Introduction

Denmark joined the European Community in 1973 (then EEC). The 1972 European Communities Act provided for the incorporation of EC law into Danish domestic law following Denmark’s accession to the EC. Section 3 states that relevant EC law has direct effect in Denmark as if it were established by the Danish Parliament.

In the wake of a rejection by public referendum of accession to the Maastricht Treaty in 1992, a so-called »national compromise« was struck between a majority of political parties. As a consequence, the Maastricht Treaty was supplemented by Edinburgh Agreement between Denmark and the then 11 other Member States, providing Denmark with a number of opt-outs from participation in EU policies in the areas of union citizenship, monetary policy, the defence dimension, and Justice and Home Affairs. Subsequently, an additional referendum was conducted in 1993, this time concluding in an approval. Denmark participates fully in the intergovernmental cooperation on Justice and Home Affairs under the Third Pillar, for instance in the fight against terrorism, but is not a party to supranational cooperation under the First Pillar. Denmark participates in the Common Foreign and Security Policy except for decisions and actions with defence implications.

Legislation on extradition was introduced relatively late in Denmark. In 1960, an Act regarding the extradition of offenders to other Nordic countries was introduced. In 1967, Denmark implemented the European 1957 Convention on Extradition by passing a common Extradition Act. Compared to the provisions in the common Act, the legislation regulating extradition relations between the Nordic countries is characterised by less restrictive conditions for extradition and more simplified procedures. This is a reflection of the mutual confidence and trust between these neighbouring countries as a result of a relatively high degree of similarity in terms of cultural and legal traditions. From a Danish perspective,
relations between the Nordic countries, as well as the broader activities of the Council of Europe, have been important preludes to the recent efforts in judicial cooperation under the Third Pillar on the extradition of suspects, defendants and convicts.


Denmark was the second Member State to implement the Framework Decision on the European Arrest Warrant (EAW), completing the process by the end of May 2003. The initiative necessitated the amendment of two chapters of the common Extradition Act. The amended chapters specifically concerned Danish relations with other EU Member States.

The new rules concerning extradition from Denmark to another EU Member State on an EAW are contained in Chapter 2a (conditions for extradition) and Chapter 3a (procedures for dealing with such cases) of the 1967 Extradition Act.


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5 The current consolidation of the 1967 Extradition Act is lovbekendtgørelse (lbk.) 833 of 25 August 2005: link.
6 By Parliamentary Decision of 10 April 2002, Folketinget formally accepted the Government’s assent to the then draft Framework Decision. For a more elaborate account in Danish of recent amendments to the Danish Extradition Act, see the author’s article in Danish: Den europæiske arrestordre - udlevering til strafforfølgning mv. Tidsskrift for Kriminalret 9/2004, pp. 555-567: link.
7 The 1967 Extradition Act was amended by Act 433 of 10 June 2003. The current consolidation of the Act is lovbekendtgørelse (lbk.) 833 of 25 August 2005: link. The bill amending the 1967 Act was passed by 80 votes to 24. The opposition votes represent the left as well as the right side of Parliament. The amended Act also covers some formal changes to the Act on Extradition of offenders to Finland, Iceland, Norway and Sweden, Act 27 of 3 February 1960: link. The amended provisions came into force by 1 January 2004 and apply to arrest warrants presented after that date.
8 Cover note to the General Secretariat, Brussels 16 January. 5348/04, COPEN 13, EJN 5, EUROJUST 5: link.
The Ministry of Justice stipulated that the new concepts used in the Framework Decision do not differ substantially from the content of traditional terminology, so the previously used terms were retained in implementing the Framework Decision in Denmark. The Framework Decision uses the term »surrender« instead of »extradition«. As both terms involve the actual handing over of a wanted person to the requesting country, the term extradition is applied in the amended provisions of the Extradition Act, too.

Extradition from Denmark to Finland or Sweden is, basically, still covered by the provisions under the amended 1960 Act on extradition of offenders to Finland, Iceland, Norway and Sweden. The provisions regarding extradition on the basis of an EAW are, however, applicable in relation to Finland and Sweden insofar as those rules go further, cf. Extradition Act Section 1 (2)(2). The latter rule may have a particular impact in cases involving extradition of Danish nationals or extradition for political offences, as the provisions in the 1960 Nordic Extradition Act might in such instances have a narrower scope in certain respects.

A set of Guidelines on the handling of requests for the extradition of offenders on the basis of an EAW was issued on 19 December 2003 by the Ministry of Justice and circulated as binding instructions to the Danish police service and the Public Prosecutor's Office. The Permanent Representative to Denmark informed the Secretary General of the Council of the European Union by letter received 14 January 2004. The letter included an addendum to the previous notification.

Supplementary Guidelines on the handling of requests for the extradition of offenders on the basis of an EAW were issued on 14 December 2004 by the Ministry of Justice and circulated as binding instructions to the Danish police service and the Public Prosecutor's Office.

The amended provisions regarding extradition based on an EAW do not require reciprocity. Thus, they are applied even if, at the time of issue of an EAW, the issuing Member State has not transposed the Framework Decision into its national law, so that the issuing State would not itself be able to deal with an extradition request under the EAW rules.

Denmark has not made a statement under Article 32 of the Framework Decision relating to the date of the acts to which an extradition requests relates. The 2003 amendment Act will apply to acts committed before as well as after it came into force, provided the request is made after 1 January 2004. The only exceptions are in relation to France, Italy and Austria who have made declarations under Article 32 FD. In the administrative guidelines on the operation of the EAW, it is noted that

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10 Addendum to Cover note to the General Secretariat, Brussels 16 January. 5348/04 ADD 1, COPEN 13, EJN 5, EUROJUST 5: link.
those countries will deal with extradition requests for such offences under the pre-existing rules in their national legislation on extradition of offenders.

The amended provisions regarding extradition for prosecution or enforcement of a sentence in another EU Member State imply a number of significant alterations of the previously applicable modality of extradition under Danish law. Attention has mainly been caught by the following points:

- Extradition will no longer be refusable on the grounds that there is insufficient evidence to support the charge or conviction for an act for which extradition is sought.
- Issue of an EAW will in itself provide the basis on which to secure a person's extradition for prosecution or service of sentence, and it is no longer possible to demand an underlying arrest or custody warrant to be supplied.
- Danish nationals will basically be extraditable in the same way as foreign nationals, although a condition regarding re-transferral for serving the sentence in Denmark may be stipulated, cf. Article 5 (3) FD.
- Extradition will no longer be refusable on the grounds that the offences involved are of a political nature.
- Double criminality is no longer required for a number of offences, specified on the »positive list«, cf. Article 2 (2) FD.
- A number of new grounds for refusal have been introduced, some of which are mandatory (i.e. extradition has to be refused), while others are optional (i.e. it may be refused, following concrete assessment in the individual case).
- A European arrest warrant has to be dealt with within shorter time limits than in the past and the Act includes deadlines for processing time, for a decision on extradition and for a possible judicial review.

On 23 February 2005 the Commission report on the Member States' implementation of the Council Framework Decision on the EAW was issued.\(^\text{12}\) In the report – and in the Commission staff working document annexed to it – the Commission concluded that Denmark had not implemented some of the provisions of the Framework Decision and had not fully implemented others. In Denmark’s comments to the Commission report and the staff working document it is stated that in Denmark’s view the Council Framework Decision has been fully transposed into Danish law, and that Denmark therefore cannot understand the Commission's criticism.\(^\text{13}\) Further details regarding the Danish position will be provided in the following sections.


\(^{13}\) Regarding Member States' comments to the Report from the Commission on the EAW, see further the following note: 11528/05, COPEN 118, EJN 40, EUROJUST 44: link.
1. Constitutional issues

a. Please specify views of doctrine and judicature in your country concerning the legal character of the third pillar framework decisions (FD) issued on the basis of art. 34.2 TUE

According to article 34 (2) TUE, the Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may adopt certain legal instruments, e.g. framework decisions for the purpose of approximation of the laws and regulations of the Member States, cf. article 34 (2)(b) TUE. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect.

In general, framework decisions are complied with rather strictly by the Danish Legislature, i.e. the Parliament of Denmark, Folketinget. Before political agreement is concluded in the Council, the Danish Government will ensure that a sufficient negotiation mandate has been obtained from Folketinget. If domestic legislation needs amendment, a bill will often be introduced at an early stage. No specific Danish views of doctrine and judicature concerning the legal character of the third pillar framework decisions can be indicated.

b. Please indicate the position of the doctrine and courts in your country concerning the relation between the domestic norms being a result of implementation of framework decisions – and conventions on European cooperation in criminal matters, accepted within the EU/Council of Europe?

As Denmark follows the dualist doctrine of international law, legislation being a result of implementation of a framework decision shall be given priority to international obligations rooted in a convention, i.e. if the latter has not been implemented in other legislation.
Thus, under Danish law, international legal obligations are not binding in domestic law unless they have been specifically incorporated by way of legislation. The point of departure according to Danish constitutional law is that rules of public international law do not automatically become part of domestic law per se. Only treaties specifically incorporated into Danish law by legislative measures are given full effect. In principle, this means that international agreements require special implementing measures in order to create rights for individuals and to be enforceable by Danish courts and other law-applying authorities.

Convention obligations can be fulfilled either by 1) establishing that special measures are not considered necessary since domestic law is already in conformity with the relevant obligations under international law (»norm harmony«); 2) incorporation by legislative reference to the entire body of a specific international agreement, thereby enacting it as a directly applicable part of domestic law; or 3) transformation, i.e. implementation by application of one or the other legislative technique, e.g. by rewriting and rephrasing a set of international obligations into the format of domestic law statutes, thereby enacting new or amended provisions in accordance with Danish legislative traditions.

However, not only conventions that have been implemented in Danish law by being transformed or incorporated are relevant sources of law in domestic law. Unincorporated guarantees of human rights may be taken into account by domestic courts, too. Also conventions, etc., that have not been specifically implemented, because harmony of norms has been ascertained, can be invoked before and applied by Danish courts and other law-applying authorities. This means that also the unincorporated conventions are relevant sources of law.

