reasons, the penalty is a fine. In otherwise mitigating circumstances, the penalty may be remitted.

(2) Any attempt to commit an offence falling within subsection (1) is a punishable offence.

44. Denmark has provided the following cases as examples of implementation:

Supreme Court judgment of 15 April 2008:

A mayor and member of Parliament (Folketinget) was found guilty of fraudulent abuse of his position (breach of trust) by on behalf of the municipality having made a deal with a contractor (regarding construction works on a sports facility) to pay the contractor an additional price of 9 million DKK, which were to be paid to a local sports club in connection with a sponsor agreement between the contractor and the sports club. The mayor was sentenced to prison for two years.

Eastern High Court judgment of 6 October 2009:

A mayor and member of Parliament (Folketinget) was found guilty of 81 counts of fraudulent abuse of his position (breach of trust) regarding approx. 2 million DKK spent on restaurant visits and on travels and regarding matters irrelevant to the municipality

or – in some cases – partly irrelevant because of the amounts spent. The mayor was sentenced to prison for two years and to pay compensation to the municipality for its financial loss of 1.6 million DKK.

45. Denmark has provided the following information regarding statistical data on number of investigations, prosecutions and convictions/acquittals:

Number of reported offences

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 278	639	549	435	372	363	334	382	680	449	988
Criminal Code, Section 280	183	140	122	83	115	96	80	89	282	362

Number of charges

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 278				268	261	237	276	558	325	575
Criminal Code, Section 280				260	243	178	246	520	456	629

Number of Criminal decisions/ convictions

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 278	261	247	220	185	133	138	180	157	158	172
Criminal Code, Section 280	76	98	64	63	40	53	30	55	60	48

Number of acquittals

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 278	31	15	15	21	12	7	13	22	20	21
Criminal Code, Section 280	3	8	4	6	4	3	5	4	10	4

(b) Observations on the implementation of the article

46. The above-cited sections 278 and 280 of the Criminal Code, when read in combination with sections 285 to 287 of the same Code, indicate full compliance with the Convention.

Article 18. Trading in influence

Subparagraph (a) of article 18

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

47. Denmark indicated that it has partly implemented the provision under review and cited part 16 of the Criminal Code on offences in public function or office etc., according to which a number of actions committed by persons holding a public function or office are criminalised, e.g. passive bribery, abuse of duty and breach of the duty of confidentiality. Trading in influence will to a certain extent be covered by the provisions in this part of the Criminal Code in conjunction with the general provisions on attempt and complicity.
48. An unofficial translation of part 16 of the Criminal Code is enclosed in Annex 2.
49. The general provision on attempt is Section 21 of the Criminal Code:
- (1) Acts aimed at inciting or assisting the commission of an offence are punishable as attempts if the offence is not completed.
 - (2) The penalty prescribed for an offence may be reduced for attempts, especially where an attempt reflects little strength or persistence of criminal intent.
 - (3) Unless otherwise provided, attempts will only be punished if the offence is punishable by imprisonment for a term exceeding four months.
50. The general provision on complicity is Section 23 of the Criminal Code:
- (1) The penalty provided for an offence applies to everybody who is complicit in the act by incitement or aiding and abetting. The punishment may be reduced where a person intended only to provide minor assistance or support an intent already formed, and where the offence has not been completed or intentional complicity failed.
 - (2) The punishment may also be reduced where a person is complicit in the breach of a special duty to which he is not subject.
 - (3) Unless otherwise provided, the punishment for complicity in offences that do not carry a sentence of imprisonment for a term exceeding four months may be remitted where the accomplice intended only to provide minor assistance or support an intent already formed, and where his complicity was due to negligence.
51. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter.
52. Denmark has not provided any statistical data on number of investigations, prosecutions and convictions/acquittals

53. Article 18 of the Convention constitutes a non-mandatory provision which obliges State Parties to consider criminalising trading in influence.
54. As stated above conduct amounting to trading in influence as referred to in Article 18 is criminalised in Denmark to a certain extent.
55. Before ratifying the convention Denmark considered whether further measures on trading in influence as referred to in article 18 should be implemented into Danish law. The government decided not to implement further measures as the existing criminalisation was assessed to be sufficient. Denmark does not have any current plans to implement further measures on trading in influence.

(b) Observations on the implementation of the article

56. According to the GRECO evaluation Denmark had given consideration to criminalizing “Trading in Influence” as a separate offence (during the period 2009 and 2011). Denmark has, however, finally come to the conclusion that it would not be desirable to do so. During the country visit, Denmark re-confirmed that no further discussions have taken place to amend or widen the current provisions.

Subparagraph (b) of article 18

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

57. Denmark indicated that it has partly implemented the provision under review and cited the same legal provisions as answer to subparagraph (a) of article 18.

(b) Observations on the implementation of the article

58. Please refer to subparagraph (a) of article 18 above.

Article 19. Abuse of functions

Article 19

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

59. Denmark indicated that it has implemented the provision under review and cited the following legal provisions from the Danish Criminal Code.

Section 155 of the Criminal Code:

Any person performing a public function or office who abuses his position to infringe a right of an individual or the public is sentenced to a fine or imprisonment for a term not exceeding four months. If such abuse is committed to obtain undue benefit for himself or others, the maximum sentence is imprisonment for two years.

Section 156 of the Criminal Code:

If a person performing a public function or office refuses or fails to observe a duty incumbent on him by virtue of his function or office, or to obey an official command, he is sentenced to a fine or imprisonment for a term not exceeding four months. Offices held by virtue of a public election fall outside the scope of the preceding provision.

60. Denmark has provided the following case as an example of implementation:

Western High Court judgment of 19 March 2009:

A driving-test examiner exercising a public function was found guilty of abusing his position to violate public authority, see Section 155 of the Criminal Code. Regardless of the fact that a student had not completed the driving test, the defendant let the student pass and issued a provisional driver's license to her. In accordance with the nature and extent of the offence the sentence could not be made conditional. Thus, the defendant was sentenced to 20 days of imprisonment.

61. Denmark has provided the following information regarding statistical data on the number of investigations, prosecutions and convictions/acquittals:

Number of reported offences

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 155	6	29	15	6	12	64	18	26	29	25
Criminal Code, Section 156	2	1	0	3	0	1	0	0	0	4

Number of charges

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 155				4	8	25	16	25	25	23
Criminal Code, Section 156				1	0	1	0	0	0	4

Number of Criminal decisions/ convictions

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 155	1	4	2	5	6	5	7	3	12	12
Criminal Code, Section 156	0	2	0	0	0	0	0	0	0	1

Number of acquittals

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 155	0	1	0	1	0	0	5	2	1	0
Criminal Code, Section 156	0	0	0	0	0	0	1	0	0	0

(b) Observations on the implementation of the article

62. Although only a non-mandatory provision, Denmark seems to be in full compliance, through Section 155 of the Criminal Code.

Article 20. Illicit enrichment

Article 20

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

63. Denmark indicated that it has implemented the provision under review and indicated that pursuant to part 16 of the Criminal Code on offences in public function or office etc., a number of actions committed by persons holding a public function or office are criminalised, e.g. passive bribery, abuse of duty and the claim or receipt of a fee for a service or taxes or duties not payable etc. Hence actions leading to illicit enrichment by a public official will be covered by the provisions in this part of the Criminal Code in conjunction with the general provisions on attempt and complicity.

64. An unofficial translation of part 16 of the Criminal Code is enclosed.
65. The provisions on attempt and complicity are cited under answer to sub-paragraph a of article 18 where to reference is made.
66. Denmark also made a reference to section 76a of the Criminal Code, provided under subparagraph 1(a), Article 31. Regarding the reversal of the burden of proof, Denmark referenced the information provided under subparagraph 8, Article 31.
67. Denmark has provided the following case as example of implementation:

Judgment of the Eastern High Court

The case was about whether the defendant, as a front man for his stepson, had invested money which derived from the stepson's criminal activity, in businesses and in a property. The stepson had been convicted for cigarette smuggling and sentenced to 1 year and 9 months of imprisonment. The defendant was a detective inspector and employed in the police. The defendant had also purchased a grill bar for DKK 500,000, where at least half of the amount was financed with money which derived from the stepson's criminal activity. The court took the view that the defendant must have had a clear presumption that the money in question derived from crime, in that the money was in cash and the fact that the stepson only was 23 years old and had no legal employment that would make him earn such a high income. Furthermore, the defendant had purchased a property and conducted a renovation of the property, in connection with which he received in total approx. DKK 275,000 from his stepson, and he had also acquired a café, in connection with which he received in total DKK 660,000 from his stepson. According to the court, the defendant must have suspected that all the money derived from the stepson's criminal activity. The defendant was sentenced to 2 years of imprisonment. At the sentencing, the court attached importance to the amount, which concerned the receiving and handling stolen goods, and the close family ties between the defendant and the stepson.

68. The duty of banks yearly to report the holdings of any account holder to the tax authorities follows from section 8 H of the Tax Control Act:

§ 8 H. Section 8H.-(1) Banks, savings banks, cooperative savings banks, private bankers, stock brokers, attorneys and other operators who accept deposits against interest must every year for the purpose of tax assessment without being requested provide information to the Customs and Tax Administration, reporting the amount of interest or any other yield paid or credited to each particular account holder during the past year, the dates of interest accrual, etc. and the amount of the funds deposited at the end of the past year. The Minister of Taxation may order that the same type of information must be reported by other operators who pay interest on funds held by another person as part of their activity.

(2) The information to be reported under subsection (1) must comprise account identification details, including the type of the account and the holder's name, address, civil reg. number (CPR no.), central business reg. number (CVR no.) or business entity reg. number (SE no.). The Minister of Taxation may lay down specific rules for account holders who have neither a civil reg. number nor an employer reg. no.

(3) The duty to report information under subsections (1) and (2) include accounts etc. that are closed in the course of the year. For such accounts, the funds deposited as at the

time when they are closed must be reported.

(4) The Minister of Taxation may lay down specific rules on the reporting of information under subsections (1) – (3). Where practical circumstances so advise and the information is of minor importance for tax control purposes, the Minister of Taxation may grant exemptions from or relax the reporting duty under subsections (1) – (3) for individual operators or groups of operators who have a duty to report information or for certain classes of accounts, as well as the Minister may stipulate a lower limit for the amounts to be reported.

(5) In respect of accounts as referred to in subsection (1) held by persons who are resident or staying abroad, the Minister of Taxation must lay down specific rules for such accounts.

69. Denmark has not provided any statistical data on number of investigations, prosecutions and convictions/acquittals

(b) Observations on the implementation of the article

70. Denmark refers to part 16 of its Criminal Code in conjunction with the general provisions on attempt and complicity.

71. As to whether there had been any particular considerations – comparable to those that were undertaken with respect to “Trading in influence” – to establish “Illicit enrichment” as a separate offence as described by Article 20 of the Convention (which would go beyond part 16 of the Criminal code), the following clarification was made during the country visit.

72. During the pre-ratification phase, Denmark’s preparatory work indicated that certain cases would be covered, reason why a partial compliance with a non-mandatory provision was deemed sufficient. Denmark outlined the cooperation efforts amongst the tax authorities, the Serious Economic Crime unit as further indications of the partial compliance.

73. Furthermore, while there is no official asset declaration system in place, a number of political parties have made asset declaration mandatory for their parliamentarians. Such asset declarations are published on the Parliament’s website.

Article 21. Bribery in the private sector

Subparagraph (a) of article 21

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

74. Denmark indicated that it has implemented the provision under review and cited Section 299, subsection 2, of the Criminal Code:

Section 299, subsection 2:

A fine or imprisonment for a term not exceeding four years is imposed on any person, who in his capacity of trustee of any property of another person, by neglect of duty, receives, claims or accepts the promise of a gift or other benefit for himself or another, as well as any person who grants, promises or offers such a gift or other benefit.

75. Denmark has not provided information regarding statistical data on number of investigations, prosecutions and convictions/acquittals.

(b) Observations on the implementation of the article

76. The scope of article 21 is on the one hand limited to acts “in the course of economic, financial or commercial activities”, but, on the other hand, refers to any breach of duties (within this limited scope).

77. Section 299 of the Danish Criminal Code refers only to acts contrary to the offender’s “duty of managing the property entrusted to him by another person”. Therefore the Danish provision to some extent goes beyond article 21 calling only the duty of managing a property (which could be wider than in the course of economic or commercial activities), whereas to some extent it lags behind (calling only the duty of managing *a property* and hence not limiting the scope to property-related duties).

78. During the country visit, Denmark indicated that the *travaux préparatoires* had taken note of a discrepancy between the previous Criminal Code provisions and the Council of Europe Criminal Law Convention on Corruption:

79. From the *travaux préparatoires* of section 299(2) of the Criminal Code on active and passive bribery in the private sector (extracts from the explanatory note to the bill adopted as Act no. 228 of 4 April 2000):

”4.7.2.5. [...]

This provision of the Criminal Code does not satisfy the requirements set by the Anti-Corruption Convention and the Common Action on this point. The implementation of the two legal acts will therefore require legislative amendments.

First, the limitation to »property benefit« in section 299 para. 2) cannot be maintained. Also other unlawful benefits must be capable of constituting bribery in private legal relations.

Second, the neglect of duty referred to in section 299 para. 2) is described as the acceptance etc. of a property benefit, ”where the receipt must remain concealed to the principal on whose behalf the recipient acts«. In the Anti-Corruption Convention and the Common Action, the neglect of duty is implied in the acceptance or granting of the benefit, ensuring that contrary to his duties the recipient has to carry out an act or refrain from carrying out an act. [...]

Against the background given above, it is proposed to *amend section 299 para. 2) of the Criminal Code* to the effect that the provision will comprise a person who while acting in a matter concerning any property of another person, neglecting his duties, receives, claims or accepts the promise of a gift or other benefit for himself or another as well as a person who grants, promises or offers such a gift or other benefit. [...]

In respect of para. 9) (Section 299 para. 2 of the Criminal Code)

[...]

The provision means *inter alia* that a person may be convicted in cases where favours of a non-financial character are provided, for example the promise of personal favours in return. Under the previous provision on kickback, the decisive element has been whether the benefit had to remain concealed to the entrusting principal. The decisive element under the new provision is whether the person for whom the benefit is intended commits neglect of his duties by accepting the benefit. The typical field of application of the provision will be cases where a person who is employed by or otherwise associated with an undertaking receives a benefit from a third party, where the benefit was granted in order to induce the person to carry through or refrain from carrying through an act or possibly carry through an act in a specific way, thereby neglecting his duties to the principal. Both the person who grants or offers such a benefit (active bribery) and the person who receives or accepts the benefit (passive bribery) are comprised by the provision.”

80. Based on the outline in the *travaux préparatoires* as cited above, Denmark appears to already have identified previous concerns some of which could also apply in relation to the implementation of the United Nations Convention Against Corruption article 21.

Subparagraph (b) of article 21

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

...

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

81. Denmark referenced to the answer provided under subparagraph (a) of Article 21.

(b) Observations on the implementation of the article

82. Please refer to the observations made under subparagraph (a) of Article 21.

Article 22. Embezzlement of property in the private sector

Article 22

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

83. Denmark indicated that it has implemented the provision under review and cited sections 278 and 280 of the Criminal Code:

Section 278 of the Criminal Code:

(1) A person is guilty of embezzlement if, to obtain an unlawful gain for himself or others, he -

- (iv) appropriates any tangible property in his possession, where the offence does fall within section 277;
- (v) denies the receipt of a cash loan or other property left in his care for ownership or of any service for which remuneration is payable; or
- (vi) wrongfully spends money entrusted to him even though he was not obliged to keep it apart from his own assets.

(2) The provision of subsection (1)(i) does not prohibit transactions involving goods sold to which the seller has retained legal ownership until payment of the full purchase price.

Section 280 of the Criminal Code:

A person is guilty of breach of trust if, to obtain an unlawful gain for himself or others where the offence does not fall within sections 276-279a, he inflicts a loss on another person:

- (iii) by abusing powers vested in him to act with legal effect on behalf of the other; or
- (iv) by acting contrary to the interests of the other in respect of property that has been entrusted to him for management on behalf of the other.

84. Denmark has referenced the statistical data provided under article 17 on the number of investigations, prosecutions and convictions/acquittals.

(b) Observations on the implementation of the article

85. Denmark is in full compliance with the Criminal Code sections 278 and 280.

Article 23. Laundering of proceeds of crime

Subparagraph 1 (a) (i) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(a) Summary of information relevant to reviewing the implementation of the article

86. Denmark indicated that it has implemented the provision under review and cited the following legal provisions:

Section 290 of the Criminal Code:

(1) A person who unlawfully accepts or acquires for himself or for others a share in proceeds which have been obtained by a violation of the law, or unlawfully assists, by subsequently concealing, keeping, transporting, helping with the disposal of or taking part in a similar manner, in securing for another the proceeds of a criminal offence, shall be guilty of receiving stolen goods and liable to a fine or imprisonment for any term not exceeding one year and six months.

(2) When a person has received stolen goods acting in a particularly aggravated way, especially due to the commercial nature of the offence, or due to the extent of the obtained or intended gain, or where a large number of offences have been committed, the penalty may be increased to imprisonment for any term not exceeding six years.

(3) Punishment under this provision shall not be imposed on a person, who accepts proceeds for ordinary subsistence from family members or a cohabitant, or a person who accepts proceeds as normal payment for ordinary consumer goods, articles for everyday use, or services.

87. In addition, Denmark has cited the *travaux préparatoires* of section 290 (3) of the Criminal Code (extracts from the explanatory note to the bill adopted as Act no. 465 of 7 June 2011):

”According to subsection (3), no one may be convicted of handling stolen goods under subsection (1) when the stolen property was received from family members or from a cohabitant for ordinary subsistence. Where, for example, a family member has committed shoplifting, stealing food or ordinary clothes, it will be a non-criminal act for other family members to accept the stolen goods even if they know from where the goods originate. The freedom from punishment applies only to ordinary subsistence. Any person who accepts a stolen genuine fur coat will not obtain exemption from punishment according to the provision.”

88. Denmark has provided the following information regarding statistical data on number of

investigations, prosecutions and convictions/acquittals:

Number of reported offences

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 290	2559	2548	2186	1757	1450	1318	1590	1850	1989	2020

Number of charges

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 290				2333	2048	1698	1829	2426	2497	2764

Number of Criminal decisions/ convictions

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 290	1337	1287	1293	1053	757	694	767	947	1117	1180

Number of acquittals

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 290	59	65	38	31	31	29	27	61	61	52

(b) Observations on the implementation of the article

89. Denmark has outlined how persons who accept proceeds from family members shall not be punished if used for subsistence, as explained in the *travaux préparatoires*. The article is deemed to be implemented.

Subparagraph 1 (a) (ii) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

90. Denmark indicated that it has implemented the provision under review and made reference

to the above-cited Section 290 of the Criminal Code.

(b) Observations on the implementation of the article

91. Please refer to observations under subparagraph (a) (i) of Article 23.

Subparagraph 1 (b) (i) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

92. Denmark has cited section 290 of the Criminal Code and provided the following case as an example of implementation:

Eastern High Court judgment of 1 December 2004

The defendant was found guilty of receiving stolen goods, cf. Section 290, Subsection 1, of the Criminal Code. During two periods of nine and two months respectively the defendant used two cars made available by her cohabiter, notwithstanding she knew or certainly suspected that the cars stemmed from theft. She thereby unlawfully accepted a share in profit which was obtained by a punishable violation of the law. The defendant was not successful with the objection that the profit was accepted as ordinary subsistence from the cohabiter, cf. Section 290, Subsection 3. She had used the cars occasionally, for commuting on rainy days, and driving her daughter to riding practices one to two days a week. According to her statement she had used the cars less than every other day. She was held liable to imprisonment for eight months. The sentence was suspended subject to performance of community service for 120 hours.

(b) Observations on the implementation of the article

93. During the country visit, it was explained that there is a low threshold for what might constitute reasonable doubt about the lawful origins of the property. If there is no proof that the proceeds stemmed from crime, but that it should have been reasonably doubted that it did, the person will be convicted of attempted money-laundering. If there was proof that the proceeds were from a crime, the person will be charged with money-laundering.

Subparagraph 1 (b) (ii) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) *Subject to the basic concepts of its legal system: ...*

(ii) *Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

(a) Summary of information relevant to reviewing the implementation of the article

94. Denmark indicated that it has implemented the provision under review and cited the following sections of the Criminal Code:

Section 21

(1) Acts aimed at inciting or assisting the commission of an offence are punishable as attempts if the offence is not completed.

(2) The penalty prescribed for an offence may be reduced for attempts, especially where an attempt reflects little strength or persistence of criminal intent.

(3) Unless otherwise provided, attempts will only be punished if the offence is punishable by imprisonment for a term exceeding four months.

Section 23

(1) The penalty provided for an offence applies to everybody who is complicit in the act by incitement or aiding and abetting. The punishment may be reduced where a person intended only to provide minor assistance or support an intent already formed, and where the offence has not been completed or intentional complicity failed.

(2) The punishment may also be reduced where a person is complicit in the breach of a special duty to which he is not subject.

(3) Unless otherwise provided, the punishment for complicity in offences that do not carry a sentence of imprisonment for a term exceeding four months may be remitted where the accomplice intended only to provide minor assistance or support an intent already formed, and where his complicity was due to negligence.”

95. The following cases were also provided as examples of implementation:

Supreme Court judgment of 27 April 1972

In an attempt to commit fraud pursuant to Section 279, cf. Section 21, of the Criminal Code the defendant drafted false lists for a statement he intended to send to an insurance company. He was convicted of an attempt to commit fraud.

Western High Court judgment of 14 December 2007

Pursuant to Section 191, cf. Section 21, of the Criminal Code the defendant was convicted of an attempt to procure amphetamine amounting to one kilo. The punishable action consisted of encouraging another person to contact people in Copenhagen who could provide the drugs.

(b) Observations on the implementation of the article

96. Denmark refers to the general provisions on attempt and complicity (as laid down in

Sections 21 and 23 of the Criminal Code). Denmark clarified during the country visit that these provisions would cover also cases of “conspiracy” to commit. The exception would be for offences, which are punishable by imprisonment for a term not exceeding four months. However, the offence starts with the ‘intent’ to commit the crime and hence refers to the agreement to commit the crime.

Subparagraphs 2 (a) and 2 (b) of article 23

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

97. Denmark indicated that it has implemented the provision under review and explained that according to section 290 of the Criminal Code any criminal offence (whether criminalised pursuant to the Criminal Code or pursuant to any other legislation) can constitute a predicate offence.

(b) Observations on the implementation of the article

98. Denmark is in compliance through Criminal Code Section 290 and could be commended that there does not seem to be any limit concerning predicate offences. During the country visit, Denmark explained that there is no lower threshold for the offences or value and therefore a multiple low value transactions will fall under the due diligence and reporting duties of the banks for suspicious transaction reports.

(c) Successes and good practices

99. Denmark’s exceptionally wide interpretation of a predicate offence to include any offence under Danish or foreign legislation is a good practice.

Subparagraph 2 (c) of article 23

2. For purposes of implementing or applying paragraph 1 of this article: ...

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

100. Denmark has shared the following extract from the *travaux préparatoires* of section 290 [previous section 284] of the Criminal Code, concerning commission of the predicate offence abroad (extracts from the explanatory note to the bill adopted as Act no. 228 of 4 April 2000):

”The application of section 284 is not restricted to cases in which the predicate offence has a connection to Denmark. Thus, the provision may also be applied in cases where the prior offence that is included would not be subject to Danish criminal jurisdiction.”

(b) Observations on the implementation of the article

101. Denmark is compliant through Criminal Code Section 290.

Subparagraph 2 (d) of article 23

*2. For purposes of implementing or applying paragraph 1 of this article: ...
(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

(a) Summary of information relevant to reviewing the implementation of the article

102. Denmark indicated that it has furnished copies of its laws to the Secretary-General of the United Nations.

(b) Observations on the implementation of the article

103. Denmark is in compliance with the provision under review.

Subparagraph 2 (e) of article 23

*2. For purposes of implementing or applying paragraph 1 of this article: ...
(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

(a) Summary of information relevant to reviewing the implementation of the article

104. Denmark has indicated that under Danish law it is a fundamental principle that a person cannot be punished both for violation of Section 290 of the Criminal Code and for having committed the predicate offence.

105. Denmark has indicated that no statistical data is available regarding investigations, prosecutions and convictions/acquittals.

(b) Observations on the implementation of the article

106. Denmark is in compliance with the provision under review. During the country visit it was clarified that predicate offences would be given priority for prosecution. However, if the predicate offence could not be proven, the offense of money-laundering would be prosecuted.

Article 24. Concealment

Article 24

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

107. Denmark has indicated that Section 290 of the Criminal Code, as cited under subparagraph (a) (i) of Article 23, is applicable.

(b) Observations on the implementation of the article

108. Denmark seems to be in full compliance through the Criminal Code Section 290.

Article 25. Obstruction of justice

Subparagraph (a) of article 25

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

109. Denmark indicated that it has implemented the provision under review and cited Section 123 of the Criminal Code concerning violence and threats in relation to the giving of testimony:

A person who uses threats of violence, or commits an offence by violence, unlawful coercion as described in section 260, threats as described in section 266 or in any other way against another person or this person's closest relatives or others connected with

that person, in conjunction with the person's anticipated or already completed statement to the police or in court, shall be liable to a fine or to imprisonment for any term not exceeding eight years.

Section 125, subsection 1, no. 2, of the Criminal Code concerns actions directed against the evidence:

- (1) A fine or imprisonment for a term not exceeding two years is imposed on any person who -...
- (ii) destroys, tampers with or disposes of items of importance to a public investigation or erases traces of an offence.
- (2) Any person who carries out such acts to evade prosecution or punishment of himself or a significant other is not punished.

110. Bribery in order to induce false testimony or to interfere in the giving of testimony is criminalised pursuant to section 158 in conjunction with section 23 (regarding complicity, please see answer to article 18, subparagraph a) or pursuant to section 122 when concerning a public employee (please see answer to article 15, subparagraph a).

Section 158 of the Criminal Code on perjury:

- (1) Any person who commits perjury in court, including by means of telecommunication equipment, is sentenced to imprisonment for a term not exceeding four years. This provision also applies to perjury before a foreign court.
- (2) The same penalty is imposed on any person who commits perjury before the Court of Justice of the European Union.
- (3) If the false statement only concerns issues of irrelevance to the subject-matter examined, the sentence may be reduced to a fine.

Section 164 of the Criminal Code on manipulation of evidence:

- (1) Any person who gives incorrect information to a public authority with the intent that an innocent person will thereby be charged with, convicted of or subjected to a penal sanction for a criminal offence is sentenced to imprisonment for a term not exceeding six years.
- (2) The same penalty is imposed on any person who destroys, distorts or removes evidence or furnishes false evidence with the intent that another person will thereby be charged with or convicted of a criminal offence.
- (3) Any person who commits an act as referred to in subsections (1) and (2) with the intent that he himself or another person who has consented thereto will be charged with, convicted of or subjected to a penal sanction for a criminal offence not committed by him is sentenced to a fine or imprisonment for a term not exceeding six years.
- (4) A court may decide if so requested by the victim that the conclusion and as many of the grounds as deemed necessary by the court must be promulgated in one or more official gazettes by order of a public authority.

Section 171 of the Criminal Code regarding forgery:

(1) Any person who uses a false document to deceive in legal matters is guilty of forgery.

(2) A document means any written or electronic form of verification bearing the name of the issuer and appearing to be intended to serve as evidence.

(3) A document is false when it does not originate from the issuer named in the document, or the contents given to it do not originate from the issuer.

111. The sanction for committing forgery follows from **section 172** of the Criminal Code:

(1) The penalty for forgery is a fine or imprisonment for a term not exceeding two years.

(2) At particularly aggravating forgery or multiple offences of the same sort, the sentence may increase to imprisonment for six years.

112. Denmark has provided the following cases as examples of implementation:

Copenhagen District Court judgment of December 2011

A man was stopped by the police who wanted to take him under arrest. He tried to bribe them not to do so. They refused. For this and for some other crimes he was sentenced to 3 months' imprisonment. He had a criminal record.

Copenhagen District Court judgment of February 2015

A car driver who was stopped by the police tried to bribe the policemen not to seize the car by offering them DKK 100,000. They refused. For this and some other smaller crimes he was sentenced to 25 days' imprisonment. The sentence was suspended.

Eastern High Court judgment of May 2015

A student at the University of Copenhagen was found guilty in trying to bribe a teacher to influence the examiners to let him graduate. He offered the teacher DKK 2,000. The teacher refused. The sentence was 20 days' imprisonment. The sentence was suspended.

113. Denmark has provided the following information regarding statistical data on number of investigations, prosecutions and convictions/acquittals:

Number of reported offences

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 123	890	853	950	983	884	765	815	725	792	734
Criminal Code, Section 125	20	28	24	28	20	19	29	41	50	47
Criminal Code, Section 158	129	153	157	143	96	77	85	100	125	118

Criminal Code, Section 164	868	938	799	816	725	771	755	787	821	826
Criminal Code, Sections 171- 172	5551	5391	3895	3001	2375	2026	2099	2589	3420	2594

Number of charges

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 123				866	760	663	720	639	708	647
Criminal Code, Section 125				28	19	17	28	36	46	38
Criminal Code, Section 158				105	75	51	62	58	93	91
Criminal Code, Section 164				760	694	697	688	735	781	775
Criminal Code, Sections 171- 172				2358	1963	1481	1500	2008	2927	2109

Number of Criminal decisions/ convictions

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 123	149	222	249	231	178	170	157	199	143	146
Criminal Code, Section 125	6	11	4	17	2	5	11	7	9	11
Criminal Code, Section 158	91	78	71	83	64	34	30	33	54	66
Criminal Code, Section 164	335	406	429	364	247	291	302	416	383	361
Criminal Code, Sections 171- 172	1013	1054	995	861	485	522	618	602	711	713

Number of acquittals

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 123	17	26	28	22	25	25	21	27	26	18
Criminal Code, Section 125	2	2	1	2	0	0	0	1	0	1
Criminal Code, Section 158	17	10	18	15	10	7	9	5	8	10
Criminal Code, Section 164	11	11	9	8	8	9	9	9	15	7
Criminal Code, Sections 171- 172	39	40	46	38	24	21	21	34	41	33

(b) Observations on the implementation of the article

114. Denmark is partially compliant with the provision under review. Concerning bribery in order to induce false testimony or to interfere in the giving of testimony Denmark refers to Section 158 of the Criminal Code in conjunction with Section 23 (or to Section 122 when a public official is involved). Nevertheless, the cases where a private person (not in the exercise of a public function or office) is bribed to refuse to give any testimony at all or to simply stay away (e.g. go into hiding) are not covered.
115. Furthermore, the provisions in relation to obstruction of justice as cited in the Danish Criminal Code do not explicitly mention the corruption element, namely that the obstruction is carried out through the “promise, offering or giving of an undue advantage” as being covered.
116. Denmark is urged to widen its provisions relating to obstruction of justice to also cover acts of corruption in relation to the refusal to give testimony and, for the sake of legal clarity, consider making specific reference to the “promise, offering and giving of an undue advantage” in relation to the obstruction of justice.

(c) Successes and good practices

117. The inclusion in Section 171 (2) of the Criminal Code of electronic forms of verification as possible the means of forgery is considered a good practice.

Subparagraph (b) of article 25

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

118. Denmark has indicated that it has implemented the provision under review and cited section 119 of the Criminal Code relating to violence and threats against persons holding a public function or office:

Section 119

(1) A person who commits an assault by using violence or threats of violence against an official who is under a duty to act in a public service function or in a public office while that official acts in connection with his service or office, or in the same way seeks to prevent such an official from performing a lawful act as part of his service or to force him to perform such an act, shall be liable to a fine or imprisonment for any term not exceeding eight years.

(2) The same penalty shall apply to a person who, in circumstances other than those covered by subsection (1) above, expresses threats of violence, deprivation of liberty or allegation of a criminal act or dishonourable conduct against a person vested by a public authority with powers to deliver judgment or make decisions on judicial matters or on enforcement of the criminal justice authority of the Executive on account of the performance of his service or office, or who justice authority of the Executive on account of the performance of his service or office, or who seeks in the same way to prevent such a person from performing a lawful act as part of his service or force him to perform such an act.

(3) A person who otherwise puts obstacles in the way of the mentioned persons preventing them from carrying out their service or office shall be liable to a fine or imprisonment for any term not exceeding six months.

119. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter

120. Denmark has provided the following information regarding statistical data on number of investigations, prosecutions and convictions/acquittals:

Number of reported offences

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 119	2415	2744	2931	3071	3067	2728	2625	2814	2843	2902

Number of charges

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 119				2727	2709	2289	2174	2356	2441	2528

Number of Criminal decisions/ convictions

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 119	1091	1280	1426	1442	1123	1051	1135	1375	1267	1290

Number of acquittals

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Criminal Code, Section 119	67	55	73	55	82	65	56	75	44	49

(b) Observations on the implementation of the article

121. Denmark is in compliance through Section 119 of the Criminal Code.

Article 26. Liability of legal persons

Paragraphs 1 and 2 of article 26

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

122. Denmark indicated that it has implemented the provision under review and cited the following provisions:

Section 306 of the Criminal Code:

Companies etc. (legal persons) may be held criminally liable according to the provisions of Part 5 for violations of this Act.

Sections 25-27 of the Criminal Code:

25. A legal person may be punished with a fine, if such punishment is authorised by law or by rules pursuant to law.

26. (1) Provisions on the criminal liability of companies etc. shall, unless otherwise provided, apply to any legal person, including private and public limited companies, co-operative societies, partnerships, associations, foundations, estates, local and central government authorities.

(2) Furthermore, such provisions apply to sole traders if, particularly in view of their size and organisation, these are comparable to the business entities referred to in subsection (1) above.

27. (1) It shall be a requirement for imposing criminal liability on a legal person that an offence has been committed as part of its activity which may be attributed to one or more persons associated with the legal person or to the legal person as such. As regards punishment for attempt, section 21(3) shall apply correspondingly.

(2) Central and local government authorities shall solely be punished for offences committed in the performance of activity that is comparable or equal to the activity of private sector entities.

123. Denmark also referenced sections 78 and 79 of the Criminal Code, which are provided under subparagraph 7(a), Article 30.

124. Denmark indicated that no information regarding statistical data on investigations, prosecutions and convictions or acquittals was available.

(b) Observations on the implementation of the article

125. Denmark has established criminal liability of legal persons in compliance with the Convention through Sections 306 and 25 to 27 of the Criminal Code.

Paragraph 3 of article 26

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

126. Denmark indicated that it has implemented the provision under review and referenced para. 3.1.5 of the DPP guidelines for Criminal Liability for Legal Persons:

“Whenever there may be a basis for imposing criminal liability on a legal person for violation of the Criminal Code, the general rule is that – in addition to charges against the legal person – charges must also be raised against the natural person(s) who contravened the Criminal Code provision in question.”

127. Thus, in the travaux préparatoires ([L 35 of 13 December 2001, general comments, paragraph 2.3.1.2](#)) it is stated that criminal liability imposed on the legal person does not exclude individual criminal liability for a person who intentionally violated the Criminal Code provisions in question. It is presumed that criminal liability will generally also be imposed on the individuals involved.”

(b) Observations on the implementation of the article

128. Denmark is in compliance through Sections 306 and 25 to 27 of the Criminal Code

Paragraph 4 of article 26

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

129. Denmark indicated that it has implemented the provision under review and referenced to the provisions quoted under paragraphs 1 and 2 of Article 26.

130. Additional information concerning public tenders indicated that the EU Directives 2004/17/EC and 2004/18/EC were implemented into Danish law by Order no. 937 of 16 September 2004 (now Order no. 712 of 15 June 2011). Accordingly, if a contracting authority is aware that a candidate or tenderer has been convicted of corruption, then the candidate or tenderer shall be excluded from participation in a public contract. The

candidates and tenderers can be required to sign a declaration in which they declare that they have not been convicted of corruption. According to this, there is no maximum period of debarment.

131. Furthermore, the contracting authority can require that the tenderer, who wins the contract, obtain a “service attest” (an official certificate from the Danish Business Authority) as proof of the information given in the declaration mentioned above.
132. At the time of the country visit, the Danish Government is in the process of drawing up regulation in order to implement Directive 2014/24/EU of the European Parliament and the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.¹
133. For this purpose and as a proposal which will meet the recommendation the Danish Government has established a committee containing representatives of the major stakeholders of public procurement in Denmark. The committee is chaired by the Danish Competition and Consumer Authority and has involved several legal experts in its efforts of implementing the directive on public procurement. The committee has drafted a legislative proposal which has been presented to the Minister of Business and Growth, who will then introduce the proposal to the Danish Parliament with or without changes following deliberation within the government.
134. As the introduction of the legislative proposal to the Danish Parliament is not scheduled after the Danish election in June, it is not possible at this point in time to say what the contents of the final legislative act will be. However, the legislative act will at a minimum be in agreement with the Directive 2014/24/EU, which requires that contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established or otherwise are aware that the economic operator has been the subject of a conviction by final judgment for corruption. The period of exclusion will not be longer than the maximum of 5 years stated in the directive.
135. Furthermore, the Danish Competition and Consumer Authority has given it high priority to guide the contracting authorities about the rules of public procurement. Among other things, the Danish Competition and Consumer Authority will guide the contracting authorities about the obligation to debar candidates and tenderers who have been convicted of bribery.
136. During the country visit Denmark also referenced Section 80 of the Criminal code, which can be found in answer to paragraph 1 of Article 37.
137. Denmark has provided the following case as example of implementation:

Fine notice

A bank was charged with violation of section 37 of the Money Laundering Act, in that the bank had not recorded and stored the findings of the bank's investigations concerning transfers, which due to their specific nature seemed likely to be related to money laundering or terrorist financing. Furthermore, the bank failed to undertake an adequate continuous monitoring of the bank's customer relations in order to ensure that

¹ Implemented into Danish law, effective 1 January 2016

the transactions made were consistent with the bank's knowledge of the customer and the customer profile. The case was settled with the acceptance of a fine notice of DKK 5,500,000.

(b) Observations on the implementation of the article

138. Denmark has implemented the provision under review.

Article 27. Participation and attempt

Paragraph 1 of article 27

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

139. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as answer to subparagraph 1 (b) (ii) of Article 23, namely Section 21 and 23 of the Criminal Code, regarding to accomplice, assistant and instigator:

140. Denmark provided following cases as examples of implementation:

Supreme Court judgment of 27 April 1972

In an attempt to commit fraud pursuant to Section 279, cf. Section 21, of the Criminal Code the defendant drafted false lists for a statement he intended to send to an insurance company. He was convicted of an attempt to commit fraud.

Western High Court judgment of 14 December 2007

Pursuant to Section 191, cf. Section 21, of the Criminal Code the defendant was convicted of an attempt to procure amphetamine amounting to one kilo. The punishable action consisted of encouraging another person to contact people in Copenhagen who could provide the drugs.

(b) Observations on the implementation of the article

141. Denmark is in full compliance with Article 27 paragraph 1 (complicity) and paragraph 2 (attempt). During the country visit, it was clarified that (preparation) is also covered and a comparison was made to the example under Article 23 in relation to money-laundering where the preparation would be considered an attempt.

Paragraph 2 of article 27

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

142. Denmark indicated that it has implemented the provision under review and referred to the provisions cited under subparagraph (a) of Article 18.

(b) Observations on the implementation of the article

143. Please refer to observations made under paragraph 1 of Article 27.

Paragraph 3 of article 27

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

144. Denmark indicated that it has implemented the provision and referred to the provisions cited under subparagraph a of article 18.

(b) Observations on the implementation of the article

145. Please refer to observations made under paragraph 1 of article 27.

Article 29. Statute of limitations

Article 29

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

146. Denmark indicated that it has implemented the provision under review and cited the following legal provisions of Part 11 of the Criminal Code (unofficial translation).

147. The commencement and suspension of the limitation period is regulated by sections:

Section 93

The limitation periods are -

- (i) two years where the maximum penalty prescribed for the offence is imprisonment for one year;

- (ii) five years where the maximum penalty prescribed is imprisonment for four years;
 - (iii) ten years where the maximum penalty prescribed is imprisonment for ten years;
 - and
 - (iv) fifteen years where the maximum penalty prescribed is imprisonment for a determinate period.
- (2) The limitation period is in no case less than five years for -
- (i) violation of sections 296(3), 297(2) and 302(2) of this Code;
 - and
 - (ii) violation of the legislation on taxes, customs, duties or subsidies, where an unlawful gain is or can be made.
- (3) The limitation period for violation of section 223(1) or section 225, cf. section 223(1), of this Code is in no case less than ten years.
- (4) If a person has committed several offences by the same act and different limitation periods apply under subsections (1)-(3), the longest of those periods will apply to all offences.

Section 93 a Where an offence falls within an international convention to which Denmark has acceded, and the criminal liability is not subject to any limitation period according to such convention, the offence will never become barred by limitation.

Section 93 b Where an offence falls within section 157a of this Code, the offence will never become barred by limitation.

Section 94 The limitation period is reckoned from the date when the criminal act or omission ceased.

- (2) Where criminality depends on or is influenced by a current consequence or other subsequent event, the limitation period is reckoned only from the date when the consequence or event occurred.
- (3) Where the offence was committed on board a Danish ship outside the territory of the Danish state, the limitation period is reckoned from the date when the ship called at a Danish port. The commencement of the limitation period cannot be postponed by more than one year under this provision.

...

(5) The limitation period is suspended when the relevant person is notified of the provisional charge, or when the Prosecution Service requests legal proceedings by which the relevant person is provisionally charged with the offence. The limitation period of the liability of a legal person can be suspended by notification to a person authorised to accept service on behalf of the legal person under section 157a of the Administration of Justice Act (retsplejeloven).

(6) Where prosecution is abandoned and such decision is not reversed by a superior prosecutor within the statutory period of reversal, the limitation period will continue to run as had no prosecution been pursued. This also applies where prosecution is suspended indefinitely. If prosecution is suspended because the person provisionally charged has evaded prosecution, the period of prosecution is not included in the calculation of the limitation period.

Section 96 The right to bring a private prosecution and to request public prosecution lapses if the person so entitled has not instituted proceedings or made a request within six months of the date when he had obtained sufficient information to institute

proceedings or request prosecution.

(2) If several persons are entitled to institute proceedings or several persons are guilty, the limitation period must be calculated separately for each of them. If the limitation period for public prosecution has expired in relation to one of the persons guilty, but not the others, the decision of whether to allow the request for prosecution of these persons rests with the Prosecution Service.

(3) The right to bring a private prosecution and to request public prosecution lapses six months after the victim's death.

(4) If private prosecution does not result in determination of the claim for punishment, the limitation period will continue to run and the period of prosecution is not included in the calculation of the limitation period.

(5) The provisions of subsections (1)-(4) also apply to the sanctions mentioned in section 273, except that the limitation period is three years.

(b) Observations on the implementation of the article

148. The limitation period for corruption related offences appear to be 10 years. In particular Section 94 (5) is noteworthy in that it can file a provisional charge in order to suspend the statute of limitation.

Article 30. Prosecution, adjudication and sanctions

Paragraph 1 of article 30

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

149. Denmark indicated that it has implemented the provision under review and referred to the sanctions described in the provisions of the Criminal Code on active and passive bribery pursuant to section 122 and 144 respectively, bribery in the private sector pursuant to section 299, subsection 2, embezzlement pursuant to section 278, fraudulent abuse of position pursuant to 280 and laundering pursuant to section 290.

150. Furthermore Denmark cited Sections 80-83 (refer to answer to article 37 (1)) of the Criminal Code concern general principles on sentencing.

Section 81

When determining a sentence, it must normally be considered an aggravating circumstance –

- (i) that the offender has relevant prior convictions;
- (ii) that the act was committed jointly with others;
- (iii) that the act had been carefully planned or was a constituent element of major crime;
- (iv) that the offender intended the act to have substantially more serious consequences

- than it had;
- (v) that the offender exhibited particular ruthlessness;
- (vi) that the act was based on the ethnic origin, religious faith or sexuality of others or similar issues;
- (vii) that the act was based on the victim's lawful expressions in the public debate;
- (viii) that the act was committed in the exercise of a public function or office or by abuse of a position or of trust and confidence;
- (ix) that the offender made another person an accomplice in the act by coercion, fraud or exploitation of such person's tender age or substantial financial or personal problems, lack of insight, rashness or an existing dependency relationship;
- (x) that the offender has been complicit in crime committed by a child under 15 years of age;
- (xi) that the offender exploited the victim's defenceless position;
- (xii) that the act was committed by a person serving a sentence or another custodial measure imposed as a penal sanction; and
- (xiii) that the act was committed by a former inmate against the institution or a person employed by the institution.

Information concerning the Act on Investigative Commissions:

151. Two forms of extraordinary inquiry are used in public administration: commissions of inquiry and legal fact-finding inquiries.
152. At the introduction of the Inquiries Act in 1999 – which was introduced and adopted by all political parties of the Parliament (the Folketing) – the underlying assumption was that a commission of inquiry should be appointed where there is a need to obtain reports or conduct interrogations, for example, in connection with the investigation and clarification of the actual course of events in a case in order to assess the liability of government ministers or officials.
153. This is due particularly to the consideration for the legal rights of the government ministers and officials involved, and the Inquiries Act therefore includes a number of procedural guarantees protecting the persons involved.
154. For the same reason it was a requirement when the Inquiries Act was introduced that legal fact-finding inquiries concerning questions of the possible legal liability of government officials should be based exclusively on an already existing body of written material in a case.
155. Since the Inquiries Act was adopted, seven commissions have been appointed under the provisions of the Act: the Farum Commission, the Dan Lyngé Commission, the Tax Allowance Commission, the Blekingegade Commission, the Stateless Citizens' Commission, the Tax Disclosure Commission and the Iraq and Afghanistan Commission.
156. Denmark has provided the following cases as examples of implementation, while also referring to the cases mentioned in relation to article 15 and article 19.

An example of the application of those [section 30, section 33 of the Constitutional Act] provisions was the case concerning the founder of the Progress Party:

Mr. Glistrup was first elected to Parliament in 1973 (often referred to as the 'landslide election' because the number of parties represented in Parliament doubled from 5 to 10, including 3 newly founded political parties). Mr. Glistrup was reelected in subsequent elections, and he was still a member when, on 22 June 1983, the Supreme Court sentenced him to 3 years' imprisonment and a fine of DKK 1 million for tax evasion. On 1 July 1983, Parliament decided that Mr. Glistrup should lose his mandate because he was no longer considered eligible pursuant to section 30 of the Constitutional Act. While Mr. Glistrup was in prison serving his sentence, he ran for Parliament again in the general elections held on 10 January 1984. He obtained a sufficient number of votes to be elected and was consequently released from prison. Parliament, however, again decided that Mr. Glistrup was not eligible, and Mr. Glistrup returned to prison to serve the rest of his sentence. After having served his sentence, Mr. Glistrup ran for election again in the general elections held on 8 September 1987 and 10 May 1988 and was elected on both occasions. Following these elections, Parliament decided that Mr. Glistrup was now again eligible, and he consequently took up his seat in Parliament. Although he ran for election in subsequent elections again, he was not elected.

157. In conjunction with the cases summarized under Article 17 (concerning a mayor and member of Parliament) an Investigative Commission was set up. The Commission was tasked with investigating events in the local authority concerned in the period 1990 to 2003. The Committee was set up in 2003 and submitted its report in 2012 in 16 volumes and a CD-ROM with appendices. One of the Commission's proposals was to clarify the rules on the suspension and termination of a mayor's mandate. The proposal was taken up by the Government, and an amendment to the Act on Municipal Administration was made by Act no. 1470 of 17 December 2013. From the travaux préparatoires of this Act (extracts from the explanatory note to the bill):

"1. [...] The Ministry of Economic and Interior Affairs finds moreover that a clarification of the current rules on the suspension and removal of a mayor is expedient in the form it has been proposed by the Committee. Thus, the set of rules for such cases should not be of a character that might raise doubts in the local council as to when the rules will make it possible to intervene and stop a mayor who may – perhaps grossly – neglect his duties. In addition, the Ministry of Economic and Interior Affairs supports the proposal for a simplification of the process for the removal of a mayor that the Committee has presented. Finally, the position of the Ministry of Economic and Interior Affairs is that the new possibilities proposed by the Committee, firstly to suspend a mayor due to charges for a serious criminal offence and secondly to remove a mayor by a special, qualified majority due to loss of confidence, will give local councils the necessary means to intervene and stop the mayor where the conditions involve a risk to the functional capacity and efficiency of local government."

158. General principles of administrative law would exclude the possibility of reappointing a senior public official with a recent criminal conviction for corruption committed in his/her prior position as senior public official. Such an appointment would not be well-founded, and such an appointment would consequently be unlawful.
159. Denmark has not provided any information regarding statistical data and information on criminal and non-criminal sanctions imposed

(b) Observations on the implementation of the article

160. Denmark is in compliance with this article of the Convention.

Paragraph 2 of article 30

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

161. Denmark indicated that it has implemented the provision under review.

162. In general, public officials do not enjoy immunities or jurisdictional privileges. However, according to Article 57, 1st. clause, of the Constitutional Act:

No Member of the Folketing (i.e. Parliament) shall be prosecuted or imprisoned in any manner whatsoever without the consent of the Folketing, unless he is taken in flagrante delicto.

163. The rules on eligibility of members of Parliament are found in sections 30 and 33 of the Constitutional Act (unofficial translation):

Section 30

(1) Any person who is entitled to vote at Folketing elections shall be eligible for membership of the Folketing, unless he has been convicted of an act which in the eyes of the public makes him unworthy to be a Member of the Folketing.

(2) Civil servants who are elected Members of the Folketing shall not require permission from the Government to accept election.

Section 33

The Folketing shall itself determine the validity of the election of any Member and decide whether a Member has lost his eligibility or not.

According to the Act on Elections to Parliament a conviction does not prevent a person from being a candidate; if he or she is elected, the question of eligibility will be determined by Parliament after the election.

164. In practice the Folketing has in a number of instances lifted the parliamentary immunity in order that criminal proceeding against a Member of Parliament could be commenced.

165. Furthermore, Article 59 and 60 of the Constitutional Act give the Court of Impeachment jurisdiction over cases against Government ministers concerning offences committed in the exercise of their official functions.

166. The procedural rules concerning specific instructions from the minister of justice to the prosecution service concerning concrete criminal proceedings are found in section 98(3) of the Administration of Justice Act:

98(3) "The Minister of Justice may give orders to the public prosecutors regarding their handling of specific cases, including orders to start or continue, refrain from or withdraw prosecution. An order under this provision to start or continue, refrain from or withdraw prosecution must be given in writing and be accompanied by reasons. In addition, the Speaker of Parliament must be notified of the order in writing. If the considerations referred to in section 729C(1) so require, the notification may be postponed. The order shall be considered, in relation to access to public documents in pursuance of sections 729A-D, as material the police have procured in order to use it in the case".

167. The immunity of the King stems from section 13, 1st clause, of the Constitutional Act (unofficial translation):

Section 13

The King shall not be answerable for his actions; his person shall be sacrosanct. [...]

The jurisdictional privileges of other members of the royal family stem from section 25 of the (1665) Regal Act (unofficial translation):

Section 25

They [the princes and princesses of the blood] shall also answer to no inferior judge, but their first and last judge shall be the King or whoever he thereto specifically orders.

(b) Observations on the implementation of the article

168. Denmark has referred to the cases mentioned in relation to article 17, and indicated that in terms of concrete instances where the issue of immunities and/or jurisdictional or other privileges accorded to public officials has arisen and addressed in official documents in the cases mentioned in the answer related to article 17, the parliamentary immunity of the defendant was lifted.

169. The provision is implemented.

Paragraph 3 of article 30

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

170. Denmark indicated that it has implemented the provision under review and cited Section

96 of the Administration of Justice Act, which concerns the task of the prosecution service and lays down the general principle on impartiality. The provision reads as follows (unofficial translation):

Section 96.-

(1) the duty of the public prosecutors is to prosecute crime in association with the police according to the provisions of this Act.

(2) The public prosecutors must pursue legal proceedings in all cases with the speed allowed by the nature of the particular case and thereby ensure not only that those deserving punishment will be held liable but also that no prosecution of innocent individuals will take place.

171. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter
172. Denmark has indicated that information regarding statistical data on relevant cases is not available.

(b) Observations on the implementation of the article

173. Denmark seems to be in full compliance with this Article. During the country visit, Denmark explained that there are in effect very little room overall for discretionary powers on the side of the prosecution.

Paragraph 4 of article 30

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

174. Denmark indicated that it has implemented the provision under review and cited Section 762, 765 and 769 of the Administration of Justice Act in relation to custody (unofficial translation):

Section 762.-(1) An accused person may be detained on remand when there are grounds to suspect that he has committed an offence which is subject to public prosecution, if, under the law, the offence carries a penalty of imprisonment for one year and six months or more, and if

1) based on the information obtained about the circumstances of the accused, there are specific reasons to presume that he will abscond from prosecution or enforcement, or
2) based on the information obtained about the circumstances of the accused, there are specific reasons to presume that, if at large, he will commit another offence of the nature referred to above, or

3) based on the circumstances of the case, there are specific reasons to presume that the accused will impede the prosecution of the case, particularly by removing evidence or alerting or influencing others.

(2) An accused person may furthermore be detained on remand when there are particularly strong grounds to suspect that he has committed

1) an offence which is subject to public prosecution and, under the law, carries a penalty of imprisonment for six years or more, and due regard for enforcement of the law is found to require, considering the information about the seriousness of the offence, that the accused shall not be at large, or

2) an offence in violation of section 119(1), section 123, section 134a, section 192a(2), section 218, section 222, section 225 read with section 216(1), section 218 or section 222, section 235(1), sections 244-246, section 250 or section 252 of the Criminal Code or violation of section 232 of the Criminal Code committed against a child of less than 15 years, in case the offence may be expected due to the information about the seriousness of the circumstances to be punished with an unconditional sentence of imprisonment for at least 60 days and due regard for enforcement of the law is found to require that the accused shall not be at large.

(3) Detention on remand may not be used if the offence can be expected to be punished with a fine or imprisonment for a term not exceeding 30 days, or if deprivation of liberty will be disproportionate to the resulting disruption of the circumstances of the accused, the significance of the case and the sanction that can be expected if the accused is found guilty.

(...)

765.-(1) If the conditions for detaining a person on remand are met but the purpose of the detention may be achieved through less restrictive measures, the court shall, if the accused consents, impose such a measure in place of detention.

(2) The court may thus decide that the accused shall

- 1) submit to supervision as determined by the court,
- 2) observe specific conditions as to his residence, work, use of spare time, and association with certain persons,
- 3) reside in a suitable home or institution,
- 4) submit to psychiatric treatment or rehabilitation treatment for misuse of alcohol, narcotics or other substances, if necessary in a hospital or special institution,
- 5) report to the police at specified times,
- 6) deposit his passport or other papers of identification with the police,
- 7) provide security of an amount determined by the court for his presence at court hearings and for the enforcement of a sentence imposed.

(3) As for decisions made under subsections (1) and (2), the rules of section 764 shall apply correspondingly.

(4) If an accused person absconds from appearing in court or from the enforcement of a sentence, the court may make an order, after the persons with whom the case is concerned has been given the opportunity to state their case to the extent possible, to the effect that the security provided under subsection (2) para. 7 has been forfeited. Forfeited security shall be allocated to the State, allowing, however, that the claim of a victim for compensation may be covered out of the security. The court may decide, in special circumstances and within six months after the order, that forfeited security which has accrued to the State shall be fully or partly refunded.