The courts shall assume that the legislature does not intend to legislate in a manner incompatible with Denmark’s international legal obligations. If domestic law is open for different interpretations, courts shall to the extent possible interpret legislation in conformity with international obligations (»rule of interpretation«).

Furthermore, courts shall presume that the legislature has not intended to legislate in contravention of Denmark’s international obligations (»rule of presumption«). Thus, courts shall to the extent possible apply domestic legislation in such a way, that infringement of international obligations is avoided. However, this does not apply if the legislature has deliberately legislated in contravention of such obligations.

Administrative authorities are obliged to take into account Denmark’s international obligations in exercising discretionary powers (»rule of instruction«).

14 Under the Danish Constitution, »The King shall act on behalf of the Realm in international affairs«, cf. Section 19 (1). »The King« means the executive, i.e. the Government. However, except with the approval of parliament, Folketinget, the Government may not enter into any obligation of major importance, e.g. a treaty requiring domestic implementation by law.
As the mentioned rules are rather vague, application may give rise to doubts as to how judicial authorities are to solve a conflict between such a convention and a statutory provision, and the specific outcome is not always predictable.

In 1992, the ECHR and additional protocols to the Convention were incorporated into Danish domestic law,\(^{15}\) thus enabling invocation of Convention law directly before national courts and government agencies.\(^{16}\) As the Convention and the ECtHR jurisprudence have gained status as a sort of surrogate constitution regarding civil liberties, the incorporation initiative has had a noticeable effect on procedures and arguments brought up in criminal cases, and a substantial number of case reports refer to the ECHR. No other human rights instruments have been directly incorporated in domestic law,\(^{17}\) but, obviously, Denmark has ratified most of the major existing human rights instruments, and some obligations under such conventions and treaties have been transformed into domestic law. The Penal Code provision on discriminatory manifestations\(^{18}\) reflects a transposition of certain parts of the International Convention on the Elimination of All Forms of Racial Discrimination, CERD; general clauses in various penal provisions cover provisions of the Geneva Conventions on humanitarian law, which therefore may be invoked before domestic courts.

c. Is the doctrine and judicature in your country opting for “pro-european” (“European – friendly”), interpretation of domestic law, including constitutional law? Is it also applied as regards third pillar instruments?

It would seem rather difficult to offer a univocal account of the interpretation of domestic Danish law as either pro-european or the opposite.

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\(^{17}\) The question regarding further incorporation has been examined by a Committee under the Department of Justice in the Report Inkorporering af menneskerettighedskonventioner i dansk ret, Betænkning nr. 1407 (Summary in English, Chap. 16). The Committee suggested incorporation of ICCP with additional protocols, CERD and CAT, but legislation to such an effect has not been enacted.

\(^{18}\) Cf. Section 266 b PC.
From a constitutional perspective, the position of the Judiciary may be characterised as a rather balanced one.

In the so-called 1998 Maastricht-Ratification-case, the Supreme Court recognised a group of citizens as formal applicants, but rejected the claim that the accession to the Maastricht-treaty as supplemented by the Edinburgh Agreement was in breach of the Constitution’s requirement that only a delimited amount of power may be ceded to »international authorities«. The judgement shares basic features with a parallel ruling of the Bundesverfassungsgericht regarding the validity of ratification of the Maastricht treaty.

However, in terms of requesting the Court of Justice to give preliminary rulings in accordance with art. 234 TEC concerning the interpretation of the Treaty establishing the European Community, there seems to be some reluctance on the part of the Danish Judiciary and the administration, too.

d. What is the influence of ECJ judicial decisions on the implementation of domestic law (e.g. Pupino case)?

In general, judicial decisions by the European Court of Justice would be adhered to rather strictly by Danish courts. Any effect of the Pupino decision has not yet been noted.

e. Is interpretation of domestic law implementing framework decisions in your country possible solely by referring to the wording or inhalt of the framework?

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19 See the judgement in the case U/R 1996.1300 H. The Supreme Court recognised that individuals may have locus standi in a case regarding transfer of state power if the matter is considered to be of general importance to citizens or has substantive impact in the population in general. In a later judgment, the Supreme Court ruled to the opposite effect in the specific instance in a case regarding Danish ratification of the Schengen Convention, see U/R 2001.2065 H.

20 Cf. Section 20 which only allow for delegation of state powers may »to a certain specified extent«. The domestic Accession Act to the Communities provides for the transfer of powers under the Danish Constitution to be exercised by the institutions of the Communities »to the extent specified in the treaties«. The Supreme Court found the Accession Act compatible with the requirements of Section 20, even though it is acknowledged that the exact delimitation of powers transferred may give rise to doubts which are then subject to the jurisdiction of the ECJ. However, the Supreme Court also found that if an »extraordinary situation« should arise that an act issued by the Communities clearly exceeds the limits of the powers transferred, even though the ECJ might rule otherwise, Danish courts must rule such an act inapplicable in Denmark. The full text of the Supreme Court’s ratio decidendi in the Maastricht judgement is excerpted in Dahl et al (ed.), pp. 33 ff.

decisions? Is it possible also when a framework decision is not yet implemented into the domestic legal order?

In principle, interpretation of domestic Danish law implementing a framework decision would not be possible solely by referring to the wording or inhalt of the framework decision. It would certainly not be possible either when a framework decision is not yet implemented into the domestic legal order.

f. To what scope, if at all, is it possible to ask EJC preliminary questions as refers to the interpretation of framework decisions (art. 35 TUE). Can such question be asked by constitutional court (or equivalent)?

Under Article 235 EC, the ECJ has the jurisdiction to give preliminary rulings on the interpretation and validity of certain measures adopted under the Third Pillar but only if the Member State has accepted the ECJ’s jurisdiction by making a declaration to this effect. Denmark has not to date made such a declaration. Furthermore, Denmark has no particular constitutional court or equivalent.

In principle, it is within the jurisdiction ratione materiae of Danish courts to review the compatibility of a specific legislative provision or body of legislation with the Constitution. Over the years, this has been a manifest presupposition behind a good deal of jurisprudence. However, the judicial authority to set aside a piece of legislation as unconstitutional has been explicitly exercised by the Supreme Court only once, and very recently. The 1999 verdict in the so-called Tvind-case made history, as the Court found that legislation stripping particular private schools of their access to state subsidies was motivated by distrust in the institution’s prior and future compliance with relevant legal requirements and, therefore, a final conclusion to a concrete legal dispute and as such in contradiction with the principle regarding separation of powers as stated in the Constitution.

g. What is the technical form of implementation of the framework decision on EAW in your country (e.g. separate law, a part of the CCP, separate from extradition provisions, other ways?)? When exactly did the law implementing the framework decision enter into force?

The amended provisions in the Extradition Act entered into force on 1 January 2004, and they apply to requests for extradition submitted after that date, cf. § 3 of the amendment Act. See further details in the introduction above.
h. Was the implementation of the framework decision and the framework decision itself subject of proceedings of the constitutional court in your country?

No. As previously mentioned, Denmark has no particular constitutional court or equivalent. The constitutionality of the FD has not been challenged at the ordinary courts, either.

i. Is the surrender procedure according to the EAW understood as a form of extradition or is it treated as a separate legal instrument?

As previously explained, the surrender procedure according to the EAW is understood as a form of extradition.

2. The implementation of the FD on the EAW in the domestic legal order

a. Are there differences between the way of implementation of the EAW in your country and the “pattern” provided by the framework decision? If so, do the differences concern:

- the negative premises (compulsorily and optional) of surrender?

In the following sections, the provisions regarding grounds for non-execution of an EAW as stipulated in the amended Danish Extradition Act will be dealt with in more detail. Comments made in the Commission’s 2005 report will be included as to clarify differences between the way of implementation of the EAW in Denmark and the “pattern” provided by the framework decision.

Grounds for non-execution of an EAW, Article 3 FD and Article 4 FD

Sections 10 c - 10 h in the amended 1967 Extraditions Act set out the bars that apply to complying with European Arrest Warrants.
The following grounds may bar surrender from Denmark:

(i) Age of criminal responsibility, Section 10 c.
(ii) Double jeopardy, Section 10 d.
(iii) Statutory limitations, Section 10 e.
(iv) Lack of double criminality, Section 10 f.
(v) Trial in absentia, Section 10 g.
(vi) Human rights perils, Section 10 h and Sections 10 j (1), cf. Section 10.
(vii) Specialty limitations, Section 10 j (2 and 3), cf. Section 10.

Temporary postponement of execution of an EAW, Article 23 (4) FD

Article 23 (4) FD has been transposed by Section 10 i of the amended Extradition Act.

The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, e.g. if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist.

In the Commission report on the EAW it is stated that the provision on postponement of surrender of the requested person for serious humanitarian reasons has not been fully transposed by Denmark. The Commission refers to Denmark having no provision requiring the issuing authority to be informed of the postponement or for arranging a new date for surrender. Denmark has pointed out in a comment to the report that it follows from Section 10 i of the amended Extradition Act that extradition shall be postponed if it must be accepted that it would be incompatible with humanitarian concerns. Extradition must be postponed until the special conditions preventing extradition no longer apply. Furthermore, it is evident for example from the travaux préparatoires that the provision is a result of Article 23 (4) FD, implying that the judicial authorities of the Member State concerned shall be informed of the postponement at once, and a new date for surrender agreed if possible. Therefore, Denmark does not agree with the Commission's criticism as regards the transposition of Article 23 FD.

Conditional execution of an EAW, Article 5 FD

Article 5(3) FD (surrender conditional on return of nationals or residents to executing state to serve sentence) has been transposed by Section 10 b of the amended Extradition Act.

Article 5(2) FD (surrender conditional on review where the act on which the EAW is based is punishable by life sentence in the issuing state) has not been transposed by Denmark.