(5) The Minister of Justice may issue rules after consultation with the Minister for Social Affairs and Integration and the Minister for Health and Prevention on when to grant off-grounds leave etc. to persons who are placed in an institution or at a hospital etc. under subsection (2) para. 3) or 4), when this has not been determined otherwise. The Minister of Justice may lay down that decisions made according to these rules may not be appealed to any higher administrative authority.
(...)

769.-(1) A decision to order detention on remand or another measure shall only remain in effect until the case has been decided by the court. After the case has been decided, the court shall decide, upon request, whether during a possible period of appeal or until enforcement of the sentence can be initiated, the defendant shall be detained on remand or remain detained or be subjected to an alternative measure instead. The rules of sections 762, 764-766 and 768 shall apply correspondingly to this decision, unless the defendant accepts remaining in detention or be subject to another measure. If a defendant has been detained on remand or subjected to another measure before his case has been decided in court, and the court does not find sufficient grounds to continue the detention or measure, it may order, however, upon request from the prosecution that the detention or measure must remain in force until a decision of the question of detention has been made by the higher court to which the case or the question of remand detention has been appealed.

(2) If a judgment has been handed down in the case by which an unconditional prison sentence of more than 30 days has been imposed on the defendant for an offence that is subject to public prosecution, the defendant may moreover be held in custody on remand when considerations for law enforcement are found to require that the defendant shall not be at liberty, taking account of the circumstance that

- 1) a showdown between groups of persons is in progress in which, as part of the showdown, certain persons have several times used either firearms or weapons or explosives which due to their particularly dangerous nature are capable of causing substantial harm or committed arson covered by section 180 of the Criminal Code and
- 2) the defendant is affiliated with one of these groups.

(3) If the judgment handed down in the case is appealed to a higher court, and if detention on remand or another measure after the conviction has been ordered pursuant to subsection (1) or (2) above, the question of the continued detention or other measure shall as soon as possible be put before the higher court to which the sentence has been appealed. In respect of the review by the higher court of the question of detention on remand or another measure, the rules of sections 762, 764(1) (3) and (4), 765, 766, 767(1), 1st-4th sentence and subsections (2) and (3) and section 768 shall apply correspondingly.

175. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter.

176. Denmark has indicated that information regarding statistical data is not available.

(b) Observations on the implementation of the article

177. It was indicated during the country visit that bail is rarely if ever used, whereas pre-trial detention was applied occasionally. Furthermore, in cases of economic criminal offenses, the suspects were rarely detained at all.

178. Denmark is in compliance with this article of the Convention.

Paragraph 5 of article 30

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

179. Denmark indicated that it has implemented the provision under review and cited Sections 38-40a of the Criminal Code in relation to early release and parole:

Section 38

(1) When two thirds of the sentence term has elapsed, but always at least two months, the Minister of Justice or the person so authorised by the Minister shall decide whether the convicted person will be released on parole.

(2) A convicted person may be released on parole earlier if justified by special circumstances and if he has served at least half of the sentence term, but always at least two months. Such decision must be made by the Minister of Justice or the person authorised by the Minister to decide certain groups of cases.

(3) The right to be released on parole does not extend to the non-suspended part of a sentence under section 58(1).

(4) It is a condition for release on parole that the circumstances of the convicted person do not render release inadvisable, that he is assured of suitable accommodation and employment or other source of maintenance, and that he undertakes to observe the conditions for the release stipulated under section 39(2).

Section 39

(1) It must be made a condition for release that the convicted person does not re-offend while on parole. The probation period cannot exceed three years. If the remainder of the sentence term exceeds three years, a probation period of up to five years may be stipulated.

(2) It may be made a condition for release that the convicted person is made subject to supervision during the entire or part of the probation period. Additional conditions may be stipulated pursuant to the rules of section 57. A condition of residence in a home,

hospital or other institution is valid for no longer than the remainder of sentence term.

Section 40

(1) If a parolee re-offends while on parole and legal proceedings by which he is provisionally charged with the act are initiated before expiration of the probation period, the court must make a decision in conformity with section 61(2) whereby the unserved balance of the parolee's prison sentence becomes comparable with a suspended sentence. If release on parole was made subject to a condition of community service pursuant to section 40a(3) or (4), the extent of the community service done must be taken into account when determining a concurrent sentence.

(2) If a parolee otherwise violates the conditions stipulated, the Minister of Justice may

-
- (i) issue a caution;
- (ii) vary the conditions and extend the probation period within the maximum period stipulated by section 39; or
- (iii) decide in special circumstances that the parolee must be imprisoned to serve the unserved balance of his prison sentence.

(3) If a parolee re-offends while on parole, but is not charged with the act, the provisions of subsection (2) apply correspondingly. The same applies if the parolee is convicted abroad for a criminal offence committed during the probation period and the issue of enforcement of the balance of his former prison sentence was not considered in that connection.

(4) A decision under subsection (2), cf. subsection (3), can only be made before expiration of the probation period.

(5) If no decision on enforcement of the balance of a prison sentence is made under subsection (1) or (2), cf. subsection (3), the sentence is deemed served at the date of the release on parole.

(6) If it has been decided to recall a parolee pursuant to subsection (2), cf. subsection (3), such person may be released again on parole even though the conditions of time set out in section 38(1) and (2) or section 40a(1) have not been satisfied as regards the unserved balance of the prison sentence. Decisions made under the first sentence hereof must take into account the extent of any community service done by the parolee pursuant to section 40a(3) or (4). As regards the probation period following such release on parole, it will be the relevant period stipulated in section 39 less the relevant parolee's previous probation periods.

Section 40 a

(1) Where half of the sentence term has been served, but always at least two months, the Minister of Justice or the person so authorised by the Minister may decide that the convicted person will be released on parole in situations other than those referred to in section 38(2) if implications for law enforcement are deemed not to weigh against such release; and -

- (i) the convicted person has made a special effort to avoid relapsing into crime, including by undergoing treatment, attending an education or a training course,

or undertaking work; or

(ii) it is justified by the circumstances of the convicted person.

(2) It must be made a condition for release on parole under subsection (1) that the convicted person is made subject to supervision until the date when two thirds of the sentence term has elapsed. After such date, it may be made a condition that the relevant person must remain under supervision.

(3) The conditions for release on parole under subsection (1)(i) may comprise one or more conditions stipulated pursuant to the rules of section 57 and a condition of doing unpaid community service.

(4) The conditions for release on parole under subsection (1)(ii) must comprise a condition of doing unpaid community service. Additional conditions may be stipulated pursuant to the rules of section 57.

(5) A condition of community service cannot be extended to more than two thirds of the sentence term. The Probation Service may decide that a condition of community service must extend beyond such date if justified for particular reasons, but not beyond the full sentence term.

(6) It is a condition for release on parole pursuant to this provision that the circumstances of the convicted person do not render release inadvisable, that he is assured of suitable accommodation and employment or other source of maintenance, and that he is found suited to and undertakes to observe the conditions for the release stipulated under subsections (3) and (4).

(7) Section 38(4), section 39(1), the third sentence of section 39(2), section 40 and the first sentence of section 63(1) apply correspondingly.

180. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter

181. Denmark has indicated that information regarding statistical data on related cases is not available

(b) Observations on the implementation of the article

182. Denmark is in compliance with this article of the Convention

Paragraph 6 of article 30

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

183. Denmark indicated that it has implemented the provision under review.
184. If there is a suspicion that a professional misconduct has been committed a disciplinary case will be commenced.
185. At the initiation of disciplinary proceedings a decision will be made as to whether provisional measures such as suspension or temporary transfer to another position shall be taken.
186. Decision on suspension etc. is taken in cases where a statutory civil servant has contracted such a reasoned suspicion against him/her that he/she does no longer hold the confidence needed for the position in question or which would make it questionable for him/her to continue to conduct his/her work.
187. Furthermore a statutory civil servant can be relieved from his/her duties based on reasoned grounds and provided that he/she continues to be paid his/her ordinary salary.
188. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter
189. Denmark has indicated that information regarding statistical data is not available.

(b) Observations on the implementation of the article

190. Denmark is in compliance with this article of the Convention.
191. During the country visit, it was explained that very few civil servants are appointed as statutory civil servants.
192. The principal categories that are now appointed as statutory civil servants are the following (the list is not exhaustive):
- Permanent Secretaries of State
 - Judges
 - Police officers
 - Prison officers
 - Management level personnel within the prosecution service
 - Military officers
 - Bishops and priests
193. It should be noted that prior to 2009 all senior management in the central State administration were appointed as statutory civil servants. Several years back, other groups were also appointed as statutory civil servants. Once appointed as a statutory civil servant, a person retains that status, also in the event of a transfer to another post in the State. Consequently, there is and will for some years to come remain a number of other staff than listed above who are statutory civil servants.
194. It was further explained that private sector rules are applicable to staff employed by the

State who are not statutory civil servants. In general, such staff will be covered by a collective labour agreement between the State and a relevant labour union. Furthermore, a number of employees are covered by the Act on the legal relationship between employers and salaried employees (see further on this Act under Article 33, below). All employees who are not statutory civil servants will also have a (usually standardised) individual contract of employment with the State.

195. However, the possibility to remove, suspend or reassign in case of an accusation of an offence, as referred to in Article 30(6), will usually not be expressly regulated in any of those sources of law. Instead, the State's power as employer to use such measures will follow from general (unwritten) principles of contract law (Denmark does not have a general civil code, so general contract law is based on case-law) as applied in particular to employment contracts.

Subparagraph 7 (a) of article 30

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office;

(a) Summary of information relevant to reviewing the implementation of the article

196. Denmark indicated that it has implemented the provision under review and cited the following legal provisions from the Constitutional Act:

Section 30

(1) Any person who is entitled to vote at Folketing elections shall be eligible for membership of the Folketing, unless he has been convicted of an act which in the eyes of the public makes him unworthy to be a Member of the Folketing.

(2) Civil servants who are elected Members of the Folketing shall not require permission from the Government to accept election.

Section 33

The Folketing shall itself determine the validity of the election of any Member and decide whether a Member has lost his eligibility or not.

According to the Act on Elections to Parliament a conviction does not prevent a person from being a candidate; if he or she is elected, the question of eligibility will be determined by Parliament after the election.

197. Eligibility for local and regional elected authorities is governed by the Local and Regional Government Elections Act, in particular section 4. The decision as to whether a person is eligible lies with the Eligibility Board, set up under section 105 of the Act.

198. The Local and Regional Government Elections Act (unofficial translation):

Section 4

(1) Any person who by final judgment or acceptance of a fine has been convicted of an act which in the eyes of the public makes him unworthy of being a member of local or regional councils shall not be eligible, cf. section 101. Measures laid down in sections 68-70 of the Criminal Code are equal to penalty.

(2) A criminal offence does not imply any forfeiture of eligibility when on election day three years have elapsed since completion, suspension, remission or abolition of the penalty or measure. Where a penalty is an unconditional prison sentence of more than six months, or a custodial sentence, five years must elapse, however. For conditional sentences and fines the time limit shall be the period calculated from the date on which the final judgment was passed or the fine was accepted.

(3) Nomination for candidacy in an election can nevertheless always take place regardless of objections in respect of non-eligibility on account of penalty.

Section 101

(1) If a member of the newly elected local council or the newly elected regional council, respectively, claims ineligibility in a candidate on account of a punishment, the local council or the regional council, respectively, shall refer the issue to the Eligibility Board, cf. section 105, for a decision on whether the member shall have forfeited his or her eligibility on that ground.

(2) An objection to the eligibility of an elected candidate on account of punishment must be filed within three months of election day.

(3) An objection to the eligibility of a substitute on account of punishment must be filed within two months of the first meeting of the local council or regional council, respectively, for which the substitute is summoned.

(4) If a member is punished, the local council or the regional council, respectively, shall refer this issue to the Eligibility Board for decision on whether the member shall have forfeited his or her eligibility on that ground.

Section 105

(1) The Minister for Economic Affairs and the Interior shall set up an Eligibility Board to decide issues regarding forfeiture of eligibility on account of punishment, cf. section 4, with regard to membership of local or regional councils and other public functions conditional upon eligibility for a local or regional council.

(2) The Eligibility Board shall decide cases of removal or suspension of a mayor or similar holder of a municipal office, or a regional council chairman according to the rules of sections 66a to 66c of the Local Government Act, cf., as regards regional council chairmen, also section 38 of the Regional Government Act.

(3) The Eligibility Board comprises a chairman and a vice-chairman assigned by the Minister for Economic Affairs and the Interior and three other members, of which Danish Regions and Local Government Denmark shall each appoint one member and the Minister for Economic Affairs and the Interior shall appoint one member who is an expert in administrative law. Danish Regions and Local Government Denmark shall furthermore appoint a substitute for each of the two members appointed by their associations. The Minister for Economic Affairs and the Interior shall appoint a substitute for the member who is an expert in administrative law.

- (4) The decisions of the Board cannot be appealed to any other administrative authority.
199. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter
200. Denmark has indicated that information regarding statistical data is not available.
- (b) Observations on the implementation of the article**
201. Denmark has implemented the provision under review.

Subparagraph 7 (b) of article 30

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

...

(b) Holding office in an enterprise owned in whole or in part by the State.

- (a) Summary of information relevant to reviewing the implementation of the article**
202. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as in answer to subparagraph 7 (a) of Article 30.
203. Denmark has not provide any information regarding statistical data on related cases.
- (b) Observations on the implementation of the article**
204. During the country visit it was clarified that Denmark does not have any provisions that would prevent a person convicted of offenses under this Convention from being reappointed in state-owned enterprises. The provision is therefore not implemented.

Paragraph 8 of article 30

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

- (a) Summary of information relevant to reviewing the implementation of the article**
205. Denmark indicated that it has implemented the provision under review and cited part 4 of the act on statutory civil servants which lays down provisions with regard to suspension and disciplinary measures. Although the provisions are applicable only to statutory civil servants a public authority may in cases where e.g. a non-statutory public employee commits a criminal offence take measures similar to those that follows from the act on

statutory civil servants based on the authority's discretionary powers.

206. The imposition of disciplinary measures does not preclude criminal sanctions.
207. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter

(b) Observations on the implementation of the article

208. Denmark is in compliance with this article of the Convention

Paragraph 10 of article 30

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

209. Denmark indicated that it has implemented the provision under review and cited this as a fundamental principle of criminal policy in Denmark.
210. Reference can be made to Section 3 of the Danish Act on enforcement of sentences etc. It follows from this provision that the enforcement of a penalty must be carried out with due regard to both the execution of the sentence, as to the need to help or influence the convicted person to lead a life without crime.
211. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter
212. Denmark provided the following information regarding statistical data on recidivism rates:
213. A report with statistics on recidivism rates, published by the Danish Prison and Probation Service, can be found at:
www.kriminalforsorgen.dk/Recidiv-statistik-1366.aspx
214. Recidivism in cases covered by the Convention is not treated as a separate issue in the report. However, it appears that the recidivism rate for persons convicted of economic crime was between 15.2 and 17.9 percent for the years 2006-2010. Recidivism is defined as a new prison sentence or community sanction that became legally binding within two years of release from prison or from commencement of the community sanction.

(b) Observations on the implementation of the article

215. Denmark is in compliance with this article of the Convention

Article 31. Freezing, seizure and confiscation

Subparagraph 1 (a) of article 31

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which correspond to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

216. Denmark indicated that it has implemented the provision under review and cited the Criminal Code Sections 75-77a:

75 (1) The proceeds of a criminal act, or a corresponding amount, may be confiscated in full or in part. Where the basis for determining the size of such amount is insufficient, an amount deemed equivalent to the proceeds made may be confiscated.

(2) If deemed necessary to prevent further offences or otherwise justified by special circumstances, the forfeiture of the following items may be ordered:

- (i) items used for or intended to be used for a criminal act;
- (ii) items produced through a criminal act; and
- (iii) items otherwise involved in a criminal act.

(3) Instead of forfeiture of such items as are referred to in subsection (2), an amount corresponding to the full or partial value of such items may be confiscated.

(4) Instead of forfeiture under subsection (2), a decision may be made about measures relating to the items to prevent further offences.

(5) Where an association or a society is dissolved by judgment, an order of forfeiture of its assets, archives, records, etc., may be issued.

76 (1) Confiscation may be made under section 75(1) from the person who received the proceeds directly after the criminal act.

(2) An order of forfeiture of the items referred to in section 75(2) may be made against the person liable for the offence and against the person on whose behalf he acted, and an order of confiscation may similarly be made in respect of the valuables referred to in section 75(3).

(3) Specifically secured rights in items subject to forfeiture will only lapse if so decided by the court on the conditions set out in subsection (2).

(4) Where one of the persons referred to in subsections (1) and (2) has undertaken transactions after the criminal act involving proceeds or items of the nature mentioned in section 75(2) or rights in such proceeds or items, the proceeds or items transferred may become subject to a forfeiture order against the acquirer or the corresponding value may

be confiscated from the acquirer if he was aware of the connection between the proceeds or items transferred and the criminal act or has displayed gross negligence in this respect or if the transfer was gratuitous.

(5) If a person subject to a confiscation or forfeiture order under subsection (1)-(4) dies, his liability under the order will cease. This does not apply to confiscation under section 75(1).

76a (1) Property owned by a person found guilty of a criminal act may become subject to forfeiture in full or in part where -

- (i) the act is of such nature that it may generate substantial proceeds; and
- (ii) the act is punishable by imprisonment for at least six years according to law or is contrary to the legislation on controlled substances.

(2) Property acquired by the relevant person's spouse or cohabitant may be subject to forfeiture in full or in part on the conditions referred to in subsection (1) unless -

- (i) the property was acquired more than five years before the criminal act warranting forfeiture under subsection (1); or
- (ii) the marriage or cohabitation had not been established when the property was acquired.

(3) Property transferred to a legal person over which the relevant person exercises control, whether alone or jointly with his significant others, may be subject to forfeiture in full or in part on the conditions referred to in subsection (1). The same applies if the relevant person receives a substantial portion of the legal person's income. No forfeiture can be ordered if the property was transferred to the legal person more than five years before the criminal act warranting forfeiture under subsection (1).

(4) No forfeiture can be ordered under subsections (1)-(3) if the relevant person renders probable that the property was acquired lawfully or with lawfully acquired funds.

(5) Instead of forfeiture of specific property under subsections (1)-(3), an amount corresponding to the full or partial value of such property may be confiscated.

77(1) If a confiscation or forfeiture order is made under section 75(1) or 76a and someone has a claim for compensation due to the offence, the property subject to confiscation or forfeiture may be applied to settle the claim for compensation.

(2) The same applies to items and valuables subject to forfeiture under section 75(2) or confiscation under section 75(3) if so decided in the judgment.

(3) Where the convicted person has paid compensation to the victim following the judgment in one of the cases referred to in subsections (1) and (2), the amount subject to confiscation or forfeiture will be reduced correspondingly.

77a (1) The forfeiture of items may be ordered if there is reason to fear that they will be used for a criminal act due to their nature combined with other particular circumstances,

if deemed necessary to prevent such criminal act. An order may be issued on the same conditions for the forfeiture of other property, including on the forfeiture of money. Section 75(4) applies correspondingly.

217. Denmark has provided the following case as examples of implementation:

Judgment of the Supreme Court of 23 August 2012

After the termination of the Oil-for-Food programme in Iraq a case regarding a kick back agreement with the Iraqi regime was dealt with by the Supreme Court. In connection with 15 contracts between a Danish company and the Iraqi government, an overcharge of 10 percent of the contract amount was sent to the company's agent in Jordan, who transferred the amount to the Iraqi government. The court found that the overcharging was illegal, but criminal liability could not be obtained due to statutes of limitation. Thus the court only dealt with the question of confiscation of the proceeds from the contracts that were illegally obtained under the program. According to Danish law direct expenditures cannot be confiscated and therefore needs to be deducted. Due to the lack of information to decide the size of these expenditures, the profit was estimated on the basis of an indirect method that could be used without the presence of concrete book keeping material such as invoices and bank statements etc. The data for the calculation was obtained from the annual statements of the company and thus reflected a proportion between the net turnover and the gross profit for the company generally. This method was accepted by the Supreme Court as a starting point in order to calculate the profit. A total amount of DKK 10,000,000 (approx. EUR 1,340,000 euro) was confiscated.

218. Denmark has not provided information regarding statistical data on the number and types of cases in which proceeds were confiscated during investigations.

(b) Observations on the implementation of the article

219. The implementation of the article 31 paragraph 1 (a) seems to be sufficient (Sections 75-77a of the Criminal Code).

(c) Successes and good practices

220. The possibility to confiscate proceeds of a criminal act, which was time-barred [prescription] follows the rule that “crime must not pay” and is good practice. Also, the application of the provisions cited above are broader than the scope foreseen in the Convention.

Subparagraph 1 (b) of article 31

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

...

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

221. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as answer to subparagraph 1 (a) of Article 31
222. Denmark cited the same examples as in subparagraph 1 (a) of Article 31
223. Denmark cited the same information regarding amount or types of property, equipment or other instrumentalities confiscated, as well as recent cases in which such confiscations took place, as in subparagraph 1 (a) of Article 31

(b) Observations on the implementation of the article

224. The implementation of the Article 31 paragraph 1 (b) is sufficient (see Sections 75-77a of the Criminal Code).

Paragraph 2 of article 31

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

225. Denmark indicated that it has implemented the provision under review and cited part 74 of the Administration of Justice Act (see Annex 4).
226. Denmark has provided the following information in relation to seizures made by the Danish Asset Recovery Office (2010-2014):

2010	2011	2012	2013	2014	
56,870,868	40,733,708	28,601,504	66,362,133	106,668,035	DKK
7,582,782	5,431,161	3,813,533	8,848,284	14,222,404	EUR

(b) Observations on the implementation of the article

227. The implementation of the Article 31 (2) seems to be sufficient, although Denmark may wish to consider the establishment of a central bank account registry.

Paragraph 3 of article 31

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

228. Denmark indicated that it has implemented the provision under review and referred to the attached copy of circular no. 94 of 13 May 1952 on the police's administration of seized or deposited sums of money or securities (a translation is not available).

(b) Observations on the implementation of the article

229. From the title the implementation of the provision seems to be sufficient, but no translation of “circular no. 94 of 13 May 1952 on the police's administration of seized or deposited sums of money or securities” was provided.
230. During the country visit it was clarified that there is no special Asset management office established within the Danish authorities. This raised concerns, as the Police authorities frequently face difficulties in seeking to establish the appropriate measures and conditions in which to preserve and administer assets that have been seized. Examples were given of antiques and valuable pieces of art which require special care in order not to depreciate or lose their value while being administered by the State. Such additional costs would be borne by the State in cases of acquittal and included in the overall court costs in cases of conviction.
231. In view of this information, Denmark may wish to consider establishing a dedicated asset administration and management office.

Paragraph 4 of article 31

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

232. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as in answer to subparagraph 1 (a) of article 31
233. Denmark cited the same examples information regarding statistical data as in answer to subparagraph 1 (a) of Article 31

(b) Observations on the implementation of the article

234. The implementation of the article 31 paragraph 4 is sufficient (see Sections 75-77a of the Criminal Code).

Paragraph 5 of article 31

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

235. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as in answer to subparagraph 1 (a) of Article 31
236. Denmark cited the same examples as in answer to subparagraph 1 (a) of Article 31
237. Denmark cited the same examples regarding statistical data as in answer to subparagraph 1 (a) of Article 31

(b) Observations on the implementation of the article

238. The implementation of the article 31 paragraph 5 is sufficient (see Sections 75-77a of the Criminal Code).

Paragraph 6 of article 31

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

239. Denmark indicated that it has implemented the provision under review and that interests and the like which are closely connected to the immediate proceeds of crime are covered by the provisions on confiscation.

(b) Observations on the implementation of the article

240. The implementation of the provision seems to be sufficient. In their answers the Danish authorities state that ‘interests and the like which are closely connected to the immediate proceeds of crime are covered by the provisions on confiscation.’ and it was confirmed during the country visit that this refers to Sections 75-77a of the Criminal Code.

Paragraph 7 of article 31

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

241. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as in answer to subparagraph 2 of Article 31, namely Section 804 of the Administration of Justice Act.

Section 804.-

(1) In connection with the investigation of an offence which is subject to public prosecution or a case of violation of an order as referred to in section 2(1) para. 1 of the Act on Restraining, Exclusion and Removal Orders, a person who is not a suspect may be ordered to produce or hand over objects (discovery), if there is reason to presume that an object of which that person has the disposal may serve as evidence, should be confiscated or, by the offence, has been procured from someone who is entitled to claim it back. When an order is imposed on a business enterprise, section 189 shall apply correspondingly to others who have gained insight into the case due to their association with the enterprise.

(2) If an object has been handed over to the police following an order of discovery, the rules of seizure according to section 803(1) shall apply correspondingly.

(3) If, without any order to this effect, an object has been handed over to the police for the reasons mentioned in subsection (1) above, section 807(5) shall apply. If a request for return of an object is made, and the police do not grant the request, the police shall as soon as possible and within 24 hours submit the case to the court with a request for a seizure order. In that case section 806(4), 2nd sentence, and subsection (6) 1st sentence, shall apply.

(4) An order of discovery may not be issued if it will produce information on matters about which the individual would be exempted from testifying as a witness according to sections 169-172.

(5) The Minister of Justice may issue rules on financial compensation in special cases for costs relating to the fulfilment of an order for discovery.

242. As regards section 8 H of the Tax Control Act reference is made to article 20 above.

243. The general rules on the exchange of information between public authorities are found in section 28 of the Public Administration Act and section 5(1)-(3), 6-8, 10, 11(1), 38 and 40 of the Act on Processing of Personal Data (unofficial translation):

Public Administration Act

Section 28

(1) The rules of section 5(1)-(3), sections 6-8, section 10, section 11(1), section 38 and section 40 of the Act on the Processing of Personal Data, see section 1(3) of this Act, apply to any divulging of information on individuals (personal data) to another administrative authority.

(2) Confidential information not falling within subsection (1) may be divulged to another administrative authority only where –

- (i) the person whom the information concerns has expressly consented thereto;
- (ii) it follows from law or statutory provisions that the information must be divulged; or
- (iii) it must be presumed that the information will be of considerable significance to the activities of the authority or to a decision to be made by the authority.

(3) Consent under subsection (2)(i) means any indication of voluntary, specific and informed willingness to accept the divulging of information from the person whom the information concerns.

(4) Consent under subsection (3) can be revoked.

(5) Local administrative agencies granted independent jurisdiction by law are considered independent authorities under subsection (2).

Act on Processing of Personal Data

Section 5

- (1) Data must be processed in accordance with good practices for the processing of data.
- (2) Data must be collected for specified, explicit and legitimate purposes and further processing must not be incompatible with these purposes. Further processing of data which takes place exclusively for historical, statistical or scientific purposes shall not be considered incompatible with the purposes for which the data were collected.
- (3) Data which are to be processed must be adequate, relevant and not excessive in relation to the purposes for which the data are collected and the purposes for which they are subsequently processed. [...]

Section 6

- (1) Personal data may be processed only if:
 1. the data subject has given his explicit consent; or
 2. processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; or
 3. processing is necessary for compliance with a legal obligation to which the controller is subject; or
 4. processing is necessary in order to protect the vital interests of the data subject; or
 5. processing is necessary for the performance of a task carried out in the public interest; or
 6. processing is necessary for the performance of a task carried out in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed; or
 7. Processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party to whom the data are disclosed, and these interests are not overridden by the interests of the data subject.
- (2) A company may not disclose data concerning a consumer to a third company for the purpose of marketing or use such data on behalf of a third company for this purpose, unless the consumer has given his explicit consent. The consent shall be obtained in accordance with the rules laid down in section 6 of the Danish Marketing Act.
- (3) However, the disclosure and use of data as mentioned in subsection (2) may take place without consent in the case of general data on customers which form the basis for classification into customer categories, and if the conditions laid down in subsection (1) 7 are satisfied.
- (4) Data of the type mentioned in sections 7 and 8 may not be disclosed or used by virtue of subsection (3). The Minister of Justice may lay down further restrictions in the access to disclose or use certain types of data by virtue of subsection (3).

Section 7

- (1) No processing may take place of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, or data concerning health or sex life.
- (2) The provision laid down in subsection (1) shall not apply where:
 1. The data subject has given his explicit consent to the processing of such data; or
 2. processing is necessary to protect the vital interests of the data subject or of another person where the person concerned is physically or legally incapable of giving his

consent; or

3. The processing relates to data which have been made public by the data subject; or
4. The processing is necessary for the establishment, exercise or defence of legal claims.

(3) Processing of data concerning trade union membership may further take place where the processing is necessary for the controller's compliance with labour law obligations or specific rights.

(4) Processing may be carried out in the course of its legitimate activities by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade union aim of the data mentioned in subsection (1) relating to the members of the body or to persons who have regular contact with it in connection with its purposes. Disclosure of such data may only take place if the data subject has given his explicit consent or if the processing is covered by subsection (2) 2 to 4 or subsection (3).

(5) The provision laid down in subsection (1) shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health care services, and where those data are processed by a health professional subject under law to the obligation of professional secrecy.

(6) Processing of the data mentioned in subsection (1) may take place where the processing is required for the performance by a public authority of its tasks in the area of criminal law.

(7) Exemptions may further be laid down from the provision in subsection (1) where the processing of data takes place for reasons of substantial public interests. The supervisory authority shall give its authorization in such cases. The processing may be made subject to specific conditions. The supervisory authority shall notify the Commission of any derogation.

(8) No automatic registers may be kept on behalf of a public administration containing data on political opinions which are not open to the public.

Section 8

(1) No data about criminal offences, serious social problems and other purely private matters than those mentioned in section 7 (1) may be processed on behalf of a public administration, unless such processing is necessary for the performance of the tasks of the administration.

(2) The data mentioned in subsection (1) may not be disclosed to any third party. Disclosure may, however, take place where:

1. the data subject has given his explicit consent to such disclosure; or

2. Disclosure takes place for the purpose of pursuing private or public interests which clearly override the interests of secrecy, including the interests of the person to whom the data relate; or

3. Disclosure is necessary for the performance of the activities of an authority or required for a decision to be made by that authority; or

4. Disclosure is necessary for the performance of tasks for an official authority by a person or a company.

(3) Administrative authorities performing tasks in the social field may only disclose the data mentioned in subsection (1) and the data mentioned in section 7 (1) if the conditions laid down in subsection (2) 1 or 2 are satisfied, or if the disclosure is a necessary step in the procedure of the case or necessary for the performance by an authority of its supervisory or control function.

(4) Private persons and bodies may process data about criminal offences, serious social

problems and other purely private matters than those mentioned in section 7 (1) if the data subject has given his explicit consent. Processing may also take place if necessary for the purpose of pursuing a legitimate interest and this interest clearly overrides the interests of the data subject.

(5) The data mentioned in subsection (4) may not be disclosed without the explicit consent of the data subject. However, disclosure may take place without consent for the purpose of pursuing public or private interests, including the interests of the person concerned, which clearly override the interests of secrecy.

(6) Processing of data in the cases which are regulated by subsections (1), (2), (4) and (5) may otherwise take place if the conditions laid down in section 7 are satisfied.

(7) A complete register of criminal convictions may be kept only under the control of a public authority.

Section 10

(1) Data as mentioned in section 7 (1) or section 8 may be processed where the processing takes place for the sole purpose of carrying out statistical or scientific studies of significant public importance and where such processing is necessary in order to carry out these studies.

(2) The data covered by subsection (1) may not subsequently be processed for other than statistical or scientific purposes. The same shall apply to processing of other data carried out solely for statistical or scientific purposes, cf. section 6.

(3) The data covered by subsections (1) and (2) may only be disclosed to a third party with prior authorization from the supervisory authority. The supervisory authority may lay down specific conditions concerning the disclosure.

Section 11

(1) Official authorities may process data concerning identification numbers with a view to unambiguous identification or as file numbers. [...]

Section 38

The data subject may withdraw his consent.

Section 40

The data subject may file a complaint to the appropriate supervisory authority concerning the processing of data relating to him.

(b) Observations on the implementation of the article

244. Observation under subparagraph 2 of article 31 also apply here.

Paragraph 8 of article 31

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

245. Denmark indicated that it has implemented the provision under review and cited the

same legal provisions as in answer to subparagraph 1a of Article 31, namely Section 76a of the Criminal Code, regarding that a property belonging to a person found guilty of a criminal act may in some cases be confiscated.

246. The provisions constitute an extended possibility to confiscate proceeds of crime in cases where a person is found guilty of committing a very serious criminal offence the outcome of which is normally a considerable proceed. In these cases the offender must prove or render probable that his property does not derive from a criminal offence.

Criminal Code Section 76 a, subparagraph 4.

(4) No forfeiture can be ordered under subsections (1)-(3) if the relevant person renders probable that the property was acquired lawfully or with lawfully acquired funds.

247. Denmark outlined the following in terms of steps or actions that domestic or other authorities would need to take to ensure the full implementation of the provision under review:

248. Article 31, subparagraph 8, of the convention constitutes an optional measure to the effect that State Parties may consider shifting the burden of proof to the offender when considering the lawful origin of property liable to confiscation. As stated above Danish law authorises shifting the burden of proof to a certain extent in some cases.

249. Before ratifying the convention Denmark considered whether further measures regarding shifting the burden of proof as referred to in article 31, subparagraph 8, should be implemented into Danish law. The government decided not to implement further measures as the existing measures were assessed to be sufficient.

(b) Observations on the implementation of the article

250. The implementation of the article 31 paragraph 1 (b) is sufficient (see Sections 75-77a of the Criminal Code).

Paragraph 9 of article 31

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

251. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as in answer to subparagraph 1a of Article 31, namely Section 76(4) of the Criminal Code

252. Denmark has indicated that the Danish authorities are not aware of examples of implementation, as well as recent cases, where bona fide third parties were involved and their rights were protected.

(b) Observations on the implementation of the article

253. The implementation of the article 31 paragraph 1 (b) is sufficient (see Sections 76 (4) of the Criminal Code).

Article 32. Protection of witnesses, experts and victims

Paragraph 1 of article 32

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

254. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as in answer to article 25, namely Section 123 of the Criminal Code, concerning threats, violence etc. in connection with the giving of testimony.

255. Information to the victim is governed, inter alia, by sections 741 E and 741 G of the Administration of Justice Act:

Section 741E

(1) The police and the prosecution service must to the necessary extent provide guidance to the victim or, in case the victim has passed away, the victim's close relatives about the victim's legal rights and the expected course of the proceedings. In addition, the police and the prosecution service will moreover inform the victim about the course of the proceedings.

(2) The Minister of Justice or the person so authorised by the Minister of Justice must lay down specific rules on the duty to provide guidance and information as set out in subsection (1).

Section 741G

(1) In cases in which the court has passed judgment imposing an unsuspended custodial sentence for a serious contravention of the Criminal Code, involving violent assault, threats or some other crime against the person or a sexual offence, the victim must be notified upon request of the date of the sentenced person's first unescorted furlough, his release and his absconding, if any, in case the sentenced person has been held in remand custody before the trial and not been released between the passing of the sentence and its enforcement. In such cases the victim must moreover be notified upon request if while serving the sentence and within the area of the custodial institution and with the knowledge of the institution, the perpetrator contributes to a television or radio programme produced for broadcasting in this country, in which the perpetrator has a prominent role or in a portrait interview in a Danish daily newspaper. The same provision applies to the contribution to the recording of such a television or radio programme or interview outside the area of the custodial institution in cases where the institution has

granted furlough knowing that it will take place. In case the victim has passed away, the victim's close relatives must be notified upon request. The notification may be denied if warranted by important considerations for the perpetrator.

(2) The rules set out in subsection (1) apply *mutatis mutandis*, if the perpetrator has been sentenced to placement under the provisions of sections 68, 69, 73 or 74A of the Criminal Code or indefinite secure detention under section 70 of the Criminal Code.

(3) The Minister of Justice may lay down specific rules concerning the notification programme, including rules to the effect that there will be no access to complain against decisions to a higher administrative authority and that the provisions of the Personal Data Processing Act on the duty to disclose information do not apply in relation to the sentenced perpetrator.

256. Denmark has provided the following cases as examples of implementation:

When questions arise regarding the protection of a witness or any other person, measures can be taken to protect this individual to any degree deemed necessary or appropriate by the police. Depending on the circumstances, the police – possibly in co-operation with the Danish Prosecution Service and the Danish Security and Intelligence Service (PET) – may initiate security measures such as emergency telephones and patrolling.

Under very extraordinary circumstances, witness protection measures may be launched within the framework of the so-called witness protection programme.

In the most severe cases, a complete change of identity may take place, and the person concerned may also be helped to begin a new life in another country. In order for a change of identity to take place, the witness must contribute to the process and conform to a number of specific and fixed conditions. Thus, the witness must for example be willing to cease all contact with his or her family, friends and circle of acquaintances. The witness protection programme cannot be implemented if the witness does not conform to these conditions.

257. Witness impact statements are mentioned in the *travaux préparatoires* of Act no. 412 of 9 May 2011 (extracts from the explanatory note to the bill):

”2. [...] The working group has [...] pointed out that it should be possible to present statements concerning the consequences to the victim of the criminal offence, if it is ensured as part of the judge's general management of proceedings that statements will not be lengthy or highly emotional and that, for example, the counsel for the victim may pay attention to this when questioning the victim in relation to a possible claim for compensation.”

258. In principle and out of concern for the individuals who need protection, no further details can be provided about the number of individuals who may have been offered physical protection, a place in the witness protection programme or relocation to another country.

(b) Observations on the implementation of the article

259. Denmark has provided information on statutes containing provisions that are designed to provide protection to witnesses, experts and victims as required under UNCAC Article 32.
260. Witness Protection is regulated by the Criminal Code and the Administration of Justice Act. These provisions apply to all witnesses whether they are victims of the criminal offence in question or not. Denmark does not have a Witness Protection Law in the strict sense. The absence of a detailed legal framework, however, does not prevent the application of a Witness Protection Programme with a full range of protection measures (change of identity, relocation, among others). The protection covers the family and the relatives of the protected person as well.
261. Victims and Witnesses can be included in the Protection Programme as long as they meet the criteria for admission. The National Witness Protection Section inside the Danish Security and Intelligence Service (PET) is responsible to run the programme.
262. Denmark is a member of the EUROPOL Network on Witness Protection. The network consists of designated senior experts from 64 countries, international organizations and special tribunals. The high level expert group meets on a regular basis to standardize and harmonize witness protection processes and procedures. It is the largest worldwide collaborative network in witness protection.
263. In view of these considerations, the legal framework should be deemed to be in compliance with the provision under review.

Subparagraph 2 (a) of article 32

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

264. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as in answer to subparagraph 1 and 2 b of Article 32
265. Denmark cited the same examples as in answer to subparagraph 1 of Article 32

(b) Observations on the implementation of the article

266. Denmark seems to be in compliance with this article of the Convention

Subparagraph 2 (b) of article 32

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

...

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

267. Denmark indicated that it has implemented the provision under review and cited Sections 29-31 b of the Administration of Justice Act concerning hearings in camera and reporting restrictions and read as follows (unofficial translation):

Part 2. Court hearings – excerpts

Section 29.-(1) The court may order a hearing to be conducted in private (in camera),

- 1) when considerations for peace and order in the courtroom so requires,
- 2) when the State's relations with foreign powers or other special considerations for foreign powers so require, or
- 3) when the hearing of a case in public will cause someone to be unnecessarily aggrieved, for instance when the court has to hear evidence about business secrets.

(2) In civil actions, the court may furthermore order a hearing in private upon request from the parties, if the avoidance of public insight into the case is of special importance to them, provided that it will not be contrary to any decisive public interest.

(3) In criminal proceedings, the court may moreover order a hearing in private,

- 1) where a suspect or defendant is less than 18 years old,
- 2) where the court is due to hear evidence from a police officer with special service functions and it is necessary to keep the officer's identity secret in order to protect this special service function,
- 3) where the hearing of a case in public may be assumed to put someone's safety at risk or
- 4) where the hearing of a case in public may be assumed decisively to prevent the course of justice.

(4) During the trial hearing, the court may only order a hearing in private according to subsection (3) para. 4 above in the first instance and only when it may be expected that charges will be raised later for the same offences against other perpetrators than those charged in the proceedings and exceptional circumstances make a hearing in private imperative. The trial proceedings must be entered in the court records in such detail that it will be possible upon the passing of the judgment to inform the public of the proceedings to such an extent as the purpose of the private hearing will allow.

(5) The court may not order a hearing in private if application of the provisions on reporting restrictions or non-disclosure of identity set out in sections 30 and 31 or on exclusion of certain individuals as set out in section 28b of this Act constitutes a sufficient measure.

Section 29a.-(1) In cases concerning violations of sections 210, 216, 222(2) or 223(1)

of the Criminal Code the hearing of the victim's statement shall take part in private where the victim so requests. This also applies in cases concerned with violation of section 225 read with sections 216, 222(2) or 223(1) of the Criminal Code.

(2) Subsection (1) above shall apply correspondingly while sound recordings are played or other audio or pictorial recordings presented, where such recordings reproduce circumstances for which charges have been raised in the proceedings.

(3) Where a police officer has carried out measures as referred to in section 754a below, the court shall hear the police officer's statement in private, in case the prosecution so requests.

Section 29b.-(1) The court shall make an order for a hearing in private upon request or at its own initiative.

(2) A hearing in private based on considerations for a suspect or defendant of 18 years or above who is present in court may only be ordered upon a request from that suspect or defendant.

Section 29c.-(1) The court shall decide on a private hearing under section 29 by an order, after the parties and persons present who are subject to section 172(1), (2) or (4) have had an opportunity to make a statement. Particularly if decisive considerations for foreign powers or for the course of justice so require, the court may decide by an order that also the negotiation as to whether a hearing in private is required must take place in a private hearing.

(2) An order for a hearing in private according to subsection (1) above may be made at the beginning of the hearing or in the course of a hearing and may immediately or subsequently be restricted to apply to a part of the hearing. The order must always be made during a hearing that is open to the public.

Section 29d. Reporting to the public of all parts of the proceedings at court hearings held in private is prohibited unless the private hearing has been ordered exclusively to ensure peace and order in the courtroom.

Section 29e. The presiding judge may where special reasons so advise give other persons than those involved in the proceedings permission to attend a hearing conducted in private. In criminal proceedings, the victim has the right to attend a hearing conducted in private unless it would be contrary to the purpose of the private hearing. The persons in question may not report on the proceedings to anyone who has not had access to the hearing unless the private hearing was ordered exclusively to ensure peace and order in the courtroom.

Section 30. In criminal proceedings, the court may prohibit any disclosure of the proceedings to the public (reporting restrictions),

- 1) where a suspect or defendant is less than 18 years old,
- 2) where reporting to the public may be assumed to put someone's safety at risk,
- 3) where reporting to the public may prevent the course of justice, or
- 4) where reporting to the public would cause someone to be unnecessarily aggrieved.

Section 30a.-(1) The court shall make an order for reporting restrictions upon request or at its own initiative.

(2) Reporting restrictions based on considerations for a suspect or defendant of 18 years or above who is present in court may only be ordered upon a request from that suspect or

defendant.

Section 30b.-(1) A decision to impose reporting restrictions shall be made by an order after the parties and any persons present who are subject to section 172(1), (2) or (4) have had the opportunity to make a statement. The order may be made at the beginning of the hearing or in the course of a hearing and may immediately or subsequently be restricted to apply to part of the hearing.

(2) The court may withdraw reporting restrictions by a subsequent order upon request, including a request from persons who are subject to section 172(1), (2) or (4), or at its own initiative.

Section 31.-(1) The court may in criminal proceedings issue a prohibition against any disclosure to the public of the name, occupation or address of a suspect or defendant or other persons mentioned in the proceedings, or publication of the suspect or defendant's identity in any other manner (non-disclosure of identity),

1) where disclosure may be assumed to put someone's safety at risk, or

2) where disclosure will cause someone to be unnecessarily aggrieved.

(2) The court may, in the same circumstance as referred to in subsection (1)(2) above prohibit public disclosure of the name of a legal person, including its secondary name or common name, and its address.

(3) When considering whether to order non-disclosure of identity, the court must take the gravity of the criminal offence and its implications to society into account. In case the defendant has held a position entrusted with special responsibility in relation to the public this should advise against the issue of non-disclosure orders.

(4) A non-disclosure order may be extended to apply also while a possible appeal is being heard, if the appeal comprises the assessment of the evidence of the defendant's guilt.

Section 31a.-(1) The court shall decide on non-disclosure of identity upon request. The decision shall be made by an order after the parties and any persons present who are subject to section 172(1), (2) or (4) have had an opportunity make a statement. The order may be made at a hearing conducted exclusively to consider a request for non-disclosure.

(2) The court may upon request withdraw a non-disclosure order by a later order, including a request from persons subject to section 172(1), (2) or (4), or at its own initiative.

(3) The non-disclosure order will cease when a final judgment has been passed at the latest.

Section 31b. Where, in the trial of a case, the case is presented in writing or the closing remarks are submitted in writing under sections 366, 387, 850 and 878 of this Act, or where documents have not been read out in court under section 871(6), the court may prohibit public disclosure of such written material to the extent that during a corresponding oral presentation or oral closing remarks the court may order the hearing to be conducted in private or order reporting restrictions under sections 29 and 30 above. Sections 29b, 29c, 30a and 30b shall apply correspondingly.

268. Furthermore, Sections 838 (2), 845 and 856 of the Administration of Justice Act concern non-disclosure of information concerning a witness and court decisions on i.a. hearing in camera, reporting restrictions, witnesses giving of testimony without the presence of the defendant, non-disclosure of information etc. The provisions read as follows

(unofficial translation):

Part 77. Prosecution and preparation of trial hearing in the first instance – excerpts

Section 838.-(1) The prosecution service shall forthwith send the defence counsel a copy of the list of evidence without specifying addresses and a transcript of the investigative and evidentiary actions taken in the case. The prosecution service shall otherwise, as far as possible, make the documents of the case and other physical evidence accessible in an expedient and prudent manner and notify the defence counsel about it.

(2) The prosecution service may order the defence counsel not to disclose information about the address, or the name, occupation or residence of a witness to the defendant if the prosecution service intends to ask the court to rule that this information must not be disclosed to the defendant pursuant to section 856(2). The defence counsel may bring such an order before the court.

(...)

Section 845.-(1) The court may, upon request from the prosecution service, the defence or a witness, decide prior to a trial hearing that

- 1) the session must be held in private according to section 29(1) and (3) and section 29a,
- 2) reporting restrictions shall apply according to section 30,
- 3) the identity of the defendant(s) may not be disclosed according to section 31(1),
- 4) the defendant must leave the courtroom while a witness is testifying as set out in section 856(1), (4) or (7),
- 5) the address or the name, occupation and residence of a witness may not be disclosed to the defendant as set out in section 856(2) or
- 6) the name and address of a police officer must not be disclosed as set out in section 856(6).

(2) The prosecution service must, no later than at the time of its submission of the list of evidence, notify the defence counsel and the court whether such issues as referred to in subsection (1) above arise.

Part 78. Trial hearing in the first instance – excerpt

Section 856.-(1) The presiding judge may in other cases than those referred to in subsection (2) para. 2 decide that the defendant must leave the courtroom while a witness or a co-defendant is testifying, if exceptional circumstances suggest that it will not otherwise be possible to obtain an unreserved statement.

(2) The court may in cases where it may be assumed to be of no importance for the defendant's defence decide upon request,

- 1) that the residence of a witness must not be disclosed to the defendant in case decisive considerations for the witness' safety make it advisable or
- 2) that the name, occupation and residence of a witness must not be disclosed to the defendant in case decisive considerations for the witness' safety make it necessary.

(3) A decision according to subsection (2) above must be based on an overall assessment of the circumstances of the case, including any information available about the witness' prior connection with the defendant and information about the nature of the case.

(4) If a decision according to subsection (2) para. 2 has been made, the court may furthermore decide that the defendant shall leave the courtroom while the witness is

testifying.

(5) A police officer who has carried through measures as those referred to in section 754a may testify without giving his own name and residence to the court.

(6) The presiding judge may decide that the name and residence of a police officer who testifies as a witness must not be disclosed if decisive considerations for the witness' special service function make it advisable and the information can be assumed to be of no importance for the defendant's defence.

(7) The presiding judge may decide that the defendant shall leave the courtroom while a police officer who has carried through measures as referred to in section 754a or a police officer with a special service function is testifying, in case this is required in order to protect secrecy in respect of the police officer's identity and in case it can be assumed not to be of any significant importance for the defendant's defence.

(8) The presiding judge shall decide whether the defendant shall leave the courtroom during the prior hearing of requests made according to subsections (2), (4), (6) or (7).

(9) When, as a consequence of a decision made according to subsection (1), (4) or (7) above, the defendant has not attended the examination of a witness or co-defendant, the defendant shall, when the defendant is present in the courtroom again, be informed of the persons who have testified in the defendant's absence and the contents of the testimony in so far as it is concerned with the defendant. The court shall decide whether the reproduction of the testimony shall be given before or after the defendant has given his own statement to the court. Information about the witness' residence or name or occupation must not, however, be given to the defendant in case the court has decided to impose secrecy according to subsection (2) para. 1 or 2 above. In addition, the name and residence of a police officer must not be disclosed to the defendant if the court has ordered secrecy according to subsection (6) above.

(10) A decision to impose secrecy in respect of the name, occupation and residence of a witness according to subsection (2) para. 2 and subsection (4), or the name and residence of a police officer according to subsections (6) and (7) shall be made by an order of the court, in which the court shall state the specific circumstances of the case on the basis of which the court has found the requirements for secrecy satisfied. The order may be reversed at any time. The court's decision according to subsection (2) para. 2 and subsections (4), (6) and (7) above, may be appealed.

269. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as in answer to subparagraph 1 of Article 32

270. Denmark has provided the same examples of implementation as in answer to subparagraph 1 of Article 32

271. Denmark cited the same examples regarding recent cases in which witnesses or experts have been given testimony using video or other communications technology as in answer to subparagraph 1 of Article 32.

(b) Observations on the implementation of the article

272. Denmark seems to be in compliance with this article of the Convention

Paragraph 3 of article 32

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

273. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as in answer to subparagraph 1 of Article 32

(b) Observations on the implementation of the article

274. Denmark seems to be in compliance with this article of the Convention

Paragraph 4 of article 32

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

275. Denmark has indicated that in its domestic legal system the provisions of this article also applies to victims insofar as they are witnesses, and referred to answer to Article 31, subparagraph 1, and subparagraph 2b. These provisions apply to all witnesses whether they are victims of the criminal offence in question or not.

276. Furthermore, pursuant to Section 193 of the Administration of Justice Act the police and the prosecution service shall inform the court in cases where there is a need of special regard in connection with a witness' (e.g. a victim's) presence in a criminal case. The court shall in these cases assist the witness to the necessary extent.

Section 193: The police or the public prosecution service will notify the court where special measures are required in connection with the attendance of a witness in criminal proceedings. The court will assist the witness to the extent necessary.

(b) Observations on the implementation of the article

277. Reference is made to observations on paragraph 1 of Article 32. Denmark seems to be in compliance with this article of the Convention.

Paragraph 5 of article 32

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

278. Denmark indicated that it has implemented the provision under review and cited the

same legal provisions as in answer to Article 32, subparagraph 2 b, and subparagraph 4.

279. Furthermore, Denmark cited Section 193 of the Administration of Justice Act (unofficial translation):

“The police or the public prosecution service will notify the court where special measures are required in connection with the attendance of a witness in criminal proceedings. The court will assist the witness to the extent necessary”.

280. Denmark has indicated that the examples of implementation are not available.

(b) Observations on the implementation of the article

281. Denmark seems to be in compliance with this article of the Convention

Article 33. Protection of reporting persons

Article 33

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

282. Denmark indicated that it has implemented the provision under review and provided the following information and legal provisions.

283. With regards to public employees it follows from general administrative principles that the decision of a public authority e.g. on dismissal of an employee shall meet the same conditions as any other decision taken by a public authority. Inter alia a decision by a public authority must be well-founded. A decision cannot be considered well-founded if an employee is dismissed on the ground the he/she e.g. has reported a suspicion of corruption within the public authority.

284. In 2007 the Agency for the Modernisation of Public Administration published a **Code of Conduct in the Public Sector**. With regards to passing on information about unlawful administration, etc. (right of disclosure) it follows from the code of conduct that:

“A public employee has the right to freely pass on non-confidential information to the press and other external parties (for example supervisory authorities or the Parliamentary Ombudsman) in cases where there may be questions of unlawful administration or other criticisable circumstances within the public administration, including obvious misappropriation of public funds. In cases involving confidential information, this information will only be able to be passed on in cases where an

employee is acting in the justified safeguarding of a clear public interest or in the best interest of him/herself or others. Moreover, an employee would be able to make statements to the press, etc. regarding situations involving unlawful administration, etc. in a form that has the character of an expression of personal opinion, if the statements fall within the limits of the employees' freedom of expression.

The lawful passing-on of information – whether it is done internally or externally – cannot be the basis for negative responses from management."

285. In 2013 the Danish Government decided to establish a Committee on "Public Employees' Freedom of Speech and Whistleblower Schemes". The Committee consists of both public and private organizations with interests in the area and is inter alia tasked with reviewing the current rules and propose new initiatives if necessary.
286. Furthermore, the Act no. 81 of 3. February 2009 on the legal relationship between employers and salaried employees which apply to labour contracts in general (e.i. not only in the public sector) protects against unjustified dismissal. Section 1 concerning the scope of the act and Section 2b concerning unjustified dismissal read as follows:

Section 1.

- (1) For the purposes of this Act, »salaried employees« means the following persons:
- a) Commercial and office assistants engaged in selling or buying or carrying out office work or equivalent warehousing work.
 - b) Persons whose work consists in providing technical or clinical assistance of a non-craftsmanlike or non-manufacturing nature, and other assistants carrying out comparable work.
 - c) Persons whose work consists exclusively or essentially in managing or supervising the work of others on behalf of the employer.
 - d) Persons whose work is primarily of the nature specified in (a) and (b) above.
- (2) The applicability of this Act is conditional on the salaried employee in question being employed by the employer in question for more than eight hours a week on average and holding a position where the employer has the right to direct and control the way in which the salaried employee performs the duties involved in the position.
- (3) The provisions of this Act do not apply to public servants – or public service trainees – in government service or in the Danish Folkeskole, the Danish State Church or the municipalities, to salaried employees covered by the Merchant Shipping (Masters' and Seamen's) Act of 7 June 1952 (sømandsloven) or to apprentices covered by the Apprenticeship Act (lov om lærlingeforhold).

However, the provisions of sections 10-14 apply to salaried employees covered by the Merchant Shipping (Masters' and Seamen's) Act (sømandsloven).

- (4) This Act also applies to fixed-term employment contracts. Successive renewals of

fixed-term employment contracts are permitted only if the conditions in section 5 of the Fixed-Term Employment Act (lov om tidsbegrænset ansættelse) are met. Fixed-term employment contracts are contracts where the date when the employment relationship ends has been set on the basis of objective criteria such as a specified date, the completion of a specified task or the occurrence of a specified event.

Section 2b

(1) If an employer terminates the employment of a salaried employee who has been continuously employed by the enterprise in question for at least one year before the date of notice and the termination cannot be deemed to be reasonably justified by the conduct of the salaried employee or the circumstances of the enterprise, the employer must pay compensation. The amount of such compensation must be fixed with due regard to the salaried employee's length of service and the circumstances of the case in general, but must not exceed the salaried employee's pay for a period corresponding to half the notice period to be given to the salaried employee under subsections (2) and (3) of section 2. However, if the salaried employee is 30 years or older on the date of notice, the compensation may amount to up to three months' pay.

(2) If a salaried employee has been continuously employed by the enterprise in question for at least 10 years at the date of notice, the compensation provided for in subsection (1) may amount to up to four months' pay. After 15 years' continuous employment with the enterprise, the compensation may amount to up to six months' pay.

(3) The provisions of subsections (1) and (2) apply *mutatis mutandis* in case of unfair summary dismissal.

287. More or less similar provisions protecting employees against unjustified dismissal can be found in many collective labour agreements. In Denmark it has traditionally been left to the social partners to regulate the labour market and legislation has mainly been playing a supplementary role. The collective labour agreements are regarded as private (collective) contracts and, accordingly, collective labour agreements are valid without any kind of endorsement or approval from public authorities. Therefore, it is not possible to specify exactly what is laid down in these agreements with regard to unjustified dismissal or what may be laid down in these agreements with regard to specific whistleblower protection.

288. From the Code of Conduct in the Public Sector:

”If the fully exceptional situation should arise where an employee gains insight into or has reason to suspect corruption involving a public administration entity, its executive management must be notified immediately. The management must subsequently deal with the situation. Depending on the circumstances, the employee may alternatively approach the police or relevant control or supervisory authorities.”

289. As regards the Committee concerning “Public Employees’ Freedom of Speech and Whistleblower Schemes”, in April 2015 the Committee finished its work by publishing a comprehensive report on the subject. The Committee, *inter alia*, concluded that Danish public employees have a very extensive freedom of speech, hereunder a right to disclose information to external parties in case of illegal administration or other reprehensible circumstances in the public sector. Public employees cannot legally be met with sanctions

due to the exercising of such rights. The Committee, however, also concluded that further information and awareness-raising initiatives concerning the right of freedom of speech for public employees were necessary.

290. Concerning whistleblower schemes, the Committee recommended that specific legislation should not be enacted, and that it should be determined on a case by case basis whether whistleblower schemes should be enacted in public authorities.
291. Furthermore, the Committee found that the current labour rules give public employees rights to financial compensation in the event of sanctions due to the legal exercise of their extensive right of freedom of speech. The Committee did, however, not agree upon whether an additional special protection should be afforded public employees in the case of illegal sanctions due to the exercise of their freedom of speech – e.g. a right to additional financial compensation.
292. The public hearing procedure regarding the report has been completed, and the Ministry of Justice is currently considering the recommendations from the Committee.
293. The Committee consisted of 17 members, representing different interest groups in the Danish society – inter alia the trade unions, the employer organisations, the media organizations, the universities and the Danish Ombudsman.
294. As mentioned above, the Committee agreed unanimously that new legislation regarding whistleblower schemes should not be recommended and listed the following reasons:
- The current Danish legislation is already well suited for the establishment of whistleblower schemes.
 - Both general considerations and practical experience with existing whistleblower schemes in Denmark suggests that there are both advantages and disadvantages to whistleblower schemes.
 - The need for whistleblower schemes is quite different in the much diversified Danish authorities.
295. The Committee recommended unanimously that each authority should consider whether it would be beneficial to enact a whistleblower scheme in the authority.
296. It should be noted that public employees that act as whistleblowers, are already protected under the current legislation and labor rules. It is for example unlawful for an authority to terminate or otherwise sanction an employee, because the employee in good faith uses his or her freedom of speech to bring attention to mistakes or unlawful behavior in the public sector. An employer may be ordered to pay damages under the general, non-statutory principles governing liability for damages (*dansk rets almindelige erstatningsbetingelser*), tort liability may arise under the Liability and Compensation Act (*erstatningsansvarsloven*), Paragraph 26, and compensation may be claimed under the Danish Salaried Employees Act (*funktionærloven*), Paragraph 2 b.
297. Report no. 1553/2015 on the freedom of speech and whistleblower schemes for public sector employees was sent to a wide range of authorities and organizations for consultation,

with a deadline of 5 June 2015.²

298. Denmark has not indicated any examples of implementation.

(b) Observations on the implementation of the article

299. Denmark mainly refers to general rules and provisions which by themselves apparently would suffice to fulfil the requirements of this Article. The Danish authorities, however, also mention the establishment of the Committee on the freedom of speech and whistleblower schemes for public sector employees in 2013. Denmark has also referenced the findings and recommendations of the Committee as published in April 2015 and shared for national consultations with a deadline of 5 June 2015.

300. Again, despite the absence of a general “whistleblower act”, Denmark has informed that as of 1 September 2014 companies in the financial sector must establish a whistleblower system. Furthermore, a number of companies (in other sectors) have been authorised by the Data Protection Agency to establish a whistleblower systems on a voluntary basis.

301. Notwithstanding the fact that this Article requires Member States only to consider taking steps in this field, it would be interesting to hear about any cases where whistleblowers have been offered protection or compensation. With an obligation to report wrongdoing in the public sector a commensurate obligation for the State to protect individuals who abide by this obligation should follow.

Article 34. Consequences of acts of corruption

Article 34

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

² These included: Højesteret (Supreme Court), Østre Landsret (Eastern High Court), Vestre Landsret (Western High Court), Sø- og Handelsretten (Maritime and Commercial Court), samtlige byretter (all district courts), Arbejdsretten (Labour Court), Domstolsstyrelsen (Court Administration), Procesbevillingsnævnet, Den særlige klageret, Rigsombudsmanden på Færøerne, Rigsombudsmanden i Grønland, Rigsrevisionen, Danske Regioner, samtlige regioner (all regional authorities), KL, samtlige kommuner (all local authorities), Folketingets Ombudsmand, Rigsadvokaten (Director of Public Prosecutions), Rigspolitiet (National Commissioner of the Police), Advokatrådet, Danske Advokater, Amnesty International, Den Danske Dommerforening, Dommerfuldmægtigforeningen, Institut for Menneskerettigheder, Ligebehandlingsnævnet, Retspolitisk Forening, Retssikkerhedsfonden, Justitia, Transparency International Danmark, Datatilsynet, Landsorganisationen i Danmark (LO), FTF, Akademikerne (AC), Danske Medier, Dansk Journalistforbund, DJØF, Arbejderbevægelsens Erhvervsråd, Centralorganisationernes Fællesudvalg, Danmarks Journalisthøjskole, Dansk Arbejdsgiverforening, Foreningen af Offentlige Anklagere, Foreningen af Statsforvaltningsjurister, Juridisk Institut (Aalborg Universitet), Institut for Statskundskab (Aalborg Universitet), Juridisk Institut (Aarhus Universitet), Institut for Statskundskab (Aarhus Universitet), Det Juridiske Fakultet (Københavns Universitet), Institut for Statskundskab (Københavns Universitet), Institut for Samfund og Globalisering (Roskilde Universitet), Juridisk Institut (Syddansk Universitet), Institut for Statskundskab (Syddansk Universitet), Kommunale Tjenestemænd og Overenskomstansatte, Offentligt Ansattes Organisationer, Politidirektørforeningen, Politiforbundet, Statsforvaltningen Hovedstaden, Statsforvaltningen Midtjylland, Statsforvaltningen Nordjylland, Statsforvaltningen Sjælland, Statsforvaltningen Syddanmark, Stats- og Kommunalt Ansattes Forhandlingsfællesskab, Lederne, Det Faglige Hus, Kristelig Fagforening (Krifa), De Frie Funktionærer, Jobtryghed, Danmarks Frie Fagforening, Cepos, Kraka, Veron, Københavns Retshjælp, Århus Retshjælp, Beskæftigelsesrådet (BER), DSB, Finanstilsynet, ATP, Energinet.dk og Socialtilsynene.

(a) Summary of information relevant to reviewing the implementation of the article

302. Denmark indicated that it has implemented the provision under review and indicated how it in some circumstances will be possible to declare an agreement invalid or non-binding if the entering into the agreement was subject to the payment of a bribe, kick-back etc.
303. The party who claims that an agreement or contract is invalid has the possibility to bring the question of validity before the courts.
304. Under Danish law it will also be possible – e.g. in connection with an open tender where a bidder wins the tender against the payment of a bribe – to order the public authority to pay compensation to the other bidders provided that the general conditions for the imposition of tortious liability have been met.
305. The consequences of fraud on contract validity is governed by section 30 of the Contracts Act (unofficial translation):

Section 30

- (1) A declaration of intention is not binding on the person making it if he was induced to make the declaration by the person to whom it was made by fraud or the latter realized or ought to have realized that it was induced by fraud on the part of a third party.
- (2) If the person to whom the declaration was made fraudulently misrepresented circumstances that may be deemed to affect the declaration or fraudulently failed to disclose such circumstances, the person making the declaration shall be regarded as having been induced to make the declaration by the fraudulent conduct unless it is shown that the fraudulent conduct was unlikely to have affected the declaration.
306. Denmark has indicated that examples of implementation are not available

(b) Observations on the implementation of the article

307. Denmark seems to be in full compliance with this article.

Article 35. Compensation for damage

Article 35

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

308. Denmark indicated that it has implemented the provision under review and indicated that a person who believes to have suffered a loss can commence civil proceedings claiming compensation. To a certain extent a claim for compensation can also be heard

and determined upon in connection with criminal proceeding pursuant to the provisions on civil claims under a criminal case in the Administration of Justice Act.

309. Denmark has provided the following case as an example of implementation:

District court case, December 2014

In a case regarding the Securities Act a company was convicted of not having disclosed inside information about the company's revised expectations for revenue growth in due time (the decision has been appealed to the high court). The conviction could be an important element when the stockholders and investors are deciding whether or not to claim compensation in civil proceedings.

(b) Observations on the implementation of the article

310. Denmark seems to be in full compliance with this article.

Article 36. Specialized authorities

Article 36

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

311. Denmark indicated that it has implemented the provision under review and provided the following overview of specialized authorities.
312. **The supreme Danish audit institution is "Rigsrevisionen".** Relevant information is available (in English) on its website: uk.rigsrevisionen.dk. The following is a quote from the website: "Rigsrevisionen audits public spending on behalf of the Danish parliament and seeks to strengthen the accountability of public administration to the benefit of the citizens. We audit public spending in compliance with good public-sector auditing principles based on the fundamental principles of the international standards of supreme audit institutions. Analyses of materiality and risk combined with a holistic approach, that looks across the public sector, provide the basis for our audits."
313. **The State Prosecutor for Serious Economic and International Crime (SØIK)** is a specialised unit within the prosecution service that handles cases on serious economic crime, including corruption. SØIK has a nationwide jurisdiction. SØIK is part of the prosecution service and is consequently obliged to adhere to the same standards as the rest of the prosecutions service.
314. The staff in SØIK comprises lawyers, police officers, legal advisors with a specialised

economic background, analysts and executive staff. Prosecutors are recruited partly from the other sectors in the prosecution service and partly from law firms and/or financial institutions. Police investigators are recruited from the police districts and are typically either experienced investigators or young investigators who have shown a special interest in economic crime. Other investigators (auditors, analysts, etc.) are recruited from accounting firms, banks and research institutions.

315. New employees in SØIK undergo a process where they learn about and are trained in the work methods and the handling of cases in SØIK. They are also paired with experienced employees who are responsible for job training. Moreover new employees continuously participate in training courses on the handling of cases involving economic crimes, general prosecution work, etc.
316. More experienced employees have the opportunity to participate in long-term training courses in the areas of economic crime, bookkeeping, general legal subjects, etc. Further, SØIK is organized in a way where employees are divided into different professional groups each handling specific subjects (securities law, competition law, corruption, etc.) which allows a high degree of specialization within each area, employee exchange with other authorities etc.

(b) Observations on the implementation of the article

317. There appears to be compliance with the obligations of this article. However, during the country visit it was explained that within SØIK, there is no permanent cell or section that deals with corruption matters. Instead, SØIK has a number of specialized professional groups that are operationalized as and when required.
318. The lack of a permanent group dealing with corruption, be it in SØIK or elsewhere in the Danish governmental structures, remains a concern of the reviewing experts. Such a permanent group could not only enhance and raise the awareness surrounding the fight against corruption generally, but could also usefully spearhead specialized training at both regional and national level. Furthermore, this would be in line with the recommendation of the afore-mentioned Committee concerning Public Employees' Freedom of Speech and Whistleblower Schemes (see above article 33), which noted that "further information and awareness-raising initiatives concerning the right of freedom of speech for public employees were necessary". Such a permanent group could act as Denmark's lead agency in the prevention of corruption.
319. In view of the above considerations, Denmark may wish to establish a permanent structure within its national authorities to act as the lead institution in the fight against corruption. Furthermore, both police and prosecutors would benefit from specialised anti-corruption training and should consider ways to draw on existing knowledge and experiences from economic crime investigations.

Article 37. Cooperation with law enforcement authorities

Paragraph 1 of article 37

- 1. Each State Party shall take appropriate measures to encourage persons who*

participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

320. Denmark has indicated that it has implemented the provision under review and cited that Section 82, no. 9, of the Criminal Code would normally consider the offender's voluntarily reporting himself to the authorities and making a full confession a mitigating circumstance.
321. Further legal provisions in general include Sections 80, 82 and 83 of the Criminal Code concerning sentencing.

Section 80

- (1) When determining a sentence, consideration must be given to the gravity of the offence and information on the offender, while ensuring consistency in the application of the law.
- (2) When assessing the gravity of the offence, the injury, damage, danger and infringement pertaining to the offence and what the offender realised or should have realised must be taken into account. When assessing information on the offender, his general personal and social circumstances, his situation before and after the act and his motives for committing the act must be taken into account.

Section 82

When determining a sentence, it must normally be considered a mitigating circumstance

- (i) that the offender had not attained the age of 18 years when the act was committed;
- (ii) that the offender is of high age, where the imposition of an ordinary sentence is unnecessary or harmful;
- (iii) that the offence borders on being exempt from punishment for the act;
- (iv) that the offender acted in excusable ignorance or under the influence of an excusable misunderstanding of rules of law prohibiting or ordering the relevant act;
- (v) that the act was committed in an agitated state of mind generated by a wrongful assault or a gross insult on the part of the victim or persons attached to him;
- (vi) that the act was committed as a consequence of coercion, fraud or exploitation of the offender's tender age or substantial financial or personal problems, lack of insight, rashness or an existing dependency relationship;
- (vii) that the act was committed with a mind of strong compassion or in a state of strong emotions, or other special information has been provided on the offender's state of mind or the circumstances of the act;
- (viii) that the offender voluntarily averted or attempted to avert the danger caused by the criminal act;

- (ix) that the offender voluntarily reported himself to the authorities and made a full confession;
- (x) that the offender has provided information crucial to solving criminal acts committed by others;
- (xi) that the offender has remedied or attempted to remedy the damage caused by the criminal act;
- (xii) that the offender is deprived of one of the rights mentioned in section 79 or experiences other consequences comparable to punishment because of the criminal act;
- (xiii) that the case against the offender is not heard within a reasonable time and the excessive length of proceedings is not attributable to the offender; or
- (xiv) that such long time has passed since the criminal act was committed that the imposition of a usual sentence is unnecessary.

Section 83

(1) The penalty may be reduced to less than the minimum penalty if clearly justified by information on the act, the offender's character or other circumstances. In otherwise mitigating circumstances, the penalty may be remitted.

322. Denmark has provided the following cases as examples of implementation:

Western High Court judgment of 22 November 2012

A young woman confessed to have functioned as a drug courier by importing 35 kilos and attempting to import 12 kilos of amphetamine from Germany to Denmark. The prosecuting attorney and the counsel for the defense agreed that the punishment for the said offences generally should be 14 years of imprisonment and that the punishment in this case should be reduced due to the defendant's participation in the clear-up of the extensive group of cases, cf. Section 82, no. 10, of the Criminal Code. Taking into account the defendant's detailed statement that led to clear-up of cases against other defendants, the High Court of Western Denmark sentenced her to only 12 years of imprisonment.

Supreme Court judgment of 17 June 1998

The defendant was found guilty of importing two kilos of heroin from Sweden to Denmark and the High Court of Eastern Denmark sentenced the defendant to six years of imprisonment. The Supreme Court stated that regard should be had to information from the prosecution service that the defendant had provided assistance to the authorities during the investigation, including information on co-perpetrators, cf. Section 82, no. 10, of the Criminal Code. The sentence was therefore reduced to five years of imprisonment.

Supreme Court judgment of 4 May 2011

Among other counts the defendant was found guilty of five counts of attempted murder, two counts of assault, and two counts of arson. A significant part of the counts were related to the defendant's link to Hell's Angels and their Danish support group AK81. As for the sentencing, the duration of the imprisonment was reduced considerably as it was deemed to constitute mitigating circumstances that the defendant with regard to three of the counts had turned himself in and confessed counts previously unknown

to the police, and that he had offered the authorities crucial information that led to clear-up of several other serious crimes, cf. Section 82, no. 10, of the Criminal Code. The defendant was sentenced to imprisonment for 12 years. The Supreme Court stated that the defendant would have been held liable to 16 or more years of imprisonment had the court not found there were mitigating circumstances.

323. Denmark has indicated that information regarding the number and nature of such cases that have contributed to depriving offenders of the proceeds of crime and to recovering such proceeds is not available

(b) Observations on the implementation of the article

324. Denmark seems to be compliance with the obligations of this provision.

Paragraph 2 of article 37

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

325. Denmark indicated that it has implemented the provision under review as, pursuant to Section 82, no. 10, of the Criminal Code, it is normally considered a mitigating circumstance that the offender has provided information crucial to solving criminal acts committed by others. Reference was also made to the information above under Article 37, subparagraph 1.

(b) Observations on the implementation of the article

326. Denmark seems to be compliance with this provision.

Paragraph 3 of article 37

3. Each State Party shall consider providing for the possibility, in accordance with the fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

327. Denmark indicated that it has not implemented the provision under review.

328. Subparagraph 3 of Article 37 constitutes a non-mandatory offence which obliges State Parties only to consider providing for the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established under the convention.

329. Before ratifying the convention Denmark considered whether the possibility of granting immunity from prosecution should be implemented into Danish law. The government

decided not to implement this possibility.

330. Denmark does not have any current plans to implement the possibility to grant immunity from prosecution with regards to persons who provide substantial cooperation in the investigation or prosecution of an offence established under the convention.

(b) Observations on the implementation of the article

331. Denmark has chosen not to adopt or implement the measures described in this non-mandatory provision.

Paragraph 4 of article 37

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

332. Denmark indicated that it is in compliance with the provision under review and referred to the examples cited under paragraph 1 of Article 37, above, as well as the explanations provided in general under Article 32.

(b) Observations on the implementation of the article

333. Denmark appears in conformity with the provision under review.

Paragraph 5 of article 37

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

334. Denmark indicated that it has been in compliance with a provision under review and referred to answer to Article 37, paragraph 1-3.

335. Denmark referred to answer to Article 37, paragraph 1-3, in relation to examples of implementation.

(b) Observations on the implementation of the article

336. In their answer, Denmark makes reference to the information provided under subparagraph 1-3. During the country visit, Denmark maintained that for security reasons surrounding their witness protection programme, no further information would be given.

Article 38. Cooperation between national authorities

Article 38

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

337. Denmark indicated that it has implemented the provision under review and cited the following legal provisions:

Public Administration Act concerning exchange of information between public authorities

Section 31

(1) To the extent that an administrative authority is entitled to divulge a piece of information, such authority shall divulge the information to another administrative authority if so requested provided that the information is of significance to the activities of that authority or to a decision to be made by such authority.

(2) The provision of subsection (1) does not apply if the divulging would inflict additional work on the authority which considerably exceeds the interest of the other authority in obtaining the information.

338. Further, it follows from general principles of administrative law that public officials are obliged to report to their superior in case they become aware of corrupt behaviour or breach of law in general.

339. As regards the general rules on the exchange of information between public authorities reference is made to article 31 above.

340. In December 2014, the Director of Public Prosecutions, the National Commissioner of Police and the Customs and Tax Administration entered into a general agreement on the cooperation between the authorities. The purpose of the agreement is to ensure an effective, correct and uniform handling of cases and to enhance the coordination between the prosecution service, the police and the tax authorities. According to the agreement, a Central Cooperation Forum and a National Contact Group which meet on a regular basis have been established. The general agreement on cooperation deals, inter alia, with the

coordination of joint efforts, discussion of priorities, exchange of information and development of best practices and guidelines. The general agreement will be supplemented by a number of more detailed “sub-agreements” concerning specific issues related to the cooperation between the prosecution service, the police and the tax authorities, e.g. the exchange of information between authorities and joint screening of new cases.

341. In September 2014 the Ministry of Justice launched an “Anti-Corruption Forum” with a view to ensure coordination and information sharing among all relevant authorities in connection with the fight against bribery and corruption. The Anti-Corruption Forum consists of representatives of the Ministry of Justice, the Director for Public Prosecutions (DPP), the State Prosecutor for Serious Economic and International Crime (SØIK), the Ministry of Employment, the Ministry of Foreign Affairs, the Ministry of Finance (Agency for Modernisation), the Ministry for Taxation, the Ministry of Business and Growth, the Danish Business Authority, the Danish FSA, the Danish Consumer and Competition Authority, Denmark’s Export Credit Agency, and the Investment Fund for Developing Countries. At the first meeting of the Anti-Corruption Forum held on 22 September 2014 the issue of strengthened coordination in the area of guidance to the private sector concerning bribery as well as awareness-raising concerning foreign bribery in the public and the private sector were on the agenda.
342. At the second meeting of the Anti-Corruption Forum held on 27 May 2015 the issue of strengthened coordination in the area of guidance to the private sector concerning bribery as well as awareness-raising concerning foreign bribery in the public and the private sector were once again on the agenda. At the meeting the Ministry of Justice invited the members of the Anti-Corruption Forum to revise their internal regulations, guidelines, etc. in accordance with the ministry’s revised booklet “How to avoid corruption” with a view to ensuring that a coordinated and consistent message is sent to the private and public sector.
343. The booklet “How to avoid corruption” has been sent to subscribers to the Ministry of Justice’s newsletter and to the following authorities:

Ankestyrelsen
Danmarks Nationalbank
Danske Regioner
Datatilsynet
Den Særlige Klageret
Direktoratet for Kriminalforsorgen
Dommerudnævnelsesrådet
Domstolsstyrelsen
Eksportkreditfonden
Erhvervsstyrelsen
Erstatningsnævnet
Finansiel Stabilitet A/S
Finansrådet
Flygtningenævnet
Folketingets Ombudsmand
Forbrugerombudsmanden
Færøernes Hjemmestyre
Færøernes Repræsentation i København
Grønlands Landsret

Grønlands Repræsentation i København
Højesteret
Investeringsfonden for Udviklingslande
KL
Konkurrence – og Forbrugerstyrelsen
Moderniseringsstyrelsen
Naalakkersuisut (Grønlands Selvstyre)
Politimesteren i Grønland
Politimesteren på Færøerne
Procesbevillingsnævnet
Retten i Grønland
Retten på Færøerne
Rigsadvokaten
Rigsombudsmanden i Grønland
Rigsombudsmanden på Færøerne
Rigspolitiet
Samtlige anklagemyndigheder
Samtlige byretter
Samtlige kommuner
Samtlige ministerier
Samtlige politikredse
Samtlige regioner
SKAT
Statsadvokaten for Særlig Økonomisk og International Kriminalitet
Statsadvokaten i København
Statsadvokaten i Viborg
Statsforvaltningen
Sø- og Handelsretten
Tinglysningsretten
Vestre Landsret
Voldgiftsnævnet for Bygge- og Anlægsvirksomhed
Østre Landsret

344. Denmark indicated that information on the number of times and cases in which information has been shared is not available.

(b) Observations on the implementation of the article

345. The Danish authorities, during and subsequent to the country visit, shared information on the various agreements or arrangements, that are in place. The establishment of the Anti-Corruption forum and the intent to strengthen cooperation amongst the national authorities was deemed as a positive development. The provision under review is deemed implemented.

(c) Successes and good practices

346. Danish national authorities cooperate during investigation and prosecution of criminal offences as per Article 38 of the UNCAC primarily through the Serious Economic and International Crime (SØIK) which houses multiple representatives from various national authority was deemed a good practice as it facilitates free exchange of information by

institutionalising the cooperation amongst national authorities.

Article 39. Cooperation between national authorities and the private sector

Paragraph 1 of article 39

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

347. Denmark indicated that it has implemented the provision under review and cited the following legal provisions from the Act on Measures to Prevent Money-Laundering and Financing of Terrorism concern investigation and report:

Sections 6 and 7

6.-(1) The undertakings and persons covered by this Act shall pay special attention to customers' activities which, by their nature, could be regarded as being particularly likely to be associated with Money-Laundering or financing of terrorism. This applies in particular to complex or unusually large transactions and all unusual patterns of transactions in relation to said customer as well as transactions which have connection to countries or territories where, pursuant to declarations from the Financial Action Task Force, there is deemed to be a special risk of Money-Laundering or financing of terrorism. The Danish FSA may lay down more detailed regulations about when the obligation to pay special attention to transactions linked to the relevant countries and territories, shall enter into force.

(2) The purpose of the transactions mentioned in subsection (1) shall be investigated and the results of such investigation shall be recorded and kept, cf. section 23.

7.-(1) If there is a suspicion that a customer's transaction or enquiry is or has been associated with Money-Laundering or financing of terrorism, the undertakings and persons covered by this Act shall investigate the transaction or enquiry in more detail. If the suspicion relates to offences punishable by imprisonment of more than one year and this suspicion cannot be disproved, the Public Prosecutor for Serious Economic Crime shall be informed immediately.

(2) In the event of suspicion as mentioned in subsection (1), members of the Danish Bar and Law Society may notify the secretariat of the Danish Bar and Law Society, which shall, following an assessment of whether the suspicion is subject to reporting obligations under subsection (1), immediately forward the notification to the Public Prosecutor for Serious Economic Crime.

(3) If the suspicion is related to Money-Laundering, and the transaction has not already been carried out, the transaction shall be suspended until notification has been effected pursuant to subsection (1). If notification is effected pursuant to subsection (2), the transaction shall be suspended until the Danish Bar and Law Society has forwarded the notification to the Public Prosecutor for Serious Economic Crime or has stated that, following specific assessment, the notification will not be forwarded. If effectuation of

the transaction cannot be avoided, or if this is deemed to be potentially harmful for the investigation, notification shall instead be given immediately after the effectuation, cf. however subsection (4).

(4) If the suspicion is related to financing of terrorism, transactions from the account or person in question may only be carried out with the consent of the Public Prosecutor for Serious Economic Crime. The Public Prosecutor for Serious Economic Crime shall decide, as soon as possible and no later than at the end of the business day following receipt of notification, whether seizure is to be effected.

(5) The Police may, under the regulations stipulated in the Administration of Justice Act, demand any information necessary for investigation of the case from the undertakings and persons covered by this Act.

(6) The Danish FSA may lay down more detailed regulations on the reporting obligation to the Public Prosecutor for Serious Economic Crime, cf. subsection (1).

348. The Danish Act on Approved Auditors and Audit Firms concerns reporting to SØIK:

Section 22

If the auditor realises during the performance of assignments in pursuance of Section 1 (2) and (3) that one or more members of the company's management commit or have committed financial crimes in connection with the performance of their managerial duties, and if the auditor has reason to assume that the crime concerns significant sums or is otherwise of a serious nature, the auditor shall immediately notify each individual member of the management hereof. The notification shall be entered in the auditors' records if the auditor keeps such records. If the management has not documented to the auditor within 14 days at the latest that it has taken the necessary steps to stop any ongoing crime and to remedy the damage that the alleged crime has caused, the auditor shall immediately notify the Public Prosecutor for Serious Economic Crime about the assumed crimes. Sentence 1 and 3 shall not apply to circumstances that are covered by the rules in the Danish Act on Preventive Measures against Money-Laundering and Financing of Terrorism.

(2) If the auditor finds that notification of the members of the management will not be a suitable measure for the prevention of continued crime, the auditor shall immediately notify the Public Prosecutor for Serious Economic Crime of the assumed financial crimes. The same shall apply if the majority of the company's members of the management are involved in or have knowledge of the financial crimes.

(3) If the auditor resigns from his or her position, cf. Section 18 (2), and this is a result of the auditor having reason to assume that there is a situation as described in (1), first sentence, the auditor shall immediately notify the Public Prosecutor for Serious Economic Crime hereof and of the reasons for the auditor's resignation from his or her position.

(4) In SE companies that have a two-tiered management system, members of the company's management shall comprise both members of the management body and of the supervisory body.

349. The special telephone helpline operated by the Money Laundering Secretariat (FIU Denmark) receives calls several times on a weekly basis mainly from the reporting entities who want to discuss possible suspicious transactions and whether to file a STR or not. During a typical week the private sector call the FIU via the line approx. 10 times. Also the FSA and other authorities use the telephone line.

350. The scope of the Act on Measures to Prevent Money Laundering and Financing of Terrorism is determined by section 1(1), (3) and (4) of the Act (unofficial translation):

Section 1

(1) This Act shall apply to the following undertakings and persons:

- 1) Banks.
 - 2) Mortgage-credit institutions.
 - 3) Investment firms.
 - 4) Investment management companies.
 - 5) Life-assurance companies and multi-employer occupational pension funds.
 - 6) Savings undertakings.
 - 7) Providers of payment services and issuers of electronic money.
 - 8) Insurance brokers, when they act in respect of life assurance or other investment-related insurance activities.
 - 9) Foreign undertakings' branches and agents in Denmark, carrying out activities under nos. 1-8 and 10.
 - 10) Investment associations and special-purpose associations, collective investment schemes, restricted associations, professional associations and hedge associations.
 - 11) Undertakings and persons, including branches and agents of foreign undertakings, that commercially carry out activities involving currency exchange or transfer of money and other assets.
 - 12) Other undertakings and persons, including branches and agents of foreign undertakings, that commercially carry out one or more of the activities mentioned in Annex 1.
 - 13) Lawyers when they participate by providing assistance in the planning or execution of transactions for their clients concerning
 - a) purchase and sale of real property or undertakings,
 - b) managing their clients' money, securities, or other assets,
 - c) opening or managing bank accounts, savings accounts, or securities accounts,
 - d) raising the necessary capital for establishment, operation, or management of undertakings or
 - e) establishing, operating, or managing undertakings.
 - 14) Lawyers when they, on behalf of their client and at said client's expense, carry out a financial transaction or a transaction concerning real property.
 - 15) State-authorised public accountants and registered public accountants.
 - 16) Authorized estate agents.
 - 17) Undertakings and persons that otherwise commercially supply the same services as the groups of persons mentioned in nos. 13-16, including tax advisors and external accountants.
 - 18) Providers of services for undertakings, cf. section 3, no. 5.
 - 19) Danmarks Nationalbank (Denmark's central bank), insofar as it carries out activities corresponding to those of the undertakings specified in no. 1. [...]
- (3) The Danish FSA may lay down regulations stipulating that this Act is not to apply to the undertakings or persons mentioned in subsection (1), nos. 1-12 in the situations where the Commission decides this pursuant to Article 40 of the Third Money Laundering Directive.
- (4) For operators on a regulated market licensed as auction platforms in Denmark pursuant to Commission Regulation no. 1031/2010 of 12 November 2010 (CO2 Auctioning Regulation), sections 6, 7 and 9-11, section 12(1)-(7), section 13(1) and (2), sections 15, 17 and 18, section 19(1), (2) and (4), sections 21-29, section 34(1) and (4)-

(7), section 34a, section 34c(2)-(5), section 34d and sections 35-37 shall apply to activities on the regulated market as auction platforms pursuant to the CO2 Auctioning Regulation).

351. Regarding the booklet “How to avoid corruption”, which was sent to subscribers to the Ministry of Justice’s newsletter and private organizations, etc, please refer to information provided under Article 38.
352. In Denmark there is a close, ongoing cooperation between the authorities to combat Money-Laundering and the financing of terrorism. The establishment of the Money-Laundering Forum is an example of that. The Money-Laundering Forum is established to improve the coordination of national anti-Money Laundering/combating the financing of terrorism activities and includes all relevant competent authorities in a coordinating group. The Forum meets regularly to discuss the fulfilment of international requirements and current operational problems. The Forum consists of representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Taxation, the Gambling Authority, the Tax Authority, the Financial Supervisory Authority, the Business Authority, the Danish Bar and Law Society and the Money-Laundering Secretariat (a specialized unit within the State Prosecutor for Serious Economic and International Crime). The Security and Intelligence Service (PET) is invited to attend the meetings of the Anti-Money Laundering Forum.
353. The Danish Anti-Money Laundering Forum was set up at a first meeting held on 15 September 2006 and has held a total of 27 meetings. The Anti-Money Laundering Forum is a collaborative body comprising authorities responsibility for duties handled in one or more of the following areas:
- Measures to counter the laundering of proceeds from crime and the financing of terrorism ("the anti-money laundering area"), designated "AML/CTF".
 - Measures taken to implement resolutions of the United Nations and legal acts of the European Union on financial sanctions against countries and/or persons, groups, legal entities, bodies, etc. ("the financial sanctions area").
354. The objective of the Anti-Money Laundering Forum is to carry out the following types of work in the anti-money laundering area and the financial sanctions area:
1. Coordinating efforts and sharing information in order to strengthen the initiatives taken by the authorities and implementing national and international obligations,
 2. Clarifying the allocation of duties among authorities,
 3. Handling obligations associated with AML/CTF evaluations of the Kingdom of Denmark by international organisations, etc., including IMF/FATF, the Council of the European Union, the UN Counter-Terrorism Committee etc., and being responsible for the relations to ‘assessment teams’ in the evaluation process, and for taking a position on draft reports, reporting to the minister, etc. and
 4. Assessing the efficiency of the measures introduced.
355. In addition, the Money-Laundering Secretariat has frequent meetings with the Financial Supervisory Authority (FSA), which administers the Act on Measures to Prevent Money-

Laundering and Financing of Terrorism and supervises the majority of the institutions and individuals that are subject to the duty to report. The Secretariat also cooperates with the Business Authority (the authority responsible for registering company information and whose activities also include supervising foreign exchange bureaus).

356. With regard to the specific collaboration between public authorities on matters relating to the financing of terrorism, the Money-Laundering Secretariat liaises in particular with the Security Intelligence Service, the Ministry of Foreign Affairs and the Business Authority (which administers the EU regulations on the freezing of terror funds).

Cooperation with the private sector

357. The Danish authorities also cooperate with the private sector to combat Money-Laundering and the financing of terrorism. For example the Money-Laundering Secretariat, which pursuant to sections 6 and 7 of the Act on Measures to Prevent Money-Laundering and Financing of Terrorism is the national authority which receives reports on suspicious transactions from the private sector, is a member of the Money-Laundering Group of the Danish Bankers' Association. The Money-Laundering Group is one of the most important interfaces with the private sector in terms of discussions providing the secretariat with typology studies and case examples about operational problems and the interpretation of importance to the daily work.
358. Furthermore, there are one-off contacts with the private sector. For example the Money-Laundering Secretariat holds meetings with representatives from institutions and individuals subject to the duty to report. In these forums both general and case-by-case feedback are discussed. The Money-Laundering Secretariat has an ongoing dialogue with the financial sector about reporting issues, and the staff also gives regular feedback through their day-to-day contact with major institutions' compliance officers.
359. Every year the Money-Laundering Secretariat convenes several lectures on anti-Money-Laundering/combating the financing of terrorism. This course is offered to more than 10,000 employees in the financial sector. In 2013 this work was expanded to co-operation on developing an online anti Money-Laundering/combating the financing of terrorism-course for the financial sector.
360. The Money-Laundering Secretariat also operates a special telephone helpline for all parties covered by the Act on Measures to Prevent Money-Laundering and Financing of Terrorism. They can call the helpline to discuss matters of dispute without providing information about the specific case that has given rise to the questions.
361. The reports from entities of the private sector and the collaboration between entities of the private sector and the national authorities have contributed to the conviction and imprisonments of criminal persons and has also resulted in fines, seizures etc.
362. The table below shows a survey of the accumulated years of imprisonment that criminal persons have been convicted, and the accumulated amount which have been obtained through fines, seizures, regulations etc. for the years 2011 and 2012 based on these reports:

Year	Imprisonment	Amount
2011	36 years	285 million DKK.
2012	42 years	420 million DKK

363. Please also see the answer to article 39, paragraph 2, where the procedure of reporting is further described and the numbers of reporting for the years 2012 and 2013 are mentioned.

(b) Observations on the implementation of the article

364. Article 39 paragraph 1 is deemed implemented.

Paragraph 2 of article 39

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

365. Denmark indicated that it has implemented the provision under review and cited the same provisions as in answer to Article 39, paragraph 1.

366. The Money-Laundering Secretariat receives reports of suspected laundering of proceeds of crime or financing of terrorism from the institutions and individuals subject to the Act on Measures to Prevent Money-Laundering and Financing of Terrorism and the Act on gaming and from public authorities, the Central Tax Administration in particular.

367. Reports to the Money-Laundering Secretariat are forwarded directly in most cases. Legal professionals, however, may decide to report through the Danish Bar and Law Society.

368. The responsibilities of the Money-Laundering Secretariat include collecting, recording, transferring, coordinating and processing information regarding the laundering of proceeds of crime and the financing of terrorism. Reports on the financing of terrorism are handled in collaboration with the Security Intelligence Service.

369. The Money-Laundering Secretariat analyses the reports and undertakes, as and when necessary, preliminary investigations. If it is subsequently found that the case ought to be investigated further with a view to possible prosecution, it will usually be forwarded to the police district that will conduct the investigation and to other police districts involved for information purposes. If a link is identified between several reports the Money-Laundering Secretariat compile intelligence reports as a supplement to the above mentioned procedure. The Secretariat also provides assistance to the police districts, where necessary, by obtaining additional information via Interpol or the FIUs of other countries. The police districts are obliged to provide the Money-Laundering Secretariat with feedback on the outcome of their investigations into the reported transactions, thus enabling the Secretariat to update its information for the purpose of compiling statistics, analysis, case descriptions,

etc.

370. In 2013 the Money-Laundering Secretariat received 5,165 reports from entities of the private sector regarding suspicious transactions or enquiries which could not be disproved to be associated with Money-Laundering or financing of terrorism. In 2012 the Money-Laundering Secretariat received 4,511 reports.
371. In 2012 the Money-Laundering Secretariat forwarded 766 intelligence reports based on the reports from the private sector to the police districts and other authorities. That was about 25 % more intelligence reports than in 2011, where 611 intelligence reports were forwarded to the police districts and other authorities. There are not yet available statistics on this matter for the year 2013.

The Asset Recovery Group

372. The work in the Money-Laundering Secretariat also covers the collaboration between the Money-Laundering Secretariat and the Asset Recovery Group which is placed in the same section of the State Prosecutor for Serious Economic and International Crime as the Money-Laundering Secretariat. The Asset Recovery Group is an interdisciplinary unit which traces proceeds of crime with the aim of confiscating such proceeds and assists the State Prosecutor for Serious Economic and International Crime as well as the police districts in tracing the proceeds of crime.
373. The Asset Recovery Group investigates the money flow in cases concerning complicated economic crime and assists in the financial investigation in cases handled by the police districts concerning e.g. trafficking in women, illicit labour, procuring, smuggling of people, smuggling of weapons and drug crimes. The Asset Recovery Group cooperates with similar groups in the other Nordic countries and the Asset Recovery Group is part of the so-called CARIN network (Camden Asset Recovery Inter-Agency Network), which is a European network for asset recovery offices similar to the Asset Recovery Group.
374. Reports on Money-Laundering have also proved to be of value in this context and contribute to the Asset Recovery Group's work by ensuring to the greatest extent possible that crime 'does not pay'.
375. In 2013 the Asset Recovery Group seized assets of about 66 million DKK. In 2012 the group seized assets of about 28 million DKK.
376. Financial incentives are not offered by the Money-Laundering Secretariat to encourage reports of suspected laundering of proceeds of crime or financing of terrorism.
377. Denmark has provided the following cases as examples of implementation:

In February 2012 a Danish bank paid a fine of 650,000 DKK for infringing i.a. sections 6 and 7 of the Act on Measures to Prevent Money-Laundering and Financing of Terrorism. In the case the bank had i.a. not paid special attention to customers' activities which, by their nature, could be regarded as being particularly likely to be associated with Money-Laundering or financing of terrorism. The bank did not examine such activities and were therefore not able to report activities to the Public Prosecutor for

Serious Economic and International Crime.

In November 2012 a Danish bureau de change was convicted for a number of infringements of the Act on Measures to Prevent Money-Laundering and Financing of Terrorism. The bureau had not in accordance to sections 6 and 7 paid special attention to customers' activities which, by their nature, could be regarded as being particularly likely to be associated with Money-Laundering or financing of terrorism. The bureau de change did not examine such activities and were i.a. convicted for not having reported 24 transactions made by one company with suspicious activities to the Public Prosecutor for Serious Economic and International Crime. The City Court imposed a fine of 1,760,000 DKK for the infringements.

In October 2013 a Danish bank paid a fine of 5,500,000 DKK for infringing i.a. sections 6 and 7 of the Act on Measures to Prevent Money-Laundering and Financing of Terrorism. In the case the bank had not paid special attention to customers' activities which, by their nature, could be regarded as being particularly likely to be associated with Money-Laundering or financing of terrorism.

378. Denmark referred to answer to Article 39, subparagraph 1 and 2 regarding the number of reports received on hotlines or other mechanisms for offences, as well as regarding the information on financial incentives offered to encourage such reports. Information regarding the number of anonymous reports given due consideration by appropriate authorities, which have contributed to the investigation or prosecution of an offence established in accordance with the Convention, can also be found under the same provision.

(b) Observations on the implementation of the article

379. The implementation of the article 39 paragraph 2 is sufficient. However, Denmark may wish to consider further ways to go beyond the dissemination of the booklet in order to build further awareness amongst the population at large on how to fight corruption. Furthermore, in cross-referencing the observations made under Article 36, a dedicated capacity to anti-corruption could also be tasked to engage in training police and prosecutors as well as lead a wider awareness-raising effort. This would be particularly relevant in view of the second Implementation Review cycle where the Convention's Chapter II on Prevention (and Chapter V on Asset Recovery), will be in the focus.

Article 40. Bank secrecy

Article 40

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

380. Denmark indicated that it has implemented the provision under review and cited the same legal provisions as answer to subparagraph 7 of Article 31, namely Section 804 of the

Administration of Justice Act, which refers to the possibility of ordering discovery to persons who are not a suspect.

381. Furthermore, Denmark also referred to section 26 of the Act on Measures to Prevent Money-Laundering and Financing of Terrorism:

The notifications and information that undertakings and persons covered by this Act disclose in good faith pursuant to section 7 and suspension of transactions pursuant to section 7(4) shall not incur any liability on the undertaking or person, its employees or management. Disclosure of information in connection with this shall not be considered a breach of any duty of confidentiality.

382. The confidentiality of bank information is regulated by section 117 of the Financial Business Act (unofficial translation):

Section 117

(1) Members of the board of directors, members of local boards of directors or similar organs, members of the shareholder committee in a financial undertaking other than a savings bank, auditors and inspectors and their deputies, founders, valuation officers, liquidators, members of the board of management, responsible actuaries, general agents and administrators in an insurance company and other employees may not without due cause divulge or use confidential information obtained during the performance of their duties. This provision shall apply correspondingly to financial holding companies and insurance holding companies.

(2) Any person receiving information pursuant to subsection (1) shall fall within the scope of the duty of confidentiality specified therein.

383. As mentioned in the Self-Assessment Checklist this duty of confidentiality does not hinder the police obtaining a court order for the production of information from banks (as complying with such court order will not be divulgence “without due course” within the meaning of section 117 of the Financial Business Act).
384. As regards section 8 H of the Tax Control Act reference is made to article 20 above.
385. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter.

(b) Observations on the implementation of the article

386. Compliance may not be finally assessed at the moment.
387. Denmark refers to Section 804 of the Administration of Justice Act which seems to be a general provision and could indicate compliance if the fact that this provision does not contain any exception maybe interpreted in a way that there simply are no exceptions (including bank secrecy). It also should be clarified whether this provision applies to bank data, since the text (only) speaks of “objects”.
388. On the other hand Denmark refers to Section 26 of the Act on Measures to Prevent Money-Laundering and Financing of Terrorism which raises the question whether this provision may also be applicable for the purpose of investigating and prosecuting

corruption offences.

Article 41. Criminal record

Article 41

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

389. Denmark indicated that it has implemented the provision under review.

390. When determining a sentence, it must normally be considered an aggravating circumstance that the offender has relevant prior convictions, see section 81(1) of the Criminal Code. Whether importance should be attached to a prior conviction depends in practice on a concrete assessment of the crime committed in the present case as well as in the prior case.

391. Pursuant to section 84(2) of the Criminal Code the court may refer equally to judgments delivered outside the Danish state and judgments delivered in Denmark when imposing an increased penalty in case of repetitive offending.

Pre-trial detention is regulated by section 762 of Administration of Justice Act (unofficial translation):

Section 762

(1) An accused person may be detained on remand when there are grounds to suspect that he has committed an offence which is subject to public prosecution, if, under the law, the offence carries a penalty of imprisonment for one year and six months or more, and if [...]

2) based on the information obtained about the circumstances of the accused, there are specific reasons to presume that, if at large, he will commit another offence of the nature referred to above [...]"

When determining whether there are specific reasons to presume that, if at large, the accused will commit another offence one relevant element will be any prior convictions. This will also include convictions abroad, see section 84(2) of the Criminal Code (unofficial translation):

Section 84 [...]

(2) The court may refer equally to judgments delivered outside the Danish state and judgments delivered in Denmark when imposing an increased penalty in case of repetitive offending.

392. Although the statutory text of section 84(2) only refers to increased penalty in case of repetitive offending, the same principle will apply in case of decisions on pre-trial detention.

393. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on the matter of where it took an alleged offender's previous conviction(s) in another State into consideration for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention

(b) Observations on the implementation of the article

394. Due to section 84 paragraph 2 of the Danish CC Denmark seems to be in compliance with this Article.

Article 42. Jurisdiction

Subparagraph 1 (a) of article 42

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

395. Denmark indicated that it has implemented the provision under review and cited the following legal provisions:

Section 6(i) of the Criminal Code:

Acts falling within Danish criminal jurisdiction are acts committed –

(i) within the Danish state;

...

396. Denmark indicated the following regarding examples of implementation, including related court or other cases:

The Danish authorities are not aware of any cases where section 290 on money-laundering (receipt of stolen property) has been applied in a situation where an act of attempt or of complicity was committed abroad with a view to completing the crime in Denmark (Article 42(2)(c) of the Convention). However, as indicated in the Self-Assessment Checklist, pursuant to section 9(2) of the Criminal Code (in conjunction with the general principle of territorial jurisdiction under section 6 of the Criminal Code) such acts would be subject to Danish criminal jurisdiction.

(b) Observations on the implementation of the article

397. Denmark is in full compliance with the binding provision of paragraph 1 and to a large degree also with the non-binding provisions of paragraphs 2 to 4. What is basically lacking,

is that Denmark still requires dual criminality in cases of bribery offences committed abroad.

398. Denmark has indicated in the written replies as well as in other for a that it does not intend to go further in the near future.

Subparagraph 1 (b) of article 42

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

...

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

399. Denmark indicated that it has implemented the provision under review and cited the following legal provisions from the Criminal Code:

Sections 6 (ii) and (iii)

Acts falling within Danish criminal jurisdiction are acts committed –

...

(ii) on board a Danish vessel or aircraft located within the territory of another state by a person belonging to or travelling on the vessel or aircraft; or

(iii) on board a Danish vessel or aircraft located outside the territory of any state.

Section 8 (v)

Acts committed outside the Danish state are subject to Danish criminal jurisdiction, irrespective of the home country of the offender, where -

...

(v) the act falls within an international instrument obliging Denmark to have criminal jurisdiction; ...

400. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter

(b) Observations on the implementation of the article

401. Reference is made to subparagraph 1(a) of Article 42.

Subparagraph 2 (a) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

402. Denmark indicated that it has partially implemented the provision under review and cited the following legal provisions:

Section 7a of the Criminal Code:

(1) Acts committed within the territory of another state and aimed at a person who was a Danish national or had his abode or similar habitual residence within the Danish state when the act was committed are subject to Danish criminal jurisdiction if any such act is also a criminal offence under the legislation of the country in which the act was committed (dual criminality) and may carry a sentence under Danish legislation of imprisonment for at least six years.

(2) Danish criminal jurisdiction under subsection (1) only applies to the acts of –

- (i) murder;
- (ii) aggravated assault, deprivation of liberty or robbery;
- (iii) offences likely to endanger life or cause serious injury to property;
- (iv) sexual offences or incest; or
- (v) female circumcision.

(3) Acts committed outside the territory of any state, but aimed at someone having such attachment to Denmark as referred to in subsection (1) when the act was committed are also subject to Danish criminal jurisdiction, provided that acts of the kind described may carry a sentence of imprisonment for a term exceeding four months.

403. Denmark has indicated that the Danish authorities are not aware of any recent relevant case law on this matter

404. Article 42, subparagraph 2 (a), of the Convention constitutes an optional measure to the effect that a State Party may establish jurisdiction when the offence is committed against a national of the State Party.

405. Before ratifying the convention Denmark considered whether further measures regarding jurisdiction as referred to in article 42, subparagraph 2 (a), should be implemented into Danish law. The government decided not to implement further measures as the existing measures were assessed to be sufficient.

406. Denmark does not have any current plans to implement further measures on jurisdiction on cases where the offence is committed against a Danish national.

(b) Observations on the implementation of the article

407. Reference is made to subparagraph 1(a) of Article 42.

Subparagraph 2 (b) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

408. Denmark indicated that it has partially implemented the provision under review and cited the following legal provisions:

Section 7 of the Criminal Code:

(1) Acts committed within the territory of another state by a person who was a Danish national or has his abode or similar habitual residence within the Danish state at the date of the provisional charge are subject to Danish criminal jurisdiction, if -

- (i) the act is also a criminal offence under the legislation of the country in which the act was committed (dual criminality); or
- (ii) the offender had the aforesaid attachment to Denmark when committing the act and such act -

(a) comprises sexual abuse of children, human trafficking or female circumcision; or

(b) is aimed at someone having the aforesaid attachment to Denmark when the act was committed.

(2) Acts committed outside the territory of any state by a person having such attachment to Denmark as referred to in subsection (1) at the date of the provisional charge are also subject to Danish criminal jurisdiction, provided that acts of the kind described may carry a sentence of imprisonment for a term exceeding four months.

(3) Subsections (1)(i) and (2) apply correspondingly to acts committed by a person who is a national of or has his abode in Finland, Iceland, Norway or Sweden at the date of the provisional charge, and who is staying in Denmark.

409. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter and indicated that Article 42, subparagraph 2 (b), of the convention constitutes an optional measure to the effect that a State Party may establish jurisdiction when the offence is committed by a national of the State Party or a stateless person who has his or her habitual residence in its territory.

410. Before ratifying the convention Denmark considered whether further measures regarding jurisdiction as referred to in article 42, subparagraph 2 (b), should be implemented into Danish law. The government decided not to implement further measures as the existing measures were assessed to be sufficient.

411. Denmark does not have any current plans to implement further measures on jurisdiction

in cases where the offence is committed by a Danish national or a person habitually resident in Denmark.

(b) Observations on the implementation of the article

412. Reference is made to subparagraph 1(a) of Article 42.

Subparagraph 2 (c) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

413. Denmark indicated that it has implemented the provision under review and cited the following legal provision from the Criminal Code:

Section 9, subsection 2

If the criminality of an act depends on or is influenced by an actual or intended consequence, the act is also deemed to have been committed at the place where the effect occurred, or where the offender intended the effect to occur.

414. Denmark has indicated that it is not aware of recent relevant case law on this matter

(b) Observations on the implementation of the article

415. Reference is made to subparagraph 1(a) of Article 42.

Subparagraph 2 (d) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

416. Denmark indicated that it has partially adopted measures to establish its jurisdiction as described above and cited the following legal provision of the Criminal Code:

Section 8 (i)

Acts committed outside the Danish state are subject to Danish criminal jurisdiction, irrespective of the home country of the offender, where -

(i) the act violates the independence, security, Constitution or public authorities of the Danish state, or official duties to the state;

...

417. Denmark has indicated that the Danish authorities are not aware of any recent relevant case law on this matter and indicated that Article 42, subparagraph 2 (d), of the Convention constitutes an optional measure to the effect that a State Parties may establish jurisdiction when the offence is committed against the State Party.

418. Before ratifying the convention Denmark considered whether further measures regarding jurisdiction as referred to in article 42, subparagraph 2 (d), should be implemented into Danish law. The government decided not to implement further measures as the existing measures were assessed to be sufficient.

(b) Observations on the implementation of the article

419. Reference is made to subparagraph 1(a) of Article 42.

Paragraph 3 of article 42

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

420. Denmark indicated that it has implemented the provision under review and cited the following legal provisions of the Criminal Code

Section 8(v) and (vi):

Acts committed outside the Danish state are subject to Danish criminal jurisdiction, irrespective of the home country of the offender, where -

...

(v) the act falls within an international instrument obliging Denmark to have criminal jurisdiction; or

(vi) extradition for the purpose of prosecution in another country of a person provisionally charged is refused, and the act, provided that it was committed within the territory of another state, is a criminal offence under the legislation of the country in which the act was committed (dual criminality), and the act may carry a sentence under Danish legislation of at least one year in prison.

421. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter

(b) Observations on the implementation of the article

422. Reference is made to subparagraph 1(a) of Article 42.

Paragraph 4 of article 42

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

423. Denmark indicated that it has implemented the provision under review and cited the same legal provision as in answer to Article 42, paragraph 3

424. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter

(b) Observations on the implementation of the article

425. Reference is made to subparagraph 1(a) of Article 42.

Paragraph 5 of article 42

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

426. Denmark indicated that it has implemented the provision under review and cited the following legal provisions and made reference to established principles of mutual legal assistance.

427. Denmark has indicated that the Danish authorities are not aware of recent relevant case law on this matter

(b) Observations on the implementation of the article

428. Reference is made to subparagraph 1(a) of Article 42.

Paragraph 6 of article 42

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

429. Denmark indicated that it has not adopted any grounds of criminal jurisdiction other than mentioned in the provision under review

(b) Observations on the implementation of the article

430. Reference is made to subparagraph 1(a) of Article 42.

IV. International cooperation

Article 44. Extradition

Paragraph 1 of article 44

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

431. Extradition is regulated by the amended Extradition Act (EA no 833) of 2005. Denmark does not make extradition conditional on the existence of a treaty. Although reciprocity is not a formal requirement, it is considered a guiding principle.

432. Denmark is a party to the European Convention on Extradition and its first and second protocols; the Council Framework Decision on the European arrest warrant (EAW) and the surrender procedures between Member States; and the Convention on the Nordic Arrest Warrant. It has bilateral extradition agreements with Canada and the United States of America.

433. Since 1 June 2016 the Director of Public Prosecutions is the central authority for extradition requests from and to States outside of the Nordic countries (Finland, Iceland, Norway and Sweden), whereas requests from and to the Nordic countries are sent to and received by the relevant police district. The procedure for extradition is governed by EA chapters 3 (countries outside of the EU and the Nordic States), 3a (EU) and 3b (Nordic

countries).

434. The EA sets forth different requirements for extradition depending on the requesting State and the nationality of the sought person.