Conditional execution of an EAW, Article 24 (2) FD
Conditional execution of an EAW is also dealt with in Section 21 a of the amended Extradition Act, which allow temporary transfer of a prisoner from another country to Denmark to be made conditional on the re-transfer of the person surrendered to the executing state to serve his sentence. This provision partially transposes Article 24 (2) FD.

**Grounds for mandatory non-execution, Article 3 FD**

1) **Amnesty, Article 3(1) FD**

The judicial authority of the Member State of execution shall refuse to execute the European arrest warrant if the offence on which the arrest warrant is based is covered by *amnesty* in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law, cf. Article 3 (1) FD.

Article 3 (1) FD has been transposed by Section 10 d (1)(2) of the amended Extradition Act. According to said provision, extradition shall be refused if the person has been pardoned in Denmark.

No express provision has been included in the amended Extradition Act regarding the non-execution of an EAW on the grounds that the offence is covered by an amnesty in Denmark.

In its report the Commission states that by using the word »pardon« in the Danish extradition law (second sentence of Section 10 d (1)) rather than »amnesty«, Denmark has not fully implemented Article 3 (1) FD on the mandatory non-execution of an extradition request if the offence on which the European arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law. The Commission submits that pardon is a narrower concept than amnesty. Denmark has commented that it follows from the first sentence of Section 10 d (1) that extradition cannot take place when the requested person has been tried or acquitted of the same criminal act in Denmark. This also applies if the person whose extradition is sought has been granted a pardon in Denmark for the act (second sentence of Section 10d (1)). This means that extradition cannot take place if the person sought has been tried, acquitted or pardoned in Denmark for the act on which the EAW is based.

It also follows from the first sentence of Section 10 d(2) that extradition shall be refused if charges against the person concerned have been dropped in Denmark, and if it is no longer possible to review this decision under the ordinary rules for reviewing such decisions pursuant to the law on the administration of justice. This means that extradition cannot take place if the
Danish Prosecution Service has made a final decision not to press charges for the act on which the European arrest warrant is based.

In Denmark's view these provisions contain clear and full legal rules laying down that extradition from Denmark cannot take place, and that a request on the basis of an EAW must therefore be refused, if the criminal act at the basis of the extradition request is covered by amnesty in Denmark.

It is noted in the Danish comment that Denmark does not make use of general releases exemptions from punishment in the form of proper amnesties. In practice only individual pardons are used or – rarely – general anticipatory decisions not to press charges from the outset, for example, by granting safe-conduct to hand over illegal weapons to the police. Such general decisions not to press charges from the outset are covered by the first sentence of Section 10 d (2). The fact that the Danish extradition law does not use the same form of words – here the expression «amnesty» – as is used in the Council Framework Decision does therefore not mean that Article 3 (1) FD has not been fully and correctly transposed into Danish law.

2) Ne bis in idem (double jeopardy), Article 3 (2) FD

The judicial authority of the Member State of execution shall refuse to execute the European arrest warrant if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State, cf. Article 3 (2) FD.

Article 3 (2) FD has been transposed by Section 10 d (1)(1 and 3) and Section d (2)(1) of the amended Extradition Act.

According to Section 10 d (1)(1), extradition shall be refused if the person has been convicted or acquitted of the same criminal act in Denmark or in a Member State other than the issuing State. However, where there has been sentence, extradition can only be refused provided that the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State, cf. Section 10 d (1)(4).

22 Under Section 10 d (1)(3) of the amended Extradition Act, extradition may also, at the relevant judicial authority’s discretion, be refused if the person has been convicted or acquitted of the same criminal act in a Third State, cf. Article 4 (5) FD. Thus, in such an instance the EAW may be executed, e.g. if an acquittal is obviously the result of a flawed trial.
Regarding refusal of extradition in instances where a waiver of prosecution has been issued in Denmark prior to reception of an EAW, see details in a following section. Under Danish law, non-execution has been made mandatory in such cases, provided that the decision to refrain from indictment has become final.

3) **Minors, Article 3 (3) FD**
The judicial authority of the Member State of execution shall refuse to execute the European arrest warrant if the person may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State, cf. Article 3 (3) FD.

Article 3 (3) FD has been transposed by Section 10 c of the amended Extradition Act. According to Section 10 c, extradition shall be refused if the person was below 15 years of age at the time of committing the alleged crime. Under Danish law, the said age limit is the general minimum age of criminal responsibility, cf. Section 15 PC.

Where any of the mentioned grounds listed above for non-execution of an EAW apply, extradition is barred. They are all mandatory grounds for non-execution.

**Additional grounds for indispensable non-execution of an EAW**
Denmark has supplemented the mandatory grounds for non-execution foreseen by the FD with additional provisions in the amended Extradition Act regarding indispensable non-execution of European Arrest Warrants. These grounds concern certain instances where double criminality is lacking and certain instances where a waiver of prosecution has been issued in Denmark prior to reception of the EAW. Moreover, non-execution is mandatory under the amended Extradition Act in certain instances regarding risk of human rights violations, trial in absentia, and competing international obligations.

**Lack of double criminality in certain instances**
Regarding instances where double criminality is lacking, there are two relevant instances:
cases regarding offences not included in the Article 2 (2) list, cf. Section 10 a (2) (prosecution) and Section 10 a (3) (sentence), and

• cases regarding offences committed in part or in whole within Danish territory (Article 4 (7)(a)), cf. Section 10 f (1).

In other words, Denmark has made use of the option granted in the Framework Decision to set up indispensable requirements regarding double criminality for certain categories of cases. For offences other than those covered by Article 2 (2) FD, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described, cf. Article 2 (4) FD.

Thus, the traditional requirement regarding double criminality has only been removed for conduct listed in Article 2(2) FD. An EAW must, therefore, be refused for all conduct falling outside that listed in Section 10 a (2) of the amended Extradition Act where such conduct does not constitute an offence under Danish law.

In the travaux préparatoires of the amendment Act is was stated that the requirement regarding double criminality shall be administered in a flexible manner in accordance with Article 2 (4) FD, so that the requirement is found to be fulfilled if an act described in an EAW in whole or in part correspond to an offence under Danish law. Regardless of legal classification, it shall be sufficient that the accusation, the indictment or the judgement concerns an act which would have been considered an offence if committed in Denmark.

Offences not covered by Article 2 (2) FD
The executing judicial authority may refuse to execute an EAW if, in one of the cases referred to in Article 2 (4) FD, the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State, cf. Article 4 (1) FD.

An EAW regarding prosecution in another EU Member State may be executed for acts not covered by Article 2 (2) FD as transposed by Section 10 a (1) of the amended Extradition Act, if the offence is punishable by imprisonment for at least 1 year under the law of the issuing
State, and the act is considered an offence under Danish law, cf. Section 10 a (2) of the amended Extradition Act. A precondition for the requirement regarding double criminality is that the act is not included in the Article 2 (2) FD list or that it is not punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years. The bottom line under the particular provision is that if the said conditions are not fulfilled, an EAW can not be executed. In this specific context, no particular requirements have been established concerning the level of punishment under Danish law, but double criminality is unconditionally required.

An EAW regarding enforcement of a sentence in another EU Member State may be executed for acts not covered by Article 2 (2) FD as transposed by Section 10 a (1) of the amended Extradition Act, where a sentence has been passed or a detention order has been made, if the sanction is a sentence of at least four months, and the act is considered an offence under Danish law, cf. Section 10 a (3) of the amended Extradition Act. A precondition for the requirement regarding double criminality is that the act is not included in the Article 2 (2) FD list or that it is not punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years. The bottom line under the particular provision is that if the said conditions are not fulfilled, the EAW can not be executed. In this specific context, no particular requirements have been established concerning the level of punishment under Danish law, but double criminality is required.

Extradition for prosecution or enforcement of a sentence may be executed for multiple offences even though the above stipulated conditions are only met for one of the relevant offences, cf. Section 10 a (4) of the amended Extradition Act.

In particular regarding taxes or duties, customs and exchange offences

In relation to taxes or duties, customs and exchange offences, execution of an EAW shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State, cf. Article 4 (1) FD. With regard to said exception from a strict principle requiring double criminality there has been no need for an explicit transposition into Danish law. Danish extradition law is based
on a doctrine implying that a certain conduct fulfils the requirement of double criminality if an equivalent act committed on Danish territory and violating Danish national interests would have constituted an offence under Danish law. As previously mentioned, Denmark did therefore not make any reservations with regard to the Second Additional Protocol to the European 1957 Convention on Extradition, as the principles under the Protocol are entirely compatible with Danish law.

In the Commission report regarding the EAW it is stated that the second part of Article 4 (1) FD cannot be regarded as fully transposed into Danish law, since the Danish law does not contain a specific reference to the condition established by said article. In the Danish comment to the Commission report it is pointed out that Denmark does not agree with the Commission's assessment on this point, as the Extradition Act only provides rules regarding those cases in which an EAW may be refused, and thus does not indicate when a refusal may not be given. In Denmark's view such a provision would be unusual as regards legal technique. In addition, Article 34 (2)(b) TEU was cited with regard to choice of form and methods for transposition. Further, it was noted that under Danish law the requirement of double criminality shall be administered flexibly, so that the condition is regarded as having been met if the acts described in the arrest warrant wholly or partly correspond to an offence in the executing State. Finally, it was stressed that by participating in the adoption of the Council Framework Decision, Denmark has under international law undertaken an obligation towards the other Member States to administer the Danish extradition law in accordance with the provisions of the Framework Decision. Thus the Danish authorities would not be able to refuse an extradition request on the basis of a tax offence on the grounds that Danish law did not contain the same type of taxes, duties, etc.

Offences committed within Danish territory, Article 4 (7)(a) FD
Execution of an EAW is barred for cases regarding acts committed in part or in whole on Danish territory if double criminality is lacking, cf. Section 10 f (1) of the amended Extradition Act.