435. Extradition of Danish nationals to a State outside the EU and the Nordic countries is regulated by chapter 2, section 2(1-2) of the EA:

(1) The Minister of Justice, acting under an agreement with a state outside the European Union and the Nordic countries, may decide that Danish nationals can be extradited for prosecution in that state,

- a) if during the two years preceding the criminal act, the person in question has resided in the state seeking his extradition and an act corresponding to the offence for which extradition is sought is punishable under Danish law by a period of imprisonment of at least one year, or
- b) if the act is punishable under Danish law by a more severe penalty than imprisonment for a term of four years.

(2) If, in relation to a state outside the European Union and the Nordic countries, one of the agreements referred to in subsection (1) does not apply, the Minister of Justice may adopt a decision on the extradition of a Danish national for prosecution, if the conditions in subsection (1) are otherwise met and this is advised by special law-enforcement reasons.

436. Extradition of foreign nationals to a State outside the EU and the Nordic Countries is regulated by chapter 2, section 2a of the EA:

A foreign national may be extradited for prosecution or enforcement of a judgment in a state outside the European Union and the Nordic countries if the act is punishable under Danish law by a period of imprisonment of at least one year. If the act is punishable under Danish law by a shorter period of imprisonment, the person may nevertheless be extradited if an agreement to that effect has been concluded with the state in question.

437. Further, chapter 2, section 10(1-3) sets out the conditions for extradition:

Extradition shall be granted subject to the following conditions only:

(1) The person to be extradited must not be held liable or re-extradited to a third state in respect of any criminal offence committed prior to his extradition other than the offence for which he was extradited, except in the following circumstances:

- a) The Minister of Justice has given his consent in pursuance of Section 20;
- b) The person has failed to leave the country to which he has been extradited, even if he has had the possibility to do so for a period of 30 days without being prevented from leaving; or
- c) The person has returned voluntarily after having left the country.

(2) The person who has been extradited may not without permission from the Minister of Justice be subjected to criminal prosecution before a special court of law.

(3) A death penalty must not be enforced for the offence in question.

438. Extradition to Member States of the European Union (EU) is regulated by chapter 2a, section 10a(1-3) of the EA:

(1) The extradition of persons for prosecution or sentence enforcement in a Member State of the European Union for an offence that, under the law of the Member State that has requested the extradition, is punishable by imprisonment or a detention order for a period of at least three years may be effected on the basis of a European arrest warrant although a corresponding act is not punishable under Danish law in respect of the following acts:

...

7) corruption

...

(2) Extradition for prosecution in a Member State of the European Union for offences that are not covered by subsection (1) may be granted on the basis of a European arrest warrant if the criminal act in that Member State renders the person liable to a term of imprisonment of at least one year and a corresponding act is punishable under Danish law.

(3) Extradition for enforcement of a sentence in a Member State of the European Union for offences that are not covered by subsection (1) may be granted on the basis of a European arrest warrant if by the judgment the person has been sentenced to prison or another custodial measure of not less than four months and a corresponding act is punishable under Danish law.

439. Further, in line with chapter 2a, section 10j, the provisions of section 10 (quoted above) shall apply *mutatis mutandis*.

440. Extradition to the Nordic countries (Finland, Iceland, Norway and Sweden) is regulated in chapter 2b (unofficial translation attached as annex), section 10 k(1-2) of the EA:

(1) Extradition for prosecution in Finland, Iceland, Norway or Sweden for a criminal offence that is punishable by imprisonment or another custodial measure under the laws of the country that has requested extradition may be granted on the basis of a Nordic arrest warrant.

(2) Extradition for enforcement of a sentence in Finland, Iceland, Norway or Sweden may be granted on the basis of a Nordic arrest warrant where, by the judgment, the person requested has been sentenced to imprisonment or another custodial measure.

441. Denmark informed that it does not register extradition cases by the type of offence, and thus it was not possible to identify requests for extradition concerning offences falling under the Convention. Further, the Danish authorities were not aware of corruption-related reported court cases. However, Denmark provided the following examples of extradition:

European Arrest Warrant – related case, case no. 2014-3311/23-0074:

Based on the European arrest warrant of 7 April 2009, the Polish authorities made a request for extradition of a Polish national to Poland for the purpose of executing a sentence of 1 year and 6 months imprisonment for violence, threats and rape and a sentence of 1 year imprisonment for violence and threats. The person was arrested by the Danish Police on 11 August 2014.

On 1 September 2014, the Danish Ministry decided that the person was to be extradited to Poland for the purpose of execution of the sentences covered by the arrest warrant as the conditions for extradition were found to be fulfilled (EA, Section 18 b(5)).

Subsequently, the Police informed the person in question and his Danish legal counsel of the decision. The person stated that he wanted to bring the decision made by the Ministry of Justice before the court. On 9 September 2014, the decision of the Ministry was ruled lawful by a Danish District Court. The decision on extradition was therefore final and enforceable.

On 22 September 2014, the person in question was physically surrendered to the Polish authorities for the purpose of execution of the sentences covered by the European arrest warrant of 7 April 2009 on the terms mentioned in Section 10 j, cf. Section 10, of the EA.

Extradition case outside of the EU, case no. 2014-3410-0055:

By a letter of 29 December 2014, the authorities of Bosnia and Herzegovina made a request for extradition of a citizen of Bosnia and Herzegovina for the purpose of execution of a sentence in Bosnia and Herzegovina. The request was made in accordance with the 1957 European Convention on Extradition. It appeared from the request that the person in question was sentenced to imprisonment for 3 years for attempted murder.

On 16 April 2015, the Danish Ministry of Justice decided that the person in question was to be extradited to Bosnia and Herzegovina as the conditions for extradition were found to be fulfilled (EA, Section 18 b (5)).

The person in question did not want to bring the decision made by the Danish Ministry of Justice before the court and therefore the decision on extradition became final and enforceable.

On 11 June 2015, the person in question was physically surrendered to the authorities of Bosnia and Herzegovina for the purpose of execution of the sentence covered by the request of 29 December 2014 on the terms mentioned in the Danish Extradition Act Section 10.

(b) Observations on the implementation of the article

442. Given that not all offences in the Convention are criminalized by the Danish law, there are limitations to the application of this article.

443. It is recommended that Denmark ensure that all offences established in accordance with the Convention are extraditable offences
444. Denmark may also wish to consider harmonizing its requirements for extradition for different groups of requesting States (Nordic Countries, EU Member States and other States), in particular regarding thresholds for imprisonment.

Paragraph 2 of article 44

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

445. Denmark referred to the information contained in article 44 (1) above.
446. Dual criminality is not a condition for extradition to Nordic countries, nor to EU Member States if the offence is on the list of offences in chapter 2a, section 10 a (1) of the EA. For countries outside of these regions, dual criminality is a condition.

(b) Observations on the implementation of the article

447. The article is implemented in relation to Nordic countries and the Member States of the EU.
448. Denmark may wish to consider granting extradition in the absence of dual criminality also to States that are not EU Member States nor Nordic countries.

(c) Successes and good practices

Paragraph 3 of article 44

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

449. For extradition to a State outside the EU and the Nordic Countries, Denmark referred to chapter 2, section 3(3) of the EA:

(3) Extradition for prosecution or enforcement of a judgment for several criminal

offences shall be granted even if the conditions in Sections 2, 2a, and Section 3(1) and (2) have been fulfilled in respect of one of the offences only.

450. For extradition to Member States of the EU, Denmark referred to chapter 2a, section 10a(4) of the EA:

(4) Extradition for prosecution or enforcement of a sentence for several offences may be granted although the conditions in subsections (1) – (3) are met in the case of only one of those offences.

451. For extradition to the Nordic countries, Denmark referred to chapter 2b, section (3) of the EA:

(3) Extradition for prosecution or enforcement of sentences for several criminal offences may be granted even if the requirements set out in subs. (1) and (2) above are only satisfied in respect of one of the offences.

(b) Observations on the implementation of the article

452. Denmark is in compliance with the provision under review.

Paragraph 4 of article 44

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

453. Denmark informed that it is a party to a number of international extradition instruments. These include the European Convention on Extradition of 1957 and its first and second protocols; the Council Framework Decision (2002/584/JHA) on the European arrest warrant (EAW) and the surrender procedures between Member States; and the Convention on the Nordic Arrest Warrant of 2005. It has bilateral extradition agreements with Canada and the United States of America.

454. According to the agreements between Canada and Denmark the agreement covers all criminal offences mentioned in the Convention (please see the annex to the Convention). According to article 2 (4) and (5) extradition shall only be granted if the offence is punishable under the law of both Contracting Parties by imprisonment for at period exceeding one year, or if the person has already been convicted, deprivation of liberty of at least four months' duration remain to be served.

455. According to the agreement between the United States of America and Denmark the

agreement covers all criminal offences mentioned in the Convention. As with the agreement between Denmark and Canada, extradition can only be granted if the offence is punishable under the law of both Contradicting Parties by imprisonment for a period exceeding one year, or if the person has already been convicted, deprivation of liberty of at least four months' duration remain to be served.

456. Denmark noted that extradition is not conditional upon the existence of a treaty. Extradition is thus possible also where no agreement on extradition has been made between Denmark and the relevant foreign country.

(b) Observations on the implementation of the article

457. Denmark is in compliance with the article under review.

Paragraph 5 of article 44

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

458. Denmark indicated that it has not made extradition conditional on the existence of a treaty.
459. During the country visit Denmark clarified that if the requesting State requires a treaty, Denmark would consider the Convention as a legal basis.

(b) Observations on the implementation of the article

460. Denmark is in compliance with the provision under review.

Paragraph 6 of article 44

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

461. Denmark indicated that it has not made extradition conditional on the existence of a treaty. As Denmark does not need the Convention as the legal basis for extradition, it has not made a notification pursuant to Article 44, paragraph 6.

(b) Observations on the implementation of the article

462. In view of the flexibility that Denmark chooses to show, as evidenced under paragraph 5 of article 44, Denmark is encouraged to consider informing the Secretary-General that it can use the Convention as the basis for extradition should the other party make extradition conditional on the existence of a treaty. This would be particularly useful in view of the limited number of bilateral extradition agreements that Denmark has entered into.

Paragraph 7 of article 44

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

463. Denmark referred to the legal provisions provided under Article 44, paragraph 1 above.

(b) Observations on the implementation of the article

464. Given that not all offences in the Convention are criminalized by the Danish law, there are limitations to the application of this article. It is therefore recommended that Denmark ensure that all offences established in accordance with the Convention are extraditable offences.

Paragraph 8 of article 44

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

465. Denmark cited the legal provisions provided under Article 44, paragraph 1 above regarding minimum penalty requirements.

466. Grounds for refusal for extradition to a State outside the EU or the Nordic countries are regulated in chapter 2, sections 4-9 of the EA:

4. Extradition for an offence under military law shall not be granted.

5. (1) Extradition for a political offence shall not be granted.

(2) If the act, moreover, comprises an offence which is not of a political nature, extradition may be granted due to that offence, provided that the act committed is predominantly of a non-political nature.

(3) Subsections (1) and (2) do not apply if the act is comprised by

- 1) Article 1 or 2 of the European Convention on Suppression of Terrorism as amended by the Amending Protocol of 15 May 2003 to the European Convention on Suppression of Terrorism,
 - 2) Article 6 and 7 and article 9, cf. Article 6 and 7, of the Council of Europe Convention on the Prevention of Terrorism,
 - 3) Article 2, cf. Article 1 of the United Nations Convention for the Suppression of terrorist Bombings
 - 4) Article 2, cf. Article 1 of the United Nations Convention for the Suppression of Financing of Terrorism,
 - 5) Article 2, cf. Article 1 of the United Nations Conventions for the Suppression of Acts of Nuclear Terrorism,
 - 6) Article 7 of the International Atomic Energy Agency Convention on the Physical Protection of Nuclear Material as amended by the Amending Convention of 8 July 2005 to the International Atomic Energy Agency Convention on the Physical Protection of Nuclear material or
 - 7) Article 3 or Article 3b, 3c or 3d of the Convention of 10 March 1988 for the Suppression of Unlawful Acts against the Safety of Maritime Navigation as amended and inserted, respectively, by the Protocol of 1 November 2005 to the convention of 10 March 1988 for the Suppression of Unlawful Acts against the Safety of Maritime Navigation or Article 2 or Article 2b or 2c of the Protocol of 10 March 1988 for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf as amended and inserted, respectively, by the Protocol of 1 November 2005 to the Protocol of 10 March 1988 for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.
- (4) In special cases, extradition for acts comprised by Article 5 or Article 9, cf. Article 5 of the Council of Europe Convention on the Suppression of Terrorism may be refused where it is assessed that the act is a political offence.

6. (1) A person shall not be extradited if, on account of his national origin, affinity to a certain ethnic group, religion or political opinion, or otherwise on account of political circumstances, there is a risk that he will be exposed to persecution directed against his

life or freedom or otherwise of a serious nature.

(2) Moreover, a person shall not be extradited if there is a risk that, after extradition, he will suffer torture or other inhuman or degrading treatment or punishment.

7. If in special cases, taking into account in particular the requested person's age, health or other personal circumstances, it must be assumed that extradition will be incompatible with humanitarian considerations, extradition shall not be granted.

8. (1) A person shall not be extradited if he has been convicted or acquitted of the same criminal offence in Denmark, in a Nordic country or in a Member State of the European Union. The same provision shall apply if the person requested has been pardoned of the offence in this country. Extradition may moreover be refused if the person requested has been convicted or acquitted of the offence in a country outside the Nordic countries and the European Union. Irrespective of whether the person concerned has been convicted of the same criminal offence, extradition may however, only be refused under the provisions of the 1st and 3rd sentence above, in case the sentence has been enforced, is in the process of being enforced or can no longer be enforced under the provisions of the law of the country in which judgment was passed.

(2) If the charge(s) against a person have been dismissed in this country, he may only be extradited if the requirements of the Administration of Justice Act for a reversal of the decision to dismiss the charges are met. Extradition may moreover be refused, if prosecution of a person has been withdrawn and the requirements for reversing a decision to withdraw prosecution are not met.

(3) Extradition for prosecution may be refused, if prosecution against the person concerned has been initiated in this country for the offence for which extradition of the person is requested and due to the nature of the offence, the person's relations to Denmark and the circumstances in general it is found that the prosecution must be carried through in this country.

9. Extradition shall not be granted if the criminal liability or the access to enforce the sentence for the act in question would be statute-barred according to Danish law.

467. For extradition to a State outside the European Union and the Nordic Countries, Denmark further referred to chapter 2, section 3(4) of the EA:

(4) Where due to special circumstances it may be assumed that the charge or the judgment in respect of an offence for which extradition is requested lacks sufficient evidential basis, extradition for that offence shall not be granted.

468. Grounds for refusal for extradition to the EU Member States are regulated in chapter 2a, sections 10b-10i of the EA:

10b. (2) A request for the extradition of a Danish national or a person who is permanently resident in Denmark for enforcement of a sentence may be refused if instead the punishment is enforced in Denmark.

10c. A person shall not be extradited if, at the time of committing the offence, he was

below the age of criminal responsibility.

10d. (1) Extradition shall not be granted where the person whose extradition is requested has been convicted or acquitted of the same criminal offence in Denmark or another Member State of the European Union. The foregoing provision shall apply *mutatis mutandis* if the person whose extradition is requested has been pardoned in Denmark of the offence. Moreover, a request for extradition may be refused if the person whose extradition is requested has been convicted or acquitted of the offence in a state outside the European Union. Even if the person has been convicted of the same criminal offence, extradition may only be refused under the provisions of the 1st and 3rd sentences above, if the sentence has been enforced, is in the course of being enforced or can no longer be enforced under the law of that state.

(2) If the charge(s) against the person concerned have been dismissed in Denmark, he may be extradited only if the conditions of the Administration of Justice Act concerning the reversal of the decision to dismiss charges are met. Moreover, extradition can be refused if prosecution has been withdrawn and the conditions for reversing the decision to withdraw prosecution are not met.

(3) Extradition for prosecution may be refused if court proceedings have been instituted in Denmark against the person concerned for the act for which extradition is requested and, by reason of the nature of the act, the person's relations to Denmark and the circumstances in general, it is found that the legal proceedings should be carried through in Denmark.

10e. Extradition for a criminal act which is subject to the jurisdiction of the Danish criminal authorities may be refused if the criminal liability or the access to enforce the sentence for the act committed would be statute-barred under Danish law.

10f. A person shall not be extradited if the offence in question was committed, wholly or in part, in Denmark and is not punishable under Danish law.

(2) Extradition may be refused if the offence in question was committed outside the territory of the requesting Member State and a corresponding act, if committed outside Danish territory, would not be subject to Danish criminal jurisdiction.

10g. Extradition for enforcement of a sentence passed upon a trial during which the person concerned was not present, by which he was sentenced to imprisonment or another custodial measure shall not be granted unless it appears from the European Arrest Warrant that in accordance with the rules of the issuing state and in due time the person

- 1) was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or was informed officially by other means of the scheduled date and place of the trial which resulted in the decision in such a manner that it is unequivocally established that the person was aware of the scheduled trial and had been informed that a decision might be handed down, even if the person concerned did not appear for the trial,
- 2) was aware of the case that had been scheduled for trial and had given a mandate to a legal counsel who was either appointed by the person

concerned or by the issuing state to defend him during the trial and was indeed defended by that counsel at the trial,

- 3) had been served with the decision and been informed expressly of his right to a renewed trial or appeal in which he has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined and which may lead to the original decision being reversed, and the person concerned has subsequently declared expressly that he does not contest this decision, or the person concerned has not requested a retrial or appeal within the applicable time frame or
- 4) will be served with the decision personally immediately after the surrender to the issuing state and will be informed expressly of his right to a retrial or appeal as referred to in para. 3) above, and will be informed of the time limit within which he must request such a retrial or appeal.

10h. A person shall not be extradited if there is a risk that, after extradition, he will suffer persecution aimed at his life or freedom or otherwise of a serious nature by reason of his origin, membership of a specific ethnic group, religious or political beliefs or, in general, for political reasons.

(2) Moreover, a person shall not be extradited if there is a risk that, after extradition he will suffer torture or other inhuman or degrading treatment or punishment.

10i. If, in special circumstances, in particular having regard to the person's age, health or other personal conditions, it must be assumed that extradition would be incompatible with humanitarian concerns, the extradition shall be postponed until the special conditions preventing extradition no longer exist.

469. Grounds for refusal for extradition to a Nordic countries are regulated in chapter 2b, sections 10k-10n of the EA:

10k(1) Extradition for prosecution in Finland, Iceland, Norway or Sweden for a criminal offence that is punishable by imprisonment or another custodial measure under the laws of the country that has requested extradition may be granted on the basis of a Nordic arrest warrant.

(2) Extradition for enforcement of a sentence in Finland, Iceland, Norway or Sweden may be granted on the basis of a Nordic arrest warrant where, by the judgment, the person requested has been sentenced to imprisonment or another custodial measure.

(3) Extradition for prosecution or enforcement of sentences for several criminal offences may be granted even if the requirements set out in subs. (1) and (2) above are only satisfied in respect of one of the offences.

10l Sections 10b and 10c shall apply mutatis mutandis.

(2) However, section 10 b(3) shall not apply to extradition for prosecution or sentence enforcement in Iceland and Norway.

10m(1) Extradition shall not be granted when the person whose extradition is requested has been convicted or acquitted of the same criminal offence in this country, in a Nordic

country or in a Member State of the European Union. The same provision shall apply if the person requested has been pardoned of the criminal act in this country. Extradition may furthermore be refused if the person whose extradition is requested has been convicted or acquitted of the offence in a country outside the Nordic countries and the European Union. Even if the person in question has been convicted of the same criminal offence, extradition may only be refused under the provisions of the 1st and 3rd sentence above if the sentence has been enforced, is being enforced or can no longer be enforced according to the legislation of the convicting country.

Section 10d, subs. (2) and (3) shall apply *mutatis mutandis*.

10n Section 10f(1) and sections 10h and 10i shall apply *mutatis mutandis*.

470. In addition, Denmark provided the following example of a case where extradition was denied:

Decision not to extradite, case no. 2013-3410-0042

By letter of 13 September 2013, the Ukrainian authorities requested the extradition from Denmark to Ukraine of a Ukrainian national for the purpose of criminal prosecution in Ukraine. It appears from the request for extradition that the person in question was charged with hooliganism committed in 2001.

However, after a thoroughly assessment from the Police and the Danish Ministry of Justice it was decided that the Danish authorities were not able to extradite the person in question, as the count covered by the extradition request was barred by limitation under Danish law.

The count covered by the extradition request fell under the Danish Criminal Act Section 245 (1), which has a limitation period of 10 years, cf. Section 93 (1)(3). The limitation period continues to run even when the investigation is suspended, unless the investigation is suspended due to the fact that the person in question is evading prosecution.

However, the request for extradition contained no information on any activities carried out by the Ukrainian authorities in order to locate the person in question for a period of time between 2002 and 2013. It was therefore the overall assessment of the Danish Ministry of Justice that the count covered by the Ukrainian request for extradition would have been barred by limitation according to Danish law.

(b) Observations on the implementation of the article

471. Denmark is in compliance with the provision under review.

Paragraph 9 of article 44

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

472. Denmark provided the following information:

473. The Council Framework Decision on the European arrest warrant and the surrender procedures between the EU Member States obliges Denmark to observe certain time-limits. Following the receipt of a European Arrest Warrant, according to chapter 3a, section 18d(1-2) of the EA:

(1) The decision of the Minister of Justice under Section 18b(5) shall be taken forthwith and as far as possible within 10 days of the date when the requested person was arrested in Denmark or gave his consent to extradition.

(2) If the Minister decides to proceed with the extradition, and if the decision is brought before the court under the provisions of Section 16 read with section 18b(5) 2nd sentence, the court shall as far as possible deliver its final decision within 60 days of the date when the person was arrested in Denmark.

474. During the country visit, Denmark informed that it does not keep specific statistics of the processing time for extradition cases. However, it informed that a manual examination of cases concerning the European arrest warrant received in 2014 revealed the following approximate timeframe:

- a) In cases where the person consents to the extradition, it takes approximately 30 days from the arrest of the subject to the day on which a decision to extradite is final.
- b) In cases where the person does not consent to extradition, it takes approximately 60 days from the day of the arrest to the day on which a decision to extradite is final.

475. Timeline of the extradition to the Nordic countries is regulated in chapter 3b, section 18k(1-2) of the EA:

(1) A decision made by the commissioner of police under section 18 H(4) 1st sentence, and by the Minister of Justice under section 18 H(4) 2nd sentence, must be made soon and as far as possible within three days after the requested person has been arrested in this country or granted consent to the extradition.

(2) Where the commissioner of police or the Minister of Justice decides in favour of extradition and the case is brought before the court under the provisions of section 18 I, the court's final decision must as far as possible be made within 30 days after the arrest of the requested person in this country.

476. Denmark informed that there are no formal time-limits concerning requests from countries outside the EU and the Nordic countries, although they are dealt with as quickly as possible. During the country visit Denmark noted that extradition to countries outside of the EU and Nordic countries usually takes longer than extradition within these regions. However, if the requested person consents, extradition is carried out right away.

477. Denmark further informed that Danish authorities will not perform an independent

appraisal of the evidence of the case for extradition to Nordic countries or EU Member States. Denmark has on several occasions rejected an extradition request outside of the EU and Nordic countries, including in relation to lack of evidence.

(b) Observations on the implementation of the article

478. Denmark is in compliance with the provision under review.

Paragraph 10 of article 44

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

479. For extradition to countries outside of the EU and Nordic countries, Denmark referred to chapter 3, section 13 of the EA:

In order to assist the examinations and expedite the extradition, the remedies mentioned in the Administration of Justice Act in Chapter 69 on arrest, Chapter 70 on preventive detention, Chapter 72 on physical integrity, Chapter 73 on searches, Chapter 74 on seizure and disclosure and Chapter 75a on other investigative steps shall apply to the same extent as in cases concerning offences of a similar nature that are prosecuted in Denmark.

480. For extradition to the EU Member States, Denmark referred to chapter 3a, section 18b of the EA:

(2) In order to assist the investigation and expedite the extradition, the procedures mentioned in the Administration of Justice Act in Chapter 69 on arrest and in Chapter 70 on preventive detention shall apply in so far as the European arrest warrant has been issued for an offence that can lead to extradition under the rules of Chapter 2a. In addition, the procedures mentioned in the Administration of Justice Act in Chapter 72 on physical integrity, Chapter 73 on searches, Chapter 74 on seizure and discovery and Chapter 75a on other investigative steps shall apply to the same extent as in cases concerning corresponding offences that are prosecuted in Denmark.

481. For extradition to Nordic countries, Denmark referred to chapter 3b, section 18h of the EA:

(2) To assist the examination and expedite the extradition, the remedies referred to in the Administration of Justice Act in Part 69 of concerning arrest and in Part 70 concerning preventive detention may be applied in so far as the Nordic arrest warrant has been issued

for an offence that is extraditable under the rules of Part 2 B. In addition, the remedies referred to in the Administration of Justice Act in Part 72 on physical integrity, in Part 73 on searches, in Part 74 on seizure and disclosure and in Part 75 A on other investigative measures may be applied to the same extent as in cases concerned with criminal offences of a similar nature prosecuted in Denmark.

482. An unofficial translation of chapter 69 of the Administration of Justice Act on arrest states:

755(1) Any person who is reasonably suspected of a criminal offence subject to public prosecution may be arrested by the police if arrest is deemed necessary to prevent further criminal offences, to secure the person's presence for the time being or to prevent his association with others.

755(4) However, no arrest may be made if, in the nature of the case or the circumstances in general, deprivation of liberty would be a disproportionate measure.

483. An unofficial translation of chapter 70 of the Administration of Justice Act on preventive detention states:

762(1) An accused person may be detained on remand when there are grounds to suspect that he has committed an offence which is subject to public prosecution, if, under the law, the offence carries a penalty of imprisonment for one year and six months or more, and if

- 1) based on the information obtained about the circumstances of the accused, there are specific reasons to presume that he will abscond from prosecution or enforcement, or
- 2) based on the information obtained about the circumstances of the accused, there are specific reasons to presume that, if at large, he will commit another offence of the nature referred to above, or
- 3) based on the circumstances of the case, there are specific reasons to presume that the accused will impede the prosecution of the case, particularly by removing evidence or alerting or influencing others.

(2) An accused person may furthermore be detained on remand when there are particularly strong grounds to suspect that he has committed

- 1) an offence which is subject to public prosecution and, under the law, carries a penalty of imprisonment for six years or more, and due regard for enforcement of the law is found to require, considering the information about the seriousness of the offence, that the accused shall not be at large, or
- 2) an offence in violation of section 119(1), section 123, section 134a, section 192a(2), section 218, section 222, section 225 read with section 216(1), section 218 or section 222, section 235(1), sections 244-246, section 250 or section 252 of the Criminal Code or violation of section 232 of the Criminal Code committed against a child of less than 15 years, in case the offence may be expected due to the information about the seriousness of the circumstances to be punished with an unconditional sentence of imprisonment for at least 60 days and due regard for enforcement of the law is found to require that the accused shall not be at large.

(3) Detention on remand may not be used if the offence can be expected to be punished with a fine or imprisonment for a term not exceeding 30 days, or if deprivation of liberty will be disproportionate to the resulting disruption of the circumstances of the accused, the significance of the case and the sanction that can be expected if the accused is found guilty.

(...)

765.-(1) If the conditions for detaining a person on remand are met but the purpose of the detention may be achieved through less restrictive measures, the court shall, if the accused consents, impose such a measure in place of detention.

(2) The court may thus decide that the accused shall

- 1) submit to supervision as determined by the court,
- 2) observe specific conditions as to his residence, work, use of spare time, and association with certain persons,
- 3) reside in a suitable home or institution,
- 4) submit to psychiatric treatment or rehabilitation treatment for misuse of alcohol, narcotics or other substances, if necessary in a hospital or special institution,
- 5) report to the police at specified times,
- 6) deposit his passport or other papers of identification with the police,
- 7) provide security of an amount determined by the court for his presence at court hearings and for the enforcement of a sentence imposed.

(3) As for decisions made under subsections (1) and (2), the rules of section 764 shall apply correspondingly.

(4) If an accused person absconds from appearing in court or from the enforcement of a sentence, the court may make an order, after the persons with whom the case is concerned has been given the opportunity to state their case to the extent possible, to the effect that the security provided under subsection (2) para. 7 has been forfeited. Forfeited security shall be allocated to the State, allowing, however, that the claim of a victim for compensation may be covered out of the security. The court may decide, in special circumstances and within six months after the order, that forfeited security which has accrued to the State shall be fully or partly refunded.

(5) The Minister of Justice may issue rules after consultation with the Minister for Social Affairs and Integration and the Minister for Health and Prevention on when to grant off-grounds leave etc. to persons who are placed in an institution or at a hospital etc. under subsection (2) para. 3) or 4), when this has not been determined otherwise. The Minister of Justice may lay down that decisions made according to these rules may not be appealed to any higher administrative authority.

(b) Observations on the implementation of the article

484. Denmark is in compliance with the provision under review.

Paragraph 11 of article 44

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

485. Danish law allows for the extradition of Danish nationals under the conditions described under article 44, paragraph 1.

486. In line with section 7 and 8 of the Criminal Code, Denmark has criminal jurisdiction over Danish nationals who have committed criminal offences abroad subject to certain conditions. Danish nationals whose extradition is declined with reference to their nationality can be prosecuted in Denmark. Kindly refer to legal provisions and information provided under article 42 above.

487. Further, it follows from section 8(1)(vi) of the Criminal Code that acts committed outside the Danish State are subject to Danish criminal jurisdiction, irrespective of the home country of the offender, where extradition for the purpose of prosecution in another country of a person provisionally charged is refused, and the act, provided that it was committed within the territory of another State, is a criminal offence under the legislation of the country in which the act was committed, and the act may carry a sentence under Danish legislation of at least one year in prison. Kindly refer to legal provision under article 42, paragraph 3 above.

488. Denmark is party to the European Convention on Extradition, and referred to its Article 6(2):

(2) If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request.

489. Denmark provided the following case example:

Extradition refused, decision to enforce the sentence, case no. 2013-3311/06-0028

Based on the European arrest warrant issued on 10 January 2013, the German authorities made a request for extradition of a Somali national for the purpose of executing a 9-month sentence in Germany. The person in question had stayed legally in Denmark since 2001. He lived in Denmark with his family and had had employment here

for several years.

By letter of 15 May 2013, the Danish Ministry of Justice informed the German authorities that it considered refusing extradition and instead undertake to execute the German sentence in Denmark, cf. Article 4 (6) of the Framework Decision on the European Arrest Warrant (2002/584/JHA).

The Danish Ministry of Justice advised in that connection that the enforcement of the sentence passed in Germany on the person in question would take place in accordance with the Framework Decision on the Transfer of Sentenced Persons (2008/909/JHA), cf. the Danish Act on the Enforcement of Certain Criminal Decisions within the European Union.

The Danish Ministry of Justice invited the German authorities to state whether – in such event – the German authorities would instead prefer to withdraw their request for extradition from Denmark of the person in question.

By letter of 28 May 2013, the German authorities expressed their wish that the Danish authorities continued in executing the European arrest warrant on the person in question.

Against this background, the Danish Ministry of Justice on 4 June 2013 made its decision regarding the German request for extradition of the person in question.

The Ministry found that, in principle, the conditions for extradition of the person in question were fulfilled but decided that the European arrest warrant issued against him by the German authorities should not be executed, since Denmark would instead undertake to execute the sentence in accordance with Danish law, cf. Article 4 (6) of the Framework Decision on the European Arrest Warrant and Section 10 b (2) of the Danish Extradition Act.

This decision was brought before the Danish courts by the person in question. On 23 October 2013, the decision of the Ministry was ruled lawful by the County Court in Randers. The person in question appealed this ruling, but it was upheld by the Western High Court on 5 December 2013. The decision on extradition was therefore final and enforceable.

Consequently, the Danish authorities brought the case before the Danish courts for the purpose of executing the sentence in Denmark and by judgment of 14 January 2015 passed by the High Western Court of Denmark, the person in question was sentenced to imprisonment in Denmark for 9 months.

(b) Observations on the implementation of the article

490. Denmark is in compliance with the provision under review.

Paragraph 12 of article 44

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned

to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

491. For extradition of a Danish national or a person permanently resident in Denmark to Nordic countries or the EU Member States, Denmark referred to chapter 2a, section 10b(1) and chapter 2b, section 101 (1) of the EA:

10b. (1) When a Danish national or a person permanently resident in Denmark is extradited for prosecution it may be made a condition of extradition that the person will be transferred to Denmark for the enforcement of a possible prison sentence or other custodial measure.

101. (1) Sections 10b and 10c shall apply *mutatis mutandis*.

492. Denmark informed that although there is no explicit legal provisions governing it, extradition of a Danish national from Denmark to a country outside the Nordic countries and the European Union would follow a similar approach as mentioned above in relation with Nordic countries and the EU Member States.

493. Section 4.1.2.2 of the travaux préparatoires of 2002 regarding extradition of Danish nationals states:

To date, it has been the opinion of the Ministry of Justice that in the extradition of Danish nationals to another state it should be possible to set the requirement that the enforcement of a possibly imposed custodial sentence etc. must take place in Denmark. Against this background, the Ministry of Justice has reserved its right with reference to public international law to make the extradition of a Danish national to other EU Member States conditional upon retransfer of the person in question to Denmark for the enforcement of the sentence. In the opinion of the Ministry of Justice, it should continue to be possible to set such a condition for extradition to another Member State.

494. During the country visit, Denmark noted that if there is a possibility that the requesting country would carry out a death penalty, it would seek assurances that death penalty would not be carried out in that case. If the requesting country would refuse to provide such assurances, Denmark would not extradite but would consider to prosecute the case in Denmark.

495. Denmark further noted that if it extradites a Danish national for prosecution on the condition that the person will be transferred to Denmark to serve a prison sentence or other period of detention, it is not obliged to prosecute the case in Denmark in line with the principle on “ne bis in idem”.

(b) Observations on the implementation of the article

496. Denmark is in compliance with the provision under review.

Paragraph 13 of article 44

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

497. Danish law allows for the extradition of Danish nationals under the conditions described in the answer given to article 44, paragraph 1.

498. If a request for the extradition of a Danish national or a person who is permanently resident in Denmark to the Nordic countries or to the EU Member States for execution of a sentence can be refused if the punishment can instead be served in Denmark. This is governed in chapter 2a, section 10b(2) and chapter 3a, section 10l(1) of the EA:

10b. (2) A request for the extradition of a Danish national or a person who is permanently resident in Denmark for enforcement of a sentence may be refused if instead the punishment is enforced in Denmark.

10l. (1) Sections 10b and 10c shall apply *mutatis mutandis*.

499. Section 4.1.2.2 of the travaux préparatoires of 2002 regarding extradition of Danish nationals states:

Considering the expanded obligation to extradite persons, including Danish nationals, to other EU Member States, which the arrest warrant involves, the Ministry of Justice moreover finds that there should be a right to refuse extradition to a Member State of Danish nationals for sentence enforcement, if at the same time Denmark undertakes the obligation to enforce the imposed sentence in this country.

500. Denmark further referred to information provided under article 45 below.

(b) Observations on the implementation of the article

501. Denmark is in compliance with the provision under review.

Paragraph 14 of article 44

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

502. Denmark noted that the European Convention on Human Rights has been incorporated into Danish law by Act No. 285 of 29 April 1992. Consequently, a person's extradition must be compatible with the rights set out in the European Convention on Human Rights.

503. For extradition to States outside the Nordic countries and the European Union, Denmark cited chapter 3, sections 13, 14(1) and 16(1-3):

13 In order to assist the examinations and expedite the extradition, the remedies mentioned in the Administration of Justice Act in Chapter 69 on arrest, Chapter 70 on preventive detention, Chapter 72 on physical integrity, Chapter 73 on searches, Chapter 74 on seizure and disclosure and Chapter 75a on other investigative steps shall apply to the same extent as in cases concerning offences of a similar nature that are prosecuted in Denmark.

14(1) Where an investigation is carried out in pursuance of Section 12, a defence counsel shall be appointed to the requested person, unless the requested person retains his own defence counsel. Besides, the rules of Chapter 66 of the Administration of Justice Act on the appointment of and retaining a defence counsel shall apply *mutatis mutandis*.

16.(1) The person who is to be extradited according to the decision made by the Minister of Justice has a right to demand that the police shall bring the issue of the legality of the decision before the court at his venue.

(2) A request to this effect shall be made within three days after the decision was notified to the requested person. When special circumstances so advise, the Minister of Justice may permit that the decision be brought before the court even if the request in question was made after the expiry of the time limit.

(3) The court's decision must be made in the form of an order. Appeal to the High Court is allowed subject to a time limit of three days only. The provision of Section 910 of the Administration of Justice Act shall apply *mutatis mutandis*.

504. For extradition to States within the European Union, Denmark cited chapter 3a, section 18b(2-5) of the EA:

(2) In order to assist the investigation and expedite the extradition, the procedures mentioned in the Administration of Justice Act in Chapter 69 on arrest and in Chapter 70 on preventive detention shall apply in so far as the European arrest warrant has been

issued for an offence that can lead to extradition under the rules of Chapter 2a. In addition, the procedures mentioned in the Administration of Justice Act in Chapter 72 on physical integrity, Chapter 73 on searches, Chapter 74 on seizure and discovery and Chapter 75a on other investigative steps shall apply to the same extent as in cases concerning corresponding offences that are prosecuted in Denmark.

(3) The provisions on the appointment of a defence counsel in Section 14 shall apply *mutatis mutandis*.

(5) After the conclusion of the police investigation under subsection (1), the issue of extradition shall be referred to the Minister of Justice for decision. The provisions in Sections 15(2) and 16 shall apply *mutatis mutandis*.

505. For extradition to the Nordic countries, Denmark cited chapter 3b, section 18h(2-3) and 18i (2) of the EA:

18h (2) To assist the examination and expedite the extradition, the remedies referred to in the Administration of Justice Act in Part 69 of concerning arrest and in Part 70 concerning preventive detention may be applied in so far as the Nordic arrest warrant has been issued for an offence that is extraditable under the rules of Part 2 B. In addition, the remedies referred to in the Administration of Justice Act in Part 72 on physical integrity, in Part 73 on searches, in Part 74 on seizure and disclosure and in Part 75 A on other investigative measures may be applied to the same extent as in cases concerned with criminal offences of a similar nature prosecuted in Denmark.

(3) The provisions of section 18 b(3) shall apply *mutatis mutandis*.

18i (2) A person who is due to be extradited according to the decision of the commissioner of police may demand that the police bring the question of the legality of the decision before the court in the district in which the person resides.

(b) Observations on the implementation of the article

506. Denmark is in compliance with the provision under review.

Paragraph 15 of article 44

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

507. For extradition to countries outside of the Nordic countries and EU Member States, Denmark cited chapter 2, section 6(1-2) of the EA:

(1) A person shall not be extradited if, on account of his national origin, affinity to a certain ethnic group, religion or political opinion, or otherwise on account of political circumstances, there is a risk that he will be exposed to persecution directed against his life or freedom or otherwise of a serious nature.

(2) Moreover, a person shall not be extradited if there is a risk that, after extradition, he will suffer torture or other inhuman or degrading treatment or punishment.

508. For extradition to the EU Member States, Denmark cited chapter 2a, section 10h(1-2) of the EA:

(1) A person shall not be extradited if there is a risk that, after extradition, he will suffer persecution aimed at his life or freedom or otherwise of a serious nature by reason of his origin, membership of a specific ethnic group, religious or political beliefs or, in general, for political reasons.

(2) Moreover, a person shall not be extradited if there is a risk that, after extradition he will suffer torture or other inhuman or degrading treatment or punishment.

509. For extradition to the Nordic countries, Denmark cited chapter 2b, section 10n of the EA:

Section 10f(1) and sections 10h and 10i shall apply *mutatis mutandis*.

(b) Observations on the implementation of the article

510. Denmark is in compliance with the provision under review.

Paragraph 16 of article 44

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

511. Denmark noted that the fact that the offence is considered to involve fiscal matters is not listed as a ground for refusal in the EA and referred to information and legal provisions provided under article 44, paragraph 8. Thus, a person may be extradited in a case regarding a fiscal offence under the conditions described under article 44, paragraph 1.

512. Denmark further noted that it has ratified the second additional protocol to the European Convention on Extradition and referred to its article 2(1-2):

(1) For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.

(2) Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, custom or exchange regulation of the same kind as the law of the requesting Party.

(b) Observations on the implementation of the article

513. Denmark is in compliance with the provision under review.

Paragraph 17 of article 44

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

514. During the country visit Denmark informed that Danish authorities would liaise with the requesting State if additional information is required and does so as a matter of practise.

515. It further referred to article 13 of the European Convention on Extradition, which Denmark is party of:

If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Convention, the latter Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof.

(b) Observations on the implementation of the article

516. Denmark is in compliance with the provision under review.

Paragraph 18 of article 44

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

517. Denmark has an extradition agreement with Canada and the United States.

(b) Observations on the implementation of the article

518. Denmark does not make extradition dependent on a treaty. The provision is therefore considered to be implemented.

Article 45. Transfer of sentenced persons

Article 45

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

519. Denmark informed that the Danish authorities have the possibility to transfer persons sentenced to imprisonment in another country to Denmark in order for them to serve their sentence in Denmark. Similarly the Danish authorities have the possibility to transfer persons who have been served such a sentence in Denmark to another country. It referred to the following consolidated acts:

- Consolidated act no. 555 of 25 May 2011, on the cooperation with Finland, Iceland, Norway and Sweden concerning the enforcement of sentences, etc.
- Consolidated Act No. 740 of 18 July 2005, as amended by Act no. 428 of 1 May 2013 and by Act no. 377 of 27 April 2016, on international enforcement of sentences, etc. (Implements the Convention on the Transfer of Sentenced Persons of 1983 and the 1997 Additional Protocol)
- Consolidated act No. 213 of 22 February 2013, as amended by Act no. 1572 of 15 February 2015 and by Act no. 377 of 27 April 2016, on the enforcement of certain judgments in criminal matters in the European Union (implements the Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union).

520. During the country visit, Denmark informed that 34 persons in 2013 and 31 in 2014 were transferred out of Denmark to States outside of the Nordic countries.

521. Denmark further informed that cases concerning transfer of sentenced persons were not separately registered on the basis of the type of the offence. Therefore, it was not possible to identify requests for transfer of persons convicted of offences falling under the Convention. Further, the Danish authorities were not aware of relevant reported court cases concerning this matter. However, following the country visit, Denmark provided the following example of transfer of a sentenced person:

Example of a transfer case, case no. 2014-3331/15-0038

In December 2014, the Danish Ministry of Justice requested the consent of the Lithuanian authorities to the transfer of a Lithuanian national to Lithuania for the enforcement of a sentence of 2 years and 9 months of imprisonment passed by a Danish District Court on 16 October 2014.

The request was made pursuant to the Additional Protocol of 18 December 1997 to The European Convention of 21 March 1983 on the Transfer of Sentenced Persons.

By letter of 9 March 2015, the Lithuanian authorities have informed that they accept the transfer from Denmark to Lithuania, and that the transfer shall be effectuated pursuant to the rules regarding conversion of the sentence set out in Article 9(1) (b), cf. Article 11, of the aforementioned Convention.

On 20 March 2015, Danish Ministry of Justice consented to the transfer of the Lithuanian national for the enforcement of the sentence in Lithuania such that the transfer was done according to the rules regarding conversion of sentence.

As a result, the Lithuanian national was transferred to Lithuania on 20 April 2015.

(b) Observations on the implementation of the article

522. Denmark is in compliance with the provision under review.

Article 46. Mutual legal assistance

Paragraph 1 of article 46

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

523. Denmark has no legislation on mutual legal assistance (MLA) in criminal matters. Instead, Denmark applies its national laws by analogy to MLA requests, using the Council of Europe Convention on Mutual Legal Assistance as the guiding principle. Therefore, Danish authorities can comply with requests for mutual legal assistance even when there is no bilateral or multilateral agreement between Denmark and the requesting country. Requests are executed in accordance with the Administration of Justice Act and, if applicable, with relevant international instruments such as the Council of Europe Convention and agreements between the Nordic countries.

524. Denmark further informed that in practice, Danish law enforcement authorities are able provide foreign law enforcement authorities with requested information in almost all cases. In some cases, there can be a restriction on the further use of the information, for example

if there is an on-going investigation in Denmark.

525. Denmark has signed bi-lateral MLA agreements with Government of the Hong Kong Special Administrative Region of the People's Republic of China and the United States of America.
526. Since 1 March 2016 The Director of Public Prosecutions has been the central authority for MLA requests instead of the Ministry of Justice. It can also be received or sent via the Ministry for foreign Affairs. After having received the request, the Director of Public Prosecutions submits them to the relevant prosecutor who treats the request similarly to Danish criminal cases. The response will again be channelled through the Director of Prosecutions.
527. In general requests for MLA and any communication related thereto must be transmitted to the Director of Public Prosecutions by the requesting State. However, urgent requests and communications may be addressed through diplomatic channels, Europol, or directly to the relevant authorities.
528. Additionally, any requests sent within the Schengen system or requests on the basis of the European Convention of 29 May 2000 on Mutual Assistance in Criminal matters may be sent directly to the relevant judicial authorities. Request may be sent by e-mail or by regular mail.
529. An initial formal request is required only from countries outside of the EU and Nordic countries, after which the communication follows directly at working level between the two countries.
530. Denmark informed that MLA cases were not separately registered on the basis of the type of offence. Therefore, it was not possible to identify cases concerning offences falling under the Convention. Following the country visit, Denmark provided the following MLA case example:

Example of a MLA case

The State Prosecutor for Serious Economic and International Crime received at the end of November 2012 a MLA request from the State Prosecutor in Kiel, Germany, asking for assistance in the form of a search in three Danish companies and at the premises of two Danish citizens who were owners and executive officers of the company and suspected of violation of the legislation on VAT committed in a particularly aggravating manner. An EAW on one of the persons mentioned was forwarded at the same time.

The searches were conducted on 22 January 2013 with the assistance of colleagues from the office of the State prosecutor in Kiel who had a thorough knowledge of the case file and were able to assess the relevance of the material for the use of the German authorities. The material was seized and handed over to the State Prosecutor in Kiel.

During the searches the person wanted according to the EAW was arrested. The court remanded him in custody the following day. He remained in custody until his transfer based on the EAW was possible on 5 June 2013.

(b) Observations on the implementation of the article

531. Although the current procedure for MLA requests seems to be fast and flexible, Denmark may wish to consider developing guidelines or procedural manuals related to MLA, including for timelines which might improve the transparency and predictability of procedures for requesting States.

(c) Successes and good practices

532. Despite MLA not being regulated by law, Denmark appears to be able to respond to requests in a timely, constructive and effective manner by applying national legislation by analogy.

Paragraph 2 of article 46

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

533. Denmark informed that under the Danish legal system, legal persons can be prosecuted for all criminal offences under the Criminal Code. MLA requests regarding natural and legal persons are treated equally.
534. Denmark referred to the information and legal provisions provided under article 26 above.
535. Denmark provided the following case example:

Example of assistance regarding a legal person, SØK-70322-00001-11

March 2011, the State Prosecutor for Serious Economic and International Crime received a MLA request from Serious Fraud Office (SFO), England, concerning the investigation in a case where companies in a big British group were suspected of bribery committed via a number of companies and covered up through consultancy agreements. In that way they should have bribed public officials in other countries to arrange for that the British group got substantial public contracts in those countries.

The investigation of SFO had shown that the British group in 2007 had paid more than 5 million euro to a Danish company referring to a consultancy agreement despite that there was no sign of any return from the Danish company.

Based on the MLA request, bank information in Denmark was obtained through edition and searches were carried out on the 3rd of August 2011 in the Danish company as well as at the premises of three executive officers. Personnel from SFO participated in the

searches.

The seized material showed that in the period from August 2006 up until September 200,9 more than 35,5 million euro had been transferred from the British company and other European companies to the same Danish company. All the transfers appeared to be payment for consultancy. Almost all the money was transferred to bank accounts in the Slovakia and Cyprus registered to a company registered on the Seychelles.

Based on the material that appeared through the edition and the searches, it was found that there was a so well founded suspicion in relation to the Danish company and the leadership thereof that a Danish investigation was opened by the State Prosecutor for Serious Economic and International Crime in Denmark and in parallel with the investigation in England. Charges were brought against the Danish company and three members of the leadership for aiding and abetting in the bribery of foreign public officials by the British company.

At the initiative of State Prosecutor for Serious Economic and International Crime a number of coordination meetings have been held at Eurojust with the participation of SFO and other involved countries.

It has not been possible to trace the money that via the Danish company was transferred to accounts pertaining to a company in the Seychelles and further on to the final beneficiaries. The main reason for that has been that most of the money has been withdrawn in cash. On that reason too it has recently been decided to close the file in Denmark.

(b) Observations on the implementation of the article

536. Denmark is in compliance with the paragraph under review.

Subparagraphs 3 (a) to 3 (i) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons; (b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of the article

537. Denmark informed that it could afford all the forms of mutual legal assistance listed in the provision under review.

(b) Observations on the implementation of the article

538. Denmark is in compliance with the paragraph under review.

Subparagraphs 3 (j) and 3 (k) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

539. Denmark indicated that it could afford all the forms of mutual legal assistance listed in the provision under review.

540. Denmark informed that dual criminality is generally required for assistance that requires a court order (coercive measures).

(b) Observations on the implementation of the article

541. Denmark is in compliance with the paragraph under review.

Paragraph 4 of article 46

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

542. Denmark informed that, within the boundaries of general Danish legislation on passing on information concerning criminal conduct, it was able to transmit information on criminal conduct spontaneously and without a formal request.
543. During the country visit, Denmark further informed that it regularly spontaneously transmits information on criminal conduct, in particular to Canada, Norway, the United Kingdom and the United States of America.

Example of a case where the competent authorities in Denmark (The Danish Asset Recovery Office) and the United States of America had transmitted information spontaneously.

Based on information in a suspicious transaction report, the Asset Recovery Office (ARO) had, in 2014, carried out restraint of approximately USD 1,400,000 in two foreign companies' accounts in a Danish bank. At the same time, the ARO had initiated an investigation against the two companies for suspicion of money laundering.

As the funds in Denmark appeared to be related to an investigation in the US, the ARO contacted the United States authorities. Subsequently, there was an ongoing dialogue which resulted in the State Prosecutor for Serious Economic and International Crime receiving a request from the United States authorities on 15 January 2015 for disclosure of bank information and restraint of the funds concerned as there was reason to assume that the funds originated from crime committed in the US.

On 12 February 2015, the ARO submitted a request to the Court of Lyngby for disclosure of bank information and restraint on the basis of the letter of request. On 16 February 2015, the Court of Lyngby issued the orders requested. The investigation in Denmark was subsequently suspended and replaced by assistance to the US authorities.

(b) Observations on the implementation of the article

544. Denmark is in compliance with the paragraph under review.

Paragraph 5 of article 46

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restriction on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

545. Denmark informed that it would comply with a request for confidentiality from a requesting State in line with basic principles on confidentiality in the Danish law.

(b) Observations on the implementation of the article

546. Denmark is in compliance with the paragraph under review.

Paragraph 8 of article 46

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

547. Denmark informed that the confidentiality of bank information was regulated by section 117 (1-2) of the Financial Business Act (unofficial translation):

(1) Members of the board of directors, members of local boards of directors or similar organs, members of the shareholder committee in a financial undertaking other than a savings bank, auditors and inspectors and their deputies, founders, valuation officers, liquidators, members of the board of management, responsible actuaries, general agents and administrators in an insurance company and other employees may not without due cause divulge or use confidential information obtained during the performance of their duties. This provision shall apply correspondingly to financial holding companies and insurance holding companies.

(2) Any person receiving information pursuant to subsection (1) shall fall within the scope of the duty of confidentiality specified therein.

548. It further noted that this duty of confidentiality does not hinder the police obtaining a court order for the production of information from banks (as complying with such court order will not be divulgence “without due course” within the meaning of section 117 of the Financial Business Act).

549. Furthermore, Denmark also referred to section 26 of the Act on Measures to Prevent Money-Laundering and Financing of Terrorism:

The notifications and information that undertakings and persons covered by this Act disclose in good faith pursuant to section 7 and suspension of transactions pursuant to section 7(4) shall not incur any liability on the undertaking or person, its employees or management. Disclosure of information in connection with this shall not be considered a breach of any duty of confidentiality.

(b) Observations on the implementation of the article

550. Denmark is in compliance with the paragraph under review.

Subparagraph 9 (a) of article 46

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(a) Summary of information relevant to reviewing the implementation of the article

551. Denmark informed that dual criminality is not required for assistance that does not involve coercive measures, but is generally required for assistance that requires a court order (coercive measures).

552. It noted that provisions on coercive measures are contained in fourth book, second division of the Danish Administration of Justice Act. Examples of coercive measures include search, seizure, disclosure and interception of communications.

553. Denmark further noted that assistance that requires a court order is subject to the statute of limitations for the corresponding offence in Denmark.

(b) Observations on the implementation of the article

554. Although Denmark is able to afford a wide range of MLA, not all offences covered by the Convention have been criminalized and the paragraph under review can therefore only be considered to be partially implemented.

Subparagraph 9 (b) of article 46

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

555. Denmark provided the following example of a case where the Danish Ministry of Justice did not fulfil a request for mutual legal assistance:

By letter of 4 November 2013, with reference to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, the Swiss authorities requested the assistance of the Danish authorities in executing a letter rogatory concerning a Danish

citizen. It appeared from the request that the person in question was charged with violation of Art. 179 in the Swiss Criminal Code (unauthorized recording of conversations).

The Swiss authorities requested assistance in searching the domicile and working place of the person concerned as well as interrogating him. Furthermore, the Swiss authorities requested assistance in conducting a house search at a company and interrogating its Director General.

By letter of 27 October 2014, the Danish Ministry of Justice requested the Danish Police to prepare an assessment of whether the conditions criteria for fulfilling the request for mutual legal assistance were met.

In the assessment the Danish Prosecution Service found that the offence motivating the Swiss request was not in concreto punishable under Danish law. This assessment involved, inter alia, considerations to Article 10 of the European Convention on Human Rights.

Against this background, the Danish Ministry of Justice informed the Swiss authorities by letter of 8 December 2015 that the Danish authorities were unable to execute the letter rogatory.

(a) Summary of information relevant to reviewing the implementation of the article

556. Denmark referred to the information provided under paragraph 9(a) of article 46 above. It informed that, if consistent with the basic concepts of its legal system, assistance that is not considered a coercive measure can be provided even if the underlying matter of the request is not punishable under Danish law.

557. During the country visit, it informed that the definition of “matters of a de minimis nature” does not exist in relevant Danish law. However, if the matter would occur to be too small, Danish authorities can have a dialogue with the requesting country in order to resolve and explain it.

(b) Observations on the implementation of the article

558. Denmark is in compliance with the paragraph under review.

Subparagraph 9 (c) of article 46

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

559. Denmark informed that should it not be possible to comply with a request due to lack of dual criminality, it would generally ask the requesting country whether additional information could be provided which might enable the Danish authorities to comply with the request, or if more limited assistance not involving coercive measures would be wanted.

(b) Observations on the implementation of the article

560. Denmark is in compliance with the paragraph under review.

Paragraph 10 of article 46

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

561. While there is no Danish legal provision governing the issue, Denmark indicated that it has ratified the European Convention on Mutual Assistance in Criminal Matters. It informed that it regularly implements the paragraph under review, as per article 11 (1-2) of the above mentioned Convention:

(1). A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting Party shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 in so far as these are applicable.

Transfer may be refused:

- a) if the person in custody does not consent;
- b) if his presence is necessary at criminal proceedings pending in the territory of the requested Party;
- c) if transfer is liable to prolong his detention, or
- d) if there are other overriding grounds for not transferring him to the territory of the requesting Party.

(2) Subject to the provisions of Article 2, in a case coming within the immediately preceding paragraph, transit of the person in custody through the territory of a third State, Party to this Convention, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested.

A Contracting Party may refuse to grant transit to its own nationals.

562. It further referred to section 191 of the unofficial translation of the Administration of Justice Act (1-5):

(1) A person who is kept in detention abroad and has granted his consent to transfer may be transferred to Denmark to be questioned or to contribute to another investigative step in criminal proceedings in this country or to be used in criminal proceedings conducted abroad. The requested person must be deprived of his liberty during the transfer and be retransferred to the foreign state no matter whether the person may later withdraw his consent to the transfer.

(2) A decision to keep a person in detention must be made by the court upon a request from the police. The court must ensure that the person in question has granted his consent to temporary transfer as referred to in subs. (1) above. A time limit, which may be extended, shall be set for the detention. The court's decision must be made by an order, against which no appeal is possible.

(3) During his stay in this country, the person in question may not be prosecuted or extradited to a third country for a criminal offence committed before the transfer to this country.

(4) While kept in detention, the person in question shall exclusively be subject to the restrictions necessary to ensure fulfilment of the purpose of the detention and maintenance of order and safety at the place of detention. The person may be placed in a local prison as set out in section 770(2) below.

(5) The Minister of Justice may lay down specific rules on the treatment of persons who are kept in detention according to subsection (1) above.

(b) Observations on the implementation of the article

563. Denmark is in compliance with the paragraph under review.

Paragraph 11 of article 46

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

564. As regards subparagraphs (a)-(c), Denmark referred to the information provided under paragraph 10 of article 46 above. In addition, it quoted paragraph 3 of article 11 of the European Convention on Mutual Assistance in Criminal Matters:

(3) The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his release.

565. As regards subparagraph (d), Denmark informed that if a person serving a sentence in Denmark is transferred to another State to give testimony etc. and is kept in custody by that State, the enforcement of the Danish sentence will not be considered to be suspended.

(b) Observations on the implementation of the article

566. Denmark is in compliance with the paragraph under review.

Paragraph 12 of article 46

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

567. Denmark referred to the information provided under paragraph 10 of article 46 above as well as article 12 of the European Convention on Mutual Assistance in Criminal Matters:

(1) A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.

(2) A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.

(3) The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

(b) Observations on the implementation of the article

568. Denmark is in compliance with the paragraph under review.

Paragraph 13 of article 46

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

569. The Ministry of Justice until 1 march 2016 has been designated as central authority to receive requests for mutual assistance and to execute them or in some cases transmit them to the competent authorities for execution. Since 1 March 2016, the Director of Public Prosecutions has been designated as central authority instead of the Ministry of Justice.

570. In general, requests for mutual legal assistance and any communication related thereto must be transmitted to the Director of Public Prosecutions by the requesting State. However, urgent requests and communications may be addressed through diplomatic channels, Europol, or directly to the relevant authorities.

Additionally, any requests sent within the Schengen system or requests on the basis of the European Convention of 29 May 2000 on Mutual Assistance in Criminal Matters may be sent directly to the relevant judicial authorities, i.e. from a police district in the requested EU Member State to a police district in Denmark. Requests may be sent by e-mail or by regular mail.

(b) Observations on the implementation of the article

571. Denmark is in compliance with the paragraph under review.

Paragraph 14 of article 46

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

572. In accordance with Article 16 of the European Convention on Mutual Legal Assistance in Criminal Matters, Denmark has declared that MLA requests and annexed documents from countries other than Austria, France, the Federal Republic of Germany, Ireland, Norway, Sweden or the United Kingdom must be accompanied by a translation into either Danish or one of the official languages of the Council of Europe. With regard to longer documents, Denmark has reserved the right, in any specific case, to require a Danish translation or to have one made at the expense of the requesting State.

573. Denmark has not notified the Secretary-General of the United Nations of the languages acceptable for MLA requests.

(b) Observations on the implementation of the article

574. It is recommended that Denmark notify the Secretary-General of the United Nations of the language or languages acceptable to Denmark for the purposes of MLA.

Paragraphs 15 and 16 of article 46

*15. A request for mutual legal assistance shall contain: (a) The identity of the authority making the request;
(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the*

authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

575. Denmark informed that it implements the paragraph as a matter of practice and referred to article 14 of the European Convention on Mutual Assistance in Criminal Matters:

(1) Requests for mutual assistance shall indicate as follows:

- a) the authority making the request,
- b) the object of and the reason for the request,
- c) where possible, the identity and the nationality of the person concerned, and
- d) where necessary, the name and address of the person to be served.

(2) Letters rogatory referred to in Articles 3, 4 and 5 shall, in addition, state the offence and contain a summary of the facts.

576. Denmark informed that the guidelines issued by the Ministry of Justice in 2001 (attached as annex) on Mutual Legal Assistance were being updated by the Director of Public Prosecutions.

(b) Observations on the implementation of the article

577. When updating its guidelines and procedural manual related to mutual legal assistance, Denmark may wish to consider including details contained in the provision under review.

Paragraph 17 of article 46

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

578. Denmark referred to the information provided under paragraphs 1-3 of article 46 above.

It further referred to Section 190 of the Administration of Justice Act.

(1) The provisions of this Act apply to witness examinations requested by foreign public authorities. A request for observance of a special form or procedure, including examination conducted from abroad by use of telecommunication equipment, must be complied with, where possible, unless such compliance would clearly incompatible with Danish Law.

(2) Examination conducted from abroad by use of voice telecommunication equipment is subject to the witness's consent to the examination being conducted in that way. Section 178 does not apply.

(3) Section 186 does not apply in the case of examination conducted from abroad by use of telecommunication equipment.

579. Denmark further referred to article 3 (1-3) of the European Convention on Mutual Assistance in Criminal Matters:

(1) The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

(2) If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.

(3) The requested Party may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in which case the requested Party shall make every effort to comply with the request.

580. Denmark noted that it has made a declaration to Article 3 above, according to which a request for evidence to be taken on oath from a witness or expert may be refused if the competent Danish court does not consider the oath to be necessary.

(c) Observations on the implementation of the article

581. Denmark is in compliance with the provision under review.

Paragraph 18 of article 46

18. Whenever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

582. Denmark indicated that it does permit hearings to take place by video conference as per paragraph under review. Reference was made to section 190 of the Administration of Justice Act.

(1) The provisions of this Act apply to witness examinations requested by foreign public authorities. A request for observance of a special form or procedure, including examination conducted from abroad by use of telecommunication equipment, must be complied with, where possible, unless such compliance would clearly incompatible with Danish Law.

(b) Observations on the implementation of the article

583. Denmark is in compliance with the paragraph under review.

Paragraph 19 of article 46

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

584. Denmark indicated that implementation of the article under review follows from basic legal principles of Danish law.

(b) Observations on the implementation of the article

585. Denmark is in compliance with the paragraph under review.

Paragraph 20 of article 46

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

586. Denmark informed that it complies with requests to maintain confidentiality. This follows from basic principles on confidentiality of Danish law.

(b) Observations on the implementation of the article

587. Denmark is in compliance with the paragraph under review.

Paragraph 21 of article 46

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

588. Denmark referred to article 2 of the European Convention on MLA in Criminal Matters, in line which Denmark may refuse MLA if the request is deemed likely to prejudice the sovereignty, security, ordre public or other essential interests:

Assistance may be refused:

a) if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;

b) if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of its country.

589. Following Denmark's reservations to Article 2 of the same Convention, assistance can also be refused if legal proceedings have already been instituted against the accused for the same offence which the person is being sought; if the accused person has been convicted or acquitted by a final judgement in Denmark or a third State for the same offence; or, if a decision has been taken to waive or discontinue proceedings by Danish or a third State's authorities.

590. Requests cannot be refused on the ground that it is considered to involve fiscal offences.

(b) Observations on the implementation of the article

591. Denmark is in compliance with the paragraph under review.

Paragraph 22 of article 46

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

592. Denmark informed that it has no special limitations concerning fiscal matters and referred to article 1 of the second additional protocol to the European Convention on Mutual Assistance in Criminal Matters:

(1) The Contracting Parties shall not exercise the right provided for in Article 2.a of the Convention to refuse assistance solely on the ground that the request concerns an offence which the requested Party considers a fiscal offence.

593. Denmark provided a case examples of implementation of the article under review:

Example of having provided information on fiscal matters, SØK-83551-00052-12

The State Prosecutor for Serious Economic and International Crime received at the end of November 2012 a MLA request from the State Prosecutor in Kiel, Germany, asking for assistance in the form of a search in three Danish companies and at the premises of two Danish citizens who were owners and executive officers of the company and suspected of violation of the legislation on VAT committed in a particularly aggravating manner. An EAW on one of the persons mentioned was forwarded at the same time.

The searches were conducted on 22 January 2013 with the assistance of colleagues from the office of the State Prosecutor in Kiel who had a thorough knowledge of the case file and were able to assess the relevance of the material for the use of the German authorities. The material was seized and handed over to the State Prosecutor in Kiel.

During the searches the person wanted according to the EAW was arrested. The court remanded him in custody the following day. He remained in custody until his transfer based on the EAW was possible on the 5th of June 2013.

(b) Observations on the implementation of the article

594. Denmark is in compliance with the paragraph under review.

Paragraph 23 of article 46

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

595. Denmark informed that it gives a reason for any refusal of mutual assistance, and referred to Article 19 of the European Convention on Mutual Assistance in Criminal Matters:

Reasons shall be given for any refusal of mutual assistance.

(b) Observations on the implementation of the article

596. Denmark is in compliance with the paragraph under review.

Paragraph 24 of article 46

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

597. Denmark informed that while there is no legislation governing this issue, MLA requests are dealt with as quickly as possible. It further informed that assistance to other countries are always handled as a high priority, but that it sometimes may be delayed if the request concerns matters that take time, or if the request is not sufficiently precise and there is need to ask the requesting State Party for clarification.
598. Denmark further indicated that no statistics are available regarding the customary length of time between receiving MLA requests and responding to them.

(b) Observations on the implementation of the article

599. Denmark is in compliance with the paragraph under review.

Paragraph 25 of article 46

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

600. Denmark informed that while there is no specific legal provisions governing this, Danish authorities would communicate freely such considerations to the requesting State.

(b) Observations on the implementation of the article

601. Denmark is in compliance with the paragraph under review.

Paragraph 26 of article 46

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

602. Denmark informed that while there are no specific legal provisions governing this, Danish authorities usually seek to consult with the requesting State.

(b) Observations on the implementation of the article

603. Denmark is in compliance with the paragraph under review.

Paragraph 27 of article 46

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

604. Denmark informed that it complies with the paragraph under review and referred to

Article 12 of the European Convention on Mutual Assistance in Criminal Matters:

- 1) A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.
- 2) A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.
- 3) The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

(b) Observations on the implementation of the article

605. Denmark is in compliance with the paragraph under review.

Paragraph 28 of article 46

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

606. Denmark informed that while there are no legal provisions governing this matter, Denmark covers the costs in most cases as a matter of practice. It further referred to Article 20 of the European Convention on Mutual Assistance in Criminal Matters:

Subject to the provisions of Article 10, paragraph 3, execution of requests for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested Party or the transfer of a person in custody carried out under Article 11.

607. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, Denmark would discuss with the requesting State, such as e.g. costs related to wiretapping of an extended period or costs related to management of substantial assets.

Example where the Dutch authorities requested seizure of an aircraft in Denmark.

In 2011, the Dutch authorities sent a request for mutual legal assistance to the Danish

authorities, asking for the seizure of a Dutch-registered airplane located in Denmark.

The request was sent because the Dutch authorities suspected multiple persons of being involved in forgery and fraud. Furthermore, the investigations in the Netherlands had shown that the airplane located in Denmark was owned by one of the suspects and that the airplane was acquired with a part of the proceeds from the possible illegal activities.

The airplane that was seized in accordance with the request for mutual legal assistance, and the suspects later consented to the airplane being sold to a foreign buyer. The purchase price was subsequently transferred to the Dutch authorities.

The expenses of administration associated with the case were incurred by the Dutch authorities.

(b) Observations on the implementation of the article

608. Denmark is in compliance with the paragraph under review.

Subparagraph 29 (a) of article 46

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

609. Denmark informed that as it applies its national laws by analogy to MLA requests, it does provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public.

(b) Observations on the implementation of the article

610. Denmark is in compliance with the paragraph under review.

Subparagraph 29 (b) of article 46

29. The requested State Party: ...

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

611. During the country visit, Denmark informed that it does share, to a large extent, copies of government records, documents or information in its possession that under its domestic

law are not available to the general public. However, there are limitations such as documents with a specific degree of classification or those that cannot be shared in line with Danish legislation on data protection. Denmark informed that it has shared tax information following MLA requests.

(b) Observations on the implementation of the article

612. Denmark is in compliance with the paragraph under review.

Paragraph 30 of article 46

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

613. Denmark noted that it is party to a number of international instruments on mutual legal assistance. These include the European Convention on Mutual Assistance in Criminal Matters (and the additional protocols), the European Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

614. It has concluded bilateral agreements with the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the United States of America.

(b) Observations on the implementation of the article

615. Denmark is in compliance with the paragraph under review.

Article 47. Transfer of criminal proceedings

Article 47

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

616. Denmark informed that requests for transfer of proceedings in criminal matters are dealt with according to Act no. 252 of 12 June 1975 on the transfer of proceedings in criminal matters and the European Convention of 15 May 1972 on the Transfer of Proceedings in Criminal Matters, which Denmark has ratified.

617. According to Section 5 of Act no. 252 of 12 June 1975 on the transfer of proceedings

in criminal matters, the Danish Minister of Justice may decide – on the basis of reciprocity – that the Act on the transfer of criminal proceedings shall apply in relation to countries that are not parties to the European Convention on the Transfer of Proceedings in Criminal Matters.

Section 5: The Ministry of Justice may on the basis of reciprocity decide, that the Act shall also apply between Denmark and a State, who has not acceded to the Convention.

618. Denmark informed that cases concerning transfer of criminal proceedings were not separately registered on account of the type of offence. Therefore, it was not possible to identify such cases concerning offences established in accordance with the Convention. Further, it was not able to identify cases on the application of the Act to countries not parties to the European Convention.

619. During the country visit Denmark informed that they frequently do transfer criminal proceedings, in particular to other Nordic countries.

(b) Observations on the implementation of the article

620. Denmark is in compliance with the article under review.

Article 48. Law enforcement cooperation

Subparagraph 1 (a) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) Summary of information relevant to reviewing the implementation of the article

621. Denmark informed that the Danish National Police has established a single point of contact (SPOC) within the National Centre of Investigation. SPOC is responsible for all information exchange with international law enforcement authorities.

622. SPOC is operated 24/7 by 33 fully-trained employees. Available languages include

English, German, French and Spanish. SPOC is headed by a daily leader and is divided into three groups specialized in respectively in different information channels. However, each employee has knowledge of the other areas of expertise and can process information through these channels as well. While SPOC does not process cases, all employees have access to relevant Danish databases enabling requests of a more generic nature to be answered directly and quickly by SPOC.

623. Denmark cooperates through organizations and networks such as the International Criminal Police Organization (INTERPOL) and the European Police Office (Europol). Denmark noted that it exchanges information daily in particular with other Europol members. Information is shared through Europol's information exchange application SIENA (Secure Information Exchange Network Application) and the Europol database EIS (Europol Information System).
624. SPOC has one e-mail address and one phone number communicated to both national and international partner authorities, which provides a smooth communication and case-flow.
625. SPOC handles approximately 14,000 to 15,000 messages monthly. Exact statistics are not available except for the SIENA channel, through which 10,110 messages were sent in 2013 and 12,106 in 2014.
626. The National Cyber Crime Centre of the Danish National Police provides specialized assistance to the Danish law enforcement on the investigation of corruption.
627. Denmark informed that law enforcement cooperation cases were not separately registered on the basis of the type of offence. Therefore, it was not possible to identify cases concerning offences falling under the Convention. Further, the Danish authorities were not aware of relevant reported court cases concerning this matter.
628. However, Danish authorities provided the following case related to law enforcement cooperation:

The Independent Police Complaints Authority handles investigation of criminal cases against police officers and considers and decides complaints of police misconduct. Headed by a council and a chief executive, the Police Complaints Authority exercises its functions in complete independence of both police and prosecutors.

In the beginning of April 2014, the Independent Police Complaints Authority made an arrest of a police officer. The police officer was charged with violation of the Criminal Code section 155 (abuse of position), section 171 (forgery) and section 278 (embezzlement) in connection with the issue of a fine for violation of the Road Traffic Act to a foreign citizen. The police officer was suspected of having acquired the fine without paying the amount by the rules and by using incorrect name and staff number. The police officer denied the charges. The case is awaiting the Public Prosecutor's decision concerning indictment in the case.

In the end of April 2014, the Independent Police Complaints Authority made another arrest of a police officer, who has now been charged with seven counts of embezzlement and abuse of position as a police officer, by issuing fines for violation of the Road Traffic

Act to foreign citizens, who paid the fines in cash. The received fines have not been registered in the files of the police. The police officer denies the charges. The case will be sent to the Public Prosecutor in the near future concerning the question of indictment.

The second case came to the attention of the Independent Police Complaints Authority due to information received from a foreign citizen following the first case mentioned above. The Independent Police Complaints Authority had requested foreign citizens who had received a fine from the police and paid in cash to contact the Authority. This led to three contacts with foreign citizens and one of them forwarded an original fine.

(d) Observations on the implementation of the article

629. Denmark is in compliance with the paragraph under review.

(c) Successes and good practices

630. The Single Point of Contact system established by the Danish National Police provides for a very rapid and efficient exchange of information with other police authorities.

Subparagraph 1 (b) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

631. Denmark informed that it cooperates with other States Parties in conducting inquiries concerning the areas mentioned in the paragraph above.

(b) Observations on the implementation of the article

632. Denmark is in compliance with the paragraph under review.

Subparagraph 1 (c) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

633. Denmark informed that it provides necessary items or quantities of substances for analytical or investigative purposes as per the paragraph under review.

(b) Observations on the implementation of the article

634. Denmark is in compliance with the paragraph under review.

Subparagraph 1 (d) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) Summary of information relevant to reviewing the implementation of the article

635. Denmark informed that it exchanges information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities as per the paragraph under review.

(b) Observations on the implementation of the article

636. Denmark is in compliance with the paragraph under review.

Subparagraph 1 (e) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(a) Summary of information relevant to reviewing the implementation of the article

637. Denmark has posted liaison officers in Albania, China, Thailand and Turkey. The liaison officers are each responsible for a particular geographic region. Additional liaison officers are posted in Europol and Interpol. An agreement with Nordic countries allows Denmark to draw on the assistance of liaison officers from other Nordic countries in the absence of their own liaison officer and can at times also allow for the seamless continuation of investigations with the other countries.

638. In addition, Denmark informed that China, Romania, Turkey, Japan, South Korea and USA have police liaison officers stationed in Denmark.

(b) Observations on the implementation of the article

639. Denmark is in compliance with the paragraph under review.

Subparagraph 1 (f) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

640. Denmark informed that it exchanges information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences as per the paragraph under review.

(b) Observations on the implementation of the article

641. Denmark is in compliance with the paragraph under review.

Paragraph 2 of article 48

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

642. The Danish National Police has multilateral agreements with the other Nordic countries and is party to a number of police cooperation agreements, such as via the Schengen agreements. Denmark has an operational and strategic cooperation agreement with Europol.

643. Denmark has bi-lateral police cooperation agreements with China, the Russian Federation, Germany, Sweden and Turkey.

644. During the country visit, Denmark noted that the police cooperation agreements concern police cooperation generally and not specifically police cooperation on corruption. However, the police cooperation agreements may also be used in corruption cases. It was also clarified that law enforcement cooperation does not require a treaty basis from Denmark's perspective.

(b) Observations on the implementation of the article

645. Denmark is in compliance with the paragraph under review.

Paragraph 3 of article 48

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

646. Denmark informed that the National Cyber Crime Centre under the Danish National Police provides technical assistance to the police and the State Prosecutor for Serious Economic and International Crime on their investigation of various crimes, including corruption. This involves the lawful interception of communication and the search and

seizure of information, including computer data. Communication and information may be lawfully intercepted from wireline technologies, such as telephones, wireless technologies, such as cellular phones, satellite communication, and pagers, and internet technology, such as e-mail and the Web. The National Cyber Crime Centre has also implemented various technical programs to address the growing complexity of computer investigations. Lawful access is provided for in the Danish Administration of Justice Act.

647. As regards the Anti-Money Laundering Act, by way of example, according to Annex III, the non-exhaustive list of factors and types of evidence of potentially higher risk include, as product, service, transaction or delivery channel risk factors, non-face-to-face business relationships or transactions, without certain safeguards, such as electronic signatures, as well as new products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products. This provision, like many other provisions of the Danish Anti-Money Laundering Act, implements a provision in directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

648. As regards the Criminal Code, the Code has several times been amended to take into account the possibility to use new technology for criminal purposes. By way of example, this happened in 1985 and 2004. The 2004 amendments included sections 169 A (forgery of electronic money), 171 (forgery of documents, including electronic documents), 263 (unauthorized access to information, including hacking), 263 A (unauthorized distribution of passwords), 291 (vandalism, including damage to electronically stored information), 293 (barring the use of something, including denial-of-service attacks), and 301 (unauthorized distribution of credit card numbers).

649. It also referred to the information provided under paragraph 1(a) of article 48, pertaining to Europol as the main information exchange channel for the Danish Police. Information is shared with Europol and Europol's members through Europol's information exchange application SIENA (Secure Information Exchange Network Application) and the Europol database EIS (Europol Information System).

(b) Observations on the implementation of the article

650. Denmark is in compliance with the paragraph under review.

Article 49. Joint investigations

Article 49

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State

Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

651. Denmark informed that in line with Danish legal tradition, joint investigations can be established on a case-by-case basis without formal bilateral or multilateral agreements.

652. Denmark further referred to article 13 of the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union, which allows Member States to set up a joint investigation team for a specific purpose to carry out criminal investigations in one or more member states. Paragraph 1 of article 13 says:

(1). By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team. The composition of the team shall be set out in the agreement.

653. Denmark noted that it has on several occasions set up joint investigations teams with other EU Member States and has found this to be a very useful and productive tool of joint investigations.

654. In the area of corruption and economic crime, several joint investigation teams have been set up.

655. Denmark has provided the following cases as examples of implementation:

A medical company case:

Following information received in the beginning of 2008 from English police authorities (The City of London Police) and The United Nations Development Programme (UNDP), the Danish State Prosecutor for Serious Economic and International Crime (SØIK) opened an investigation against a Danish medical company under suspicion of corruption.

The City of London Police provided information that showed a money flow (1.1 million USD) from the Danish medical company to a British consultancy agency that was hired by The United Nations. It was suspected that the money paid from the Danish medical company to the British consultancy agency was a secret commission which secured the Danish medical company a contract with the UNDP exceeding approx. 40 million USD.

The British authorities handled the corruption case against the British consultancy agency and the Danish authorities (SØIK) handled the corruption case against the Danish medical company.

By agreement signed on 26 June 2008, a Joint Venture Investigation Team (JIT) was set up according to article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

The purpose of the JIT was to co-ordinate the national investigations and subsequent

proceedings and to collect and exchange evidence obtained from the national investigations and criminal proceedings.

The JIT-agreement expired on 1 June 2009 but was subsequently extended. In 2011 the Danish medical company accepted a fine of 2.5 million DKK and confiscation of approx. 20 million DKK.

According to information received, the British case against the consultancy agency is still pending.

An intermediary case:

In July 2011, SØIK received information through the British authorities, according to which sizable amounts of money had been transferred from a number of large foreign companies to a Danish company. The amounts deducted by 1.5 per cent were subsequently wire transferred from the Danish company to various accounts abroad, controlled by a Hungarian citizen, among these in particular to accounts in Cyprus.

The investigation of the case is to a certain extent carried out in cooperation with the British and Austrian authorities. Through Eurojust a working group has been set up with participation of authorities from UK, Hungary and Austria. The case is still pending.

(b) Observations on the implementation of the article

656. Denmark is in compliance with the paragraph under review.

Article 50. Special investigative techniques

Paragraph 1 of article 50

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

(a) Summary of information relevant to reviewing the implementation of the article

657. Denmark informed that it has ratified the second additional protocol to the European Convention on Mutual Assistance in Criminal Matters which also contains provisions on controlled delivery and covert investigations.

658. Denmark further cited provisions in part 71 of the Administration of Justice Act on limitation of the secrecy of communications, observation, data reading and interference or interruption of radio or telecommunications. These provisions allow the police to carry out

wiretapping, observation etc. when the conditions on such investigative actions are met. The opening paragraph of part 71 says:

(1) The police may carry through interception of communications according to the rules in this Part by

- 1) intercepting telephone conversations or other similar telecommunication (telephone interception),
- 2) intercepting other conversations or statements by means of a device (other interception),
- 3) obtaining information about the telephones or other similar communication devices that are connected to a certain telephone or other communication device, even if its owner has not granted permission (obtainment of telecom logs),
- 4) obtaining information about the telephones or other similar communication devices within a specified area that are connected to other telephones or other communication devices (extended obtainment of telecom logs),
- 5) withholding, opening and acquiring knowledge of the contents of letters, telegrams and other correspondence (supervised correspondence), and
- 6) stopping the forwarding of the communications mentioned in para. 5 (stopped correspondence).

659. It further referred to provisions in Part 68 on examinations and special investigative measures:

Section 754a.-(1) As part of the investigation of an offence, the police may not cause assistance to be offered or measures to be taken with a view to inciting anyone to commit or continue the offence, unless:

- 1) there are reasonable grounds to suspect that the offence is being committed or attempted to be committed;
- 2) the investigative measure may be assumed to be decisive for the investigation; and
- 3) the investigation is concerned with an offence that is punishable under the law with imprisonment for no less than six years.

(2) Measures taken with a view to inciting a person to commit or continue an offence shall not fall within the scope of subsection (1) above if the police do not thereby influence important circumstances of the offence.

Section 754b.-(1) The measures referred to in section 754a may not lead to any increase in the scope or gravity of the offence.

(2) The measures may exclusively be carried out by police officers. However, upon agreement with the police, civilians may provide assistance towards having the offence that is under investigation committed or continued, if the assistance provided is very minor relative to the scope of the offence.

Section 754c.-(1) Measures according to section 754a shall be taken on the basis of an order of the court. The question of such measures shall be submitted to the court at the location where charges have been or may be expected to be raised or otherwise

where the decision of the police to seek implementation of the measures was made.

(2) In the order, the court must state the specific circumstances of the case which it has relied upon when finding that the requirements for carrying through the measures are met. The order may be reversed at any time.

(3) If awaiting a court order would thwart the aim of the measure, the police may decide to carry through the measures. In that case the police must as soon as possible and no later than within 24 hours from the initiation of the measures submit a request to the court. The court shall decide by an order whether the measures may be approved and if they may be continued. If the court finds that the measures should not have been carried through, the court shall notify this to the Ministry of Justice.

Section 754d. Where measures have been taken as referred to in section 754a and charges are raised for the offence, the defence counsel shall be given information about such measures. If required in exceptional circumstances due to considerations for foreign powers, the security of the State, the interest in solving the crime or the interests of a third party, the police may order the defence counsel not to disclose information which the counsel has received in pursuance of the first sentence above.

Section 754e. The provisions of sections 754a-754d shall not apply to investigation of violations of Part 12 or sections 111-115 or 118 of the Criminal Code.

660. Denmark further noted that evidence procured in conformity with the provision in the Administration of Justice Act can be presented in court and cited Section 789 of the Act:

(1) If, during an invasion of the secrecy of communication, the police obtain information about an offence, which has not formed and which according to section 781, subsection 1, no. 3, or section 781, subsection 5, could not form the basis for measure, the police can use this information as part of the investigation of the criminal offence concerned.

(2) Information, which is obtained during an invasion of the secrecy of communication, must not be used as evidence in court in regard to an offence, which has not formed, and which according to section 781, subsection 1, no. 3, or section 781, subsection 5, could not form the basis for the measure.

(3) The court can decide that subsection 2 does not apply, if:

- 1) other investigative measures will not be suitable for securing evidence in the case,
- 2) the case concerns an offence, which under the law can result in imprisonment for one year and six months or more, and
- 3) the court otherwise finds that it does not cause concern.

661. Denmark has provided the following cases as examples of implementation:

Supreme Court judgment of 9 February 2014

Pursuant to the Firearms Act, the defendant was convicted of transporting a bag containing various heavy firearms from Sweden to Denmark where he transferred the

bag to a Danish police officer who worked as an undercover agent. The measures conducted by the police agent solely consisted of instructing the defendant with regard to time and place of the delivery of the firearms. On this ground, the Supreme Court found that the undercover operation did not cause an aggravation of the extent or seriousness of the offence.

Supreme Court judgment of 6 November 1996

The two defendants were sentenced to imprisonment for eight years after being found guilty on various counts of attempted import of heroin. The defendants' attorneys asserted that the measures taken by the police in the import of the drugs affected significant circumstances of the offence and thereby incited the defendants to commit or continue an offence. Thus, according to the attorneys the measures taken by the police did not fulfill the requirements of a controlled delivery and the involvement of the police thereby constituted an unlawful undercover operation as the conditions for an undercover operation, cf. sections 754 a-754 e of the Administration of Justice Act, were not established. They pleaded termination of the verdict of the High Court of Eastern Denmark and remission with a view to renewed adjudication of the case. The majority of the Supreme Court found that the police did not alter the circumstances of the offence in a way that went beyond the limits of a controlled delivery. On this ground, the Supreme Court upheld the verdict of the High Court of Eastern Denmark.

(b) Observations on the implementation of the article

662. Denmark is in compliance with the paragraph under review.

Paragraph 2 of article 50

2. For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

(a) Summary of information relevant to reviewing the implementation of the article

663. Denmark informed that special investigative techniques such as controlled delivery, electronic and other forms of surveillance and undercover operations are allowed in Denmark and can be used as evidence. However, such techniques have not been used in cases involving corruption.

664. Denmark noted that the Second additional Protocol to the European Convention on Mutual Assistance in Criminal Matters contains provisions on controlled delivery and covert investigations.

(b) Observations on the implementation of the article

665. Denmark is in compliance with the paragraph under review.

Paragraph 3 of article 50

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

a) Summary of information relevant to reviewing the implementation of the article

666. Denmark referred to the information provided under paragraph 1 and 2 of article 50 above.

(b) Observations on the implementation of the article

667. Denmark is in compliance with the paragraph under review.

Paragraph 4 of article 50

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

668. Denmark referred to the information provided under paragraph 1 and 2 of article 50 above. Denmark is a member of the Schengen agreement which covers controlled delivery as well as the Nordic cooperation.

(b) Observations on the implementation of the article

669. Denmark is in compliance with the paragraph under review.

ANNEXES

ANNEX 1. Part 11 of the Criminal Code

Part 11. Cessation of sanctions for criminal acts

92. Offences are not punished if they have become barred by limitation under sections 93-94.

93. The limitation periods are -

- (i) two years where the maximum penalty prescribed for the offence is imprisonment for one year;
- (ii) five years where the maximum penalty prescribed is imprisonment for four years;
- (iii) ten years where the maximum penalty prescribed is imprisonment for ten years; and
- (iv) fifteen years where the maximum penalty prescribed is imprisonment for a determinate period.

(2) The limitation period is in no case less than five years for - (i) violation of sections 296(3), 297(2) and 302(2) of this Code;

and

(ii) violation of the legislation on taxes, customs, duties or subsidies, where an unlawful gain is or can be made.

(3) The limitation period for violation of section 223(1) or section

225, cf. section 223(1), of this Code is in no case less than ten years. (4) If a person has committed several offences by the same act and different limitation periods apply under subsections (1)-(3), the longest of those periods will apply to all offences.

93 a. Where an offence falls within an international convention to which Denmark has acceded, and the criminal liability is not subject to any limitation period according to such convention, the offence will never become barred by limitation.

93 b. Where an offence falls within section 157a of this Code, the offence will never become barred by limitation.

94. The limitation period is reckoned from the date when the criminal act or omission ceased.

(2) Where criminality depends on or is influenced by a current consequence or other subsequent event, the limitation period is reckoned only from the date when the consequence or event occurred.

(3) Where the offence was committed on board a Danish ship outside the territory of the Danish state, the limitation period is reckoned from the date when the ship called at a Danish port. The commencement of the limitation period cannot be postponed by more than one year under this provision.

(4) For violation of section 210, sections 216-224, section 225, cf. sections 216-224, section 226, section 227(1), section 245a, section

246, cf. section 245a, or section 262a(2) committed against a person under 18 years of age, or of section 232 committed against a child under 15 years of age, the limitation period is reckoned from the date when the victim attains the age of 21 years at the earliest. If the offender has coerced the victim to refrain from reporting the offence to the police by the use of violence, duress under section 260 or otherwise by a criminal act, the limitation period is reckoned from the date when such coercion ceased at the earliest.

(5) The limitation period is suspended when the relevant person is notified of the provisional charge, or when the Prosecution Service requests legal proceedings by which the relevant person is provisionally charged with the offence. The limitation period of the liability of a legal person can be suspended by notification to a person authorised to accept service on behalf of the legal person under section

157a of the Administration of Justice Act (retsplejeloven).

(6) Where prosecution is abandoned and such decision is not reversed by a superior prosecutor within the statutory period of reversal, the limitation period will continue to run as had no prosecution been pursued. This also applies where prosecution is suspended indefinitely. If prosecution is suspended because the person provisionally charged has evaded prosecution, the period of prosecution is not included in the calculation of the limitation period.

95. Where an act is not punishable due to limitation, it cannot result in sanctions under sections 68-70, or section 74a, 164(4) or 236, confiscation, forfeiture or deprivation of rights either. The limitation period for confiscation or forfeiture is in no case less than five years, and for confiscation under section 75(1) in no case less than ten years.

96. The right to bring a private prosecution and to request public prosecution lapses if the person so entitled has not instituted proceedings or made a request within six months of the date when he had obtained sufficient information to institute proceedings or request prosecution.

(2) If several persons are entitled to institute proceedings or several persons are guilty, the limitation period must be calculated separately for each of them. If the limitation period for public prosecution has expired in relation to one of the persons guilty, but not the others, the decision of whether to allow the request for prosecution of these persons rests with the Prosecution Service.

(3) The right to bring a private prosecution and to request public prosecution lapses six months after the victim's death.

(4) If private prosecution does not result in determination of the claim for punishment, the limitation period will continue to run and the period of prosecution is not included in the calculation of the limitation period.

(5) The provisions of subsections (1)-(4) also apply to the sanctions mentioned in section 273, except that the limitation period is three years.

97. Imprisonment and other sanctions in the form of custodial measures will be remitted under the rules of subsections (2)-(6). (2) The limitation periods are -

(i) five years for imprisonment for up to one year and for measures under section 74a;

(ii) ten years for imprisonment exceeding one year, but not four years, and for measures under sections 68 and 69;

(iii) fifteen years for imprisonment exceeding four years, but not eight years, and for safe custody under section 70; and

(iv) twenty years for imprisonment exceeding eight years.

(3) The limitation period is reckoned from the date when the sentence could be enforced pursuant to the general rules of law.

(4) The computation of the limitation period does not include any time in which -

(i) enforcement has been postponed under a suspended sentence

or conditional pardon;

(ii) the offender is serving another prison sentence or is subject to another custodial measure imposed as a penal sanction; or

(iii) enforcement cannot be commenced because the relevant person evades enforcement of the sentence.

(5) The limitation period is suspended when enforcement commences.

(6) If it has been decided to recall a parolee following release on parole or discharge on parole or following conditional pardon for part of a sentence, the limitation period for the unserved balance of the sentence or the unserved balance of any other sanction will be reckoned from the date of the recall decision. If enforcement is interrupted otherwise than by release on parole, discharge on parole or pardon, the limitation period is reckoned from the interruption, but see subsection (4)(iii).

97 a. If no prior application for a distress warrant has been filed, fines will be remitted after -

(i) five years if the fine does not exceed DKK 10,000; and

(ii) ten years if the fine exceeds DKK 10,000.

(2) Any alternative sentence in lieu of a fine will be remitted after three years, unless enforcement has commenced before then. For

fines exceeding DKK 10,000, the limitation period is five years.

(3) The limitation periods mentioned in subsection (1) are reckoned from the date when the decision could be enforced pursuant to the general rules of law. The time during which enforcement was postponed due to suspension of the sentence or the granting of a conditional pardon is not included in the calculation of the limitation periods.

(4) The limitation period of confiscation and forfeiture orders is ten years.

97 b. No penal sanctions can be enforced after the convicted person's death.

(2) The Prosecution Service may always request the court which tried the case in the first instance to uphold a confiscation or forfeiture order. A confiscation or forfeiture order can be upheld only for items or amounts received as proceeds from the criminal act, or any property corresponding to such proceeds. The court may vary its confiscation or forfeiture order and decide that an amount must be confiscated instead of items. Such decision must be made by court order.

(3) Decisions under sections 164(4) and 273(2) can be enforced after the convicted person's death.

97 c. A pardon can be granted for a confiscation or forfeiture order in a manner similar to that of a pardon from a penalty.

ANNEX 2: Part 16 of the Criminal Code

Part 16. Offences in public function or office, etc.

144. Any person who unduly receives, demands or agrees to receive a gift or another benefit in the exercise of a Danish, foreign or international public function or office is sentenced to a fine or imprisonment for a term not exceeding six years.

145. Any person performing a public function or office who claims or receives for private gain a fee for a service or taxes or duties not payable is sentenced to a fine or imprisonment for a term not exceeding six years. If he keeps such payment received in good faith for private gain after becoming aware of the mistake, he is sentenced to a fine or imprisonment for a term not exceeding two years.

146. If a person with power to issue judgments or other public decision-making power to decide legal matters relating to private individuals commits injustice when determining or examining a case, he is sentenced to imprisonment for a term not exceeding six years. (2) If the act is committed with intent to cause a loss of welfare for someone, the penalty is imprisonment for a term not exceeding 16 years.

147. If a person with a duty to enforce criminal law on behalf of the state applies illegal means to prompt a confession or statement or makes an unlawful arrest, wrongful incarceration, or an unlawful search or seizure, he is sentenced to a fine or imprisonment for a term not exceeding three years.

148. If a person with power to issue judgments or other public decision-making power to decide legal matters, or with a duty to enforce criminal law on behalf of the state, intentionally or with gross negligence fails to observe a statutory procedure for the processing of a case or the performance of individual judicial acts, or for any arrest, incarceration, search, seizure or

similar measure, he is sentenced to a fine or imprisonment for a term not exceeding four months.

149. If a person with a duty to guard a prisoner or enforce criminal sentences lets a provisionally charged person abscond, prevents the enforcement of a sentence or contributes to the enforcement of a sentence in a more lenient manner than prescribed, he is sentenced to a fine or imprisonment for a term not exceeding three years.

150. Any person performing a public function or office who abuses his position to coerce another person to do, accept or fail to do something is sentenced to imprisonment for a term not exceeding three years.

151. Any person who incites to or is complicit in an offence committed by someone who is subordinate to him in his public function or office while acting in such capacity is punished under the provision prohibiting the relevant offence without taking into consideration whether his subordinate is punishable or exempt from punishment because of a mistake or for other reasons.

152. Any person who performs or has performed a public function or office and who unduly discloses or utilises confidential information imparted to him in the course of his duties is sentenced to a fine or imprisonment for a term not exceeding six months.

(2) If a person commits the act referred to in subsection (1) with intent to obtain an unlawful gain for himself or others, or if particularly aggravating circumstances apply, the penalty may increase to imprisonment for a term not exceeding two years. Especially situations where information is disclosed or utilised in circumstances that inflict serious harm on others or entail a risk of such harm are considered particularly aggravating circumstances.

(3) Information is confidential when it has been classified by law or other valid regulations as confidential, or when secrecy is otherwise required to safeguard significant considerations for public or private interests.

152 a. The provision of section 152 applies correspondingly to any person who otherwise is, or has been, involved in tasks performed pursuant to

agreement with a public authority. The same applies to any person who performs or has performed a function with a telephone service provider recognised by the government.

152 b. The same penalty as set out in section 152 is imposed on any person who carries on or has carried on activities or pursues or has pursued a profession by virtue of a public authorisation or recognition and who unduly discloses or utilises information which is confidential for reasons of private interests, where the relevant information was imparted to him in the course of his work.

(2) The same penalty as set out in section 152 is also imposed on any person who performs or has performed services as an employee of the Statistical Office of the European Communities, or who works or has worked at the premises of the Statistical Office, and who unduly discloses or utilises confidential statistical data imparted to him in the course of his work.

152 c. The provisions of sections 152-152b also apply to such person's assistants.

152 d. The provisions of sections 152-152c apply correspondingly to any person who unduly obtains or utilises information derived from such offence without being complicit in the act.

(2) The same penalty is imposed on any person who unduly discloses personal details on individuals, see section 28(1) of the Public Administration Act (forvaltningsloven), deriving from violation of sections 152-152c without being complicit in the act.

(3) The same penalty is imposed on any person who unduly discloses information classified as confidential information for reasons of national security or national defence without being complicit in the act.

152 e. The provisions of sections 152-152d do not comprise situations in which the relevant person:

(i) is under an obligation to disclose the information; or

(ii) has a justified interest in acting for the benefit of the general public or in the interests of himself or others.

152 f. Any violation of sections 152-152d infringing private interests only is subject to private prosecution.

(2) Public prosecution may be initiated at any time at the request of the victim.

153. (Repealed)

154. (Repealed)

155. Any person performing a public function or office who abuses his position to infringe a right of an individual or the public is sentenced to a fine or imprisonment for a term not exceeding four months. If such abuse is committed to obtain undue benefit for himself or others, the maximum sentence is imprisonment for two years.

156. If a person performing a public function or office refuses or fails to observe a duty incumbent on him by virtue of his function or office, or to obey an official command, he is sentenced to a fine or imprisonment for a term not exceeding four months. Offices held by virtue of a public election fall outside the scope of the preceding provision.

157. If a person performing a public function or office is guilty of gross or frequently repeated negligence or recklessness in performing his function or office or in performing the duties implied by the function or office, he is sentenced to a fine or imprisonment for a term not exceeding four months. Offices held by virtue of a public election fall outside the scope of the preceding provision.

157 a. When determining a sentence for violation of this Code, it must be considered an aggravating circumstance if the offence was committed by torture.

(2) An offence is considered committed by torture if it was committed by someone exercising a public function or office with a Danish, foreign or international organisation by causing injury to the body or health of another person or strong physical or mental pain or suffering on such person -

(i) to obtain information or a confession from someone;

(ii) to punish, frighten or coerce someone to do, accept or fail to do something; or

(iii) due to the person's political views, gender, race, colour, national or ethnic origin, religious faith or sexuality.

157 b. The provisions of sections 145-157 apply correspondingly to persons exercising a public function or office with a foreign or international organisation if the act falls within section 157a.

ANNEX 3: Part 71 of the Administration of Justice act

Kap. 71. Indgreb i meddelelseshemmeligheden, observation, dataaflæsning og forstyrrelse eller afbrydelse af radio- eller telekommunikation

§ 780. Politiet kan efter reglerne i dette kapitel foretage indgreb i meddelelseshemmeligheden ved at

1) aflytte telefonsamtaler eller anden tilsvarende telekommunikation

(telefonaflytning),

2) aflytte andre samtaler eller udtalelser ved hjælp af et apparat

(anden aflytning),

3) indhente oplysning om, hvilke telefoner eller andre tilsvarende kommunikationsapparater der sættes i forbindelse med en bestemt telefon eller andet kommunikationsapparat, selv om indehaveren af dette ikke har meddelt tilladelse hertil (teleoplysning),

4) indhente oplysning om, hvilke telefoner eller andre tilsvarende kommunikationsapparater inden for et nærmere angivet område der sættes i forbindelse med andre telefoner eller kommunikationsapparater

(udvidet teleoplysning),

5) tilbageholde, åbne og gøre sig bekendt med indholdet af breve, telegrammer og andre forsendelser (brevåbning) og

6) standse den videre befordring af forsendelser som nævnt i nr.

5 (brevstandsning).

Stk. 2. Politiet kan foretage optagelser eller tage kopier af de samtaler, udtalelser, forsendelser mv., som er nævnt i stk. 1, i samme omfang som politiet er berettiget til at gøre sig bekendt med indholdet heraf.

§ 781. Indgreb i meddelelseshemmeligheden må kun foretages, såfremt

1) der er bestemte grunde til at antage, at der på den pågældende måde gives meddelelser eller foretages forsendelser til eller fra en mistænkt,

2) indgrebet må antages at være af afgørende betydning for efterforskningen, og

3) efterforskningen angår en lovovertrædelse, som efter loven kan straffes med fængsel i 6 år eller derover, en forsætlig overtrædelse af straffelovens kapitler 12 eller 13 eller en overtrædelse af straffelovens §§ 124, stk. 2, 125, 127, stk. 1, 233, stk. 1, 235, 266, 281 eller en overtrædelse af udlændingelovens § 59, stk. 7, nr. 1-5.

Stk. 2. Er betingelserne i stk. 1, nr. 1 og 2, opfyldt, kan telefonaflytning og teleoplysning endvidere foretages, såfremt mistanken angår fredskrænkelser som omhandlet i straffelovens § 263, stk. 2.

Stk. 3. Er betingelserne i stk. 1, nr. 1 og 2, opfyldt, kan teleoplysning endvidere foretages, såfremt mistanken angår krænkelse som nævnt

i § 2, stk. 1, nr. 1, i lov om tilhold, opholdsforbud og bortvisning. Det samme gælder, såfremt mistanken angår en overtrædelse af straffelovens § 279 a eller § 293, stk. 1, begået ved anvendelse af en telekommunikationstjeneste, eller såfremt mistanken angår en overtrædelse af lov om værdipapirhandel m.v. § 35, stk. 1, § 36 eller § 39, stk. 1, eller artikel 3, stk. 1, eller artikel 5 i Europa-Parlamentets og Rådets forordning nr. 1227/2011/EU af 25. oktober 2011 om integritet og gennemsigtighed på engrosenergimarkederne.

Stk. 4. Brevåbning og brevstandsning kan desuden foretages, hvis der foreligger en særlig bestyrket mistanke om, at der i forsendelsen findes genstande, som bør konfiskeres, eller som ved en forbrydelse er fravendt nogen, som kan kræve dem tilbage.

Stk. 5. Aflytning efter § 780, stk. 1, nr. 2, og udvidet teleoplysning efter § 780, stk. 1, nr. 4, kan kun foretages, når mistanken vedrører en forbrydelse, som har medført eller som kan medføre fare for menneskers liv eller velfærd eller for betydelige samfundsværdier.

Udvidet teleoplysning kan foretages, uanset betingelsen i stk. 1, nr. 1, ikke er opfyldt.

§ 782. Et indgreb i meddelelseshemmeligheden må ikke foretages, såfremt det efter indgrebets formål, sagens betydning og den krænkelse og ulempe, som indgrebet må antages at forvolde den eller de personer, som det rammer, ville være et uforholdsmæssigt indgreb.

Stk. 2. Telefonaflytning, anden aflytning, brevåbning og brevstandsning må ikke foretages med hensyn til den mistænkte forbindelse med personer, som efter reglerne i § 170 er udelukket fra at afgive forklaring som vidne.

§ 783. Indgreb i meddelelshemmeligheden sker efter rettens kendelse. I kendelsen anføres de telefonnumre, lokaliteter, adressater eller forsendelser, som indgrebet angår, jf. dog stk. 2. Endvidere anføres de konkrete omstændigheder i sagen, hvorpå det støttes, at betingelserne for indgrebet er opfyldt. Kendelsen kan til enhver tid omgøres.

Stk. 2. Angår efterforskningen en overtrædelse af straffelovens kapitel 12 eller 13 eller §§ 123 eller 180, § 183, stk. 2, §§ 191 eller

192 a, § 233, stk. 1, §§ 237 eller 245, § 246, jf. § 245, § 252, stk.

1, § 261, stk. 2, eller §§ 262 a eller 288, kan der i rettens kendelse i medfør af § 780, stk. 1, nr. 1 eller 3, ud over bestemte telefonnumre anføres den person, som indgrebet angår (den mistænkte). I så fald skal politiet snarest muligt efter udløbet af det tidsrum, inden for hvilket indgrebet kan foretages, underrette retten om de telefonnumre, som indgrebet har været rettet imod, og som ikke er anført i kendelsen. Hvis særlige forhold taler for det, skal underretning efter 2. pkt. ske senest 24 timer efter indgrebets iværksættelse. Underretning efter 2. og 3. pkt. skal indeholde en angivelse af de bestemte grunde, der er til at antage, at der fra de pågældende telefonnumre gives meddelelser til eller fra den mistænkte. Retten underretter den beskikkede advokat, jf. § 784, stk. 1, der herefter kan indbringe spørgsmålet om lovligheden af indgrebet for retten. Retten træffer afgørelse ved kendelse. Burde indgrebet efter rettens opfattelse ikke være foretaget, skal retten give meddelelse herom til Justitsministeriet.

Stk. 3. I kendelsen fastsættes det tidsrum, inden for hvilket indgrebet kan foretages. Dette tidsrum skal være så kort som muligt og må ikke overstige 4 uger. Tidsrummet kan forlænges, men højst med 4 uger ad gangen. Forlængelsen sker ved kendelse.

Stk. 4. Såfremt indgrebets ojemed ville forspildes, dersom retskendelse skulle afventes, kan politiet træffe beslutning om at foretage indgrebet. I så fald skal politiet snarest muligt og senest inden 24 timer fra indgrebets iværksættelse forelægge sagen for retten. Retten afgør ved kendelse, om indgrebet kan godkendes, samt om det kan opretholdes, og i bekræftende fald for hvilket tidsrum, jf. stk. 1, 2.-3. pkt., og stk. 3. Burde indgrebet efter rettens opfattelse ikke være foretaget, skal retten give meddelelse herom til Justitsministeriet. Stk. 5. Ved modtagelse af underretning i medfør af artikel 20 i konventionen af 29. maj 2000 om gensidig retshjælp i straffesager mellem Den Europæiske Unions medlemsstater skal politiet forelægge sagen for retten senest 48 timer fra modtagelsen af underretningen. Retten afgør ved kendelse, om indgreb i meddelelshemmeligheden må finde sted, eller, hvis indgrebet allerede er iværksat, om indgrebet kan godkendes, og om det kan opretholdes. Bestemmelserne i dette kapitel finder tilsvarende anvendelse.

§ 784. Inden retten træffer afgørelse efter § 783, skal der beskikkes en advokat for den, som indgrebet vedrører, og advokaten skal have lejlighed til at udtale sig. Angår efterforskningen en overtrædelse af straffelovens kapitler 12 eller 13, beskikkes advokaten fra den særlige kreds af advokater, som er nævnt i stk. 2. Rettens beslutning om, at advokaten ikke skal beskikkes fra denne særlige kreds, kan påkæres til højere ret.

Stk. 2. Justitsministeren antager for hver landsrets område et antal advokater, der kan beskikkes i de i stk. 1, 2. pkt., nævnte sager. Justitsministeren fastsætter nærmere regler om de pågældende advokater, herunder om vagtordninger, om vederlag for at stå til rådighed og om sikkerhedsmæssige spørgsmål.

§ 785. En advokat, som er beskikket efter § 784, stk. 1, skal underrettes om alle retsmøder i sagen og er berettiget til at overvære disse samt til at gøre sig bekendt med det materiale, som politiet har tilvejebragt. Advokaten er endvidere berettiget til at få udleveret en genpart af materialet. Finder politiet, at materialet er af særlig fortrolig karakter, og at genpart heraf derfor ikke bør udleveres, skal spørgsmålet herom på begæring af advokaten af politiet indbringes for retten til afgørelse. Advokaten må ikke give de modtagne oplysninger videre til andre eller uden politiets samtykke sætte sig i forbindelse med den, over for hvem indgrebet er begæret foretaget. Den beskikkede advokat må ikke give møde ved anden advokat eller ved fuldmægtig.

Stk. 2. Bestemmelserne om beskikkede forsvarere i kapitel 66 og

§ 746, stk. 1, samt bestemmelserne i kapitel 91 om sagsomkostninger finder tilsvarende anvendelse på den beskikkede advokat. Retten kan bestemme, at den beskikkede advokat ikke senere under sagen kan virke som forsvarer for nogen sigtet.

§ 786. Det påhviler postvirksomheder og udbydere af telenet eller teletjenester at bistå politiet ved gennemførelsen af indgreb i meddelelshemmeligheden, herunder ved at etablere aflytning af telefonsamtaler m.v., ved at give de i § 780, stk. 1, nr. 3 og 4, nævnte oplysninger samt ved at tilbageholde og udlevere forsendelser m.v.

Stk. 2. Uden for de i § 780, stk. 1, nr. 3, nævnte tilfælde kan retten efter begæring fra politiet med samtykke fra indehaveren af en telefon eller andet kommunikationsapparat give de i stk. 1 nævnte selskaber mv. pålæg om at oplyse, hvilke andre apparater der sættes i forbindelse med det pågældende apparat.

Stk. 3. Bestemmelsen i § 178 finder tilsvarende anvendelse på den, som uden lovlig grund undlader at yde den bistand, som er

nævnt i stk. 1, eller at efterkomme et pålæg, som er givet efter stk. 2.

Stk. 4. Det påhviler udbydere af telenet eller teletjenester at foretage registrering og opbevaring i 1 år af oplysninger om teletrafik til brug for efterforskning og retsforfølgning af strafbare forhold. Justitsministeren fastsætter efter forhandling med erhvervs- og vækstministeren nærmere regler om denne registrering og opbevaring.

Stk. 5. Justitsministeren kan efter forhandling med erhvervs- og vækstministeren fastsætte regler om telenet- og teletjenesteudbyderes praktiske bistand til politiet i forbindelse med indgreb i meddelelseshemmeligheden.

Stk. 6. Overtrædelse af stk. 4, 1. pkt., straffes med bøde.

Stk. 7. For overtrædelse af bestemmelser i forskrifter, der er fastsat i medfør af stk. 4, 2. pkt., og stk. 5 kan der fastsættes bestemmelser om bødestraf.

Stk. 8. Justitsministeren kan fastsætte regler om økonomisk godtgørelse til de i stk. 1 nævnte virksomheder for udgifter i forbindelse med bistand til politiet til gennemførelse af indgreb i meddelelseshemmeligheden.

§ 786 a. Som led i en efterforskning, hvor elektronisk bevismateriale kan være af betydning, kan politiet meddele udbydere af telenet eller teletjenester pålæg om at foretage hastesikring af elektroniske data, herunder trafikdata.

Stk. 2. Et pålæg om hastesikring i medfør af stk. 1 kan alene omfatte elektroniske data, som opbevares på det tidspunkt, hvor pålægget meddeles. I pålægget anføres, hvilke data der skal sikres, og i hvilket tidsrum de skal sikres (sikringsperioden). Pålægget skal afgrænses til alene at omfatte de data, der skønnes nødvendige for efterforskningen, og sikringsperioden skal være så kort som mulig og kan ikke overstige 90 dage. Et pålæg kan ikke forlænges.

Stk. 3. Det påhviler udbydere af telenet eller teletjenester som led i sikring efter stk. 1 uden ugrundet ophold at videregive trafikdata om andre telenet- eller teletjenesteudbydere, hvis net eller tjenester har været anvendt i forbindelse med den elektroniske kommunikation, som kan være af betydning for efterforskningen.