Prior waiver of prosecution in Denmark
The requested judicial authority may refuse to execute an EAW where the judicial authorities of the requested Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings, cf. Article 4 (3) FD.
The optional ground for non-execution provided by the third (final) part of Article 4 (3) FD (final judgement) has been transposed into Danish law as a mandatory ground for non-execution of an EAW where a waiver of prosecution (in Danish: tiltalefrafald) has previously been issued by the prosecutor, provided that the decision to refrain from indictment has become final. Thus, an EAW may only be executed if the common conditions under the Administration of Justice Act concerning reversal of the non-prosecution decision and resumption of the case are fulfilled, cf. Section 10 d (2)(1) of the amended Extradition Act.

However, there seems to be a great deal of disparity regarding the understanding of Article 4 (3) FD and, consequently, the perceptions as to what has been transposed and whether the implementation is in accordance with the Framework Decision. For an account of the positions of the Commission and the Danish Ministry of Justice, see further below in this section.

Danish law provides the prosecutor a rather extensive authority to waive prosecution due to a doctrine regarding a principle of expediency (opportunitetsprincippet). The main reasons to apply the expediency principle are:
- the offence is of a minor seriousness;
- measures according to social; welfare legislation preferable to punishment;
- the offender was under 18 years old when committing the act, and conditions for waiving prosecution are stipulated;
- the offender has recently been sentenced for another crime, and none or only minor additional punishment would be imposed;
- continuation of prosecution would be disproportionate;
- the offence is a corporate crime and the corporation is prosecuted;
- the victim requests charges to be dropped; or
- the offender has been re-committed to custody.

The above cited Section 10 d (1)(1) and Section 10 d of the amended Extradition Act reflects the Article 54 Schengen Convention which refers to judgement regarding the ‘same acts’ and has been incorporated into Article 3 (2) FD. Thus, the formulation of the Extradition Act does not require the second prosecution to be for an offence identical in law to the first. It is a sufficient ground for refusal of extradition that the second case aims at prosecution for any offence arising out of the same facts. Conduct covered by the Article 2(2) FD list, for which double criminality is removed, would therefore also be protected by the double jeopardy rule in Denmark. This formulation of the double jeopardy rule is in line with the wording of the FD as well as to the ECJ judgment in Gözutok and Brügge in which the court stated that the
The double jeopardy rule in Article 54 Schengen is part of the Community acquis and that the rule’s application is not conditional on harmonisation of criminal procedural rules.\(^{23}\)

The amended Extradition Act is in agreement with the in a section above mentioned reservation concerning Article 9 ECE. Further, Denmark has ratified ECHR and additional protocols (including Protocol 7 Article 4 ECHR)\(^{24}\), the Additional 1975 Protocol to the European 1957 Convention on Extradition (including Article 2), the European 1970 Convention on International Validity of Criminal Judgments (including Articles 53-55), and the European 1972 Convention on the Transfer of Proceedings in Criminal Matters (including Articles 35-37), the 1987 EC Convention on Double Jeopardy.

Regarding prosecution in Denmark, the Penal Code contains a statute barring double jeopardy, cf. Section 10 a PC. Under certain conditions, a person who has been finally judged in the State where the criminal act has been committed can not be prosecuted in Denmark for the same act. The same rule applies regarding judgements covered by the European 1970 Convention on International Validity of Criminal Judgments and the European 1972 Convention on the Transfer of Proceedings in Criminal Matters. The conditions for barring prosecution in a second case are that (1) the person was acquitted, (2) that there has been a sentence which has been served or is currently being served or may no longer be executed under the law of the sentencing Member State, or (3) that the person was convicted but no sentence was applied. However, a second prosecution is not barred if the act is covered by the territoriality principle under Section 6 PC or the protective principle under Section 8 (1) PC, se above regarding said provisions and principles. If a second prosecution results in a sentence, due considerations shall be taken regarding a prior sentence imposed for the same act to the extent is has already been served, cf. Section 10 b PC.

Regarding the Member States' implementation of the second part of Article 4(3) FD (halting of proceedings), it is claimed in the Commission report on the EAW and the annexed staff working document that implementation is not in accordance with the case-law of the ECJ in a number of Member States, including Denmark, since it has allegedly been made optional for

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\(^{23}\) Joined cases C-187/01 Gözutok and C-385/01 Brügge of 11 February 2003.

\(^{24}\) As previously mentioner, the ECHR and additional protocols to the Convention have been incorporated into Danish domestic law, thus enabling invocation of Convention law directly before national courts and government agencies, cf. Act no. 285 of 29 April 1992.
extradition to be refused in cases where the executing State has decided to halt proceedings for the same offence as that on which the EAW is based. Principally, Denmark has commented that it follows directly and expressly from Article 4 of the Council Framework Decision that Member States »may« refuse to execute an EAW in the cases listed in Article 4 FD. Thus, Member States have the option of deciding whether they wish to use the grounds for refusal in Article 4 FD. Therefore, Denmark finds the Commission's comment that this is not in accordance with the case-law of the ECJ basically misleading in relation to the question of whether the Framework Decision itself has been correctly implemented in the national law of the Member States.

Further, Denmark has called attention to the fact that it actually follows from Section 10 d (2)(1) of the amended Extradition Act that extradition shall be refused if charges against the person for the same act »have been dropped« (in Danish: tiltalefrafald) in Denmark, and if it is no longer possible to review this decision under the ordinary rules for reviewing such decisions pursuant to the Administration of Justice Act. The Ministry of Justice added, that this »means that extradition cannot take place if the Prosecution Service has made a final decision not to press charges for the act on which the European arrest warrant is based.« However, in the comment made by Denmark, the rule established in the cited Section 10 d (2)(1) is taken as a result of the implementation of the second part of Article 4(3) into Danish law, which is probably not an adequate reading of the Framework Decision, see further below.

Moreover, the Ministry of Justice in its comment to the Commission report also stated that it follows from the second sentence of Section 10 d (2) of the Extradition Act that extradition may (»can«) be refused if charges have been withdrawn (in Danish: påtaleopgivelse) and if the conditions for reviewing the decision to withdraw the charges (under the ordinary rules pursuant to the Administration of Justice Act) have not been met. Regarding this issue, see further details below in a section on optional non-execution.

Thus, Denmark believes that it has implemented the second part of Article 4(3) in accordance with the Council Framework Decision.

The conclusion reached in Denmark’s comment regarding implementation of Article 3 (4) FD is definitely correct. However, the line of argument reflects the fact that it is not at all sufficiently clear what the three parts of Article 4 (3) are supposed to cover and regulate. Rightfully, an instance regarding a prior waiver of prosecution should adequately be attributed to the article’s third part (regarding final judgements), in accordance with Gözutok and Brügge. However, the uncertainty regarding the correct reading of the Framework Decision is reflected in the line of argument upon which the conclusion in Denmark’s comment is built, as the views expressed there refers to the first and second part of Article 4 (3) FD as far as waiver of prosecution is concerned, although the proper reference should be the third and final part of the article (final judgements). The report of the Commission and the staff working document seem to be based on a misinterpretation of the Framework Decision, too,
as the relevant EJC case-law is allegedly connected with the second part of Article 4 (3) FD, which should rightly have been the third and final part of the article.

Risk of capital punishment, persecution, torture, or other violations of human rights, recitals 12 and 13 FD, Article 1 (3) FD

The 1967 Extradition Act includes certain specific provisions barring extraditions in instances where fundamental human rights are at stake. A person may not be extradited if capital punishment might be enforced. This principle is stated in Section 10 (3) of the Extradition Act, and the amended Section 10 j (1) refers to said section with regard to the conditions for extradition to an EU Member State. Further, a person may not be extradited if there is a risk of serious persecution due to his or her ethnic background, religious or political faith or other political circumstances. This principle is stated in Section 6 (1) of the Extradition Act, and, in accordance with recital 12 FD, an equivalent provision has been amended in a new Section 10 h (1) with regard to the conditions for extradition to an EU Member State.

In accordance with tradition, the Extradition Act does not contain any general provision explicitly barring extradition in instances where there is a risk of human rights violations. The 2003 amendment Act did not alter this tradition in any fundamental way. However, new provisions were introduced to accommodate human rights proponents who had advocated an express provision barring extradition in cases characterised by a manifest risk of torture, etc. Consequently, it has now been specifically stated in the Extradition Act that a person may not be extradited on the basis of an EAW if there is a risk of torture or other inhuman or degrading treatment or punishment, cf. Section 10 h (2) of the amended Extradition Act. An equivalent provision was set up regarding extradition to Third countries, cf. Section 6 (2) of the amended Extradition Act.

It was emphasized in the travaux préparatoires of the 2003 amendment Act that Denmark’s international obligations regarding human rights and principles was not in any way affected by the Framework Decision, and that compliance in extradition law was not dependant of the existence of particular statutes regulation the issue. As previously mentioned, Denmark has incorporated the ECHR and additional protocols by 1992 legislation and subsequent amendments. Thus, deliberations regarding extraditions must take into consideration whether extradition would be compatible with the European Convention on Human Rights. If it is
found that extradition would be incompatible with convention rights, extradition must be rejected. In other words, extradition is barred e.g. if surrender would jeopardize the right to a fair trial under Article 6 ECHR. In addition, the general human rights clause stated in recital 12 FD was quoted by the Ministry of Justice:

»This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union(7), in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.«

Also Article 1 (3) FD was cited in the travaux préparatoires:

»This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined by Article 6 of the Treaty on European Union.«

Thus, the fact that the issuing state is a signatory to the ECHR does not per se mean that extradition will be compatible with Convention rights and that, consequently, an EAW should not automatically trigger a decision to surrender. However, it may be anticipated that Danish extradition authorities will handle an EAW on the basis of a presumption that the issuing Member State have a criminal justice system that is trustworthy and Strasbourg-compliant, so that wanted men can be sent there without fear for their human rights. Still, in unusual instances, there might be a reason particular to the case in hand for thinking otherwise. It remains to see how the Ministry of Justice and the judiciary will exercise justice in such cases.