Stk. 4. Overtrædelse af stk. 1 og 3 straffes med bøde.

§ 787. Den beskikkede advokat kan forlange at overvære åbningen af breve og andre lukkede forsendelser. Dette gælder dog ikke, hvis åbningen ikke kan udsættes.

Stk. 2. Reglen i stk. 1 finder tillige anvendelse på en forsvarer.

§ 788. Efter afslutningen af et indgreb i meddelelseshemmeligheden skal der gives underretning om indgrebet, jf. dog stk. 4 og 5. Har den person, til hvem underretning efter stk. 2 skal gives, været mistænkt i sagen, skal der tillige gives underretning herom og om, hvilken lovovertrædelse mistanken har angået.

Stk. 2. Underretningen gives

- 1) ved telefonaflytning og teleoplysning til indehaveren af den pågældende telefon,
- 2) ved anden aflytning til den, der har rådighed over det sted eller det lokale, hvor samtalen er afholdt eller udtalelsen fremsat, og
- 3) ved brevåbning og brevstandsning til afsenderen eller modtageren af forsendelsen.

Stk. 3. Underretningen gives af den byret, som har truffet afgørelse efter § 783. Underretningen gives snarest muligt, såfremt politiet ikke senest 14 dage efter udløbet af det tidsrum, for hvilket indgrebet

har været tilladt, har fremsat begæring om undladelse af eller udsættelse med underretning, jf. stk. 4. Er der i medfør af § 784, stk. 1, beskikket en advokat, skal genpart af underretningen sendes til denne.

Stk. 4. Vil underretning som nævnt i stk. 1-3 være til skade for efterforskningen eller til skade for efterforskningen i en anden verserende sag om en lovovertrædelse, som efter loven kan danne grundlag for et indgreb i meddelelseshemmeligheden, eller taler hensynet til beskyttelse af fortrolige oplysninger om politiets efterforskningsmetoder eller omstændighederne i øvrigt imod underretning, kan retten efter begæring fra politiet beslutte, at underretning skal undlades eller udsættes i et nærmere fastsat tidsrum, der kan forlænges ved senere beslutning. Er der efter § 784, stk. 1, beskikket en advokat, skal denne have lejlighed til at udtale sig, inden retten træffer beslutning om undladelse af eller udsættelse med underretningen.

Stk. 5. Efter afslutningen af et indgreb i meddelelseshemmeligheden i form af udvidet teleoplysning efter § 780, stk. 1, nr. 4, skal der ikke gives underretning om indgrebet til indehaverne af de pågældende telefoner.

§ 789. Får politiet ved et indgreb i meddelelseshemmeligheden oplysning om en lovovertrædelse, der ikke har dannet og efter §

781, stk. 1, nr. 3, eller § 781, stk. 5, heller ikke kunne danne grundlag for indgrebet, kan politiet anvende denne oplysning som led i efterforskningen af den pågældende lovovertrædelse.

Stk. 2. Oplysninger, der er tilvejebragt ved et indgreb i meddelelseshemmeligheden, må ikke anvendes som bevis i retten vedrørende en lovovertrædelse, der ikke har dannet og efter § 781, stk. 1, nr.

3, eller § 781, stk. 5, heller ikke kunne danne grundlag for indgrebet.

Stk. 3. Retten kan bestemme, at stk. 2 ikke finder anvendelse, såfremt

- 1) andre efterforskningsskridt ikke vil være egnede til at sikre bevis i sagen,
- 2) sagen angår en lovovertrædelse, der efter loven kan medføre fængsel i 1 år og 6 måneder eller derover, og
- 3) retten i øvrigt finder det ubetænkeligt.

§ 790. Forsendelser, der har været tilbageholdt med henblik på brevåbning, skal snarest muligt befordres videre efter deres bestemmelse. Ønsker politiet at standse den videre befordring, skal begæring om brevstandsning indgives til retten inden 48 timer efter tilbageholdelsens iværksættelse.

§ 791. Båndoptagelser, fotokopier eller anden gengivelse af det, der ved indgrebet er kommet til politiets kendskab, skal tilintetgøres, hvis der ikke rejses sigtelse mod nogen for den lovovertrædelse, der dannede grundlag for indgrebet, eller hvis påtale senere opgives. Politiet underretter en i medfør af § 784, stk. 1, beskikket advokat, når tilintetgørelse har fundet sted.

Stk. 2. Er materialet fortsat af efterforskningsmæssig betydning, kan tilintetgørelse undlades eller udsættes i et nærmere fastsat tidsrum. Politiet indbringer spørgsmålet herom for retten, der, inden der træffes afgørelse, skal give den beskikkede advokat lejlighed til at udtale sig. Bestemmelserne i 2. pkt. finder ikke anvendelse på materiale, der er tilvejebragt som led i efterforskning af overtrædelser af straffelovens kapitel 12, §§ 111-115 og 118.

Stk. 3. Er der i forbindelse med telefonaflytning, anden aflytning eller brevåbning foretaget indgreb i den mistænktes forbindelse med personer, som efter reglerne i § 170 er udelukket fra at afgive forklaring som vidne, skal materiale om dette indgreb straks tilintetgøres. Dette gælder dog ikke, hvis materialet giver anledning til, at der rejses sigtelse for strafbart forhold mod den

omhandlede person, eller at hvervet som forsvarer bliver frataget den pågældende, jf. §§ 730, stk. 3, og 736.

Stk. 4. I øvrigt skal politiet tilintetgøre materiale, som tilvejebringes ved indgreb i meddelelseshemmeligheden, og som viser sig ikke at have efterforskningsmæssig betydning.

§ 791 a. Politiet kan foretage fotografering eller iagttagelse ved hjælp af kikkert eller andet apparat af personer, der befinder sig på et ikke frit tilgængeligt sted (observation), såfremt

- 1) indgrebet må antages at være af væsentlig betydning for efterforskningen, og
- 2) efterforskningen vedrører en lovovertrædelse, der efter loven kan medføre fængselsstraf.

Stk. 2. Observation som nævnt i stk. 1 ved hjælp af fjernbetjent eller automatisk virkende tv-kamera, fotografiapparat eller lignende apparat må dog kun foretages, såfremt efterforskningen vedrører en lovovertrædelse, der efter loven kan medføre fængsel i 1 år og 6 måneder eller derover.

Stk. 3. Observation af personer, der befinder sig i en bolig eller andre husrum, ved hjælp af fjernbetjent eller automatisk virkende tv-kamera, fotografiapparat eller lignende apparat eller ved hjælp af apparat, der anvendes i boligen eller husrummet, må dog kun foretages, såfremt

- 1) der er bestemte grunde til at antage, at bevis i sagen kan opnås ved indgrebet,
- 2) indgrebet må antages at være af afgørende betydning for efterforskningen,
- 3) efterforskningen angår en lovovertrædelse, der efter loven kan straffes med fængsel i 6 år eller derover, en forsætlig overtrædelse af straffelovens kapitler 12 eller 13 eller en overtrædelse af straffelovens §§ 124, stk. 2, 125, 127, stk. 1, 193, stk. 1, 266 eller 281 eller en overtrædelse af udlændingelovens § 59, stk. 7, nr. 1-5, og
- 4) efterforskningen vedrører en lovovertrædelse, som har medført eller som kan medføre fare for menneskers liv eller velfærd eller for betydelige samfundsværdier.

Stk. 4. Observation af et ikke frit tilgængeligt sted som nævnt i stk.

1-3, som den, der angiver at være forurettet ved lovovertrædelsen, har rådighed over, er ikke omfattet af reglerne i denne bestemmelse, såfremt den pågældende meddeler skriftligt samtykke til observationen.

Stk. 5. Politiet kan fra udbydere af telenet eller teletjenester indhente oplysninger vedrørende lokaliseringen af en mobiltelefon, der antages at benyttes af en mistænkt (teleobservation), hvis indgrebet må antages at være af væsentlig betydning for efterforskningen, og efterforskningen vedrører en lovovertrædelse, der kan medføre fængsel i 1 år og 6 måneder eller derover.

Stk. 6. Det påhviler udbydere af telenet eller teletjenester at bistå politiet ved gennemførelse af teleobservation, herunder ved at give de i stk. 5 nævnte oplysninger.

Stk. 7. Observation må ikke foretages, såfremt det efter indgrebets formål, sagens betydning og den krænkelse og ulempe, som indgrebet må antages at forvolde den eller de personer, som det rammer, ville være et uforholdsmæssigt indgreb.

Stk. 8. Reglerne i § 782, stk. 2, §§ 783-785, § 788, stk. 1, § 788, stk. 2, nr. 2, og § 788, stk. 3 og 4, § 789 samt § 791 finder tilsvarende anvendelse på de i stk. 2 og 3 omhandlede tilfælde. Reglerne i §§ 783-785, § 788, stk. 1, § 788, stk. 2, nr. 1, § 788, stk. 3 og 4, samt § 791 finder tilsvarende anvendelse på de i stk. 5 omhandlede tilfælde.

§ 791 b. Aflæsning af ikke offentligt tilgængelige oplysninger i et informationssystem ved hjælp af programmer eller andet udstyr (dataaflæsning) kan foretages, såfremt

- 1) der er bestemte grunde til at antage, at informationssystemet anvendes af en mistænkt i forbindelse med planlagt eller begået kriminalitet som nævnt i nr. 3,
 - 2) indgrebet må antages at være af afgørende betydning for efterforskningen,
- og
- 3) efterforskningen angår en lovovertrædelse, som efter loven kan straffes med fængsel i 6 år eller derover eller en forsætlig overtrædelse af straffelovens kapitel 12 eller 13.

Stk. 2. Indgreb som nævnt i stk. 1 må ikke foretages, såfremt det efter indgrebets formål, sagens betydning og den krænkelse og ulempe, som indgrebet må antages at forvolde den eller de personer, som det rammer, ville være et uforholdsmæssigt indgreb.

Stk. 3. Afgørelse om dataaflæsning træffes af retten ved kendelse. I kendelsen angives det informationssystem, som indgrebet angår. I øvrigt finder reglerne i § 783, stk. 1, 3. og 4. pkt., samt stk. 3 og

4, tilsvarende anvendelse.

Stk. 4. Efterfølgende underretning om et foretaget indgreb sker efter reglerne i § 788, stk. 1, 3 og 4. Underretningen gives til den, der har

rådigheden over det informationssystem, der har været aflæst efter stk. 1. I øvrigt finder reglerne i § 782, stk. 2, §§ 784, 785, 789 samt 791 tilsvarende anvendelse.

§ 791 c. Politiet kan forstyrre eller afbryde radio- eller telekommunikation i et område, hvis der er afgørende grunde til det med henblik på at forebygge, at der i det pågældende område vil blive begået en lovovertrædelse, der efter loven kan straffes med fængsel i 6 år eller derover, eller en forsætlig overtrædelse af straffelovens kapitel 12 eller 13, og som kan medføre fare for menneskers liv eller velfærd eller for betydelige samfundsværdier.

Stk. 2. Indgreb som nævnt i stk. 1 må ikke foretages, såfremt det efter indgrebets formål, sagens betydning og den krænkelse og ulempe, som indgrebet må antages af forvolde den eller de personer, som indgrebet rammer, ville være et uforholdsmæssigt indgreb.

Stk. 3. Indgreb efter stk. 1 sker efter rettens kendelse. I kendelsen anføres det område, som indgrebet angår, og de konkrete omstændigheder i sagen, hvorpå det støttes, at betingelserne for indgrebet er opfyldt. Kendelsen kan til enhver tid omgøres. Endvidere fastsættes det tidsrum, inden for hvilket indgrebet kan foretages. Tidsrummet kan forlænges. Forlængelsen sker ved kendelse.

Stk. 4. Såfremt indgrebets øjemed ville forspildes, dersom retskendelse skulle afventes, kan politiet træffe beslutning om at foretage indgrebet. I så fald skal politiet snarest muligt og senest inden 24 timer fra indgrebets iværksættelse forelægge sagen for retten. Retten afgør ved kendelse, om indgrebet kan godkendes, og om det kan opretholdes, samt i bekræftende fald for hvilket tidsrum, jf. stk. 3, 2. og 4.-6. pkt. Burde indgrebet efter rettens opfattelse ikke have været foretaget, skal retten give meddelelse herom til Justitsministeriet.

Stk. 5. I øvrigt finder reglerne i §§ 784 og 785 tilsvarende anvendelse.

ANNEX 4: Part 74 of the Administration of Justice act

Kap. 74. Beslaglæggelse og edition

§ 801. Efter reglerne i dette kapitel kan der foretages beslaglæggelse

- 1) til sikring af bevismidler,
- 2) til sikring af det offentliges krav på sagsomkostninger, konfiskation og bøde,
- 3) til sikring af forurettedes krav på tilbagelevering eller erstatning, og

4) når tiltalte har unddraget sig sagens videre forfølgning.

Stk. 2. Genstande, som politiet tager i bevaring, som ingen har eller vedkender sig rådighed over, og hvorover ingen gør en ret gældende, er ikke omfattet af reglerne i dette kapitel.

Stk. 3. Om udlevering af breve, telegrammer og lignende under forsendelse samt om oplysning om forbindelse mellem telefoner

mv. gælder reglerne i kapitel 71. Om fratagelse af genstande og penge i forbindelse med anholdelse gælder endvidere bestemmelsen

i § 758, stk. 1.

§ 802. Genstande, som en mistænkt har rådighed over, kan beslaglægges, såfremt

1) den pågældende med rimelig grund er mistænkt for en lovovertrædelse, der er undergivet offentlig påtale, og

2) der er grund til at antage, at genstanden kan tjene som bevis eller bør konfiskeres, jf. dog stk. 2, eller ved lovovertrædelsen

er fravendt nogen, som kan kræve den tilbage.

Stk. 2. Gods, som en mistænkt ejer, kan beslaglægges, såfremt

1) den pågældende med rimelig grund er mistænkt for en lovovertrædelse, der er undergivet offentlig påtale, og

2) beslaglæggelse anses for nødvendig for at sikre det offentliges krav på sagsomkostninger, krav på konfiskation efter straffelovens

§ 75, stk. 1, 1. pkt., 2. led, og 2. pkt., og stk. 3, § 76a,

stk. 5, og § 77 a, 2. pkt., bødekraft eller forurettedes krav på erstatning i sagen.

Stk. 3. Beslaglæggelse af en mistænks hele formue eller en del af denne, herunder formue, som den mistænkte senere måtte erhverve, kan foretages, såfremt

1) tiltale er rejst for en lovovertrædelse, der efter loven kan medføre fængsel i 1 år og 6 måneder eller derover, og

2) tiltalte har unddraget sig videre forfølgning i sagen.

Stk. 4. Skriftlige meddelelser eller lignende, som hidrører fra en person, der efter reglerne i § 170 er udelukket fra at afgive forklaring

som vidne i sagen, kan ikke beslaglægges hos en mistænkt.

Det samme gælder materiale, som hidrører fra en person, der er omfattet af § 172, når materialet indeholder oplysninger, som den pågældende efter § 172 er fritaget for at afgive forklaring om som vidne i sagen.

§ 803. Genstande, som en person, der ikke er mistænkt, har rådighed over, kan beslaglægges som led i efterforskningen af en lovovertrædelse, der er undergivet offentlig påtale, hvis der er grund til at antage, at genstanden kan tjene som bevis, bør konfiskeres eller ved lovovertrædelsen er fravendt nogen, som kan kræve den tilbage. Andre formuegoder, herunder penge, som en person, der ikke er mistænkt, har rådighed over, kan beslaglægges som led i efterforskningen af en lovovertrædelse, der er undergivet offentlig påtale, hvis der er grund til at antage, at disse formuegoder bør konfiskeres.

§ 189 finder tilsvarende anvendelse.

Stk. 2. Hos personer, som efter reglerne i § 170 er udelukket fra at afgive forklaring som vidne i sagen, er skriftlige meddelelser mellem den mistænkte og den pågældende person samt dennes notater og lignende vedrørende den mistænkte ikke genstand for beslaglæggelse.

Hos personer, som er omfattet af § 172, er materiale, der indeholder oplysning om forhold, som de pågældende efter § 172 er fritaget for at afgive forklaring om som vidne i sagen, ikke genstand for beslaglæggelse.

§ 804. Som led i efterforskningen af en lovovertrædelse, der er undergivet offentlig påtale, eller krænkelse som nævnt i § 2, stk.

1, nr. 1, i lov om tilhold, opholdsforbud og bortvisning kan der meddeles en person, der ikke er mistænkt, pålæg om at forevise eller udlevere genstande (edition), hvis der er grund til at antage, at en genstand, som den pågældende har rådighed over, kan tjene som bevis, bør konfiskeres eller ved lovovertrædelsen er fravendt nogen, som kan kræve den tilbage. Når pålæg meddeles en erhvervsvirksomhed, finder § 189 tilsvarende anvendelse for andre, der i kraft af deres tilknytning til virksomheden har fået kendskab til sagen.

Stk. 2. Er en genstand udleveret til politiet efter pålæg om edition, finder reglerne om beslaglæggelse efter § 803, stk. 1, tilsvarende anvendelse.

Stk. 3. Er en genstand uden pålæg herom afleveret til politiet af de i stk. 1 nævnte grunde, finder § 807, stk. 5, anvendelse. Fremsættes der begæring om udlevering, og imødekommer politiet ikke begæringen, skal politiet snarest muligt og inden 24 timer forelægge sagen for retten med anmodning om beslaglæggelse. § 806, stk. 4, 2. pkt., og stk. 6, 1. pkt., finder i så fald anvendelse.

Stk. 4. Der kan ikke meddeles pålæg om edition, såfremt der derved vil fremkomme oplysning om forhold, som den pågældende ville være udelukket fra eller fritaget for at afgive forklaring om som vidne, jf. §§ 169-172.

Stk. 5. Justitsministeren kan fastsætte regler om økonomisk godtgørelse i særlige tilfælde for udgifter i forbindelse med opfyldelse af pålæg om edition.

§ 805. Beslaglæggelse må ikke foretages, og pålæg om edition må ikke meddeles, såfremt indgrebet står i misforhold til sagens betydning og det tab eller den ulempe, som indgrebet kan antages at medføre.

Stk. 2. Kan indgrebets øjemed opnås ved mindre indgribende foranstaltninger, herunder sikkerhedsstilling, kan der med den, mod hvem indgrebet retter sig, træffes skriftlig aftale herom.

Stk. 3. Ved beslaglæggelse til sikkerhed for det offentlige krav på sagsomkostninger, krav på konfiskation efter straffelovens § 75, stk. 1, 1. pkt., 2. led, og 2. pkt., og stk. 3, § 76 a, stk. 5, og § 77 a,

2. pkt., bødekraft eller forurettedes krav på erstatning finder reglerne i §§ 509-516 tilsvarende anvendelse.

§ 806. Afgørelse om beslaglæggelse og om pålæg om edition træffes efter politiets begæring. Begæring om beslaglæggelse til sikring af erstatningskrav kan tillige fremsættes af forurettede.

Stk. 2. Afgørelsen træffes af retten ved kendelse, jf. dog stk. 8. I kendelsen anføres de konkrete omstændigheder i sagen, hvorpå det støttes, at betingelserne for indgrebet er opfyldt. Kendelsen kan til enhver tid omgøres.

Stk. 3. Retten kan efter politiets begæring i en kendelse om edition bestemme, at politiet fra virksomheder og personer, der er omfattet af § 1 i lov om forebyggende foranstaltninger mod hvidvask af udbytte og finansiering af terrorisme, kan indhente oplysninger, som de pågældende

har rådighed over, om transaktioner på en konto, hvortil der er overført midler ved en transaktion, som er omfattet af kendelsen om edition, eller ved en transaktion, der udspringer af en transaktion, som er omfattet af kendelsen om edition. I kendelsen fastsættes det tidsrum, inden for hvilket indhentelse af oplysninger kan ske. Dette tidsrum skal være så kort som muligt og må ikke overstige 4 uger. Tidsrummet kan forlænges, men højst med 4 uger ad gangen. Forlængelsen sker ved kendelse. Politiet skal snarest muligt efter udløbet af det tidsrum, inden for hvilket indhentelse af oplysninger kan ske, underrette retten om de transaktioner, som politiet har indhentet oplysninger om. Underretningen skal indeholde en angivelse af de bestemte grunde, der er til at antage, at transaktionerne udspringer af en transaktion, som er omfattet af kendelsen om edition.

Stk. 4. Såfremt indgrebs øjemed ville forspildes, hvis retskendelse skulle afventes, kan politiet træffe beslutning om beslaglæggelse og om edition, jf. dog stk. 5. Fremsætter den, mod hvem indgrebet retter sig, anmodning herom, skal politiet snarest muligt og senest inden 24 timer forelægge sagen for retten, der ved kendelse afgør, om indgrebet kan godkendes.

Stk. 5. Beslaglæggelse efter § 802, stk. 3, kan kun ske efter retskendelse. Det samme gælder beslaglæggelse af trykte skrifter eller lydeller billedprogrammer omfattet af medieansvarsloven, i anledning af hvis indhold ansvar skal gøres gældende.

Stk. 6. Inden retten træffer afgørelse efter stk. 4, 2. pkt., skal der være givet den, mod hvem indgrebet retter sig, adgang til at udtale sig. § 748, stk. 5 og 6, finder tilsvarende anvendelse.

Stk. 7. Inden retten træffer afgørelse om pålæg om edition efter § 804, skal der være givet den, der har rådighed over genstanden, adgang til at udtale sig. § 748, stk. 5 og 6, finder tilsvarende anvendelse. Bestemmelsen i 1. pkt. finder ikke anvendelse, hvis rettens afgørelse skal danne grundlag for en international retsanmodning om edition.

Stk. 8. Afgørelse om beslaglæggelse træffes af politiet, såfremt den, som indgrebet retter sig imod, meddeler skriftligt samtykke til indgrebet.

§ 807. Politiet iværksætter beslaglæggelse. Foretages beslaglæggelse på grundlag af en retskendelse, skal denne på begæring forevises for den, som indgrebet retter sig imod. Foretages beslaglæggelsen efter reglen i § 806, stk. 4, skal politiet vejlede den pågældende om adgangen til at få spørgsmålet indbragt for retten.

Stk. 2. Politiet foranlediger ved henvendelse til den, som indgrebet retter sig imod, at en kendelse om edition opfyldes. Rettens kendelse skal på begæring forevises for den

pågældende. Afviser den pågældende uden lovlig grund at efterkomme pålægget, finder bestemmelsen i § 178 tilsvarende anvendelse.

Stk. 3. Beslaglægges materiale hos personer, der er omfattet af § 172, kan den pågældende kræve, at det første gennemsyn af materialet skal foretages af retten. § 806, stk. 6, 1. pkt., finder tilsvarende anvendelse ved rettens gennemsyn. Indtil det første gennemsyn kan ske, opbevares materialet af politiet.

Stk. 4. Har retten afsagt kendelse om beslaglæggelse af en formue eller en del af en formue, jf. § 802, stk. 3, skal politiet sørge for, at der beskikkes en værge til at bestyre den beslaglagte formue. Politiet lader kendelsen om beslaglæggelse tinglyse efter reglerne i tinglysningslovens § 48. Kendelsen forkyndes for tiltalte efter reglerne i § 159.

Stk. 5. Genstande, som kommer i politiets besiddelse som følge af beslaglæggelse eller pålæg om udlevering, skal snarest muligt optegnes og mærkes. Politiet skal på begæring udstede kvittering for modtagelsen.

§ 807 a. Samme beføjelser til beslaglæggelse som politiet, jf. § 806, stk. 4, har enhver, der træffer nogen under eller i umiddelbar tilknytning til udøvelsen af et strafbart forhold. Det beslaglagte skal snarest muligt overgives til politiet med oplysning om tidspunktet og grundlaget for beslaglæggelsen. Politiet forelægger sagen for retten i overensstemmelse med § 806, stk. 4, 2. pkt., medmindre det beslaglagte inden udløbet af 24 timer udleveres til den, mod hvem indgrebet er foretaget, eller denne meddeler skriftligt samtykke til beslaglæggelse i overensstemmelse med § 806, stk. 8.

§ 807 b. Beslaglæggelse efter § 802, stk. 1, og § 803, stk. 1, 1. pkt., medfører, at der hverken ved aftale eller kreditorforfølgning kan foretages dispositioner over det beslaglagte, som er i strid med indgrebets formål.

Stk. 2. Beslaglæggelse efter § 802, stk. 2, og § 803, stk. 1, 2. pkt., har, indtil der træffes afgørelse efter § 807 d, stk. 2 og 3, samme retsvirkning som arrest, jf. kapitel 56.

Stk. 3. Beslaglæggelse efter § 802, stk. 3, medfører, at tiltalte er uberettiget til at råde over formuen. Kreditorforfølgning kan alene foretages med hensyn til krav mod tiltalte, som bestod, før kendelsen om beslaglæggelse blev afsagt.

§ 807 c. Indtil sagens afgørelse kan begæring om hel eller delvis ophævelse af beslaglæggelse fremsættes over for retten af den, der har

interesse heri. Rettens afgørelse træffes ved kendelse, efter at de, som har interesse i afgørelsen, har haft adgang til at udtale sig.

§ 807 d. Rådighedsberøvelse som følge af beslaglæggelse efter §

802, stk. 1, og § 803, stk. 1, 1. pkt., bortfalder senest, når sagen er endeligt sluttet ved dom, påtaleopgivelse eller tiltalefrafald, medmindre det beslaglagte konfiskeres. Er der tvist om, til hvem tilbagelevering skal ske, kan retten efter begæring træffe bestemmelse om, til hvem beslaglagte genstande skal udleveres. Afgørelsen træffes ved kendelse.

Stk. 2. Gods, der er beslaglagt efter § 802, stk. 2, og § 803, stk. 1, 2. pkt., eller sikkerhed, der er stillet efter § 805, stk. 2, anvendes først til fyldestgørelse af forurettedes krav på erstatning, dernæst det offentliges krav på sagsomkostninger, dernæst krav på konfiskation efter straffelovens § 75, stk. 1, 1. pkt., 2. led, og 2. pkt., og stk. 3, § 76 a, stk. 5, og § 77 a, 2. pkt., og dernæst bødekraft. Retten kan undtagelsesvis træffe bestemmelse om en afvigende rækkefølge for fyldestgørelse.

Stk. 3. Afgørelse om anvendelse af beslaglagt gods til fyldestgørelse af de i stk. 2 nævnte krav træffes efter begæring ved kendelse. Det samme gælder, hvis der efterfølgende opstår spørgsmål med hensyn til kendelsens fortolkning. Afgørelsen har retsvirkning som udlæg, jf. § 526, stk. 2. Sluttes sagen ved påtaleopgivelse eller frifindelse, bortfalder beslaglæggelsen.

Stk. 4. Nægter retten forfølgning af et erstatningskrav under straffesagen, jf. § 991, stk. 4, og § 992, stk. 1, kan retten i forbindelse hermed bestemme, at en beslaglæggelse til sikring af dette krav bevarer sin gyldighed, jf. § 807 b, stk. 2, indtil erstatningsspørgsmålet er afgjort, forudsat at der inden 4 uger anlægges sag i den borgerlige retsplejes former eller indgives ansøgning i henhold til lov om erstatning fra staten til ofre for forbrydelser. Fastsættes der herefter et erstatningskrav, kan den ret, der har afsagt dom i straffesagen, efter begæring af forurettede bestemme, at erstatningskravet helt eller delvis skal fyldestgøres af provenuet fra det beslaglagte gods, herunder at fyldestgørelse skal ske forud for det offentliges krav på sagsomkostninger, krav på konfiskation og bødekraft. Denne afgørelse har retsvirkning som udlæg, jf. § 526, stk. 2. Sagen behandles i strafferetsplejes former.

Stk. 5. Beslaglæggelse efter § 802, stk. 3, bortfalder, når tiltalte ikke længere unddrager sig forfølgning, medmindre der er bestemte grunde til at antage, at tiltalte på ny vil unddrage sig forfølgningen. Afgørelse om beslaglæggelsens bortfald træffes af retten ved kendelse.

§ 807 e. Hvis det er af afgørende betydning for efterforskningen, at der foretages beslaglæggelse, uden at den mistænkte eller andre gøres bekendt hermed, kan retten ved kendelse træffe bestemmelse herom og om, at reglerne i § 807, stk. 1, 2. og 3. pkt., fraviges.

Stk. 2. Reglerne i § 783, stk. 3 og 4, § 784, § 785 og § 788 finder tilsvarende anvendelse på de i stk. 1 omhandlede tilfælde.

§ 807 f. Beløb, som en person har til gode hos en virksomhed, der er omfattet af § 1 i lov om forebyggende foranstaltninger mod hvidvask af udbytte og finansiering af terrorisme, kan beslaglægges midlertidigt som led i efterforskningen af en lovovertrædelse, der er undergivet offentlig påtale, hvis der er grund til at antage, at beløbet har tilknytning til hvidvask eller finansiering af terrorisme, og midlertidig beslaglæggelse anses for nødvendig for at sikre krav på konfiskation. § 805, stk. 1 og 2, finder tilsvarende anvendelse.

Stk. 2. Afgørelse om midlertidig beslaglæggelse træffes af politiet.

§ 806, stk. 4, 2. pkt., finder tilsvarende anvendelse.

Stk. 3. Politiet iværksætter midlertidig beslaglæggelse. Politiet skal snarest muligt og senest inden 24 timer underrette og vejlede den, som indgrebet retter sig mod, om adgangen til at få spørgsmålet indbragt for retten, medmindre politiet inden samme frist indgiver anmodning som nævnt i stk. 4.

Stk. 4. Hvis det er af afgørende betydning for efterforskningen, at der foretages midlertidig beslaglæggelse, uden at den, som indgrebet retter sig mod, eller andre gøres bekendt hermed, kan retten ved kendelse træffe bestemmelse herom. §§ 784, 785 og 788 finder tilsvarende anvendelse.

Stk. 5. § 807 b, stk. 1, finder tilsvarende anvendelse på midlertidig beslaglæggelse.

Stk. 6. Midlertidig beslaglæggelse bortfalder senest efter 1 uge.

ANNEX 5: Circular no. 94 of 13 May 1952

Cirkulære om politiets forvaltning af beslaglagte eller deponerede pengebeløb eller værdipapirer.

(Til politidirektøren i København og samtlige politimestre).

Da justitsministeriet finder det ønskeligt, at penge eller værdipapirer, der i henhold til frivillig deponering eller retskendelse er taget i bevaring af politiet i anledning af en verserende straffesag, administreres under fornøden sikkerhed og således, at de giver et passende udbytte, skal man anmode d'herrer om fremtidig at iagttage de nedenfor fastsatte retningslinier:

1. De tilfælde, der haves for øje, er: a) Bevaringstagelse eller beslaglæggelse i medfør af retsplejelovens § 745 af ting, der antages at burde konfiskeres, eller som ved en forbrydelse er fravendt nogen, af hvem de kan kræves tilbage.

Derimod gælder nærværende cirkulære ikke ting, der tages i bevaring eller beslaglægges for at tjene som bevismidler. Som ting anses også rede penge og værdipapirer, og i retspraksis er det antaget, at bestemmelsen også giver hjemmel til

beslaglæggelse af et beløb, der svarer til værdien af et formentlig konfiskationskrav. b) Sikkerhedsstillelse, der efter rettens

bestemmelse i medfør af retsplejelovens § 785 træder i stedet for fængsling. c) Beslaglæggelse i medfør af retsplejelovens §

797 til sikkerhed for sagsomkostninger og erstatningsansvar.

2. I forbindelse med sikkerhedsstillelse eller beslaglæggelse (bortset fra beslaglæggelse af individuelt bestemte værdipapirer) bør den pågældende gøres bekendt med, at sikkerheden kan stilles ikke blot i form af kontante penge, men også ved deponering af bank- eller sparekassebøger, hvorpå kun ihændehaveren kan hæve, obligationer, kursnoterede aktier eller andre værdipapirer, der efter omstændighederne må antages at frembyde fornøden sikkerhed og realisationsmulighed. Sikkerhed vil ligeledes kunne stilles ved betryggende selvskyldnerkaution.

3. Kontante pengebeløb på over 2000 kr., der ved de fornævnte foranstaltninger kommer i politiets besiddelse, og som ikke skønnes at ville komme til udbetaling i løbet af 4 uger, bør snarest muligt indsættes på særskilte bank- eller sparekassebøger, eventuelt med passende opsigelsesvarsel, hvorom der så vidt muligt bør træffes aftale med ejeren.

Obligationer, aktier og andre værdipapirer, som ikke skønnes at kunne udleveres i løbet af 4 uger, bør anbringes i åbent depot i en bank eller et andet anerkendt pengeinstitut til sædvanlig formueadministration.

4. Udbytte af værdier, der er taget i bevaring eller beslaglagt i medfør af retsplejelovens § 745, tilfalder statskassen, såfremt effekterne bliver konfiskeret. Tilkommer effekterne en ved forbrydelsen forurettet, tilfalder også udbyttet denne. Iøvrigt tilfalder udbytte af penge

eller værdipapirer, der er stillet som sikkerhed eller er taget i bevaring eller beslaglagt, deponenten, efterhånden som det forfalder, medmindre andet er aftalt eller fastsat af retten.

5. Såfremt der bliver spørgsmål om at udnytte særlige til beslaglagte eller deponerede værdipapirer knyttede rettigheder, såsom en med aktier forbundet stemmeret eller ret til nytægning af aktier, eller der ved udtrækning af obligationer eller indfrielse af gælds- eller pantebreve bliver spørgsmål om anbringelse af provenuet, bør politiet, når det måtte blive bekendt hermed, give vedkommende berettigede fornøden adgang til at varetage sit tarv, forsåvidt dette kan ske, uden at det offentliges sikkerhed derved forringes.

Justitsministeriet, den
13. maj 1952.

P.M.V.

Boas.

/Heide-Jørgensen.

ANNEX 6: Information pursuant to Article 23(2)(d) of the United Nations Convention Against Corruption



JUSTITISMINISTERIET

Politi- og Strafferetsafdelingen

Dato: 9. januar 2014

Kontor:
Strafferetskontoret
Sagsbeh: Louise Black
Mogensen Sagsnr.:
2013-730-0293

Dok.: 999751

Information pursuant to Article 23(2)(d) of the United Nations Convention Against Corruption

1. In accordance with Article 23(2)(d) of the United Nations Convention Against Corruption Denmark hereby informs the Secretary-General of the United Nations that the following provisions of Danish law give effect to Article 23 (laundering of proceeds of crime) of the Convention:

- Sections 290, 21 and 23 of the Criminal Code (consolidated act no. 1028 of 22 August 2013).

Those provisions are worded as follows:

”§ 290. For hæleri straffes med bøde eller fængsel indtil 1 år og 6 måneder den, som uberettiget modtager eller skaffer sig eller andre del i udbytte, der er opnået ved en strafbar lovovertrædelse, og den, der uberettiget ved at skjule, opbevare, transportere, hjælpe til afhændelse eller på lignende måde efterfølgende virker til at sikre en anden udbyttet af en strafbar lovovertrædelse.

Stk. 2. Straffen kan stige til fængsel i 6 år, når hæleriet er af særligt grov beskaffenhed navnlig på grund af forbrydelsens erhvervsmæssige eller professionelle karakter eller som følge af den opnåede eller tilsigtede vinding, eller når et større antal forbrydelser er begået.

Stk. 3. Straf efter denne bestemmelse kan ikke pålægges den, som modtager udbytte til sædvanligt underhold fra familiemedlemmer eller samlever, eller den, der modtager udbytte som normalt vederlag for sædvanlige forbrugsvarer, brugsting eller tjenester.

§ 21. Handlinger, som sigter til at fremme eller bevirke udførelsen af en forbrydelse, straffes, når denne ikke fuldbyrdes, som forsøg.

Stk. 2. Den for lovovertrædelsen foreskrevne straf kan ved forsøg nedsættes, navnlig når forsøget vidner om ringe styrke eller fasthed i det forbryderiske forsæt.

Stk. 3. For så vidt ikke andet er bestemt, straffes forsøg kun, når der for lovovertrædelsen kan idømmes en straf, der overstiger fængsel i 4 måneder.

§ 23. Den for en lovovertrædelse givne straffebestemmelse omfatter alle, der ved tilskyndelse, råd eller dåd har medvirket til gerningen. Straffen kan nedsættes for den, der kun har villet yde en mindre væsentlig bistand eller styrke et allerede fattet forsæt, samt når forbrydelsen ikke er fuldbyrdet eller en tilsigtet medvirken er mislykkedes.

Stk. 2. Straffen kan ligeledes nedsættes for den, der medvirker til krænkelse af et særligt pligtforhold, men selv står uden for dette.

Stk. 3. For så vidt ikke andet er bestemt, kan straf for medvirken ved lovovertrædelser, der ikke straffes med højere straf end fængsel i 4 måneder, bortfalde, når den medvirkende kun har villet yde en mindre væsentlig bistand eller styrke et allerede fattet forsæt, samt når hans medvirken skyldes uagtsomhed.

Unofficial translation:

“Section 290

(1) A person who unlawfully accepts or acquires for himself or for others a share in proceeds which have been obtained by a violation of the law, or unlawfully assists, by subsequently concealing,

keeping, transporting, helping with the disposal of or taking part in a similar manner, in securing for another the proceeds of a criminal offence, shall be guilty of receiving stolen goods and liable to a fine or imprisonment for any term not exceeding one year and six months.

(2) When a person has received stolen goods acting in a particularly aggravated way, especially due to the commercial nature of the offence, or due to the extent of the obtained or intended gain, or where a large number of offences have been committed, the penalty may be increased to imprisonment for any term not exceeding six years.

(3) Punishment under this provision shall not be imposed on a person, who accepts proceeds for ordinary subsistence from family members or a cohabitant, or a person who accepts proceeds as normal payment for ordinary consumer goods, articles for everyday use, or services.

Section 21

(1) Acts aimed at inciting or assisting the commission of an offence are punishable as attempts if the offence is not completed.

(2) The penalty prescribed for an offence may be reduced for attempts, especially where an attempt reflects little strength or persistence of criminal intent.

(3) Unless otherwise provided, attempts will only be punished if the offence is punishable by imprisonment for a term exceeding four months.

Section 23

(1) The penalty provided for an offence applies to everybody who is complicit in the act by incitement or aiding and abetting. The punishment may be reduced where a person intended only to provide minor assistance or support an intent already formed, and where the offence has not been completed or intentional complicity failed.

(2) The punishment may also be reduced where a person is complicit in the breach of a special duty to which he is not subject.

(3) Unless otherwise provided, the punishment for complicity in offences that do not carry a sentence of imprisonment for a term exceeding four months may be remitted where the accomplice intended only to provide minor assistance or support an intent already formed, and where his complicity was due to negligence.”

Slotsholmsgade 10

1216 København K.

Telefon 7226 8400

Telefax 3393 3510

www.justitsministeriet.dk jm@jm.dk

Table of contents

1. *Overview and checklist*
2. [Police investigation and case processing](#)
3. [Preparation](#)
 - 3.1. [Person to be charged](#)
 - 3.1.1. [Corporate liability in legislation other than the Criminal Code](#)
 - 3.1.2. [Situations where charges may also be raised against a natural person](#)
 - 3.1.3. [Local and central government authorities – specific information](#)
 - 3.1.4. [Parent/subsidiary companies – specific information](#)
 - 3.1.5. [Violations of the Criminal Code](#)
 - 3.1.6. [Selected areas of legislation other than the Criminal Code](#)
 - 3.2. [The raising of charges and trial proceedings](#)
 - 3.2.1. [Structure of the indictment](#)
 - 3.2.2. [Service of process](#)
 - 3.2.3. [The situation of natural persons while proceedings are pending](#)
4. [Legal rules](#)
 - 4.1. [Part 5 of the Criminal Code](#)
 - 4.1.1. [Persons to be charged](#)
 - 4.1.2. [Requirements for criminal liability](#)
 - 4.2. [Section 306 of the Criminal Code](#)
 - 4.3. [Attempt and complicity](#)
5. [Punishment and other legal consequences](#)
6. *After judgment*
7. [Acts and legislative material](#)

UNODC

1. Overview and checklist

2. Police investigation and case processing

When investigating cases in which it may be possible to impose criminal liability on a legal person, the police must procure the information about the ownership of the legal person, the right to make decisions in the legal person and details about its financial liability, size, organisation, etc. that is necessary due to the nature of the case in order to ensure that the person to be charged can be identified in accordance with the guidelines set out below.

The application of the guidelines requires prior case processing work, ascertaining the existence of the objective and subjective conditions required to impose criminal liability on the enterprise or one or more individuals. In this connection, it should be noted that it is a requirement for imposing criminal liability on a legal person that an offence has been committed in the course of its activities and that the offence may be attributed to one or more persons associated with the enterprise or to the enterprise as such. See section 27(1) of the Criminal Code. Please refer to [paragraph 4.1.2](#) in that connection.

According to section 752(1) of the Administration of Justice Act, before interviewing an accused, the police must inform the accused of the charge and of his right to remain silent.

When a charge is raised against a company, the charge will usually be communicated to the management of the company – usually to the legal person's managing director who is in charge of day-to-day management of the legal person. At this early stage of the case, it has usually not yet been decided whether a charge will also be raised against the managing director personally, and therefore the person in question should generally not only be notified that the company is being charged with an offence but also that the person in question is under no obligation to make a statement to the police.

At an early stage of investigations, the police should seek to clarify who the legal person wishes to appoint as its procedural representative in connection with the investigations

and, if relevant, the raising of formal charges against the legal person. If the legal person does not identify a procedural representative, a person from the management of the legal person – usually a member of its board of directors or executive board – will be the company's procedural representative.

Section 94(5) of the Criminal Code stipulates that the period of limitation is suspended when the offender is informed of the charge, or when the prosecution requests procedural steps by which the offender is charged with violation of the law. As regards legal persons, it is provided that the period of limitation may be suspended in relation to a legal person by notice to a natural person who is authorised to accept service on behalf of the legal person under section 157A of the Administration of Justice Act.

Please refer to [paragraph 3.2.2](#) for further details about service of process.

3. Preparation

3.1 The person to be charged

The guidelines for identifying the person to be charged depend on whether the case is concerned with offences under the Criminal Code or under other legislation. The guidelines for identifying a person to be charged in cases concerned with offences under legislation other than the Criminal Code can be found in [paragraphs 3.1.1 - 3.1.4](#), while the guidelines for imposing liability under the Criminal Code are covered by [paragraph 3.1.5](#).

3.1.1 Corporate liability in legislation other than the Criminal Code

The general rule when identifying the person to be charged for offences under legislation other than the Criminal Code is that the charge will be raised against the legal person.

See paragraph 4.1.1 for a definition of the persons to be charged who are subject to the provisions governing criminal liability for companies, etc.

In the travaux préparatoires of Part 5 of the Criminal Code (L 201 of 7 February 1996, general comments, section 3.1), it has thus been implied that the legal person's criminal liability must be the primary one in many areas. This applies particularly when an offence has been motivated by financial reasons but also if the negligence displayed is not aggravated or the offence was committed by subordinate staff in the enterprise.

3.1.2 Situations where charges may also be raised against a natural person

In a number of situations, there may be reason to raise charges against one or more natural persons – in addition to the charge against the legal person - if the person(s) in question has/have acted with intent or gross negligence.

The following guidelines should be applied when determining whether charges should also be raised against natural persons:

a) General guidelines

If the management of the legal person or a senior officer, such as the managing director, has acted with intent or gross negligence, the charge must generally be raised against the natural person(s) responsible as well as against the legal person.

Charges against subordinate employees should generally not be raised unless advised by special circumstances. This could be the case if the offence is of a serious nature and the subordinate employee committed it intentionally and possibly at his own initiative. The legal person must be charged as well.

If the criminal offence is of a nature that warrants a request for an order for imprisonment, this order must necessarily be requested against a natural person.

b) Companies in which individuals have sole control

The criminal liability for violations committed in companies in which individuals have sole control must be imposed on the basis of the same principles as for violations committed in other legal persons.

This means that, as a rule, the charge will only be raised against the legal person, see paragraph 3.1.1. If the management of the company or a senior officer, such as the managing director, has acted with intent or displayed gross negligence, the charge must, however, generally be raised against the natural person(s) responsible as well as against the legal person, see item a) above.

Where the day-to-day manager of company may fully own the company in which the violation was committed (as the principal shareholder), this should therefore not – in principle – affect the criminal-law sentencing of the person in question, see the Criminal Law Commission's Report No. 1289/1995, paragraph 8.5.2. Generally, this must also apply in situations where the company may subsequently have been declared bankrupt.

However, there may be quite specific circumstances in which charges should be raised against a day-to-day manager, who must be presumed to have sole control of the company's affairs, even though the person in question may not have committed the offence intentionally or with gross negligence. However, this requires that also simple negligence is punishable under the statute in question. This will primarily be the case when the natural person in question has previously been the day-to-day manager and sole decision-maker in several legal persons that have stopped existing after a short period and similar offences have been committed in the legal persons in question. In such situations, the legal person must be charged as well, provided that it still exists.

If charges are raised against individuals as well as companies, including partnerships, owned fully or partly by the individuals in question, and these charges will in reality lead to double punishment of the same person, this should be taken into account in the sentencing. Please see the judgments referred to in the Weekly Law Reports U 2005.2290V, TfK 2011.772 and U 2012.3395H.

In companies where the owner is the day-to-day manager and sole decision-maker as regards the company's affairs, charges should generally also not be raised against subordinate employees unless special circumstances are involved. This could be the case if the offence is of a serious nature and the subordinate employee committed it intentionally and possibly at his own initiative. The company must be charged as well.

c) Sole trading businesses (section 26(2))

Please refer to paragraph 4.1.1 for further details about the sole trading businesses covered by the rules on criminal liability for legal persons.

The basic approach to such enterprises is also that charges must be raised against the enterprise, see paragraph 3.1.1.

Charges will be raised against owners when they have acted intentionally or displayed gross negligence. In such situations, the enterprise will not be charged as well. Thus, the travaux préparatoires of section 26(2) of the Criminal Code (L 201 of 7 February

1996, general comments section 3.2 a.) show that it was intended, in situations where liability is imposed on sole trading businesses under section 26(2) of the Criminal Code, that personal criminal liability should not be imposed on the owner too for the same offence.

Charges must be raised against senior officers if they have acted intentionally or displayed gross negligence. In such cases, charges must also be raised against the enterprise or the owner personally, if the owner committed the offence intentionally or with gross negligence.

Charges against subordinate employees should generally not be raised unless special circumstances are involved. This could be the case if the offence is of a serious nature and the subordinate employee committed it intentionally and possibly at his own initiative. Charges must also be raised against the enterprise or the owner personally, if the owner committed the offence intentionally or with gross negligence.

d) Situations in which legislation imposes independent and individual liability on a natural person

In a number of areas, specific rules have been laid down, imposing independent and individual criminal liability on individuals due to their special position or function. Examples could be contravention of civil aviation law by pilots and crew members, contravention of the Act on Safety at Sea by shipmasters and contravention of animal welfare law by road carriers and farmers. In this connection, please see the Supreme Court judgment referred to in the Weekly Law Reports, U 2012.3395H.

In the event of contravention of rules of the type mentioned above, the general rule is that charges must be raised against the person in question and usually also against the legal person.

In addition, some areas of legislation allow for independent and individual criminal liability even though the contravention cannot be attributed to the persons in question as intentional or negligent acts (objective individual liability).

Please see paragraph 3.1.6 for further details about the areas in which special rules have been laid down as regards the allocation of liability that go further than the criminal liability imposed on legal persons.

Please otherwise refer to Report No. 1289/1995, paragraph 8.5.2 in which it is stated that it would counteract the purpose of the legislation if the rules on allocation of liability were to exempt some of these persons from being held liable in case of their criminal contravention of the law.

3.1.3 Local and Central Government Authorities – Specific Information

According to section 26(1) of the Criminal Code, provisions on criminal liability for companies, etc. also cover local and central government authorities, unless otherwise provided.

Under section 27(2) of the Criminal Code, central and local government authorities may solely be punished for offences committed in the performance of activity that is comparable or equal to the activity of private sector entities. Thus, public authorities may only become subject to criminal liability under Part 5 of the Criminal Code if the authority in question acts in a manner, which is comparable to the activity of a private individual or a company, i.e. in the capacity of entrepreneur. An example could be contravention of the Environmental Protection Act in connection with the operation of a local water treatment plant. See also paragraph 4.1.2.

However, the rules in Part 5 of the Criminal Code do not cover offences committed as part of the exercise of authority, for example when an authorisation is issued illegally. Such situations may only lead to personal criminal liability for the individuals responsible.

The question of whether – in situations covered by Part 5 of the Criminal Code – charges should be raised against both the public authority and one or more individuals must be determined on the basis of the same guidelines as those which apply to other legal persons covered by section 26(1) of the Criminal Code, see paragraph 3.1.2.a.

Thus, the general rule is that charges must be raised against the public authority.

If managerial or senior staff of the public authority, including any publicly elected representatives, have acted with intent or displayed gross negligence, the charge must be raised against the person(s) who are subject to personal liability as well as against the public authority.

Charges against subordinate employees should generally not be raised unless advised by special circumstances. In such situations, the public authority must be charged as well.

3.1.4 Parent/Subsidiary Companies – Specific Information

If a violation is committed in a subsidiary, the liability generally lies with this company and not the parent company, just as the liability for violations committed in the parent company generally lies with the parent and not the subsidiary.

However, in all cases of this nature, it should be considered whether it is a group of companies where the liability for certain activities is placed with the subsidiary, while in reality the decisions are made at group level, i.e. in the parent company, and thus affect the activities of the subsidiary. In such situations, the parent company should be charged along with the subsidiary.

If it cannot be proved that the real decisions were made in the parent company, it should be considered if the parent company could be regarded as an accomplice to the violations committed in the subsidiary by aiding, abetting, counselling or procuring, see section 23 of the Criminal Code. Depending on the circumstances, this could be the case if the parent company encourages the subsidiary to act illegally or if the parent fails to prevent a criminal offence which it has a presumption that the subsidiary will commit.

3.1.5 Violations of the Criminal Code

Section 306 of the Criminal Code provides authority for punishing legal persons for all violations of the Code. In the travaux préparatoires of the provision (L 35 of 13 December 2001, general comments, paragraph 2.3.1.2) it was, however, a presumption that, in practice, primarily criminal offences committed to obtain a gain for the legal person would give rise to imposing criminal liability on the legal person. In the travaux préparatoires, examples of such violations which may be committed within the enterprise and thus result in criminal liability for the legal person include making incorrect statements on behalf of the enterprise, active bribery, general fraud as well as tax and VAT fraud. Please refer to paragraph 4.2.

Whenever there may be a basis for imposing criminal liability on a legal person for violation of the Criminal Code, the general rule is that – in addition to charges against

the legal person – charges must also be raised against the natural person(s) who contravened the Criminal Code provision in question.

Thus, in the travaux préparatoires (L 35 of 13 December 2001, general comments, paragraph 2.3.1.2) it is stated that criminal liability imposed on the legal person does not exclude individual criminal liability for a person who intentionally violated the Criminal Code provisions in question. It is presumed that criminal liability will generally also be imposed on the individuals involved.

The rate of attribution required will depend on the individual criminal law provision. If intent is required, criminal liability for the legal person will only be relevant if evidence proves that one or more persons within the enterprise has violated the criminal law provision intentionally. If merely negligence is required in order to impose individual liability, the same attribution requirements apply in relation to the legal person.

3.1.6 Selected areas of legislation other than the Criminal Code As stated in paragraph 3.1.2., item d) above, several areas of law have special provisions or an established practice for the imposition of criminal liability that differ from the guidelines set out above.

This is the case in the traffic area, for example, where it follows from section 118(9) of the Road Traffic Act that the owner (or user) of a motor vehicle may be held liable to a fine for violation of the rules concerning excess load, driving hours and rest periods, even if the violation cannot be attributed to him as intentional or negligent. Thus, the provision prescribes an objective individual liability for the owner (the user) when the driving takes place in the owner's (the user's) interest, irrespective of whether he has any financial interest in the violation. Under this provision, the owner of a lorry may be held liable for certain violations of the Road Traffic Act committed by a driver.

This liability is exclusively related to the situation of driving with excess load or contrary to the rules on driving and resting time. If other provisions are violated during the

driving, the owner will solely be liable under the general rules of section 23 of the Criminal Code, if the owner contributes to a negligent or intentional act, see paragraph. 4.3.

According to the established practice, criminal liability in cases concerned with excess load and driving and resting time will be imposed on the owner as well as the driver of the vehicle.

The background is that the owner, who will as a main rule be a legal person, will have a financial gain from the offences in question, while the driver of the vehicle is subject to a special obligation, see paragraph 3.1.2, item d).

In addition, in its Report No. 1289/1995, section 8.5.2., the Criminal Law Commission has pointed out that, in certain areas, current legislation imposes an independent and individualised responsibility on natural persons for observing the rules. In those areas, it would be contrary to the purpose of the legislation if rules on the allocation of liability would exempt some of these persons from liability, if they committed a punishable violation of the rules. In that connection, the Criminal Law Commission refers to the example of an employee's driving with an excess load to point out that normally it is not possible to refrain from imposing individualised liability at the same time as charges are raised against the company that is the employer and owner of the vehicle.

See moreover the paragraph on road traffic in the Instructions, RM 4/2000, 20 and 21.

In cases involving the transportation of animals, questions may arise concerning the persons to charge, as there may be a basis for imposing criminal liability on both an employed driver, his employer/company, other employees in the transport company and/or the person (typically a farmer) who has had an animal transported even if it is unfit for transport. In addition, it may be relevant to impose criminal liability on the transport company as such.

The specific guidelines for raising charges in this type of case are described in the paragraph on animal welfare, paragraph 3.2. C, to which reference is made (RM 2/2008).

In the area of violation of legislation covering income tax, excise duty and value added tax, etc., charges will only be raised according to the established practice against the majority shareholder or the sole shareholder, in cases where the day-to-day manager is also a majority shareholder or sole shareholder and may be assumed to have sole control of the company's affairs, if the offence was committed intentionally or with gross negligence.

In other cases where the circumstances referred to above prevail but, due to the seriousness of the offence, charges are raised according to the overarching provision in section 289 of the Criminal Code, the criminal liability should be restricted to the majority shareholder or the sole shareholder. If it is therefore a consequence of the clear practice in the area of legislation in question that the legal person will not be subjected to criminal liability for having contravened the relevant legislation, the same practice may be transferred to the contravention of the Criminal Code. Please refer in this connection to the explanatory notes to Bill No. 379 of 6 June 2002 paragraph 2.3.1.2 (L 35 of 13 December 2001).

In the area of health and safety at work, it follows from section 83(1) of the Working Environment Act that an employer may be held liable to pay a fine for violation of a number of listed provisions of the Act, even if the violation cannot be attributed to the employer as an intentional or negligent act. According to section 83(3) of the Act, it is however not possible to impose criminal liability on the employer for certain violations, if the employer has observed his obligations as prescribed by Part 4 of the Act. Thus, to a certain extent this has introduced objective individual liability for the employer, which means that the criminal liability may be placed with the employer, even if, subjectively or objectively, he has nothing to do with the violation.

It appears from section 83(1), 2nd sentence, of the Working Environment Act that a requirement for imposing criminal liability on the employer is that the violation can be attributed to one or more persons associated with the enterprise or the enterprise as such.

However, it is not a requirement that the violation can be attributed to the employer personally.