All in all, the Danish legislature did not find it necessary to deploy a general provision regarding respect of human rights. Further it was argued, that the existence of such a provision might lead to unfortunate conclusions with regard to the interpretation of other legislation where such provisions had not been implemented. However, risk of torture, etc. is
explicitly mentioned in the recitals to the Framework Decision as a bar to extradition, etc., cf. recital 13 FD. Therefore, it was argued, such a specific rule could also be included in the amended Extradition Act.

In the Commission’s report on the EAW it is stated that a number of Member States, including Denmark, have provided for mandatory refusal of an extradition request on the basis of an EAW if extradition would conflict with the fundamental rights of the person whose extradition is being sought. The Commission comments that there is a risk that Danish implementation of the Framework Decision on this point goes too far beyond the provisions of the Framework Decision, since extradition will be refused if there is a danger that the person will suffer persecution for »political reasons«, cf. Section 10 h of the amended Extradition Act. In the Danish comment to the report it is pointed out, that Denmark does not agree with the Commission that Danish implementation of the Framework Decision goes too far beyond the provisions of that Decision. It is accentuated in the Danish comment as a background to the Danish view that recital 12 FD and Article 1(3) FD state that the Framework Decision respects fundamental rights and principles recognised in Article 6 TEU and elsewhere. A consequence of this is that the Framework Decision respects the ECHR. Extradition will therefore have to be denied if there are objective grounds to believe that an EAW has been issued with the aim of persecuting or punishing a person amongst other things because of that person's political beliefs. Thus, in Denmark’s view there is no question of the Danish extradition law going further than the Framework Decision.

**Trial in absentia**

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

Where an EAW has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered in absentia and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment, cf. Article 5 (1) FD.

Denmark has implemented a provision resembling Article 5(1) FD. However, said article has been interpreted as concerning a particular set of grounds for non-execution. Thus, instead of
allowing surrender to be made conditional on the person receiving a retrial in such cases, the amended Extradition Act requires surrender to be refused where the person has not been appropriately summoned regarding the trial and is not entitled to a retrial in the issuing state and to be present at the judgement, cf. Section 10 g (1 and 2) of the amended Extradition Act. The rationale behind the new provision in the Extradition Act is convincingly explained in the travaux préparatoires of the Act with reference to ECtHR jurisprudence regarding Article 6 ECHR.

Earlier extradition to Denmark and competing international obligations, Article 21 FD
The Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality, cf. Article 21 (1) FD. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant, cf. Article 21 (2) FD.

Article 21 FD is cited bluntly in the travaux préparatoires to the 2003 amendment Act, but nothing is said regarding the issue in the Act or in the administrative guidelines.

In the Commission report on the EAW it is, in general, claimed that the implementation of framework decisions in the national legislation of the Member States requires the use of binding provisions. In Denmark’s comment to the report it is stated that Denmark does not agree with the Commission's view. For details, see the section above regarding multiple requests.

Grounds for optional non execution

Lack of double criminality, Article 4 (1) FD and Article 4 (7)(a) FD
As previously mentioned, Denmark has implemented the following optional grounds for non-execution in Article 4 FD as mandatory under the amended Extradition Act.
Grounds for indispensable non-execution of European Arrest Warrants concern lack of double criminality in two instances (for further details, see above):

- Offences not covered by Article 2 (2) FD, cf. Article 4 (1) FD
- Offences committed within Danish territory, Article 4 (7)(a) FD

Concerning other indispensable grounds for non-execution, see above with regard to the following issues that are not included under Article 4 FD:

- Risk of capital punishment, persecution, torture, or other violations of human rights
- Trial in absentia

Litis pendens – instances where a person subject of an EAW is being prosecuted in the requested Member State for the act on which the EAW is based, Article 4(2) FD

The executing judicial authority may refuse to execute an EAW where the person who is the subject of the EAW is being prosecuted in the executing Member State for the same act as that on which the EAW is based, cf. Article 4 (2) FD.

Extradition for prosecution can be refused if court proceedings have been instituted in Denmark against the person concerned for the act for which extradition is sought and the legal proceedings, by reason of the nature of the act, the person's relation to Denmark and the circumstances in general, indicate that the proceedings should be carried out in Denmark, cf. Section 10 d (3) of the amended Extradition Act. Traditionally, it has not been found necessary to have an explicit provision to this effect, and no such provision has been instituted with regard to extradition requests from Third countries, as no statutory basis for refusal has been considered required. With regard to the Framework Decision, however, it was found that grounds for non-execution should be explicitly stated in the Extradition Act.

Ne bis in idem – dismissal of prosecution and halting of proceedings, first and second parts of Article 4 (3) FD

The requested judicial authority may refuse to execute an EAW where the judicial authorities of the requested Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has
been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings, cf. Article 4 (3) FD.

As previously mentioned, the optional ground for non-execution provided by the third part of Article 4 (3) FD (final judgements) has been transposed into Danish law as a mandatory ground for non-execution due to a prior *waiver of prosecution*, provided that the decision to drop charges has become final. Thus, if a waiver of prosecution (in Danish: *tiltalefrafald*) has been issued by the prosecutor, an EAW may only be executed if the common conditions under the Administration of Justice Act concerning reversal of the non-prosecution decision and resumption of the case are fulfilled, cf. Section 10 d (2)(1) of the amended Extradition Act. For further details, see above in a previous section concerning additional grounds for mandatory non-execution, where the disparity regarding the interpretation of Article 4 (3) FD are also mentioned.

The first part of Article 4 (3) FD regarding dismissal of prosecution or halting of proceedings has been transposed into Danish law as an optional ground for non-execution, provided that the decision to withdraw charges or discontinue proceedings has become final. If the prosecutor has decided to dismiss charges (in Danish: *påtaleopgivelse*) and the common conditions under the Administration of Justice Act concerning reversal of the decision are not fulfilled, execution of an EAW may be refused at the relevant judicial authority’s discretion, cf. Section 10 d (2)(2) of the amended Extradition Act. An equivalent provision was simultaneously enacted with regard to extradition requests from Third countries, cf. Section 8 (3) of the amended Extradition Act. As main reasons for *nolle prosequi* under Danish law, lack of sufficient evidence, an exculpation, lack of jurisdiction, the perpetrator’s minority, might be listed.

The travaux préparatoires on the 2003 amendment Act state in relation to Section 10 d (2)(2) that there might be grounds to refuse extradition on the basis of an EAW e.g. if the Danish police and Prosecution Service had already assessed the case to which the EAW related on the basis of the evidence, with a view to possible prosecution in Denmark, and had withdrawn charges because they had proven unfounded. On the other hand there would for example not be the same grounds to refuse to execute an EAW if the reason charges had been withdrawn
in Denmark was that a prosecution could not be brought in Denmark because of a lack of jurisdiction, but had to be brought in the Member State now issuing an EAW.

As mentioned in a previous section regarding Article 4 (3) FD, the comment made by Denmark with regard to the Commission report on the EAW reflects a certain disparity in the interpretations of duties imposed on the Member States.

Statute of limitation, Article 4 (4) FD
The executing judicial authority may refuse to execute the European arrest warrant where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law, cf. Article 4 (4) FD.

Article 4 (4) DF has been transposed into Danish law as an optional ground for non-execution. Thus, extradition for an alleged offence within Danish jurisdiction may be refused at the relevant judicial authority’s discretion if criminal liability or enforceability of a possible sentence would have been statute-barred according to Danish law, cf. Section 10 e of the amended Extradition Act.

In the travaux préparatoires to the 2003 amendment Act it is stated that there will mainly be a presumption regarding non-execution of an EAW due to statute of limitation where the offence has been committed on Danish territory.

Ne bis in idem – wanted person finally judged by a third State, Article 4 (5) FD
The requested judicial authority may refuse to execute an EAW if the wanted person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country, cf. Article 4 (5) FD.

The said optional ground for non-execution due to reasons regarding double jeopardy has been transposed into Danish law as a discretionary rule regarding non-execution. Extradition
may be refused if the person has been convicted or acquitted of the same criminal act in a Third State, cf. Section 10 d (1)(3) of the amended Extradition Act. Thus, in such an instance the EAW may be executed at the relevant juridical authority’s discretion, e.g. if an acquittal is obviously the result of a flawed trial.

Execution of a custodial sentence – nationals and residents of the requested member State, Article 4(6) FD

The executing judicial authority may refuse to execute the European arrest warrant if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law, cf. Article 4 (6) FD.

The said optional ground for non-execution has been transposed into Danish law as a discretionary rule regarding for non-execution. If a Danish citizen or a person permanently residing in Denmark is wanted for execution of an imposed punishment, surrender may, at the relevant judicial authority’s discretion, be refused if the sentence will be served in Denmark instead, cf. Section 10 b (2) of the amended Extradition Act.

Under Danish extradition law, a »national« is a person in possession of Danish citizenship, whether acquired by birth, licensing, or naturalisation. A »resident« is a person with a »permanent address« (fast bopæl) in Denmark. The term is applied as a relevant criteria in a great deal of legislation, e.g. regarding elections, social welfare, taxation, foreigners, but the law does not offer a uniform definition of a »resident«, and the understanding of the concept may differ from one area of legislation to another. The Extradition Act does not contain a definition, either. Supposedly, the application of Article 5 (3) FD and the corresponding Section 10 b of the Extradition Act will be dependent of an individual assessment of the wanted individual’s personal affiliation with Denmark in terms of length and continuity of stay. Possession of a residence permit might naturally be of importance. Special problems might arise concerning the legal status of asylum seekers. If the person has been living on and off in more that one country, e.g. for occupational reasons, the specific circumstances of the individual case might leave a great deal of choice to the Ministry of Justice, as the person
does not have a literal right under said provision, which basically confers the authority to make a discretionary decision to the Ministry of Justice.

No distinction has been drawn under Danish law between nationals/residents and non-nationals/non-residents with regard to surrender for prosecution and surrender for serving of a sentence.

As previously mentioned, the 1983 European Convention on the Transfer of Sentenced Persons has been implemented in Denmark by Act 323, 1986 on the execution of international criminal judgments\(^\text{25}\) which has later been amended several times.\(^\text{26}\)

Regarding Denmark's implementation of Article 4 (6) FD in national law, the Commission has stated in the report on the EAW that the Danish legislation does not oblige Denmark to execute the sentence. Denmark has commented that under Section 10 b (2) of the amended Extradition Act, a request for the extradition of a Danish national or a person who is permanently resident in Denmark for execution of a judgment may »can« be refused if the punishment will »can« instead be served in Denmark. Thus, the law contains a condition that, when extradition for execution of a sentence is refused, the Danish national or permanent resident in question will serve their sentence in Denmark. This is covered in more detail in the comments on Section 10b (2) where it is stated that extradition may be refused in such cases if Denmark gives a commitment that the sentence will be executed there. Denmark therefore does not accept the Commission's comment on Danish legislation on this point.

Offences committed within Danish territory, Article 4 (7)(a) FD

The requested judicial authority may refuse to execute an EAW where the EAW relates to offences which are regarded by the law of the executing Member State as having been


\(^{26}\) See amendment Act 291 of 24 April 1996 (implementation of: the 1988 International Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; 1990 European Convention Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; link); amendment Act 280 of 25 April 2001 (implementation of the 1983 European Convention on the Transfer of Sentenced Persons and the 1997 Additional Protocol; link); amendment Act 258 of 8 May 2002 (implementation of the 2000 EU Convention on Mutual Assistance in Criminal Matters; implementation of the Second Additional 2001 Protocol to the European Convention on Mutual Assistance in Criminal Matters; link); amendment Act regarding the execution of certain decisions within the area of criminal law 1434 of 18 July 2004, which assigns a priority status to the latter Act over the aforementioned general Act on execution of European judgements in relevant instances, see following footnote (implementation of: the 2003 Council Framework Decision on the Execution on Orders Freezing Property or Evidence; the 2005 Council Framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Property; the 2005 Council Framework Decision on the Application on the Principle of Mutual Recognition to Financial Penalties; link. The current consolidation of the 1986 Act has been issued as lovbekendtgørelse (lbk.) 740 of 18 July 2005; link.
committed in whole or in part in the territory of the executing Member State or in a place treated as such, cf. Article 4 (7)(a) FD.

As previously mentioned, Article 4 (7)(a) FD has been transposed into Danish law as a mandatory ground for non-execution. Thus, execution of an EAW is barred for cases regarding acts committed in part or in whole on Danish territory if double criminality is lacking, cf. Section 10 f (1) of the amended Extradition Act.

Disparity in extraterritorial jurisdiction, Article 4 (7)(b) FD
The requested judicial authority may refuse to execute an EAW where the EAW relates to offences which have been committed outside the territory of the issuing Member State and the law of the requested Member State does not allow prosecution for the same offences when committed outside its territory, cf. Article 4 (7)(b) FD.

Article 4 (7)(b) FD has been transposed into Danish law as a discretionary rule regarding non-execution. Thus, execution of an EAW may be refused if the act in question was committed outside the territory of the issuing Member State and an equivalent act committed outside Danish territory would not have been within Danish jurisdiction, cf. Section 10 f (2) of the amended Extradition Act. In other words, if the alleged offence can not be prosecuted in Denmark, execution of an EAW may be refused if it has been issued in a Member State different from the one where the offence has allegedly been committed. The situation might be that the issuing Member State attempts to exercise extra territorial jurisdiction with regard to an act committed by a Danish citizen in a third country where said act is not considered a criminal offence, in which case Denmark lacks jurisdiction since the standard requirement under the active personality principle regarding double criminality is not fulfilled.

b. Are there differences between the way of implementation of the EAW in your country and the “pattern” provided by the framework decision? If so, do the differences concern:

- the catalogue of “crimes” listed in art. 2.2. FD. Are all those “crimes” criminalised in your country. Please specify which are not criminalized?
Regarding »participation in a criminal organisation«, it may be noted that, theoretically, an EAW might include a type of act which is not per se criminalised as an offence sui generic under Danish law. Thus, extradition would be barred if the alleged act merely concerns passive membership of a criminal organisation and the wanted person is charged with no other specific offence. Depending on the specificities of the case, extradition could be refused on the ground that it would imply a violation of a fundamental freedom of association etc.

Included on the list of offences covered by art. 2 (2) FD is also »racism and xenofobia«. Prior to the EAW, Denmark has issued a declaration to the effect that such an act will only be regarded as an offence if it is threatening, insulting or degrading offences and, thus, in violation of the Danish Penal Code § 266 b. 2

Art. 2 (2) FD list also includes »computer-related crime«, which is a concept that may give rise to many interpretation problems. Under Danish law, no particular offence labelled as »computer-related crime« exists but, naturally, a number of such acts are considered to be crimes of various types.

c. Are there differences between the way of implementation of the EAW in your country and the “pattern” provided by the framework decision? If so, do the differences concern:

- the period of time for executing the EAW?

There are no differences between the way of implementation of the EAW in Denmark and the “pattern” provided by the framework decision. In the administrative guidelines, the Ministry of Justice has stated the following:

»According to information available to the Ministry of Justice, in their legislation, EU Member States set differing time limits for forwarding a European arrest warrant. Preliminary information suggests that practice varies widely from one Member State to another, with time limits, which seem to depend in part on whether the country in question requires an actual certificate, likely to be set in such a way that in some countries the arrest warrant has to be received within a very short time (in some circumstances, within 48 hours of arrest), while other countries will accept forwarding of the arrest warrant within a longer period (in some circumstances, up to two months after arrest).”

2 The declaration was issued in relation to the 1992 Common Action regarding racism and xenofobia.
In order to ensure that a European arrest warrant can be forwarded within any time-limit applicable in the Member State in question, the original of it should be kept in the police district concerned, so that it can be translated into the relevant language as swiftly as possible and then forwarded to the executing judicial authority, if appropriate via the National Police Commissioner's Office (Communications Centre).«

d. Can lack of dual criminality in cases other than mentioned in art. 2.2. FD constitute optional reason to refuse the execution of the EAW (to surrender)?

As previously mentioned, lack of double criminality in cases other than those mentioned in art. 2 (2) FD is an indispensable ground for refusing extradition, cf. The Danish Extradition Act Section 10 a (2) (prosecution) and Section 10 a (3) (sentence). Thus, the traditional requirement regarding double criminality has only been removed for conduct listed in Article 2(2) FD. An EAW must, therefore, be refused for all conduct falling outside that listed in Section 10 a (2) of the amended Extradition Act where such conduct does not constitute an offence under Danish law.

In the travaux préparatoires of the amendment Act is was stated that the requirement regarding double criminality shall be administered in a flexible manner in accordance with Article 2 (4) FD, so that the requirement is found to be fulfilled if an act described in an EAW in whole or in part correspond to an offence under Danish law. Regardless of legal classification, it shall be sufficient that the accusation, the indictment or the judgement concerns an act which would have been considered an offence if committed in Denmark.

e. Did your country make a proper notification to the Secretary of the CUE, concerning the waiver of the speciality rule (according to the art. 27.1 FD)?

The General Secretariat has been informed that Denmark does not wish to issue notifications as referred to in Article 27 (1) FD.27

Under Danish law, the Ministry of Justice may grant permission to submit a person who has been extradited to prosecution, enforcement of a sentence or extradition requested by a third

27 Addendum to Cover note to the General Secretariat, Brussels 16 January. 5348/04 ADD 1, COPEN 13, EJN 5, EUROJUST 5: link.
State with regard to an offence committed prior to extradition in the previous case, cf. Section 20 (1) of the Extradition Act.

f. Did your country appoint a central authority (art. 7 FD). What is the scope and tasks it is supposed to perform and its practical meaning?

In the above mentioned addendum to the cover note to the Secretary General of the Council of the European Union, received 14 January 2004, the Representative to Denmark provided the following information on behalf of Denmark:

»Article 6 (3):
The following authority is competent to issue (Article 6 (1)) and execute (Article 6 (2)) a European arrest warrant in Denmark:

Ministry of Justice
Slotsholmsgade 10
1216 Copenhagen K
tel: +45 33923340
fax: +45 33933510
e-mail: jm@jm.dk

Article 7 (2):
The designation of the Ministry of Justice as the competent judicial authority (cf. Article 6 (3) of the Framework Agreement) means that there is no need to designate a central authority pursuant to Article 7 of the Framework Agreement.«

Thus, the Ministry of Justice is the only designated judicial authority under the EAW Framework Decision as such the Ministry is the only authority with a competence to receive and execute European Arrest Orders, cf. Article 6 (2) FD. Thus, the Ministry decides whether an EAW meets the necessary criteria for certification.

The Ministry of Justice is also the only designated judicial authority competent to issue European Arrest Orders, cf. Article 6 (3) FD.

28 Ibid.
The Ministry is responsible for any official correspondence relating to extradition requests and competent to make decisions. Regarding decisions on execution of an EAW, see Extradition Act Section 18 b (4).

In the Commission report on the EAW it is stated that it is difficult to view the designation of the Ministry of Justice as being in the spirit of the Framework Decision. Furthermore, the Commission states that the designation of an organ of the state as a judicial body in this context impacts on fundamental principles upon which mutual recognition and mutual trust are based. Denmark has commented that it disagrees altogether with the Commission's views concerning Denmark's designation of the Ministry of Justice as the competent judicial authority. The reasons for this are as follows: Article 6 (1) FD and Article 6 (2) FD state that the issuing judicial authority and the executing judicial authority shall be the judicial authority of the Member State which is competent respectively to issue or execute an EAW by virtue of the law of that State. Thus, under the Framework Decision it is for the individual Member State to decide who will issue and execute European Arrest Warrants, and it in no way conflicts with the wording of the Framework Decision to designate the Ministry of Justice of a Member State as the competent judicial authority, assuming of course that the relevant ministry is a judicial authority under national law.