Thus, charges should only be raised against individuals under section 83 of the Working Environment Act in the cases where it is not possible to impose criminal liability on a legal person for the same offence. This may particularly be the case in connection with small sole trading businesses of a simple structure with a few employees, which are not comprised by the rules on the criminal liability of legal persons. See in this connection Report No.

1289/1995, paragraphs 10.3 and 10.6.

Refer moreover to the section on health and safety at work, item 5 in RM 8/2006.

In respect of restaurant operation, etc. it follows from section 37(7) of the Restaurants Act that restaurant owners, canteen owners and their managers may be subjected to objective criminal liability in relation to their employees' violation of provisions, including the provision prohibiting serving alcoholic beverages to persons of less than 18 years of age and severely intoxicated individuals. It appears from the provision that criminal liability may be imposed no matter whether the violation cannot be attributed to those involved as an intentional or negligent act. Where the restaurant or canteen owner is a company, the state, a local authority or a joint local authority undertaking, the company, the State, the local authority or the joint local authority undertaking may be subjected to criminal liability.

In the assessment of criminal liability according to section 37(7) of the Act, it is necessary to take reasonable account of the extent to which the restaurant owner etc. may be assumed to have fulfilled his supervision duty.

When the requirements for raising charges are fulfilled, charges must be raised against both the restaurant owner and the employee as a consequence of the authority to impose liability provided by section 37(7) of the Act. See moreover the section on restaurant operation and alcohol licences, etc. In the Instructions, RM 6/2005 para. 5.

The Media Liability Act includes a special liability system that applies in relation to violations committed through print or electronic media. The Act contains several provisions on objective individual liability, which will not be reviewed here.

It should be mentioned, however, that under section 11(1) of the Media Liability Act, the editor is responsible for the contents of an unsigned article in a publication, even if the offence cannot be attributed to the editor as intentional or negligent. According to section

11(2), the editor is moreover objectively liable for the contents of a signed article if it is not possible to impose liability on the named writer, for example due to lack of compos mentis. It may moreover be mentioned, as an example, that according to section 15(1) of the Media Liability Act, the publisher is liable on an objective basis for the contents of the publication, in case liability cannot be imposed on the editor. Where the publisher is a legal person, liability may be imposed on the legal person as such under the provisions of section 15(2) of the Act.

3.2 The raising of charges and trial proceedings

3.2.1 Structure of the indictment

Section 834(1) of the Administration of Justice Act, which contains the requirements for the structure of an indictment, provides that the indictment must include inter alia the defendant's name and address and as far as possible the defendant's civil reg. no. or similar. It means that where charges are raised against a legal person, the indictment must include the name and address of the legal person and its CVR registration number, if any.

In principle, it will not be necessary to state the name of the company's procedural representative – typically a member of its board of directors or executive management

– in the indictment.

These guidelines may also be applied in connection with the drafting of a fixed penalty notice to be settled out of court.

3.2.2 Service of process

Section 157A of the Administration of Justice Act provides special rules on the service of process on legal persons.

It follows from section 157A(1) that, in respect of a legal person, a summons or notice may be served by post on a member of its executive management, a member of its board of directors or another officer who is responsible for the legal person's affairs at its postal address. According to the travaux préparatoires (Bill No. 12 of 3 October

the last category may comprise an officer with powers of procuration, a partner, a general partner, a member of a supervisory board under the provisions of section 111 of the Companies Act, in cases where the supervisory board may represent the company according to section 135(4) of the Act and, in respect of estates left by deceased persons administered out of court, the person to whom communication to the estate may be transmitted as provided by section

25(6) of the Estates Administration Act.

In addition, a summons or notice may be served by post on members of the legal person's staff at the postal address of the legal person, i.e. the address shown in the legal person's letterhead or similar. A requirement stated in the travaux préparatoires (Bill No. 12 of 3

October 2012, special comments on section 1 para. 6) of the Bill) is that such staff

members should be dealing with administrative case processing (typically a receptionist) on site, unlike categories such as staff who deal with maintenance, etc. of the physical

setting. There is no requirement that staff members must have attained the age of 18 years.

In the cases where charges are also raised against the particular partners or general partners personally, the summons or notice must be served on each of these persons according to the travaux préparatoires (Bill No. 12 of 3 October 2012, special comments on section 1 para. 6) of the Bill). It should be noted that a partner or general partner may also be a legal person.

Where a summons or notice is due to be served on a legal person by post or by a bailiff, it follows from section 157A(2) para. 1) of the Administration of Justice Act that it should be served on a member of its executive management, a member of its board of directors or another officer who is responsible for the affairs of the legal person, as far as possible at the location from where the legal person is operated. The words “the location from where the legal person is operated” should be interpreted in a broad sense according to the travaux préparatoires (Bill No. 12 of 3 October 2012, special comments on section 1 para. 6 of the Bill). A summons or notice may moreover be served at the natural person’s residence, temporary address or place of work. Service at a person’s residence is not secondary to service at the location from where the legal person is operated. However, as a starting point, it should be sought as far as possible to serve process at the location from where the legal person is operated.

If a member of a legal person’s executive management, a member of its board of directors or another officer who is responsible for the legal person’s affairs is not present at his residence, the summons or notice may moreover be served at the residence on persons who belong to the household, who have attained the age of 18 years, such as a spouse or cohabitant, as set out in section 157A(2) para. 2) of the Act.

In addition, in the case of staff members who have attained the age of 18, a summons or notice may be served by post or by a bailiff at the location from where the legal person is operated, as set out in section 157A(2) para. 3) of the Act.

In respect of trustees, administrators of estates etc., a summons or notice may only be served by post or by a bailiff on the trustee or administrator himself or his/her employees

who have attained the age of 18 years at the location from where the trustee, administrator, etc. operates his business, as set out in section 157A(2) para. 4). If a bankrupt estate is dealt with by several trustees or a decedent estate by several administrators while the estate is being wound up, etc., it will be sufficient according to the travaux préparatoires of the provision (Bill No. 12 of 3 October 2012, special comments on section 1 para. 6) of the Bill) that a summons or notice is served upon one of them.

In respect of public authorities, it follows from section 157A(2) para. 5) of the Administration of Justice Act that a summons or notice may solely be served by post or by a bailiff on employees of the authority who have attained the age of 18 years and at the authority's address. A summons or notice may not be served by telephone in relation to legal persons.

3.2.3 The situation of natural persons while proceedings are pending

The procedural representative who is due to represent the legal person during a trial hearing (typically a member of its board of directors or its executive management) should during the pre-trial proceedings in the criminal prosecution of the legal person – independently of his/her personal position in the case – as a main rule be dealt with as a defendant. This means that the representative should not make a statement under affirmation and that the representative must be given an opportunity to be present throughout the trial.

Other persons, including members of staff, may, however, as a main rule be dealt with according to the rules governing witnesses. Thus, as a starting point these persons will be subject to the duty to give evidence. This does not apply, however, if the persons have been charged personally or are facing a risk of being charged.

In respect particularly of cases in which a public authority may be charged, all employees should be treated according to the witness rules, unless they have been charged personally or are facing a risk of being charged. Thus, the guidelines that apply to public authorities differ from those concerned with private-sector legal persons.

In other respects, please refer to Report No. 1289/1995 on legal persons' liability to pay fines, page 181ff.

4. Legal rules

4.1 Part 5 of the Criminal Code

Part 5 of the Criminal Code, which was inserted by Act No. 474 of 12 June 1996 to Amend the Criminal Code (L 201 of 7 February 1996) [Link], includes rules on the criminal liability of legal persons. The Act was based on the Criminal Justice Commission's Report No. 1289/1995 on legal persons' liability to pay fines.

The provision of section 25 of the Criminal Code establishes the general rule that legal persons may be sanctioned when the law provides special authority to do so. The provision does not in itself contain authority to impose such a liability but requires that it has been stipulated in or in pursuance of the Act in question that legal persons must be subject to criminal liability.

4.1.1 Persons to be charged

The rules set out in section 26 of the Criminal Code define the range of persons who may be charged under corporate criminal liability provisions, etc.

Section 26(1) of the Criminal Code comprises criminal liability provisions for legal persons, meaning, unless otherwise provided, all legal persons including private and public limited companies, cooperative societies, partnerships, associations, foundations, estates and local and central government authorities. It is not an exhaustive list. Thus, the term 'legal person' comprises any type of organisation, etc. that may act in matters involving legal obligations, irrespective of whether they operate commercial business or are non-commercial entities.

As mentioned, the concept includes local and central government authorities unless otherwise provided. Moreover, joint local authority enterprises as defined by section 60

of the Local Government Act are included as well, irrespective of whether the enterprise is a partnership, a cooperative society or similar, see section 5.5.3 of Report No. 1289/1995.

Under the provisions of section 26(2) of the Criminal Code, the rules on criminal liability for legal persons comprise sole traders too, as far as they may be equated with the entities referred to in subsection (1), particularly in light of their size and organisation. According to the travaux préparatoires (Bill no. 201 of 7 February 1996, general comments section 3.2 letter a), a prior requirement for such a liability is that, in respect of competence and allocation of responsibility, the organisation of the sole trading business will make it natural to equate the business with a legal person and that (as of the time when an offence is committed) the entity employs 10 – 20 employees.

In certain cases, the conditions of the legal person may have changed during the period after the criminal offence was committed, making it necessary to consider whether the legal person has maintained its identity in the sense of criminal law and thus continues to be the proper person to charge.

Basically, it is without any importance whether the management or other employees are replaced or the body of shareholders is changed. In principle, it is also of no importance for criminal liability that a business entity is converted, for instance from a partnership or a private limited company into a public limited company, and it is without any importance for the company's criminal liability that after an offence has been committed the entity has discontinued the activity that gave rise to the contravention of the law.

In case two entities are merged, the basic principle to be applied is universal succession, meaning that any criminal liability that might otherwise be aimed at the merging company may be considered to have been transferred to the surviving company.

In cases where, after a criminal offence, the legal person has been split up whereby the entity that gave rise to the punishable offence has been separated from the original company, the question of which person to charge will depend on a specific assessment of whether in respect of operation, ownership, management, etc. after the de-merger,

one company may be found to continue the part of the company's activity that is of relevance to the criminal proceedings.

In case the legal person has been dissolved by bankruptcy or liquidation, etc. it will not be possible to impose any criminal liability on the legal person. If the legal person has been dissolved as a solvent concern there may, however, be a possibility of confiscation of proceeds from the owners in accordance with section 76(4) of the Criminal Code.

4.1.2 Requirements for criminal liability

The specific requirements for imposing criminal liability on legal persons are set out in section 27 of the Criminal Code. According to this provision, criminal liability on the part of a legal person will require that a criminal offence has been committed in the course of its activities and that the offence can be attributed to one or more individuals associated with the legal person or to the legal person as such.

It appears from the travaux préparatoires of the provision (Bill no. 201 of 7 February 1996, the general comments section 2.5), that offences committed by employees in connection with the performance of their work must generally be considered to have been committed in the company's activity, while on the other hand offences may occur that have been committed by employees who may be considered to be so alien to or detached from the legal person that objectively such offences cannot be attributed to the legal person's sphere of activity.

In addition, it appears from the explanatory notes (Bill no. 201 of 7 February 1996, the general comments section 2.5), that a requirement is that the offence can be attributed subjectively to one or more individuals associated with the legal person or the legal person as such, and that the assessment may either be concerned with the conditions of individuals (1st indent) or the legal person as such (2nd indent).

It is explained in that connection that an offence committed within the sphere of a legal person will generally be attributable to its management and/or staff and thereby be

covered by the 1st indent. It is stated furthermore that presumably the 2nd indent will be of separate importance especially where faults accumulate and the offence will not be attributable to individuals because of their modest share or low rate of negligence in relation to the offence.

The question of the type of attribution required (negligence, possibly gross negligence or wilful intent) will depend, according to the travaux préparatoires, on the subjective requirements in relation to the penalty provision in question. If, for example, criminal liability depends on intent, criminal liability for the legal person will thus require that the offence can be attributed to individuals as a wilful act.

Finally, it will not be possible for any person with the required attribution of an offence committed within the sphere of the legal person to cause imposition of criminal liability on the legal person. The requirement is that the employee in question must be 'connected with' the legal person. As explained in the travaux préparatoires this requirement is clearly satisfied when management and employees are involved.

Offences committed in connection with purely private steps taken by an employee will not impose any criminal liability on the company, as the offence will generally not have the required functional connection with the company's operations. Cases that fall outside criminal liability are moreover those in which the criminal act or failure to act was committed as part of the performance of ordered job tasks, but where the act in question may be characterised as a fully abnormal step taken by the employee. If in connection with his/her work process, an employee chooses a fully inadequate method which no one else would have chosen, this cannot be considered an abnormal step. It will also not be of any importance if the employee has overstepped his/her area of duty or acted contrary to issued instructions, where the offence committed may be considered as part of the legal person's operations. See in that connection Report No. 1289/1995, section 6.6.2.

Section 27(2) of the Criminal Code specifies that central and local government authorities can solely be punished for offences committed when they carry out activities which correspond to or may be equated with activities carried out by private sector entities. The imposition of criminal liability will thus depend on whether the public

authority acts in the capacity of entrepreneur. See Report No. 1289/1995, section 6.6.7. Please refer also to paragraph 3.1.3.

4.2. Section 306 of the Criminal Code

Section 306 was given its present wording by Act No. 378 of 6 June 2002. The explanatory notes to the Bill (L 35 of 13 December 2001, general comments section

2.3.1.2.) show inter alia that the criminal liability of legal persons in relation to offences of the Criminal Code should generally be subject to the general requirements that apply to this type of liability under section 27 of the Criminal Code.

This means that a requirement for criminal liability is that the offence was committed in the course of the activities of the legal person and that the offence can be attributed to one or more individuals associated with the legal person or to the legal person as such. In this connection the explanatory notes (L 35 of 13 December 2001, general comments section 2.3.1.2) refer to examples of offences such as giving incorrect declarations on behalf of the undertaking, active bribery, general fraud, income tax and value added tax fraud, European Community fraud, etc., which may be committed within the undertaking and therefore cause criminal liability to be imposed on the legal person. Against this background, it is assumed that in practice it will still be the criminal law offences committed to obtain a gain for the legal person that will particularly bring up the question of punishment of the legal person.

It is pointed out at the same time in the travaux préparatoires (L 35 of 13 December 2001, general comments section 2.3.1.2) that a wide range of criminal law offences that characterize tortious, dangerous or otherwise objectionable acts committed by individuals such as homicide, violent assault, rape, vandalism, etc. may generally be considered to be so alien and non-typical of the activity carried out by the legal person that they cannot be considered to have been committed “in the course of its activities”.

Whether criminal liability for the legal person will be incurred exclusively when an individual has acted with intent or whether also negligent offences may cause criminal liability to be imposed on the legal person will depend on the specific penalty

provision. If intent is a requirement, criminal liability for the legal person may only be considered if one or more individuals within the undertaking have intentionally contravened the criminal code provision in question. If the provision requires nothing but negligence to impose individual liability, the same attribution requirement will apply in relation to the legal person.

Whether the requirements for imposing criminal liability on a legal person are satisfied will depend on the specific circumstances. Please refer in this connection to the travaux préparatoires (L 35 of 13 December 2001, general comments paragraph 2.3.1.2).

The provision of section 306 was originally inserted into the Criminal Code by Act No. 228 of 4 April 2000 (L 15 of 6 October 1999), whereby it was made possible to punish legal persons for contravention of a range of specifically listed provisions of the Criminal Code.

By Act No. 280 of 25 April 2001 (L 129 of 6 December 2000), the provision was amended to the effect that legal persons could be punished for all intentional contraventions of the Criminal Code, provided that the contravention was committed in order to obtain a financial gain for the legal person.

By Act No. 378 of 6 June 2002 (L 35 of 13 December 2001), whereby section 306 of the

Criminal Code was given its present wording, the requirement of a financial gain was abolished, and the provision was revised to include both negligent and intentional contravention of the Criminal Code. See further details above.

4.3 Attempt and complicity

It appears from section 27(1) 2nd sentence of the Criminal Code that section 21(3) of the Code concerning attempt will apply mutatis mutandis to legal persons.

It has thereby been specified that legal persons may be punished for attempt to the same extent as natural persons, irrespective of whether the contravention is of the Criminal Code or of other legislation. Thus, the provision implies that legal persons can solely be

punished for attempted crimes if the prescribed maximum penalty is higher than four months of imprisonment. For further details, refer to the travaux préparatoires of Act No. 378 of 6 June 2002 (L 35 of 13 December 2001, special comments on section 1 para. 1) of the Bill).

To the extent that imposing a penalty on a legal person for an attempted crime is being considered, this will depend on the requirement that an individual within the legal person has acted with the intent required to impose a penalty for attempt, as stated in the explanatory notes to the Bill for Act No. 228 of 4 April 2000 (L 15 of 6 October 1999, special comments on section 1 para. 10) of the Bill). Refer in this connection also to Report No. 1289/1995, section 6.4.2.

According to section 23(1) of the Criminal Code, the penalty provision given for a contravention of the law will comprise all who have contributed to the act by aiding, abetting, counselling or action. This general provision on complicity in criminal offences will also apply to legal persons. Thus, a legal person may be punished for complicity in a criminal offence committed by another legal person, see for instance the rulings referred to the Weekly Law Reports U 1985, 950V, U 1996.209/2H and U 2004.2181/2V. See also paragraph 3.1.4 concerning the relationship between parent companies and subsidiaries.

5. Punishment and other legal consequences

Legal persons may solely be punished with a fine. Such fines will be determined as aggregate fines irrespective of whether the legal person has contravened the Criminal Code or other legislation, see. Report No. 1289/1995, section 11.3.2.

The general provision on sentencing laid down by section 80 of the Criminal Code must also be applied in determining fines to be imposed on legal persons. Thus, when fixing the penalty, the Court must take account of aspects including the severity of the offence.

In addition, it is prescribed explicitly by section 51(3) of the Criminal Code that within the limits allowed by the consideration of the nature of the offence and the circumstances referred to in section 80 of the Code, the Court must give special consideration to the offender's capacity to pay and to the gain or savings obtained or intended to be obtained. In practice, the fine should thus be determined particularly with consideration for the legal person's financial position and the financial gain for the legal person obtained by the offence. It will therefore usually have impact on the determination of the penalty if the person to be charged is an individual or a legal person, and whether it is a small or larger legal person. In the case of a large legal person, the size may in itself call for the fixing of a proportionately bigger fine, see Report No. 1289/1995, section 11.5.1.

It should be noted that special sentencing rules are laid down in certain areas of legislation other than the Criminal Code which are complementary to the provisions of the Criminal Code, for example the Competition Act (section 23(5)), the Tax Control Act (section 14(6) and section 17(7)), the Financial Business Act (section 373(9)) and the Securities Trading Act (section 93(8)).

A request for a penalty to be imposed on offenders who may be personally liable, as referred to in paragraph 3.1.2, must be determined in conformity with the general sentencing rules based on the severity of the offence and the financial circumstances of the offender, so that it is sought to recover the gain that may have been obtained or intended to be obtained by means of an order for confiscation and an order for payment of a fine against the legal person.

In cases concerned with seeking to recover a financial gain that has been obtained, it may be relevant in the cases where no charges are raised against the legal person to summon the legal person as a co-defendant in the proceedings against the natural person, requesting an order for confiscation of the proceeds achieved under section 76(1) of the Criminal Code and section 684(1) para. 3 of the Administration of Justice Act. See in this connection Report No. 1289/1995, section 11.7.

The provisions of the Criminal Code that are in the nature of overarching provisions in relation to provisions of legislation other than the Criminal Code, for instance sections

289, 296, 299A and 299B of the Criminal Code, are of no importance for the maximum penalty as such. The extended maximum penalty of the Criminal Code thus does not add anything to that of the other statutes in relation to the legal person, as no prison sentence, only a fine, may be imposed on a legal person (section 25 of the Criminal Code). The circumstance that the offence is classified under the overarching provision of the Criminal Code may, however, lead to the imposition of a bigger fine than the court would have imposed if the offence were only classified under provisions other than the Criminal Code. It should be noted in this connection that a fine may be applied to a legal person even if the Criminal Code provision that has been contravened only provides authority to order a prison sentence (in the case of natural persons). See also L 35 of 13 December 2001, general comments section 2.3.1.2.

There is no upper limit for the amount of fines to be imposed on legal persons or individuals who may be subject to personal liability.

It may be mentioned, for example, that in the travaux préparatoires of Act No. 1385 of 23 December 2012 (L 41 of 26 October 2012, general comments section 2.11.3) it is assumed that the basic amount of a fine to be imposed on a company for a less serious contravention of the Competition Act should be in the range of up to DKK 4 million. The basic amount for a serious contravention of the same Act should be from DKK 4 million to DKK 20 million, while the basic amount for a very serious contravention should be from DKK 20 million and upwards.

No alternative penalty may be fixed for fines imposed on legal persons, see section 54(3) of the Criminal Code.

In respect of the issue of deprivation of rights, the Supreme Court has established (by its judgment cited in the Weekly Law Reports U 2014.1540H) that the Criminal Code's provisions on the deprivation of rights also apply to legal persons. Thus, in criminal proceedings against legal persons, the prosecution must also request deprivation of rights where the requirements of sections 78 and 79 of the Criminal Code may be considered fulfilled. This may become relevant both when the request for deprivation of

rights is related solely to part of the undertaking's overall operation and when the request is concerned with the undertaking's core activity.

6. After judgment

7. Acts and travaux préparatoires

Report No. 1289/1995 of the Criminal Law Commission on legal persons' liability to pay fines

Act No. 474 of 12 June 1996 to Amend the Criminal Code (Criminal Liability Imposed on Legal Persons) (Bill No. 201 of 7 February 1996)

Act No. 228 of 4 April 2000 to Amend the Criminal Code (Serious value added tax fraud, fraud against the European Union and paying bribes to foreign public servants, etc.) (L 15 of 6 October 1999)

Act No. 280 of 25 April 2001 to Amend the Criminal Code, the Act on International Sentence Enforcement, etc., the Act on Cooperation with Finland, Iceland, Norway and Sweden on Sentence Enforcement, etc., the Act on Extradition of Offenders and various other statutes (implementing the EU framework agreement on measures to strengthen the protection against counterfeiting, the 1st Additional Protocol to the European Convention on the Transfer of Sentenced Persons, the UN Convention on the Combat of Terror Bombing and amendments due to the abolition of lenient imprisonment as a penalty, etc.) (L 129 of 6 December 2000)

Act No. 378 of 6 June 2002 to Amend the Criminal Code, the Administration of Justice Act, the Act on Competition and Consumer Conditions in the Telecom Market, the Weapons Act, the Extradition Act and the Act on Extradition of Offenders to Finland, Iceland, Norway and Sweden (implementing the United Nations Convention on the Combat of the Financing of Terrorism and implementing Resolution No. 1373 (2001) of the United Nations Security Council and other initiatives to combat terrorism, etc.) (L 35 of 13 December 2001).

ANNEX 8: Letter from the Director of Public Prosecutions

To all police districts
and state prosecutors

DATE 4 February 2014

REF NO.

RA2012-279-0080

* ENCLOSURES

DESK OFFICER: LLI

DIRECTOR OF
PUBLICS
PROSECUTIONS

FREDERIKHOLMS
KANAL 16 1220
COPENHAGEN K

TEL.72 68 90 00

FAX 68 90 04

Criminal cases concerning bribery

1. On 15 March 2013 the OECD Working Group on Bribery adopted the attached evaluation report concerning Denmark's implementation and enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments.

The evaluation report includes, *inter alia*, the following recommendations:

1. "With respect to the foreign bribery offence, the Working Group recommends that Denmark take immediate and conclusive steps to ensure that its small facilitation payments defence is clearly defined, has the force of law, and is consistent with Article 1 of the Convention and the 2009 Recommendation." (recommendation 1a)
2. "Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Denmark adopt a clear framework for out-of-court settlements and make public, where appropriate and in conformity with the applicable rules, as much information about settlement agreements as possible." (recommendation 3c)
3. "Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Denmark issue guidelines to raise awareness of Article 5 of the

Convention and to ensure that the factors enumerated in the Article do not influence foreign bribery investigations and prosecutions.”(recommendation 3e)

4. “Regarding jurisdiction, the Working Group recommends that Denmark ensure that its law enforcement authorities thoroughly explore territorial links to Denmark in foreign bribery cases.”(recommendation 4b)

Having discussed the report with the Ministry of Justice, I note in respect of those recommendations as follows:

2. Re Item 1 (recommendation 1a):

The recommendation calls for a clear definition of the criminal area of bribery of Danish and foreign public officials in respect of payment of so-called small facilitation payments.

Bribery of Danish and foreign public officials has been criminalised by Section 122 of the Criminal Code, which reads as follows:

“**Section 122.** A person who unduly grants, promises or offers another person who works in Danish, foreign or international public functions or service a gift or other favour in order to induce that other person to carry out or not to carry out an act required by his functions or service, shall be liable to a fine or imprisonment for any term not exceeding six years.”

That provision was to a large extent given its present wording by Act No. 228 of 4 April 2000. According to the explanatory notes to the Bill, one of the purposes of Section 122 was to implement the amendments to the Criminal Code that were required to ensure that Denmark would fulfil its obligations under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The provision must therefore be interpreted in the light of Denmark’s obligations under the OECD Convention.

Article 1(1) of the OECD Convention prescribes that Member States must criminalise bribery of foreign public officials in international business transactions:

“Article 1 The Offence of Bribery of Foreign Public Officials

1. Each party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.”

It is described in Paragraph 9 of the explanatory notes to the Convention that the provision quoted above is not intended to introduce an obligation to criminalise payment of so-called small facilitation payments:

"Small "facilitation" payments do not constitute payments made "to obtain or retain business or other improper advantage" within the meaning of paragraph 1 and, accordingly, are also not an offence. Such payments, which, in some countries, are made to induce public officials to perform their functions, such as issuing licenses or permits, are generally illegal in the foreign country concerned. Other countries can and should address this corrosive phenomenon by such means as support for programmes of good governance. However, criminalisation by other countries does not seem a practical or effective complementary action."

It follows from the wording of Section 122 of the Criminal Code that it is a requirement for criminal liability that the granting of a favour has been "undue". Gifts or advantages of a inferior character given in connection with an official's general service, which does not comprise any risk of influence on the performance of the service, such as moderate presents on the occasion of anniversaries, resignation or similar occasions thus fall outside the scope of the provision. The same applies to gifts granted in recognition of an act that has already been performed without any prior promise or any other indication of such a gift. The mentioned proviso that criminal liability is conditional upon the undue nature of the advantage must in other respects be interpreted restrictively. Reference is made to the explanatory notes to Bill No. L 15 of 6 October 1999 on Amendments to the Criminal Code (Serious VAT fraud, European Community fraud, and bribery of foreign public officials, etc.)

Small facilitation payments — i.e. payments made to induce an official to carry out his duties — will as an absolute main rule be "undue" and thus constitute criminal bribery. In the *travaux préparatoires* of the Criminal Code (L 15 of 6 October 1999, the general comments section 4.7.1.1 and the specific comments on section 1(3) of the Bill), it is stated, however, that in the assessment of which acts are considered undue, it is necessary to consider, *inter alia*, the conditions prevailing in the country in which the official is carrying out his duties as well as the purpose of the gift or advantage. It is thus specified in the *travaux préparatoires* that, in exceptional cases, the granting of modest gratuities to foreign public officials will not, depending on the circumstances, constitute a criminal offence:

"Even if, according to the proposed amendment, the elements of the crime are the same concerning the bribery of foreign public officials as concerning the bribery of Danish public officials, it cannot be excluded that such exceptional conditions may prevail in some countries that, depending on the circumstances, certain gratuities will fall outside the scope of the provision, even if such acts would constitute criminal bribery if they had been granted in this country. This may even be the case even if the gratuities have been granted in order to cause the foreign public official to act contrary to his duties. Whether such a situation is exempt from punishment (not "undue") will depend on a specific assessment of the particular case, including the purpose of the gratuity."

For a further illustration of this issue reference is made to the Minister of Justice's reply to question no. 3 from the parliamentary Legal Affairs Committee concerning Bill No. L 15 of 6 October 1999, which includes the following:

"By way of illustration, an example may be payment of a sum of money to a prison officer in order to obtain permission to visit a relative who is an inmate in the prison in question. If taking place in Denmark, this will be criminal bribery. Should this situation arise in a country in which it is necessary to pay money "under the table" in order to visit inmates and possibly to bring food, blankets, medication etc. to the inmate, however, paying the amount demanded will not normally, in the view of the Ministry of Justice, constitute an "undue" act. In the view of the Ministry of Justice, this will, depending on the circumstances, be the case, even if, according to the prison rules of the country in question, allowing visits is in violation of a prison officer's duties, and the payment therefore may be said to be intended to induce the prison officer to commit an act in violation of his duties."

It may be added, however, that the possibility as described above — i.e. the possibility that payment aimed at inducing a public official to act contrary to his duties will not, depending on the circumstances, constitute an "undue" act — does not apply in connection with international business transactions. Payment of an amount in connection with international business in order to induce a public official to act in contravention of his duties will always be "undue" and thus constitute a criminal offence.

3. Re Item 2 (recommendation 3c):

The purpose of the recommendation is, in particular, to ensure greater insight into criminal proceedings that are settled out of court.

I point out in relation to this recommendation that a new provision on access to information concerning fixed-penalty notices accepted by legal persons has been added to the Administration of Justice Act, in Section 41G, by the adoption of Act No. 638 of 12 June 2013, which entered into force on 1 January 2014.

According to the *travaux préparatoires* of this provision, the expanded access for the public to gain insight into fixed-penalty notices concerning legal persons has been introduced particularly because cases concerning criminal prosecution of legal persons do not involve the same substantial protection considerations as criminal proceedings against natural persons, in which — in addition to the interests of the investigation — the protection of the individual with whom the case is concerned must be taken into account as well.

According to the new provision, anyone may demand to be provided with a copy of a fixed-penalty notice issued by the police and the prosecution service which has been accepted by a legal person.

The access to information concerning an accepted fixed-penalty notice under the provisions of section 41G of the Administration of Justice Act is not restricted to criminal proceedings concluded finally within the past year, but applies to older criminal cases as well.

In addition, in the light of the recommendation, I point out that criminal cases that are settled out of court must be dealt with in accordance with the provisions of the Administration of Justice Act, including in particular section 832 as well as the general principles of the administration of criminal justice.

This implies that prior to issuing a fixed-penalty notice, the police and the prosecution service must make an assessment — based on the general principle of objectivity (see also under Item 3 below) — of whether on the basis of the information available the accused may be considered guilty of the offence in question and whether there are grounds for bringing charges. When a fixed-penalty notice is issued it will thus be based on an assessment of the evidence in the case which corresponds to the assessment made prior to bringing charges in a case.

Similarly, when setting the amount of the fine in a fixed-penalty notice a specific assessment is made in accordance with sections 80-82 of the Criminal Code — as required in cases tried in court — of the gravity of the criminal offence as well as of the information concerning the personal circumstances of the accused, thus ensuring that comparable offences are sanctioned in the same manner.

4. Re Item 3 (recommendation 3e):

The recommendation suggests calling attention to the considerations referred to in Article 5 of the OECD Convention in order to ensure that the prosecution of cases involving bribery will not be influenced by arbitrary considerations.

Article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions has the following wording:

"Article 5 Enforcement

Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved."

It is stated in the explanatory notes to the Convention that this provision is designed to ensure that the decision of whether to bring charges in criminal cases is based on professional motives and is not subject to improper influence of a political nature.

The police and the prosecution service are subject to the so-called principle of objectivity, which is a statutory provision set out in section 96 of the Administration of Justice Act. This fundamental principle implies that in the investigation and prosecution of all cases the police and the prosecution service are obliged to act objectively. Thus, the police and the prosecution service have a duty to consider also circumstances that suggest the innocence of a suspect and may not bring charges unless the prosecution service estimates

Moreover, it follows from section 97 of the Administration of Justice Act that anyone who may be considered disqualified in relation to a specific case under the provisions of Part 2 of the Public Administration Act is barred from serving as a prosecutor in the case.

In connection with the above-mentioned recommendation, I call attention to Article 5 of the OECD Convention and reiterate that the considerations referred to in that provision may not influence investigations and prosecution, including in cases concerning bribery of foreign public officials in connection with international business transactions.

5. Re Item 4 (recommendation 4b):

The purpose of the recommendation is to ensure that Danish authorities will always consider whether a possible case of bribery of foreign public officials in connection with international business transactions have such ties to Denmark that it will be subject to Danish jurisdiction.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions includes in Article 4 the following provisions on jurisdiction:

"Article 4 Jurisdiction

1. Each party shall take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.
2. Each party which has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles.
3. When more than one Party has jurisdiction over an alleged offence described in this Convention, the Parties involved shall, at the request of one of them, consult with a view to determining the most appropriate jurisdiction for prosecution.
4. Each party shall review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, shall take remedial steps."

The Danish rules governing criminal jurisdiction are set out in Sections 6-9A of the Criminal Code.

Under Section 6 of the Criminal Code, the main rule is that Denmark has jurisdiction in respect of acts committed in Danish territory (the territoriality principle). This principle is complemented by the provision in Section 7 of the Criminal Code on the so-called personality principle, according to which it is possible to a specified extent —also as a starting point conditional upon dual criminality— to prosecute acts committed outside Danish territory in cases where the perpetrator has a connection to Denmark.

Sections 9 and 9A of the Criminal Code define the territory where an act is considered to have been committed as to whether it will be subject to Danish jurisdiction.

Particularly in respect of Article 4 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, I call attention to Section 8(v) of the Criminal Code, according to which acts committed outside the territory of the Danish state are subject to Danish criminal

jurisdiction irrespective of where the perpetrator is resident, where the act is comprised by an international provision according to which Denmark is obliged to have jurisdiction.

Thus, as regards convention-established obligations of jurisdiction, the Criminal Code provides authority to establish Danish jurisdiction, even if the jurisdictional obligation extends beyond the Danish jurisdiction that follows from Section 6 of the Criminal Code (the territoriality principle) and Section 7 of the Criminal Code (the personality principle, including the requirement of dual criminality) as well as Section 8(i)-(iv).

In conformity with the above, it is stated in the *travaux préparatoires* of the Criminal Code (L 15 of 6 October 1999, general comments paragraph 4.7.1.4) that the jurisdictional obligations that follow from, *inter alia*, the OECD Convention Combating Bribery of Foreign Public Officials in International Business Transactions, are met and therefore no legislative amendments are necessary in this respect.

In general, cases concerning bribery of foreign public officials in connection with international business transactions where, according to Article 4 of the OECD Convention. Denmark is obliged to establish jurisdiction, are subject to the general rules on criminal jurisdiction set out in Sections 6, 7 and 9 of the Criminal Code. If a case should arise, which cannot be considered to be covered by these rules, the offence will, however, be subject to Danish criminal jurisdiction under the provisions of Section 8(v) of the Criminal Code.

In connection with the above-mentioned recommendation, I point out that, in connection with cases concerning possible bribery of foreign public officials in connection with international business transactions, the police and the prosecution service must consider whether the case has such links to Denmark that it is subject to Danish criminal jurisdiction. Accordingly, in such cases the police and the prosecution service must also thoroughly examine potentially relevant ties to Denmark.

DIRECTOR OF
PUBLIC
PROSECUTIONS

Yours sincerely,

Ole Flasselgaard

ANNEX 9 : The Danish Extradition of Offenders Act, i.e. Consolidation Act No. 833 of 25 August 2005

(Unofficial translation)

Part 2 B. Conditions for extradition to Nordic countries

Section 10 K

(1) Extradition for prosecution in Finland, Iceland, Norway or Sweden for a criminal offence that is punishable by imprisonment or another custodial measure under the laws of the country that has requested extradition may be granted on the basis of a Nordic arrest warrant.

(2) Extradition for enforcement of a sentence in Finland, Iceland, Norway or Sweden may be granted on the basis of a Nordic arrest warrant where, by the judgment, the person requested has been sentenced to imprisonment or another custodial measure.

(3) Extradition for prosecution or enforcement of sentences for several criminal offences may be granted even if the requirements set out in subs. (1) and (2) above are only satisfied in respect of one of the offences.

Section 10 L

(1) Sections 10 B and 10 C shall apply mutatis mutandis.

(2) However, section 10 B(3) shall not apply to extradition for prosecution or sentence enforcement in Iceland and Norway.

Section 10 M

(1) Extradition shall not be granted when the person whose extradition is requested has been convicted or acquitted of the same criminal offence in this country, in a Nordic country or in a Member State of the European Union. The same provision shall apply if the person requested has been pardoned of the criminal act in this country. Extradition may furthermore be refused if the person whose extradition is requested has been convicted or acquitted of the offence in a country outside the Nordic countries and the European Union. Even if the person in question has been convicted of the same criminal offence, extradition may only be refused under the provisions of the 1st and 3rd sentence above if the sentence has been enforced, is being enforced or can no longer be enforced according to the legislation of the convicting country.

(2) Section 10 D, subs. (2) and (3) shall apply mutatis mutandis.

Section 10 N

Section 10 F(1) and sections 10 H and 10 I shall apply mutatis mutandis.

Section 10 O

(1) Extradition shall not be made conditional upon a requirement that the person extradited may not be prosecuted for other criminal offences committed before the extradition than the offence for

which the person is extradited. However, extradition may only be granted on the condition that the person extradited will not be prosecuted for such acts, if

1. extradition could not have been carried through for the criminal offence in question under the provisions of section 10 C, read with section 10 L, section 10 M(1) 1st sentence read with the 4th sentence, or section 10 M(1) 2nd sentence, or
2. extradition for the criminal offence in question could have been refused under the provisions of section 10 D(2), read with section 10 M(2) or section 10 F(1) read with section 10 N, and the Minister of Justice does not grant permission to prosecute the person in question for the criminal offence, see section 20(3).

(2) However, irrespective of subs. (1) 2nd sentence, the person extradited may be prosecuted for other criminal offences committed before the extradition than the offence on which the extradition was based, if

1. the person in question has not left the country to which the person was extradited after having had the possibility of doing so during a period of 30 days after final release or has returned to that country after having left it, or
2. in connection with consent to extradition to the Nordic country to which the extradition was carried through, the person in question granted consent to being prosecuted for other criminal offences committed before the extradition than the offence on which the extradition was based, see section 18 J, or the person in question has granted consent to it at a court hearing in the Nordic country to which the person was extradited.

(3) Extradition shall not be made subject to the condition that the person extradited may not be re-extradited to a third Nordic country for other criminal offences committed before the extradition than the offence on which the extradition was based. However, extradition may only be granted on the condition that the person extradited is not re-extradited to Iceland, in case extradition to Iceland would be barred under the rules of the Nordic country to which the person was extradited.

(4) Extradition shall only be granted on the condition that the person in question is not re-extradited to a Member State of the European Union or a state outside the European Union and the Nordic countries for other criminal offences committed before the extradition than the offence for which the person was extradited, unless

1. in connection with granting consent to being extradited to the Nordic country to which the extradition was carried through, the person in question granted consent to being re-extradited to a Member State of the European Union or a state outside the European Union and the Nordic countries for such offences, see section 18 J, or the person in question has granted consent to it at a court hearing in the Nordic country to which the person was extradited,
2. the person has not left the country to which the person was extradited after having had a possibility to do so during a period of 30 days after final release or has returned to that country after having left it or

3. The Minister of Justice grants consent to extradition, see section 20.

Part 3 B. Procedure in cases of extradition to the Nordic countries

Section 18 G

(1) A Nordic arrest warrant must, in order to serve as a basis for arrest and extradition to a Nordic country include particulars of the requested person's identity and nationality, the time and place of the criminal offence, the nature of the offence and the applicable penalty provisions and information as to whether it has been decided to arrest or detain the person in question or whether the person has been convicted.

(2) A Nordic arrest warrant that has been issued with a view to extradition for prosecution must moreover include an indication of the penalty carried by the offence in question under the laws of the country to which extradition is requested.

(3) A Nordic arrest warrant issued with a view to extradition for enforcement of a sentence must moreover include information about the penalty or other criminal sanction imposed.

(4) A European arrest warrant issued by Finland or Sweden shall be considered as a Nordic arrest warrant.

Section 18 H

(1) A Nordic arrest warrant must be forwarded to the commissioner of police in the area of the residence of the person whose extradition is requested. Next, the police must forthwith initiate the examination required to determine whether the requirements for extradition are fulfilled. The provisions of Chapter 4 of the Administration of Justice Act shall apply to this examination mutatis mutandis.

(2) To assist the examination and expedite the extradition, the remedies referred to in the Administration of Justice Act in Part 69 of concerning arrest and in Part 70 concerning preventive detention may be applied in so far as the Nordic arrest warrant has been issued for an offence that is extraditable under the rules of Part 2 B. In addition, the remedies referred to in the Administration of Justice Act in Part 72 on physical integrity, in Part 73 on searches, in Part 74 on seizure and disclosure and in Part 75 A on other investigative measures may be applied to the same extent as in cases concerned with criminal offences of a similar nature prosecuted in Denmark.

(3) The provisions of section 18 B(3) shall apply mutatis mutandis.

(4) The decision of extradition shall be made by the commissioner of police. In case a European arrest warrant or a request for extradition from a state outside the European Union and the Nordic Countries has been submitted at the same time as a Nordic arrest warrant, the decision of extradition must, however, be made by the Minister of Justice.

Section 18 I

(1) Where the commissioner of police decides in favour of extradition, the person whose extradition is requested must, at the same time as being notified, be informed of the right to have

the decision reviewed by a court according to subs. (2) and of the time limit for submitting a request to this effect.

(2) A person who is due to be extradited according to the decision of the commissioner of police may demand that the police bring the question of the legality of the decision before the court in the district in which the person resides.

(3) A request to this effect must be filed within three days after the decision was notified to the person in question. Where special circumstances so advise, the commissioner of police may permit that the decision be brought before the court, even if the request has been filed after the time limit has expired. Section 16(3) shall be applied mutatis mutandis.

(4) In cases that must be dealt with by the Minister of Justice according to section 18 H(4) 2nd sentence, the provisions of section 15(2) and section 16 shall be applied mutatis mutandis.

Section 18 J

A person who is requested for extradition on the basis of a Nordic arrest warrant may grant consent to the extradition at a court hearing. In addition, the person concerned may at a court hearing grant consent to being prosecuted and re-extradited to a third Nordic country, a Member State of the European Union or a state outside the European Union and the Nordic countries for other criminal offences committed before the extradition than the offence on which the extradition is based. The court will provide guidance to the person requested on the consequences of consent according to this present provision.

Section 18 K

(1) A decision made by the commissioner of police under section 18 H(4) 1st sentence, and by the Minister of Justice under section 18 H(4) 2nd sentence, must be made soon and as far as possible within three days after the requested person has been arrested in this country or granted consent to the extradition.

(2) Where the commissioner of police or the Minister of Justice decides in favour of extradition and the case is brought before the court under the provisions of section 18 I, the court's final decision must as far as possible be made within 30 days after the arrest of the requested person in this country.

Section 18 L

(1) Unless the person in question renounces his right to refer the decision on extradition to the court, the person shall not be extradited until the three day time limit mentioned in section 18 I(3) and section 16 read with section 18 I(4) has expired. Where the decision is brought before the court, the person shall not be extradited until the decision has been found lawful by a final order of the court.

(2) The extradition must be carried through soon and as far as possible within five days after the times referred to in subs. (1) above, but see also section 10 I read with section 10 N.

(3) To ensure that an extradition will be carried through, the remedies referred to in the Administration of Justice Act in Part 69 concerning arrest and in Part 70 concerning preventive detention may be applied. Detention imposed under this present provision must be cancelled if the extradition has not taken place before the expiry of the time limit set out in subs. (2). In exceptional cases the court may, however, extend this time limit.

(4) The provision of section 18 F shall be applied *mutatis mutandis*.

Bill No. 168 of 26 February 2003 (Proposal for an Act to amend the Act on the Extradition of Offenders and the Act on Extradition of Offenders to Finland, Iceland, Norway and Sweden (Implementing the EU framework decision on the European Arrest Warrant, etc.)

Re Section 10 B

The proposed wording of the provision in section 10 B(1) will render it possible to make extradition for prosecution based on a European arrest warrant of a Danish national or a person with permanent residence in Denmark conditional upon return to Denmark of the person in question with a view to the enforcement of a possible prison sentence or another custodial measure.

The provision will, in connection with extradition for prosecution, expand the existing permission to demand return to Denmark for the purpose of enforcement of a possible sentence, so that it will include persons with permanent residence in this country. Under the existing regime, Denmark has reserved its right under international law to set the requirement in relation to other EU States that Danish nationals may be extradited subject to the condition that the particular persons will be returned to Denmark for enforcement of a possible sentence.

The proposed provision in section 10 B does not mean any changes in relation to the existing law applying to the extradition of Danish nationals to non-EU states.

Extradition of a Danish national or a person with permanent residence in Denmark for sentence enforcement under the proposed provision of section 10 B(2) may furthermore be refused, if Denmark makes the commitment that the sentence will be enforced in this country. In other respects, Denmark's implementation of the enforcement of a criminal sentence imposed in another EU Member State must be carried through according to the current rules on such enforcement set out in Act No. 323 of 4 June 1986 on International Sentence Enforcement etc. as later amended.

The provisions of section 10 B(1) and (2) continue to be in conformity with Article 4(6) and Article 5(3) of the framework decision.

Please refer otherwise to item 4.1.2.2. of the general comments.

4.1.2.2. Extradition of Danish nationals

In principle, the framework decision does not, in respect of the obligation of the Member States to grant extradition on the basis of a European arrest warrant, make any distinction between extradition of their own citizens and foreign nationals. Thus, the framework decision means that, basically, it will not be possible to set different requirements for the extradition of Danish and foreign nationals.

The proposed provision in section 10 A therefore makes no distinction, unlike the existing provisions of section 2 and 2 A of the Extradition of Offenders Act, between Denmark's own nationals and foreign nationals.

According to Article 4(6) of the framework decision, extradition of for instance a country's own nationals may be refused, however, if the requested Member State undertakes to ensure its own enforcement of the sentence. Thus, this provision is of importance for the extradition of Danish nationals to other EU Member States, as Danish authorities may refuse extradition for the enforcement of a custodial sentence, if the Danish authorities undertake to take responsibility for the enforcement of the sentence. This provision should be seen in conjunction with Article 5(3), which means that the extradition of a state's own nationals for prosecution in the other Member States may be made conditional upon the return of the person in question for enforcement of a possible sentence in the requested Member State.

To date, it has been the opinion of the Ministry of Justice that in the extradition of Danish nationals to another state it should be possible to set the requirement that the enforcement of a possibly imposed custodial sentence etc. must take place in Denmark. Against this background, the Ministry of Justice has reserved its right with reference to public international law to make the extradition of a Danish national to other EU Member States conditional upon retransfer of the person in question to Denmark for the enforcement of the sentence. In the opinion of the Ministry of Justice, it should continue to be possible to set such a condition for extradition to another Member State.

Considering the expanded obligation to extradite persons, including Danish nationals, to other EU Member States, which the arrest warrant involves, the Ministry of Justice moreover finds that there should be a right to refuse extradition to a Member State of Danish nationals for sentence enforcement, if at the same time Denmark undertakes the obligation to enforce the imposed sentence in this country.

Please refer to the proposed new provision in section 10 B of the Extradition of Offenders Act and the specific comments on this provision.

In connection with the ratification of the 1957 Convention, Denmark made a declaration to the effect that the word 'national' should comprise persons with nationality rights or permanent residence in Denmark or in one of the Nordic countries.

This meant, for instance, that Denmark was not obliged under public international law to extradite persons who had a residence permit in Denmark as refugees or nationals of a Nordic country. In connection with the EU Extradition Convention of 1996, Denmark, Finland and Sweden made a declaration, however, to the effect that they did not intend to invoke *inter alia* the declaration referred to above as a reason for refusal to extradite persons from non-Nordic states who are resident in those countries. Thereby, Denmark relinquished its right under public international law to

refuse extradition of such persons to the other EU Member States. The Danish Extradition of Offenders Act was amended accordingly by Act No. 417 of 10 June 1997. It is therefore not possible under current legislation to refuse extradition of persons from non-Nordic states from Denmark to an EU Member State with reference to the fact that the person requested is a resident of Denmark, Finland or Sweden. Refer in this connection to the Weekly Law Reports 1996-97, Supplement A, pp. 4489-4490.

Articles 4(6) and 5(3) of the Framework Decision allow the Member States to set the same limitations on the obligation to extradite persons who stay or are residents in the Member State in question as they may do for their own citizens.

Thus, it is possible to insert provisions into the Extradition of Offenders Act according to which the extradition for sentence enforcement in an EU Member State of such persons may be refused, if Denmark undertakes to enforce the imposed sentence in this country. In addition, extradition of these persons for prosecution in another EU Member State may, as in cases involving Danish nationals, be made conditional upon the requirement of the return of the person to Denmark for the enforcement of a possible sentence.

In view of the extended obligation of extradition to other EU Member States, which the Framework Decision involves, the Ministry of Justice finds that the possibility of refusing extradition for sentence enforcement if, instead, the sentence is served in Denmark, and the possibility of setting the condition for extradition for prosecution that the person in question is transferred back with a view to serving a possible sentence in this country, should be extended to include persons with a permanent residence in this country. In this connection, the Ministry of Justice takes into account that the considerations that, according to the proposed section 10 B, may warrant that extradition of a Danish national is refused or made conditional upon return to Denmark, may likewise be involved in respect of persons who are not Danish nationals but have had their permanent residence in Denmark for a long period of time, for example persons who fulfil the formal requirements for obtaining citizenship in this country.

In connection with the drafting of the Bill, the Ministry of Justice considered whether the provision in section 10 B should be made compulsory, ensuring that the extradition of Danish nationals etc. to other EU Member States must always be refused or made conditional upon retransfer.

As the Ministry of Justice sees it, cases may however be envisioned in which a person has committed a very serious criminal offence in another Member State, and the consideration for this Member State therefore warrants that the person in question should be prosecuted and serve an imposed sentence in that Member State.

The Ministry of Justice has therefore found that the question of whether extradition of Danish nationals etc. should be refused/made conditional upon retransfer should depend on a specific assessment in each particular case.

This assessment may for instance take into account the gravity of the crime committed and the perpetrator's relations to the Member State in which the criminal offence was committed. In the opinion of the Ministry of Justice, there will for example not normally be a basis on which to make extradition of a Danish national etc. for prosecution conditional upon the return of the person in question for the enforcement of the imposed sentence, in case the person was convicted of very serious criminal offences, including acts of terrorism.

Another example might be a case where the person requested has close ties to the Member State in which the criminal offence was committed.

The Administration of Justice Act, i.e. Consolidation Act No. 1308 of 9 December 2014

Section 191

(1) A person who is kept in detention abroad and has granted his consent to transfer may be transferred to Denmark to be questioned or to contribute to another investigative step in criminal proceedings in this country or to be used in criminal proceedings conducted abroad. The requested person must be deprived of his liberty during the transfer and be retransferred to the foreign state no matter whether the person may later withdraw his consent to the transfer.

(2) A decision to keep a person in detention must be made by the court upon a request from the police. The court must ensure that the person in question has granted his consent to temporary transfer as referred to in subs. (1) above. A time limit, which may be extended, shall be set for the detention. The court's decision must be made by an order, against which no appeal is possible.

(3) During his stay in this country, the person in question may not be prosecuted or extradited to a third country for a criminal offence committed before the transfer to this country.

(4) While kept in detention, the person in question shall exclusively be subject to the restrictions necessary to ensure fulfilment of the purpose of the detention and maintenance of order and safety at the place of detention. The person may be placed in a local prison as set out in section 770(2) below.

(5) The Minister of Justice may lay down specific rules on the treatment of persons who are kept in detention according to subsection (1) above.

ANNEX 10 : GUIDELINES ON PROCESSING REQUESTS FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS AND TRANSFER OF CRIMINAL PROSECUTION

1. Introduction
2. Mutual Legal Assistance in Criminal Matters
 - 2.1. Danish Law
 - 2.2. International Conventions, etc.
 - 2.2.1. The Council of Europe's Convention of 14 April 1959 on Mutual Assistance in Criminal Matters and the associated Additional Protocol of 17 March 1978.
 - 2.2.1.1. What is Legal Assistance?
 - 2.2.1.2. Letters of Request
 - 2.2.1.3. Service of Documents
 - 2.2.1.4. Submission
 - 2.2.2. The Schengen Convention
 - 2.2.3. The Nordic Convention on Mutual Assistance in Judicial Matters of 26 April 1974
 - 2.2.4. Other International Conventions
 - 2.2.5. Good Practice in Cases concerning Mutual Legal Assistance in Criminal Matters
 - 2.3. The European Judicial Network
 - 2.4. Eurojust
3. Processing Requests for Mutual Legal Assistance in Criminal Matters
 - 3.1. Requests from Denmark
 - 3.1.1. Submission of Letters of Request
 - 3.1.2. Contents of the Letter of Request
 - 3.1.3. Requests for Service
 - 3.1.4. Requests for Countries which have not Acceded to the Relevant Conventions
 - 3.1.5. The Responsibilities of the Ministry of Justice
 - 3.2. Requests to Denmark
 - 3.2.1. Submission of Letters of Request
 - 3.2.2. Contents of the Letter of Request
 - 3.2.3. Requests for Service
 - 3.2.4. Requests to Denmark from Countries which have not Acceded to the Relevant Conventions
 - 3.2.5. The Responsibilities of the Ministry of Justice
 - 3.3. The Schengen Convention
 - 3.3.1. Processing Letters of Request between Denmark and the Schengen Countries
 - 3.3.2. Processing Requests for Service between Denmark and the Schengen Countries
 - 3.4. Statistical Information

4. Transfer of Proceedings
- 4.1. Danish Law
- 4.2. The European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972
- 4.3. Notifications from the Director of Public Prosecutions on Transfer of Criminal Prosecution between the Nordic Countries
5. Processing Requests for Transfer of Criminal Prosecution
- 5.1. Requests from Denmark
- 5.2. Requests to Denmark
6. Further Information

Annexes to the Guidelines:

- Annex 1: List of the countries which have ratified the European Convention of 14 April 1959 on Mutual Assistance in Criminal Matters and the associated Additional Protocol
- Annex 2: The other countries' declarations about languages
- Annex 3: Denmark's declaration on good practice in cases concerning mutual legal assistance in criminal matters
- Annex 4: List of Danish contacts in the European Judicial Network

1. INTRODUCTION

On 5 December 1997, the Council of the European Union adopted a joint action establishing a mechanism for evaluating the application and the implementation at national level of international undertakings in the fight against organized crime (OJ L 344, 15 December 1997). It was subsequently decided that the subject of the first evaluation was to be delays in connection with the execution of requests for mutual legal assistance in criminal matters, including urgent requests for the seizure of property with particular regard to procedures used in cases of organised crime. The evaluations of the individual member states were carried out by specifically appointed expert groups in cooperation with the General Secretariat of the Council.

In a circular letter of 15 December 1999, the Ministry of Justice provided information about the evaluation of Denmark and about the contents of the report which was drawn up about Denmark's processing of requests for assistance in criminal cases. Even though the report on Denmark was generally very positive, the expert group did give Denmark a few recommendations with a view to further improving the processing of requests for mutual legal assistance in criminal matters.

Against this background, the Ministry of Justice has prepared these Guidelines on the processing of requests for mutual legal assistance in criminal matters. The Guidelines take into account the recommendations which the expert group made in the report on Denmark, and the Guidelines also take into account that Denmark entered the practical Schengen cooperation on 25 March 2001 which makes it necessary to implement a number of changes in the processing of requests for mutual legal assistance in criminal matters between Denmark and the other Schengen countries.