Under Danish law, the concept of »judicial authorities« traditionally includes the courts and the Prosecution Service. According to the Danish law on the administration of justice, the Prosecution Service comprises the Ministry of Justice, the Director of Public Prosecutions, the regional public prosecutors, the Commissioner of the Copenhagen Police and the chief constables. Furthermore, it follows directly from the Danish Penal Code that charges for offences against certain provisions of the Penal Code may be brought only at the order of the Ministry of Justice.

Denmark maintains the position that there is no question of Denmark wishing to create some special arrangement for European Arrest Warrants by designating the Ministry of Justice as the judicial authority for the issue and execution of such warrants. Furthermore, under Danish law the Ministry of Justice has the central competence as regards extradition, and even before the adoption of the Framework Decision on the EAW, the Ministry dealt with cases involving the extradition of offenders to other EU Member States. Also, the designation of the Ministry of Justice as the competent authority in relation to the Framework Decision on the EAW took place after discussions with representatives from the Danish Judges' Association, the Court Administration, the Director of Public Prosecutions, the public prosecutors' association, the association of chief constables, and the Commissioner of the Copenhagen Police, and within this circle there was agreement that authority to deal with extradition cases on the basis of an EAW should be placed with the Ministry of Justice until further notice; consequently, a decision taken by the Ministry of Justice to extradite a person could always unconditionally be brought before the Danish courts and tested by two instances. Among the reasons for this was the fact that this would result in the same allocation of authority and procedure for handling extradition requests on the basis of an EAW as applied for extradition requests on the basis of e.g. the European 1957 Convention on the Extradition of Offenders. Denmark
also wanted to ensure uniform practice in the handling of European arrest warrants, which it was found would best be achieved by giving authority to the Ministry of Justice.

Finally, it was pointed out that in actual extradition cases based on an EAW or involving the issue of a Danish EAW, the fact that the Ministry of Justice has competence in these matters has been neither questioned nor otherwise criticised.

3. The principle *ne bis in idem* and EAW

Regarding *ne bis in idem* and the various grounds for refusal, please see section 2 above.

According to the amended Extradition Act, extradition shall be refused if the person has been convicted or acquitted of the same criminal act in Denmark or in a Member State other than the issuing State. Regarding refusal of extradition in instances where a waiver of prosecution has been issued in Denmark prior to reception of an EAW, non-execution has been made mandatory, provided that the decision to refrain from indictment has become final.

a. What is the meaning of the identity of an act in the context of the art. 3 FD (ground for refusal of the execution of EAW) – is it its description or legal qualification as made by the domestic court?

The formulation of the amended Extradition Act does not require the second prosecution to be for an offence identical in law to the first. It is a sufficient ground for refusal of extradition that the second case aims at prosecution for any offence arising out of the same facts. Conduct covered by the Article 2(2) FD list, for which double criminality is removed, would therefore also be protected by the double jeopardy rule in Denmark. This formulation of the double jeopardy rule is in line with the wording of the FD as well as to the ECJ judgment in Gözutok and Brügge.

b. Is the valid judgment/conviction/discontinuance of the procedure in your country a mandatory ground for non-execution of the EAW?

Yes, if discontinuance is taken to mean waiver of prosecution. Please see section 2 above.
c. Is the valid judgement/conviction/discontinuance of the procedure in other UE Member State the same ground for refusal as in “b”?

Yes, please see section 2 above.

d. What is the meaning and/or interpretation of “the finally disposal of the trial” in art. 54 SDU in your country?

- Is such a disposal the valid decision on discontinuance of the criminal process because its legal inadmissibility?
- Is such a disposal the valid decision on discontinuance of the criminal process because lack of advisability of prosecution?

Please see a) under this section.

e. Was the problem of the European application of the principle ne bis in idem a subject of judicial interpretation in your country (e.g. by the Supreme Court, Constitutional Court)?

No.
4. The issuing of the EAW

Specific questions in the research questionnaire will be dealt with below. First, a general account of the Danish legislation will be presented.

**General account of extradition procedures when an EAW is issued in Denmark**

Extradition to Denmark from another State is not governed by any provision in the common 1967 Extradition Act 2003 nor the 1960 Nordic Extradition Act. Thus, the conditions under which a person may be extradited to Denmark from another EU Member State for prosecution or enforcement of a sentence in Denmark are not statutorily regulated. Whether a wanted person is extraditable to Denmark in a particular case will therefore depend on the rules in the Framework Decision and on the implementing legislation in the particular EU Member State from which extradition is requested.

**Emission of the warrant**

*Competent authority, Article 6 FD*

As previously pointed out, the Ministry of Justice is the designated judicial authority under the Framework Decision regarding the EAW and as such the Ministry is the only authority with a competence to receive and execute EAWs. The responsibility for initial examination of cases involving extradition on an EAW and the actual issuing of an EAW lies with the Ministry of Justice. Thus, the Ministry decides whether an EAW meets the necessary criteria for certification.

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

*General procedure*
The local police commissioner will inform the relevant district prosecutor and the Ministry of Justice of the need to issue an EAW for a wanted person. This procedure shall be initiated, at the latest, when the police decide to present the case to the municipal court to obtain an order for remand in custody *in absentia* with a view to issue of an EAW.

The public prosecutor will prepare a draft EAW, while leaving section (i) of the certificate, concerning the issuing authority, to be completed by the Ministry of Justice.

After being submitted to the relevant district prosecutor, the draft European arrest warrant is to be sent electronically to the Ministry of Justice, via the National Police Commissioner's Office (Communications Centre), for approval. It should be indicated whether the wanted person is also to be sought for in Third Countries.

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

If the wanted person's whereabouts are known and the EAW can be sent straight to the authority required to execute it, the police commissioner must inform the Ministry of Justice whether, in addition to an alert in SIS, it would be expedient to have the warrant sent directly to the executing authority, which will normally be the presumption.

As soon as notification is received from an authority in another EU Member State that someone wanted by the Danish authorities has been arrested and, if applicable, has been remanded in custody, that notification should be passed on to the relevant police commissioner. If the executing judicial authority in the EU Member State in question requires the original EAW, the police commissioner will supply the relevant materials, if necessary, in hard copy. The EAW must have been translated into a language acceptable to the Member State concerned, see further below.
In the guidelines issued by the Ministry of Justice it is stated that, under Article 10 (4) of the Framework Decision, an EAW may be forwarded by any secure means capable of producing written records, under conditions allowing the executing Member State to establish its authenticity.

*Procedures for transmitting an EAW, Article 10 (6) FD*

If the authority which receives an EAW is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly, cf. Article 10 (6) FD.

The Commission notes in its report on the EAW that Denmark is one of those Member States which has not *specifically* transposed Article 10 (6). However, Denmark has pointed out that it is a basic principle of Danish law – enshrined in Section 7 (2) of the Public Administration Act – that an authority which receives any written communication on which it is not competent to act shall forward that communication to the correct authority. This also applies to any European arrest warrants which might be received by a Danish authority not competent to handle them. Thus Danish law – indeed, Danish legislation – already meets the requirement stemming from Article 10 (6) of the Framework Decision, which is why it was not necessary to transpose a specific provision on this into the extradition law.

*Particularly urgent cases*

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

*Languages in which European Arrest Warrants are issued*

The Ministry of Justice has issued the following guidelines regarding the languages in which an EAW should be drafted:

»When forwarding an EAW to another EU Member State, unless it is known for sure that a different procedure can be followed, it should be ensured that the warrant has been translated
into an official language of the country from which extradition is sought, in accordance with Article 8 (2) of the Framework Decision.«

Transmission of the warrant

Article 8 (1) of the Framework Decision requires an EAW to give a number of specified details, in accordance with the form annexed to the Framework Decision. Even though this cannot be regarded as a requirement under the Framework Decision, the Ministry of Justice has based the administrative guidelines on the assumption that a number of Member States will require supply of the actual certificate (a hard copy). Thus, it has been decided that, when an EAW for a wanted person is issued, an actual certificate containing the relevant information shall be drawn up, so that the certificate can be sent straight to the appropriate executing judicial authority in the EU Member State in question.

Processing time

Please see section above.

Specific questions in the research questionnaire

a. Which judicial authority in your country decides on the issuing of the EAW?

The Ministry of Justice, please see details above.

b. Is, according to the domestic law, the decision on issuing of the EAW made on a motion (on request) of a national organ or ex officio. If the former, on which organ’s motion/request?

The decision on issuing of the EAW made on a motion (on request) by the local police, please see further below.

c. If a court is entitled to issue the EAW – of what rank and panel?

Question not relevant. Under Danish law, courts are not entitled to issue an EAW. However, an issuing decision made by the Ministry of Justice may be subject to court review at the municipal court level with the possibility of appellate review by the High Court.
d. Do the parties or other participants to the process have the right or duty to take part in the session?

Parties or other participants do not take part in any session conducted by the issuing authority, i.e. the Ministry of Justice.

e. Is evidence procedure made in the proceedings on the issuing of the EAW?

Normally, evidence procedure at the courts is not made in proceedings on the issuing by the Ministry of Justice of an EAW.

f. Who (party, other participant), if anyone, is entitled to appeal against the decision on the issuing (accordingly: rejecting issuing) of the EAW? Which judicial authority reviews these decisions?

The wanted person is entitled to court review of the decision on the issuing an EAW. A court review will then be conducted at the municipal court level with an access to appellate review by the High Court. In principle, no party is entitled to appeal against a decision whereby the Ministry of Justice rejects the issuing of an EAW.

g. Can the EAW be issued retroactively? (as regards to crimes allegedly committed before the implementation of the EAW)?

Yes.

h. How many EAWs were issued in your country until the day mentioned above in point 1g of the questionnaire?