First, the Guidelines contain a brief review of the provisions of the international conventions which are most important in connection with the processing of requests for legal assistance in criminal

cases. Next, the Guidelines contain instructions for the Danish authorities' processing of requests for mutual legal assistance in criminal matters, including a clarification of the distribution of competences between the Ministry of Justice, the Prosecution Service and the Police.

The Guidelines also account for the changes in the processing of requests between the Schengen countries which are consequential upon Denmark entering the practical Schengen cooperation on 25 March 2001.

The evaluation report on Denmark contains a recommendation that the computer systems of the Ministry of Justice and the Police and Prosecution Service be adapted so that it will be possible to keep statistics of the numbers of incoming and outgoing requests for the purpose of case management. Therefore, these Guidelines also contain directions as to the provision of such statistical data.

Finally, the Guidelines contain a brief review of the rules governing the processing of requests for transfer of criminal prosecution and the guidelines on the processing of such requests.

These Guidelines do not cover requests for extradition of criminal offenders or requests for international enforcement of sentences, including the transfer of convicted persons.

2. MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Mutual legal assistance in criminal matters is primarily concerned with procuring evidence, disclosure of evidence, disclosure of records or documents, disclosure of information from criminal registers and service of documents in criminal cases.

2.1. Danish Law

With a few exceptions, Denmark has not implemented specific legislation on mutual legal assistance in criminal matters. However, supported by case law, it is generally presumed that foreign requests for investigative measures in Denmark may be granted, irrespective of whether the submission and processing of letters of request are regulated by an agreement which is applicable between Denmark and the requesting country. Where appropriate, the relevant investigative measures will be carried out on the basis of an analogic application of the relevant provisions of the Danish Administration of Justice Act as a foreign request for investigation, including search, seizure and disclosure, may be complied with if it would be possible to carry out the investigative measure in question in connection with a similar national criminal investigation.

This entails, for example, that requests from foreign authorities for the implementation of investigative measures requiring the cooperation of the court will only be granted if the act on which the foreign request for assistance is based is punishable under Danish law.

The circumstance that the Administration of Justice Act is applied analogically in connection with the processing of requests for mutual legal assistance in criminal matters also entails that requests from Denmark to foreign authorities for implementation of investigative measures, which would require the cooperation of the court if the investigative measure in question were to be carried out in Denmark, will also have to be brought before a Danish court before the submission of a request to the foreign authorities.

The Administration of Justice Act contains a few provisions which are directly aimed at cases concerning mutual legal assistance. Under section 190 of the Administration of Justice Act, the rules

set out in the Act also apply to witness evidence taken at the request of a foreign authority. It appears from the provision that a request for compliance with a specific form or procedure must be granted as far as possible unless this would be clearly incompatible with the legal system of the country, see paragraph 3.2.2.

Section 191 of the Administration of Justice Act contains specific rules for situations where a person who is detained abroad and who has consented to it is transferred to Denmark at the request of Danish authorities in order to give evidence or take part in a confrontation, see Article 11 of the European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters.

Under section 806 of the Administration of Justice Act, decisions on ordering disclosure lie with the court based on requests submitted by the police. According to section 806(6), first sentence, the person who has the disposal of the object must have been given an opportunity to state their case before the court makes a decision to order disclosure. However, according to the last sentence of this provision, the first sentence does not apply if the court's decision is intended to form the basis of an international letter of request for disclosure which means, for example, that foreign banks do not have to be given an opportunity to make a statement before an order is issued.

2.2. International Conventions, etc.

2.2.1. The European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters and the associated Additional Protocol of 17 March 1978.

Denmark has ratified the European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters (*hereafter referred to as the Mutual Assistance Convention*) and the associated Additional Protocol of 17 March 1978 (*hereafter referred to as the Additional Protocol*). Most of the letters of request which Denmark receive and submit are issued in conformity with the Mutual Assistance Convention which will continue to be the main convention in connection with the submission of requests for mutual legal assistance in criminal matters as the purpose of the Schengen Convention is to supplement the Mutual Assistance Convention.

The Mutual Assistance Convention has been ratified by most European countries, including all EU Member States. [Annex 1](#) contains the most recent list of countries which have ratified the Mutual Assistance Convention and the Additional Protocol (see also paragraph 6).

2.2.1.1. What is Legal Assistance?

According to Article 3 of the Mutual Assistance Convention, the requested country must grant letters of request which pertain to a criminal case and which are submitted by the judicial authorities of the requesting country with a view to procuring evidence or disclosure of evidence, records or documents.

According to Article 7 of the Convention, the requested country must also effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting country. According to Article 13 of the Convention, the requested country must communicate extracts from and information relating to judicial records, requested from it by the requesting country and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like cases.

The typical types of request for legal assistance are concerned with:

- out-of-court and in-court interviews with suspects/accused/defendants/witnesses
- searches
- seizure
- disclosure
- service of judgments, summonses for court hearings, indictments and fixed-penalty notices
- information about judgments

Article 3 of the Mutual Assistance Convention does not expressly cover assistance for implementation of telephone wiretapping or other investigative measures which were not relevant at the time when the Convention was adopted in 1959. Thus, it depends on the national legal system whether requests for such investigative measures will be granted.

Although the countries have undertaken under Article 3 to provide legal assistance in the situations covered by the Convention, there are a number of exceptions to this obligation.

According to Article 2(a), requests for legal assistance may be refused if the request is concerned with an offence which is regarded by the requested country as a political offence, an offence connected with a political offence, or a fiscal offence. A number of countries have reserved the right not to provide legal assistance in cases of a fiscal nature. Under Article 2 of the Additional Protocol, however, the countries can no longer refuse to provide legal assistance merely for the reason that the case is of a fiscal nature. However, the countries which have reserved the right not to provide legal assistance in cases of a fiscal nature have not ratified the Additional Protocol.

A request for legal assistance may also be refused under Article 2(b) of the Convention if the requested country considers that execution of the request may prejudice the sovereignty, security, ordre public or other essential interests of its country. Under this provision, several countries, including Denmark, have reserved the right to refuse execution of a letter of request with reference to the prohibition against double jeopardy (*ne bis in idem*).

2.2.1.2 Letters of Request

Under Article 14 of the Mutual Assistance Convention, a letter of request must contain the following:

- Indication of the authority making the request
- The object of and the reason for the request
- The identity and the nationality of the person concerned
- Requests made under Articles 3-5 must also state the offence and contain a summary of the facts

The general rule of Article 16(1) of the Mutual Assistance Convention is that translation of requests for legal assistance cannot be required. A number of countries, including Denmark, have issued declarations about this provision. Therefore, Denmark has declared that requests may be submitted to Denmark in English, French, German and Danish, subject however to the limitation that, on a case-by-case basis, the Danish authorities may still require that a request be translated into Danish. The other countries' declarations about Article 16 can be seen in [Annex 2](#).

As regards Germany, it should be noted that Denmark and Germany have entered into a bilateral agreement which states that letters of request between the two countries may be submitted in Danish or German.

In this connection, it should be noted that the requested country may always reply to a letter of request in its own language. This means that the Danish authorities will usually respond to requests in Danish, irrespective of the fact that it may be difficult for the requesting country to have the material translated.

Under Article 17 of the Convention, it is not necessary to carry out legalisation of evidence or documents forwarded under the Convention.

2.2.1.3. Requests for Service Documents

Article 7 of the Mutual Assistance Convention stipulates that the requested country is required to effect service of writs and records of judicial verdicts. Service may be effected by simple transmission of the writ or record to the person to be served unless another method is required in the request.

Requests for service must contain the following:

- Indication of the authority making the request
- The object of and the reason for the request (writ/judgment/witness summons/notice of appeal)
- Name and address of the person to be served

In addition, the request should contain information about witness compensation and reimbursement of travel and accommodation expenses as well as any specific formalities required in connection with service.

In connection with the ratification of the Convention, a number of countries have indicated a time limit of at least one month for service of writs and witness summonses. This time limit means that documents to be served on persons staying in the countries in question must be received by the authorities at least one month before the defendant or witness is required to enter an appearance.

Under Article 8 of the Convention, a witness who has failed to answer a summons to appear even though the witness had been duly summoned must not be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting country and is there again duly summoned.

According to Article 3 of the Additional Protocol, the provisions on service set out in the Convention also apply to the service of documents concerning the enforcement of a sentence, the recovery of a fine or the payment of costs of proceedings.

2.2.1.4. Submission

According to Article 15(1) of the Mutual Assistance Convention, letters of request submitted under Articles 3, 4, 5 and 11 of the Convention must generally be submitted through the central authorities of the countries in question. Under Article 15(2) of the Convention, letters of request may, in case of urgency, be addressed directly by the judicial authorities of the requesting country to the judicial authorities of the requested country. The reply to the request must be returned through the central authorities. Requests for extracts from and information relating to judicial records may be submitted and returned directly between the judicial authorities of the requesting country and the competent authority of the requested country, see Article 15(3). Under Article 15(4), letters of request concerning service of documents may be communicated directly between the judicial authorities. According to Article 15(5), direct transmission may be carried out through Interpol.

In connection with their ratification of the Convention, the countries have indicated the authority which is the central authority and the authorities which are judicial authorities. In Denmark, the Ministry of Justice is the central authority, and in pursuance of Article 24 of the Convention, Denmark has indicated that the courts and the Prosecution Service which includes the Ministry of Justice, the Director of Public Prosecutions, the state prosecutors, the Commissioner for the Copenhagen Police and the local police commissioners as the authorities competent to draw up letters of request (*judicial authorities*).

2.2.2. The Schengen Convention of 19 June 1990

The Schengen Convention contains a number of provisions on cooperation in criminal matters, including mutual legal assistance in criminal matters. The purpose of the provisions set out in the Schengen Convention on mutual legal assistance in criminal matters is to supplement and facilitate the application of the Mutual Assistance Convention for the countries participating in the Schengen cooperation. The Schengen Convention applies between France, Germany, Austria, the Netherlands, Luxembourg, Belgium, Italy, Spain, Portugal, Greece, Denmark, Sweden, Finland, Norway and Iceland.

Under Article 49 of the Schengen Convention, legal assistance is provided in the following cases in addition to those covered by the Mutual Assistance Convention:

- in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of one of the two countries, or of both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
- in proceedings for claims for damages arising from wrongful prosecution or conviction;
- in clemency proceedings;
- in civil actions joined to criminal proceedings, as long as the court has not yet taken a final decision in the criminal proceedings;
- in the service of judicial documents relating to the enforcement of a sentence or a preventive measure, the imposition of a fine or the payment of costs for proceedings;
- in respect of measures relating to the deferral of delivery or suspension of enforcement of a sentence or a preventive measure, to conditional release or to a stay or interruption of enforcement of a sentence or a preventive measure.

Thus, Article 49 of the Convention expands the scope of legal assistance in relation to the provisions of the Mutual Assistance Convention, particularly so that it is also possible to provide legal assistance in connection with the subsequent processing of a criminal case. Moreover, Article 49 means that legal assistance may be provided in certain specifically defined cases of an administrative nature.

Under Article 50 of the Convention, the Schengen countries undertake to afford each other mutual assistance as regards infringements of their laws and regulations on excise duties, value added tax and customs duties. Such requests may not be rejected on the grounds that the requested country does not levy excise duties on the goods referred to in the request. Legal assistance in such cases may, however, be refused where the alleged amount of duty underpaid or evaded does not exceed EUR 25,000 or where the presumed value of the goods exported or imported without authorisation does not exceed EUR 100,000.

According to Article 52, each Schengen country may send procedural documents directly by post to persons who are in the territory of another Schengen country. If there is reason to believe that the addressee does not understand the language in which the document is drawn up, the document, or at least the most important passages thereof, must be translated into (one of) the language(s) of the country in the territory of which the addressee is staying. If the authority forwarding the document knows that the addressee understands only one language – a language other than the language(s) of the country in question – the document, or at least the most important passages thereof, must be translated into that other language.

According to Article 52(5), procedural documents may be forwarded via the judicial authorities if the addressee's address is unknown or if the requesting country requires the document to be served in person.

Under Article 52(1), last sentence, the Schengen countries are required to submit a list of the procedural documents which may be forwarded directly by post by the authorities of the country in question. In connection with Denmark's accession to the practical Schengen cooperation, Denmark issued a declaration stating which documents the Danish authorities are allowed to send directly by post to persons staying in the other Schengen countries. As was the case for Sweden, the Ministry of Justice found it most appropriate to make a general statement which means that, as a general rule, Danish authorities are allowed to send all types of procedural documents prepared as part of criminal proceedings by direct post.

The Danish declaration is worded as follows:

"Documents and notification messages sent by a judicial authority as part of its processing of criminal cases as well as certain notifications from administrative authorities about decisions related to the processing of criminal cases."

In situations where service in person is required or where it is deemed appropriate that service is carried out in person, a request for service in person must be submitted directly to the relevant authority in the other Schengen country.

Documents which may be transmitted under Article 52, include:

- fixed penalty notices
- warnings
- notifications about payment of costs for proceedings
- decisions under section 721 of the Administration of Justice Act about withdrawal of prosecution
- decisions under section 722 of the Administration of Justice Act about charges being dropped
- decisions under section 749 of the Administration of Justice Act about investigation not being instituted
- notifications of measures under section 788 of the Administration of Justice Act
- notifications to compensation parties under section 724 of the Administration of Justice Act
- notifications on compensation under Part 93A of the Administration of Justice Act
- declarations on compensation questions under Part 93 of the Administration of Justice Act
- service of indictments in certain types of cases
- service of charge sheets in certain types of cases
- service of writs in certain types of cases
- service of witness summonses in certain types of cases
- service of judgments and orders in certain types of cases

- notifications about postponement of serving of a sentence
- notifications about pardon
- administrative withdrawal of driving licences
- notifications about decisions in cases considered by the Police Complaints Board under Parts 93B and 93C of the Administration of Justice Act
- notifications about restraining injunctions under the police regulations
- warnings issued under section 265 of the Criminal Code
- notifications about restraining injunctions under certain non-criminal laws, including the Restaurants Act
- declarations on deportation under the Aliens Act
- certain decision on entry bans under the Aliens Act

According to Article 52(3), a witness or expert who has failed to answer a summons to appear which has been sent by post must not be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting country and is there again duly summoned. Authorities sending a postal summons to appear must ensure that this does not include a notice of penalty.

Under Article 53(1) and (2), the general rule is that requests for legal assistance may be submitted and returned directly between the judicial authorities, but requests may still be submitted through the central authorities or Interpol. Requests for the temporary transfer or transit of persons who are under provisional arrest, being detained or who are the subject of a penalty involving deprivation of liberty, and the periodic or occasional exchange of information from the judicial records must be effected through the central authorities.

Thus, Article 53 establishes a change, as far as the Schengen countries are concerned, of the existing practice according to which the general rule was that requests for legal assistance and replies had to be submitted between the central authorities. This provision therefore necessitates certain changes in Denmark's processing of requests for legal assistance in criminal cases. These changes will be described in paragraph 3.3.

2.2.3. The Nordic Convention on Mutual Assistance in Judicial Matters of 26 April 1974

Denmark has entered into the Nordic Convention on Mutual Assistance in Judicial Matters of 26 April 1974 with the other Nordic countries (Finland, Iceland, Norway and Sweden). Under Article 1 of the Convention, applications for service of documents and the taking of evidence may be made in writing by the appropriate national authorities of the countries in question.

The Nordic Convention supplements the Mutual Assistance Convention as regards submission of letters of request and requests for service of documents. The Nordic Convention is not affected by the application of the Schengen Convention in relation to the Nordic countries. However, Article 52 of the Schengen Convention on submission of procedural documents directly by post may be of independent significance between the Nordic countries as the Nordic Convention does not contain a similar provision.

2.2.4. Other International Conventions

In addition to the Mutual Assistance Convention and the Schengen Convention, Denmark has also ratified a number of other conventions which contain provisions on mutual legal assistance in criminal matters. Under these conventions, including the European Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (*the Money Laundering Convention*) and the UN Convention of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (*the UN Convention*), requests must generally be transmitted between the central authorities, but that urgent requests may be submitted between the judicial authorities.

The UN Convention has independent significance in situations where, in cases concerning contravention of the law on controlled substances, Danish authorities need to submit requests to countries which have not acceded to the Mutual Assistance Convention. The Money Laundering Convention should be applied as the basis of a letter of request in the type of cases covered by the scope of that Convention, possibly in combination with the Mutual Assistance Convention.

2.2.5. Good Practice in Cases concerning Mutual Legal Assistance in Criminal Matters

On 29 June 1998, the Council of the European Union adopted a Joint Action on good practice in mutual legal assistance in criminal matters (OJ L 191 of 7 July 1998). In accordance with Article 1 of the Joint Action, Denmark – as well as the other EU Member States – has issued a statement of good practice. Denmark's statement is enclosed as Annex 3.

2.3. The European Judicial Network

On 29 June 1998, the Council of the European Union adopted a Joint Action on the creation of a European Judicial Network (OJ L 191 of 7 July 1998). The network is comprised of contacts appointed by the Member States. These contacts come from the central authorities, the prosecution services and the courts of the Member States.

The contacts will help facilitate cooperation in connection with the combat against serious crime and improve coordination of cooperation in specific cases. They will do this by being active intermediaries between the judicial authorities in their own countries and other Member States.

In accordance with this Joint Action, Denmark has appointed contacts at the Ministry of Justice, the Director of Public Prosecutions, the State Prosecutor for Serious Economic Crime and the Commissioner for the Copenhagen Police. The National Commissioner of Police, Section A, International Relations, has also been designated as a contact point. The current contacts and their areas of responsibility can be seen from Annex 4. The contacts will be able to provide assistance in specific criminal cases by using the network to facilitate contact between Danish authorities and the relevant foreign authorities.

The European Judicial Network is currently preparing a standard form to be used when submitting letters of request so that the requested country can quickly see what the request is about. It is also the intention that, upon receipt, the requested country will return the form to the requesting country with a notification as to which authority is processing the case and including information about name and telephone number of a contact with the authority in question.

Moreover, the network is developing a European legal atlas. The legal atlas will enable the judicial authorities of the EU Member States to immediately find the right judicial authority of another EU Member State by checking the legal atlas.

2.4. Eurojust

On 14 December 2000, the Council adopted a Decision setting up a Provisional Judicial Cooperation Unit for the national prosecutions services (provisional Eurojust unit) with reference to Articles 31 and 34(2)(c) of the EU Treaty. In circular letters of 23 March 2001 and 24 October 2001, the Ministry of Justice informed of the purpose of establishing Eurojust and Denmark's representative in the unit.

3. Processing of Requests for Mutual Legal Assistance in Criminal Matters.

The following paragraph contains a description of the practical procedure when Danish authorities submit or receive requests for mutual legal assistance in criminal matters. The description is based on the rules which apply under the Mutual Assistance Convention.

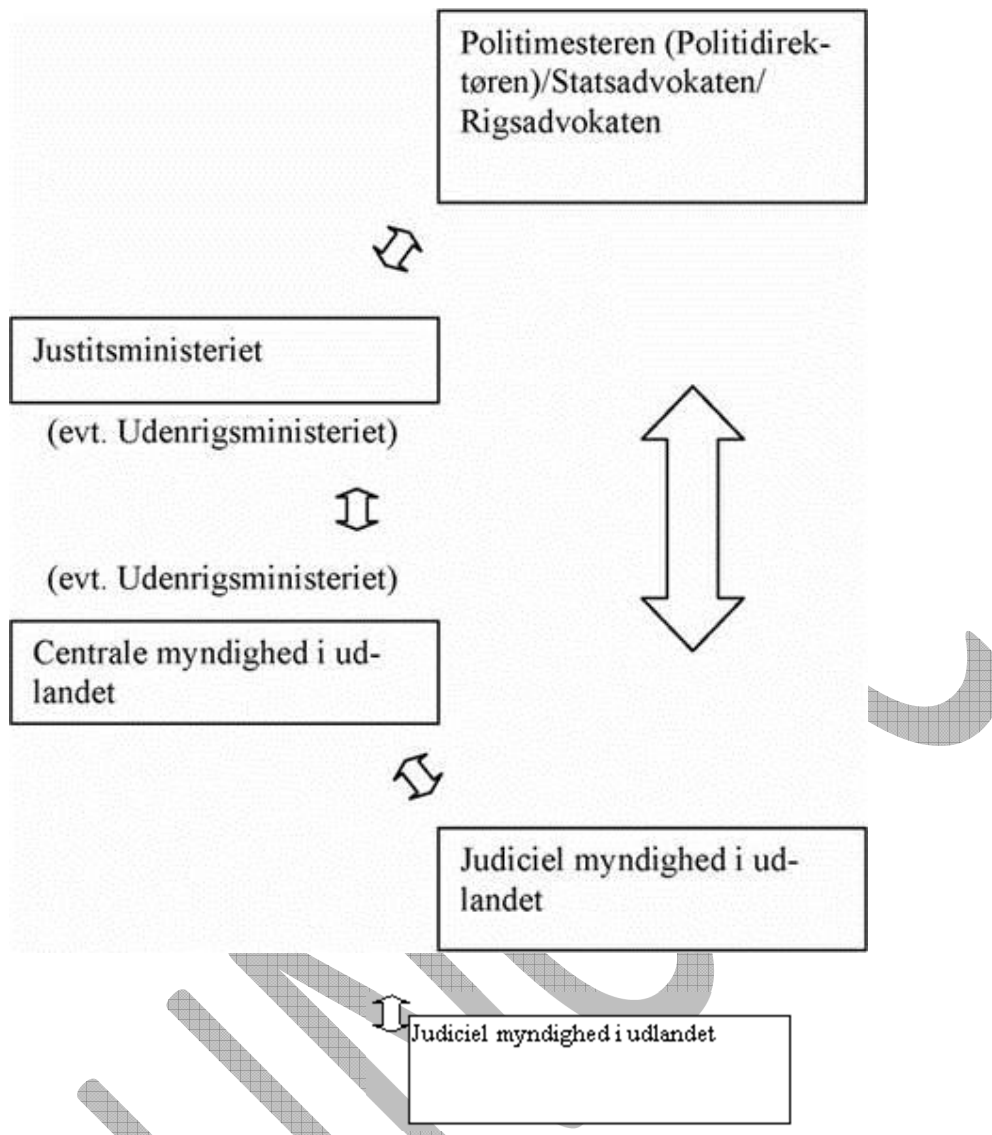
The most important difference between the Mutual Assistance Convention and the Schengen Convention is in the rules on submission of letters of request and requests for service of documents which can be seen in the figure below. Under the Mutual Assistance Convention, requests are submitted between the central authorities of Member States, while requests between the Schengen countries are submitted directly between the judicial authorities, i.e. from a Danish police commissioner to the equivalent authority of another Schengen country.

The specific rules for submission of requests between the Schengen countries are described in paragraph 3.3.

As mentioned, the Schengen Convention constitutes a supplement to the Mutual Assistance Convention, and in situations where the Schengen Convention does not contain any special rules, the Mutual Assistance Convention will still apply. This applies, for example, to the contents of a letter of request which must still follow Article 14 of the Mutual Assistance Convention.

Tekst til figur herunder:

Police Commissioner/State Prosecutors/Director of Public Prosecutions
The Ministry of Justice
(or the Ministry of Foreign Affairs)
(or the Ministry of Foreign Affairs)
Central authority abroad
Judicial authority abroad
Judicial authority abroad



3.1. Requests from Denmark

It is the police and the prosecution service which decide on the specific investigative measures to be carried out in a criminal case, including whether investigative measures requiring assistance from foreign authorities need to be carried out.

Before a letter of request is submitted to foreign authorities, a number of things must be considered. First, it must be considered whether the case in question falls within areas covered by a convention acceded to by Denmark and the country in question. If the country in question has not acceded to one of the relevant conventions, it must be checked if it is common practice for the country to provide legal assistance anyway and, if so, on which conditions, including whether the principles of the Mutual Assistance Convention are being followed. In situations where the country in question has acceded to one of the relevant conventions, it must be checked whether it has made declarations or taken reservations of significance to the specific case. Finally, it may be an option to

seek assistance from contacts who may provide guidance as to finding the fastest and best solution for the case in question.

3.1.1. Submission of Letters of Request

Pursuant to the Mutual Assistance Convention, the Ministry of Justice has been appointed as the central authority in Denmark. Letters of request to foreign authorities must therefore generally be submitted through the Ministry of Justice. As regards submission of letters of request to the Schengen countries, please refer to paragraph 3.3.

If the request is of an urgent nature, it may be submitted directly – through Interpol if appropriate – to the competent authority in the other country. However, a number of countries require that the request is also submitted through the Ministry of Justice, and it is therefore most appropriate to follow this procedure in general. In such situations, it must be stated in the covering letter to the Ministry of Justice that the request has already been submitted directly to the competent authority in the foreign country. It is also possible to receive assistance from the Nordic liaison officers abroad with a view to having them hand over the request to the foreign authorities. This method of submission must also be mentioned in the covering letter to the Ministry of Justice.

The Ministry of Justice is able to arrange for translation of the letter of request, but considering the time factor, the Ministry recommends that the police/prosecution service arranges for translation by a state-authorised translator prior to submitting the letter of request to the Ministry of Justice.

As a rule, the letter of request must be submitted in two copies, one of which must be the original. Upon submission of letters of request to countries which have not acceded to the Convention, the letter of request must be submitted in three copies as the request will be transmitted via diplomatic channels.

When submitting letters of request to foreign authorities, the Ministry of Justice uses a number of standard letters which have been translated into English, German, French and Spanish. Therefore, there will usually be no translation costs in relation to the Ministry of Justice's covering letter. In the situations where there is a need for changes and additions to the Ministry's standard letter, the letter will be translated by a state-authorised translator along with the letter of request if it has not already been translated at the instance of the police/prosecution service. Until now, the Ministry of Justice has subsequently sent the invoice for the translation to the relevant police commissioner or state prosecutor for further action. With a view to rationalising this procedure and also ensure that invoices are paid in due time, the Ministry of Justice will from now on pay the invoices, and the Ministry of Justice will then withdraw the amount directly from the police district/state prosecutor.

According to the Mutual Assistance Convention, the results of the investigative measures carried out will generally be returned through the same channels as were used for submission of the request. The Ministry of Justice will forward the investigation material to the police commissioner/state prosecutor as soon as possible after receipt from the other country.

3.1.2. Contents of the Letter of Request

Article 14 of the Mutual Assistance Convention only contains minimum requirements for the contents of the letter of request. In addition to the information expressly mentioned in the provision, the request should also contain the name and telephone number of one or more contacts

with the authority submitting the request. If the letter of request is of an urgent nature, it should also contain a reason for the urgency and information stating that the request has also been submitted directly to the competent authorities of the requested country.

As regards the practical layout of the letter of request, reference is made to the dossier of the Prosecution Service which contains a number of standard documents that should be used in connection with the submission of letters of request.

In addition to the practical information, a letter of request must contain an account of the circumstances of the case, including how the case arose, the nature of the offence, the people involved, why there is a need for the assistance of the foreign authority, and which assistance is required. The request must contain the information necessary for the foreign authority to understand the facts of the case and decide whether the request can be executed. Furthermore, the request must include a copy of the legal provisions with which the case is concerned.

As a rule, the letter of request should not contain copies of the Danish investigative material, except for potentially a summary report and any relevant court orders. The reason for this is that the costs of having the investigation material translated may be considerable, and the execution of the letter of request will be delayed if it is necessary for the requested authority to read through a lot of case documents in order to understand the circumstances of the case.

If it is found that there is a need for representatives from Danish authorities to participate in the execution of the investigative measure abroad, this must be stated and justified in the letter of request. This also applies if the presence of a Danish defence counsel in addition to police officers and representatives of the prosecution service is wanted.

3.1.3. Requests for Service

Requests for service of documents must generally be submitted through the central authorities but, under the Mutual Assistance Convention, the requests may also be submitted directly –through Interpol if appropriate – to the foreign judicial authority. As regards service on persons in the Schengen countries, please refer to paragraph 3.3.

Requests for service of documents need not contain an account of the circumstances of the case, but it must be stated what the charge is concerned with. Furthermore, requests for service need not include a copy of the legal provisions with which the case is concerned.

Summonses for witnesses staying abroad may be drawn up like witness summonses in Danish cases – with two important exceptions, however. First, it must be taken into account that it will not be possible to detain a witness staying abroad if they fail to appear. Second, the summons or the covering letter from the Ministry of Justice must contain information about witness compensation and reimbursement of travel and accommodation expenses or information about the name and telephone number of a person in the police district/state prosecutor's office whom the witness may contact about this.

When submitting requests for service of documents, the time factor plays an important role. When court hearings are being scheduled, it must therefore be taken into account that the dates must be served on defendants or witnesses abroad. It is the experience of the Ministry of Justice that at least three months should be allowed for service of documents in European countries and considerably longer outside Europe. For example, it must be expected that it may take more than one year before documents are served in Thailand. Therefore, it should also be considered carefully if there is a need

to summon the witness in question. If the request for service of documents which is submitted to the Ministry of Justice has not been translated, the police district/state prosecutor must be aware that, in addition to the time for service of the documents, it will also take time to have the documents translated.

In situations where an indictment has to be served on a defendant, attempts should be made to fix dates for trial so that the indictment and the summons may be served at the same time.

In particularly urgent situations, the Ministry of Justice may help by contacting the Danish embassy of the country in question with a view to seeking assistance for service of the documents.

It is also recommendable to contact the Ministry of Justice prior to fixing the final dates for trial, etc. if there is any doubt as to whether the documents can be served in due time.

3.1.4. Requests for Countries which have not Acceded to the Relevant Conventions

Requests for countries which have not acceded to the Mutual Assistance Convention or other relevant conventions must be submitted through diplomatic channels, i.e. the request must be submitted by the Ministry of Justice through the Ministry of Foreign Affairs. If the request is of an urgent nature, it may, however, be submitted through Interpol, but in such situations, the original request must always be submitted to the foreign authorities through the Ministry of Justice. As regards letters of request to Gibraltar, the United Kingdom and Spain have entered into a bilateral agreement which entered into force on 1 June 2000. This agreement means that letters of request from EU countries to Gibraltar must be submitted to the authorities of Gibraltar through a PO box at the UK Foreign and Commonwealth Office. If a letter of request to Gibraltar is of an urgent nature, the Ministry of Justice should therefore be contacted for the Ministry to telephone or email the UK authorities to notify them that a request of an urgent nature will be submitted.

Requests for countries which have not acceded to the relevant conventions may be drafted in accordance with the principles of the Mutual Assistance Convention and should, as a rule, contain the same information as requests submitted under that Convention. This applies, for example, to requests to the United States, Canada and a number of South American countries. However, some countries have special requirements for how letters of request should be drafted and what they are required to contain. To the extent that the Ministry of Justice has previous experience with the country in question, the Ministry will be able to provide guidance about this, and the Ministry of Justice will also be able to assist by obtaining information through the Ministry of Foreign Affairs.

It should also be noted that a number of countries do not execute letters of request if there is no agreement on mutual legal assistance in criminal matters between Denmark and the country in question. It may be attempted to find an answer to that question by contacting the Ministry of Justice or by enquiring through Interpol before preparing a letter of request.

3.1.5. The Responsibilities of the Ministry of Justice

As mentioned, the competence to decide whether there is a basis for submitting a letter of request in a specific case lies with the police and the prosecution service. Therefore, the Ministry of Justice does not generally carry out a substantive review of the case, unless the case raises questions of principle. As a rule, the Ministry of Justice will merely ensure that the formal conditions of the

Convention are satisfied, including that the request is worded in the correct language, and that the request otherwise contains the information required under the Convention.

It is the job of the prosecution service to assess whether an investigative measure requires a court order and, if so, to obtain the required court orders in connection with the submission of a letter of request. If it is an investigative measure which the requested authorities require a court order for, the Ministry of Justice will ensure that the necessary court orders are obtained prior to submission of the letter of request.

When forwarding investigation material from abroad, the Ministry of Justice does not check whether the foreign authorities have executed the request in full or in part. Therefore, it will be appropriate if, as soon as possible after receipt of the material from the foreign authority, the Danish authorities review the material to determine whether a follow-up letter of request needs to be submitted.

3.2. Requests to Denmark

Letters of request to Denmark are usually submitted under the Mutual Assistance Convention and the Additional Protocol. However, some requests are submitted under the Money Laundering Convention or both conventions. Finally, Denmark receives a number of requests from countries which have not acceded to the Mutual Assistance Convention or the Money Laundering Convention.

3.2.1. Submission of Letters of Request

As regards letters of request from the Schengen countries, please refer to paragraph 3.3.

Letters of request from countries which are not part of the Schengen cooperation are still generally submitted from the central authority abroad to the Ministry of Justice. However, requests are often submitted directly – sometimes through Interpol – to the Danish authorities. In most situations where a request was submitted directly, it will also be submitted through the central authorities. However, the Ministry of Justice is not always notified when the request was submitted directly to the competent Danish authority, and the Ministry of Justice will therefore not be aware which Danish authority received the request. This may cause difficulty in cases where more than one police district may be deemed competent.

When the request is received directly from the foreign authorities, the police district may commence execution of the request without awaiting receipt of the original request through the Ministry of Justice. At worst, it may take several months before the request is submitted through the central authorities, and the execution of the request should not await this.

In situations where the letter of request is received by the Ministry of Justice, the request will be forwarded to the competent Danish authority in accordance with the rules on competence set out in the Administration of Justice Act. If several police districts are competent, the Ministry of Justice will forward the request to the relevant police districts. At the same time, the Ministry will – if the request is deemed to give rise to this – ask one of the districts to coordinate execution of the request.

When forwarding the request to the relevant police district, the Ministry of Justice will also inform the foreign authority that the request has been received and state which authority is considering the request.

When a request has been executed, the case should be returned to the Ministry of Justice which will forward the Danish investigation material to the foreign authorities. As regards requests which the police commissioner has received directly from the foreign authority, the investigation material should always be returned through the Ministry of Justice in accordance with Article 15 of the Mutual Assistance Convention.

3.2.2. Contents of the Letter of Request

Foreign requests for investigative measures in Denmark may be granted, irrespective of whether the submission and processing of letters of request are regulated by a convention or an agreement which is applicable between Denmark and the requesting state. As mentioned, the requested investigative measures will, in that case, be carried out on the basis of an analogous application of the relevant rules in the Administration of Justice Act.

Requests for assistance from foreign authorities must be considered on the same basis as if the measure were to be carried out in a domestic case. As regards requests for assistance requiring the cooperation of the court, the offence on which the request is based must be punishable under Danish law. This appears from a declaration which Denmark has issued in relation to Article 5 of the Mutual Assistance Convention. The Danish authorities must also be aware of the ban against double jeopardy (*ne bis in idem*) if a request for assistance is received in a case in which a final and conclusive judgment has already been handed down in Denmark or where prosecution has been finally withdrawn, see the principles set out in section 10A of the Criminal Code. A number of countries have a different understanding of the concept of "*ne bis in idem*" than the rules set out in the Criminal Code, and Danish authorities should therefore be reluctant to hand over material from the Danish investigation. In certain situations, the foreign authorities should merely be informed of the outcome of the criminal proceedings in Denmark.

In some situations, the foreign authorities will ask that specific formalities be observed when executing an investigative measure in Denmark. This applies to the United Kingdom and the United States, for example, which regularly request that witness evidence be taken under oath or that interviews be recorded as a statement. Under section 190 of the Administration of Justice Act, such requirements for a specific form or procedure should be granted as far as possible, unless this would be clearly incompatible with the legal order of Denmark. Denmark has issued a declaration in relation to Article 3 of the Mutual Assistance Convention according to which a request that evidence given by a witness or an expert must be confirmed under oath may be declined if the Danish court in question does not find that such confirmation is necessary. Irrespective of the wording of the declaration, it is the practice of the Ministry of Justice that requests for evidence under oath are generally declined without presenting the matter to the court in connection with an in-court interview. According to practice, it is, however, possible to record witness evidence given to the police in such a way that a statement containing the evidence given by the witness is annexed to the interview report.

A request asking that representatives of foreign authorities may be present in Denmark in connection with the execution of the investigative measures in question should generally be granted, unless there are considerations which constitute a decisive argument against this. However, the investigation will be carried out by Danish police, and the representatives of the foreign authorities are not allowed to carry out independent investigative measures in Denmark.

Police reports drawn up in connection with investigation carried out at the request of a foreign authority will be written in the Danish language by Danish police. This also means that – irrespective of whether the interviewee has a right to it – an interpreter must participate in situations where representatives of a foreign authority will be given the chance to ask questions of the interviewee. Police reports, etc. will subsequently be sent to the foreign authorities which will be responsible for arranging for translation of the reports themselves. It may be agreed that the interpreter who participated in the interview will carry out the translation of the police report and that the costs of this will be reimbursed by the foreign authorities.

Under Article 11 of the Mutual Assistance Convention, the requesting country may ask that a person in custody in the requested country, whose personal appearance as a witness or for purposes of confrontation is needed in the requesting country, be transferred to the requesting country or the country where the hearing is intended to take place. The transfer may be declined if the person in custody does not consent to the transfer or if there are other decisive reasons for not temporarily transferring the person in question to the other country. When Denmark receives a request under Article 11 of the Convention, the police commissioner who is or were investigating the criminal case which gave rise to the deprivation of liberty in Denmark will be in charge of making a decision as regards the request – possibly after presenting it to the superior prosecution service. If the request is related to a person in remand custody, the conditions under which the person in question will be in custody in the requesting country must be taken into consideration. For example, not all countries can offer solitary pre-trial detention or letter and visitation control. In this connection, it may be considered to make granting the request conditional upon a Danish police officer being present in connection with the detainee's temporary transfer to the requesting country.

3.2.3. Requests for Service

As regards requests for service of documents from the Schengen countries, please refer to paragraph 3.3.

Requests for service of documents are also generally submitted through the central authorities. However, requests for service of documents may always be submitted directly – through Interpol, if relevant – to the judicial authorities in Denmark.

Requests for service of documents will generally indicate a time limit for the performance of the service, and the police commissioner receiving the request for service of documents must endeavour to keep such time limits whenever possible. Service should be performed on the person in question him- or herself unless otherwise stated in the request.

Proof of service will be made in the same manner as for service of documents in Danish cases, but it should be taken into account that a stamp proving service may be difficult to read for foreign authorities and that the stamp should therefore be very clear. Alternatively, the proof of service may be noted on a separate page to be enclosed as an annex.

Foreign authorities often send documents to be served in one of the languages which Denmark has declared allowable in connection with the submission of letters of request. However, it is the view of the Ministry of Justice that this declaration does not cover documents to be served, and it is thus the requesting country which must arrange for translation into a language understood by the person to be served. This means that in connection with service of the documents, it must be clarified if the

person in question understands the language in which the documents are worded. If the person in question claims not to understand the language, this should be noted in the proof of service.

The Ministry of Justice receives a lot of requests from countries like Hungary and the Czech Republic in which they ask for service on the reporting citizen/victim in cases where the foreign authorities have decided to withdraw prosecution or discontinue investigation in a criminal case. It is the view of the Ministry of Justice that there is no need for service in person, and the Ministry therefore forwards the request to the relevant police commissioner with a note stating that it will be sufficient to inform the person in question of the withdrawal of prosecution.

3.2.4. Requests to Denmark from Countries which have not Acceded to the Relevant Conventions

Denmark frequently receives requests from countries which have not acceded to the Mutual Assistance Convention or other relevant conventions. As mentioned in paragraph 3.2., requests may be granted irrespective of whether there is an agreement about this between Denmark and the requesting country. Letters of request from such countries will thus generally be considered in the same manner as requests from countries which have acceded to the relevant conventions. This means, for example, that the letters of request should meet the formal requirements provided for by the Mutual Assistance Convention. The difference between these requests and requests from countries which have acceded to the relevant conventions is that Denmark is not obliged to provide assistance. However, Denmark will generally provide assistance to the extent that the Administration of Justice Act allows for it and the assistance is not otherwise contrary to fundamental principles of law.

In this connection, special cautiousness should be used when dealing with requests from countries which have a judicial system that is very different from the Danish one. In some countries, police reports may be used as direct evidence during criminal proceedings, and before a request from such countries can be granted, it is the practice the Ministry of Justice to ask the country in question to declare that police reports will not be used as direct evidence during criminal proceedings to any wider extent than what would be allowed under the Danish Administration of Justice Act.

As regards letters of request concerning offences which may result in the death penalty under the laws of the requesting country, such requests cannot be granted unless the requesting country declares that no requests for the death penalty will be made or that a potential death penalty will not be enforced.

3.2.5. The Responsibilities of the Ministry of Justice

As mentioned, letters of request from foreign authorities are considered on the basis of an analogous application of the relevant rules in the Administration of Justice Act. This means that the police commissioner will decide whether the request will be granted and to what extent. This means that the Ministry of Justice does not generally review the substance of the case. Prior to forwarding a foreign letter of request to the competent Danish authority for further action, the Ministry of Justice will, however, assess whether the formal conditions set out in the Mutual Assistance Convention are satisfied, including whether the request pertains to a criminal case and it has been submitted in either Danish, German, English or French. If there is a need to have the request translated, this will be arranged for by the police commissioners.

If, already upon receipt of the request, the Ministry of Justice finds that the formalities under the Mutual Assistance Convention are not met, that documents or information is missing from the request, or that an investigative measure is requested which will clearly not be granted, the Ministry will return the request to the foreign authorities directly.

If the police commissioner finds that it is only possible to grant part of a request or that a request cannot be executed within the time limit set by the requesting country, the police commissioner should discuss this directly with the competent authority in the requesting country. In situations where the request gives rise to consideration of principles, the request should, however, be discussed with the Ministry of Justice before contacting the foreign authorities.

In situations where the police commissioner finds that the entire request should be declined, for example based on *ne bis in idem* or with reference to the offence on which the request is based not constituting a criminal offence in Denmark, the request must be returned through the Ministry of Justice, and the police commissioner should state the reason the request should not be granted. The Ministry of Justice will subsequently consider the case and inform the foreign authorities of the outcome.

3.3. The Schengen Convention of 19 June 1990

On 25 March 2001, Denmark entered the practical Schengen cooperation, and the provisions on mutual legal assistance in criminal matters set out in the Schengen Convention will now apply to the consideration of requests between Denmark and the other Schengen countries. As can be seen from the review in paragraph 2.2.2., the Convention's rules on mutual legal assistance in criminal matters will entail changes in connection with the processing of requests for mutual legal assistance as the main rule under the Schengen Convention is that requests must be submitted directly between the judicial authorities.

3.3.1. Processing Letters of Request between Denmark and the Schengen Countries

Letters of request may be submitted directly from the judicial authorities in Denmark to the judicial authorities in the other Schengen countries in accordance with the guidelines given by those countries. The judicial authorities in Denmark are defined in the same way as under the Mutual Assistance Convention, which means that the courts and the Prosecution Service which includes the Ministry of Justice, the Director of Public Prosecutions, the state prosecutors, the Commissioner for the Copenhagen Police and the local police commissioners are the authorities competent to send letters of request. The judicial authorities in Denmark will thus also be able to process and respond to requests received directly from the judicial authorities in the other Schengen countries.

From now on, letters of request between the Schengen countries and Denmark must only be submitted or returned through the Ministry of Justice if the case involves a matter of principle or if the case otherwise gives rise to questions of more general importance to the consideration of requests for legal assistance in criminal cases. Moreover, cases in which the judicial authorities in Denmark are not willing to grant a request from another Schengen country must be returned through the Ministry of Justice so that the Ministry may consider the case.

Cases concerning matters of principle will typically be requests for investigative measures which may give rise to special considerations under the Administration of Justice Act. This could be

requests to use agents or to observe specific procedures in connection with the execution of investigative measures.

The Ministry of Justice has not yet received lists of judicial authorities from all other Schengen countries. The lists will be distributed when the Ministry of Justice receives them.

3.3.2. Processing Requests for Service between Denmark and the Schengen Countries

The provisions of the Schengen Convention on service of documents mean that the main rule will now be that documents to be served will be sent directly by post to the person who is to receive the documents. The individual Schengen countries have declared which documents may be sent in this way. Please refer to paragraph 2.2.2.

The Ministry of Justice has not yet received a full list of these documents from the other Schengen countries. The Ministry of Justice will distribute the list upon receipt.

In future, Danish authorities will be able to send documents directly by post to the persons in the other Schengen countries who are to receive the documents. If there is reason to believe that the person does not understand Danish, the documents, or at least the most important passages thereof, must be translated into (one of) the language(s) of the country in the territory of which the addressee is staying. If the Danish authorities know that the addressee understands only one language – a language other than the language(s) of the country in question – the documents, or at least the most important passages thereof, must be translated into that other language. Requests for service of documents must therefore now only be submitted to the judicial authorities if the recipient's address is unknown or when the Administration of Justice Act provides for service of documents in person.

3.4. Statistical Information

As mentioned in the introduction, the evaluation report on Denmark contains a recommendation to keep statistics of the numbers of incoming and outgoing requests for the purpose of case management.

The Ministry of Justice must ask the police and the prosecution service to take the necessary steps to ensure that it will be possible to obtain the following information in the future:

I. Incoming Requests

1. Letters of Request

- 1.1. the number of letters of request from foreign countries
- 1.2. the number of letters of request from Schengen countries
- 1.3. the number of letters of request received directly from authorities in Schengen countries
- 1.4. the number of letters of request received from Schengen countries through the Ministry of Justice
- 1.5. the number of letters of request from other countries
- 1.6. the number of letters of request received directly from authorities in other countries
- 1.7. the number of letters of request received from other countries through the Ministry of Justice

2. Service of Documents

- 2.1. the number of requests for service of documents from foreign countries
- 2.2. the number of requests for service of documents from Schengen countries
- 2.3. the number of requests for service of documents received directly from authorities in Schengen countries
- 2.4. the number of requests for service of documents received from Schengen countries through the Ministry of Justice
- 2.5. the number of requests for service of documents from other countries
- 2.6. the number of requests for service of documents received directly from authorities in other countries
- 2.7. the number of requests for service of documents received from other countries through the Ministry of Justice

II. Outgoing Requests

1. Letters of Request

- 1.1. the number of letters of request to foreign countries
- 1.2. the number of letters of request to Schengen countries
- 1.3. the number of letters of request submitted directly to Schengen countries
- 1.4. the number of letters of request submitted to Schengen countries through the Ministry of Justice
- 1.5. the number of letters of request to other countries
- 1.6. the number of letters of request submitted to other countries through the Ministry of Justice
- 1.7. number of letters of request submitted directly to other countries

2. Service of Documents

- 2.1. the number of requests for service of documents to foreign countries
- 2.2. the number of requests for service of documents to Schengen countries
- 2.3. the number of requests for service of documents submitted directly to the addressee in a Schengen country
- 2.4. the number of requests for service of documents submitted directly to authorities in Schengen countries
- 2.5. the number of requests for service of documents submitted to Schengen countries through the Ministry of Justice
- 2.6. the number of requests for service of documents to other countries
- 2.7. the number of requests for service of documents submitted directly to authorities in other countries
- 2.8. number of requests for service of documents submitted to other countries through the Ministry of Justice

4. TRANSFER OF PROCEEDINGS

In practice, transfer of proceedings is used as an alternative to a request for extradition in situations where there will not be grounds for requesting extradition. A request for transfer of

proceedings in a criminal case will also be relevant if the accused has permanent residence in another country and it is most appropriate for criminal proceedings to take place in that country, for example, because the witnesses in the case are already in that country.

4.1. Danish Law

Under section 1 of Act No 252 of 12 June 1975 on the transfer to another country of proceedings in criminal matters, offences which are covered by the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 may be prosecuted in accordance with the rules set out in the Convention.

Cases to be decided by a court in Denmark are brought before the court where the person in question lives by the Prosecution Service, see section 2 of the Act. Under section 3 of the Act, the rules set out in the Administration of Justice Act on the processing of criminal cases apply to the extent that the Convention does not contain conflicting rules. When a foreign state indicates that it intends to make a request for criminal prosecution and only Danish courts are competent to consider the case under section 8(1)(5) of the Criminal Code, the accused may be arrested and held in custody in accordance with the rules set out in Articles 27-29 the Convention. Under section 5, the Minister of Justice may, for reasons of reciprocity, decide that the Act must also be applied in the relationship between Denmark and a state which has not acceded to the Convention.

4.2. The European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972

Denmark has acceded to the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972. Under Article 2(1) of the Convention, any contracting state has competence to prosecute under its own criminal law any offence to which the law of another contracting state is applicable.

This provision in the Convention has been taken into account in the jurisdiction rule set out in section 8(1)(5) of the Criminal Code according to which acts committed outside the territory of Denmark, irrespective of the nationality of the perpetrator, are subject to Danish criminal jurisdiction where the act is covered by an international provision under which Denmark is obliged to have criminal jurisdiction.

The jurisdiction rules set out in section 8 are of independent importance if the act does not concern the Danish territory and was committed by a foreigner without such relations to Denmark as described in section 7 of the Criminal Code.

Part III of the Convention contains more detailed rules on the transfer of proceedings. Article 6 of the Convention stipulates that when a person is suspected of having committed an offence under the law of the requesting country, that country may request another country to take proceedings in the situations and under the conditions provided for in this Convention. The competent authorities of the requested country are obliged to consider the request.

A general principle of double criminality applies under Article 7 of the Convention, as proceedings may only be taken in the requested country if the offence in respect of which the proceedings are requested would be an offence if committed in its territory and when, under these circumstances, the offender would be liable to sanction under its own law also.

Article 8 of the Convention sets out the situations in which the countries may request transfer of proceedings. First, this applies when the suspected person is ordinarily resident in the requested country or is a national of the requested country. Moreover, transfer of proceedings may be relevant if the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested country, if the majority of the items of evidence are located in the requested country, or if the requesting country considers that it could not itself enforce a sentence and that the requested country could do so.

Under Article 10 of the Convention, the requested country may not take action on the request, if the country does not comply with the provisions of Articles 6(1) and 7(1), if the institution of proceedings is contrary to the provisions of Article 35 of the Convention banning double jeopardy, or if the time-limit for criminal proceedings has already expired in the requested country.

Article 11 of the Convention deals with the situations in which, besides the situations referred to in Article 10, the countries may refuse acceptance of the request for transfer of proceedings. This applies, for example, in situations where the grounds on which the request is based under Article 8 are not sufficient.

Under Article 13, all requests must be made in writing and generally be submitted through the countries' ministries of justice. The request for transfer of proceedings must be accompanied by the original, or a certified copy, of the criminal file and all other necessary documents.

Under Article 16 of the Convention, the requested country must promptly communicate its decision on the request for proceedings to the requesting country, and the requested country must also inform the requesting country of the decision taken as a result of proceedings.

Under Article 21, a request for transfer of proceedings means that the requesting country can no longer prosecute the suspected person for the offence in respect of which the proceedings have been requested or enforce a judgment which has been pronounced previously in the requesting country against him for that offence. The right of prosecution and of enforcement reverts to the requesting country if the requested country informs it of a decision in accordance with Article 10 not to take action on the request, if the requested country decides to refuse acceptance of the request under Article 11, or if the requested country decides not to institute proceedings or discontinue them.

4.3. Notifications, etc. from the Director of Public Prosecutions on Transfer of Criminal Proceedings between the Nordic Countries

In February 1970, the Nordic directors of public prosecution entered into a Cooperation Agreement on criminal prosecution in another Nordic country than the country in which the criminal offence was committed. The Cooperation Agreement has been amended several times – most recently when Denmark, Sweden and Norway ratified the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972. Finland and Iceland have still not ratified the Convention.

The Cooperation Agreement can be found in Danish in the Prosecution Service's Annual Report of 1976, pages 53ff and Instruction No. 5/78 from the Director of Public Prosecutions. The Cooperation Agreement applies in its entirety to the relationship between Nordic countries which have not acceded to the European Convention, and sections 4, 5, 7 and 8 of the Agreement apply in addition to and instead of the Convention's provisions on the relationship between Nordic countries which

have acceded to the conventions. These provisions are concerned with the requirements for the contents of the request and submission of the request.

By Instruction No. 11/1982 from the Director of Public Prosecutions, specific rules were laid down for the transfer of proceedings to another Nordic country in minor drugs cases. According to the Instruction, it must normally be attempted to transfer prosecution of drugs cases which are not deemed to result in a prison sentence to the country where the suspected person is resident unless there are significant reasons against the transfer, including the consideration for the production of evidence.

5. Processing of Requests for Transfer of Proceedings

Requests for transfer of proceedings are generally submitted through the countries' ministries of justice, see Article 13 of the Convention, but requests between the Nordic countries are submitted in accordance with the rules set out in section 5 of the Cooperation Agreement. For Denmark, this means that requests from Denmark are made by the police commissioners, and requests to Denmark are also submitted to the police commissioner in the police district where the suspected person lives or is staying.

5.1. Requests from Denmark

It is for the police commissioner to decide – potentially after presentation to the superior prosecution service – if in a specific case there are grounds to request another country to take proceedings in the case. If so, the request must be submitted to the Ministry of Justice which will forward it to the minister for justice of the other country.

Upon submission of requests for transfer of proceedings, the exhibits in the case should be reviewed carefully, as – because of the costs for translation – only the exhibits necessary for the foreign authority to decide whether to take proceedings should be included to begin with. If there are doubts as to whether another country will be able to take proceedings, for example due to the requirement for double criminality, rules on criminal jurisdiction, lack of ratification of the European Convention, etc., it will be possible to submit a preliminary request to the foreign authorities. This preliminary request should contain a brief account of the circumstances of the case and an accurate description of the criminal offence.

5.2. Requests to Denmark

A request for transfer of criminal proceedings from another country will be forwarded as soon as possible by the Ministry of Justice to the relevant police district in accordance with the rules set out in the Act on Transfer of Proceedings in Criminal Matters to Another Country. At the same time, the Ministry of Justice will also inform the foreign authorities that the request has been received and state which police district is considering the request.

Before it is decided whether proceedings can be taken, it may be considered to inform the foreign authorities that the case will then be concluded by the issue of a warning or that prosecution may be withdrawn under section 721(1), paras. (2) and/or (3), of the Administration of Justice Act. The foreign authorities will then be able to assess whether they still wish for Denmark to take proceedings.

6. Further Information

On 29 May 2000, the EU Member States adopted a Convention on Mutual Legal Assistance in Criminal Matters whose purpose is to supplement provisions of the Mutual Assistance Convention, the Additional Protocol and the Schengen Convention on mutual legal assistance in criminal matters. The EU Convention thus contains provisions on mutual legal assistance in connection with requests for video interviews, telephone interviews, establishment of joint investigation teams and interception of telecommunication. The Convention will enter into force when it has been ratified by eight of the countries which were members of the EU on 29 May 2000 when the Convention was signed. In connection with the entry into force of the Convention, the Ministry of Justice will draw up revised guidelines on mutual legal assistance in criminal matters.

Questions about the processing of requests for mutual legal assistance in criminal matters may be directed to the International Office of the Ministry of Justice. The Ministry can also provide information as to which countries have ratified the relevant international conventions and as to which reservations and declaration the countries in question may have made in relation to the conventions. However, this information will also be available on the website of the Council of Europe at <http://conventions.coe.int>.

Guidelines on processing requests for mutual legal assistance in criminal matters may also be found in the Prosecution Service's Annual Reports from 1996 and 1999 as well as from the State Prosecutor for Serious Economic Crime as regard requests in cases concerning economic crime.

Ministry of Justice, 5 December 2001

Jakob Scharf