In 2005, the Danish Ministry of Justice issued 64 EAWs.

i. Which “crimes” mentioned in art. 2.2. of the FD on EAW were subject to issuing the EAW in your country? If possible, please specify exact numbers?

Information not available.
j. Were the EAW’s issued in your country subject to crimes other than “crimes” mentioned in art. 2.2. FD. If so, in how many cases?

Information not available.

k. How many such request were rejected by the deciding judicial authority? (applies only if EAW’s are issued on request)

Information not available. EAWs are issued on request by the local police/prosecution.

l. Which information channels are used before/along with the issuing of the EAW in your country (SIS, EJN, Europol, other means)? Is EAW issued only if the exact place of residence of the requested person is known? If not, what is the procedure if the place of residence of the requested person is not known?

Please, see below.

m. How many EAW’s issued by the judicial authority in your country were executed in other Member States? In how many cases was the requested person effectively surrendered?

According to information available, there have been no refusals of execution by other member states of EAWs issued by the Danish Ministry of Justice. No substantial problems regarding time limits have been reported. In the majority of cases, surrender has taken place less than 10 days after the final decision regarding execution. Excesses have been brief.

n. In how many cases did the executing of the EAW issued by judicial authority in your country refuse? What were the grounds for refusal?

Please see above.
5. Executing of the European Arrest Warrant

Specific questions in the research questionnaire will be dealt with below. First, a general account of the Danish legislation will be presented.

General account of extradition procedures when an EAW is executed in Denmark

Extradition from Denmark to another EU Member State outside the realm of the Nordic countries is particularly governed by the following parts of the 1967 Extradition Act: Chapter 2 (a), covering Sections 10 a – 10 j on the substantive requirements, and Chapter 3 (a), covering Sections 18 a – 18 f on the procedural aspects.

Procedure when the wanted person’s whereabouts are known

In cases in which the wanted person's whereabouts in Denmark are known, an EAW may either be sent straight to the Ministry of Justice (as the designated competent authority) or be forwarded via the Schengen Information System or alternatively via Interpol, cf. Article 9 FD and Article 10 FD.

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

The issuing judicial authority in the relevant EU Member State may send the EAW directly to the Ministry of Justice in Denmark. The Ministry will determine whether the criteria for certification of an EAW are fulfilled and whether the EAW contains the necessary information to serve as a basis for extradition. The Ministry may ask the issuing judicial authority to supply missing information, cf. Article 15 (2) FD.

When the necessary information is present, the Ministry of Justice will make a preliminary assessment of whether there is obvious reason to refuse extradition on the basis of the available information. If not, the EAW will be passed to the relevant law enforcement agency for execution. It is then sent to the police at the place where the person to be extradited is staying, cf. the Extradition Act Section 18 b (1). A copy of the EAW received will also be
sent to the National Police Commissioner's Office (Communications Centre), for the necessary updating of central information systems.

The local police commissioner must then, without delay, carry out the investigation required to determine whether the conditions for extradition are fulfilled.

Police investigation of whether the conditions for extradition are fulfilled in a particular case should be completed speedily and, if at all feasible, within three days following receipt of the EAW. As soon as the investigation has been completed, a recommendation concerning extradition should be submitted to the Ministry of Justice, so that the Ministry can make a decision on the case within a 10 days limit, cf. the Extradition Act Section 18 d.

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

The Ministry of Justice will inform the relevant local police commissioner of the decision made regarding extradition. The police commissioner will then notify the person concerned of the Ministry's decision and, if extradition has been decided, of the possibility of judicial review and the three days time limit within which to file a request, cf. the Extradition Act, cf. Section 18 b (4). If the person declines to seek judicial review or fails to request it within the time limit, the Ministry of Justice shall be informed. Where a request is made for the matter to be referred to the courts, the Ministry of Justice shall likewise be informed. The Ministry shall be notified regarding the result of the court review, too.

**Entry of an alert in SIS, the Schengen Information System**

As an alternative to direct submission of an EAW to the Ministry of Justice, or possibly in addition to it, the issuing judicial authority may decide to enter an alert for the wanted person in SIS, the Schengen Information System. Under Article 9 (3) of the Framework Decision,
such an alert, based on Article 95 of the Schengen Convention, is to have the same legal force as an EAW.

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

As soon as the necessary information is available, the National Police Commissioner's Office (Communications Centre) will notify the Ministry of Justice of the Article 95 alert received for a person whose whereabouts in Denmark are known. The Ministry of Justice will then make a preliminary assessment of whether there is obvious reason to refuse extradition on the basis of the available information. The Ministry will inform the National Police Commissioner's Office (Communications Centre) of the result of the assessment, in order for the wanted person to be entered in the data file of N.SIS, the national section of the Schengen Information System.

The Ministry of Justice will also ask the relevant local police commissioner to carry out, without delay, the investigation required to determine whether the conditions for extradition are fulfilled. In so doing, the police commissioner will follow the procedure described in the section above. The police investigation of whether the conditions for extradition are fulfilled in the particular case shall be completed as soon as possible and, if at all feasible, within three days following receipt of the EAW, so that the Ministry of Justice can make a decision on the person's extradition, in the light of the police commissioner’s recommendation, within the 10 days limit set up in The Extradition Act Section 18 d.

The Ministry of Justice will inform the relevant local police commissioner and the National Police Commissioner's Office (Communications Centre) of the decision made regarding extradition. The local police commissioner will then notify the person concerned of the
Ministry's decision and, if it has been decided to extradite, of the right to judicial review and the three days limit, under Section 18 b (4) of the Extradition Act, within which to request it. For further details, see the section above regarding the general procedure.

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

**Submission via Interpol**

In accordance with Article 10 (3) of the Framework Decision, those EU Member States which do not participate in SIS, the Schengen Information System, viz. the United Kingdom and Ireland, may ask Interpol to forward an EAW. In that event, as with an alert in the Schengen Information System, the EAW will be received by the National Police Commissioner's Office (Communications Centre), which will check that it is an EAW that may serve as a basis for extradition.

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

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

The Ministry of Justice will inform the relevant local police commissioner and the National Police Commissioner's Office (SIRENE and Communications Centre) of the decision made regarding extradition. The local police commissioner will then notify the person concerned of the Ministry's decision and, if it has been decided to extradite, of the right to judicial review and the three days limit, under Section 18 b (4) of the Extradition Act, within which to request it. For further details, see the section above regarding the general procedure.
The police will make an arrangement with the issuing authority on practical arrangements for the person's surrender. This may be done via the National Police Commissioner's Office (Communications Centre).

**Procedure if the wanted person's whereabouts are unknown**

In cases in which the wanted person is not known to be staying at any particular location in Denmark an EAW may be received either as an alert in SIS or, alternately, via Interpol, in accordance with Article 9 FD and Article 10 FD.

*Alert in SIS, the Schengen Information System*

Under Article 9 (3) of the Framework Decision, an alert based on Article 95 of the Schengen Convention is to have the same legal force as an EAW. When an Article 95 alert is entered in N.SIS, it is only relevant to check that the alert in question, constituting an EAW, includes the necessary information to serve as a basis for extradition pursuant to the Extradition Act Section 18 a. The checking of an EAW is carried out by the National Police Commissioner's Office (Communications Centre), which will also ensure that any missing information is obtained from the issuing judicial authority as soon as possible, in accordance with Article 15 (2) of the Framework Decision. Once the necessary information is available, the National Police Commissioner's Office (Communications Centre) will enter the wanted person into the national section of the Schengen Information System.

If found, a wanted person (with no known address in Denmark) for whom an alert has been entered into SIS may be arrested. Then the local police commissioner will immediately notify the Ministry of Justice, via the National Police Commissioner's Office (Communications Centre), so that the Ministry can make a preliminary assessment of whether there is obvious reason to refuse extradition on the basis of the available information, under section 18b(1) of the Extradition Act. The Ministry of Justice will inform the relevant local police commissioner and the National Police Commissioner's Office (Communications Centre) of the result of the assessment and will also, if appropriate, ask the relevant local police commissioner to carry out, without delay, the investigation required for final determination of whether the conditions for extradition are fulfilled. The investigation shall be conducted as described above.
The Ministry of Justice will inform the local police commissioner and the National Police Commissioner's Office (Communications Centre) of the decision made regarding extradition. The police commissioner will then notify the person concerned of the Ministry's decision and, if extradition has been decided, of the possibility of judicial review and the three days limit within which to file a request, cf. the Extradition Act, cf. Section 18 b (4). For further details, see the section regarding the general procedure above.

**Forwarding via Interpol**

An EAW received via Interpol, i.e. one issued by the United Kingdom or Ireland, shall be dealt with in accordance with the procedure to be followed for an alert in the Schengen Information System, as described above.

**Languages in which the European Arrest Warrant is accepted**

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

The Extradition Act does not set up any particular requirements as to languages usable by other EU Member States in submitting an EAW to Denmark. The Ministry of Justice has sent the General Secretariat of the Council a declaration to the effect that Denmark will accept European arrest warrants drawn up in Danish, Swedish or English, or translated into one of those three languages.29

If appropriate, the local law enforcement agency will have an EAW received in Swedish or English translated into Danish, particularly for use in court proceedings.

**Consent to surrender**

29 Cover note to the General Secretariat, Brussels 16 January. 5348/04 ADD 1, COPEN 13, EJN 5, EUROJUST 5: link.
If the arrested person indicates that he or she consents to surrender, that consent shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State, cf. Article 13 (1) FD.

Under the Extradition Act Section 18 c, a person who consents to his or her surrender must do so before the court. The judge shall give the person the appropriate guidance as to the impact of consenting to extradition. In accordance with the Framework Decision, counsel will be provided, cf. Article 13 (2)(2) FD.

Consent to extradition does not render a decision by the Ministry of Justice regarding extradition superfluous. The Ministry still has to ascertain that the relevant conditions are fulfilled.

A person who consents to extradition is not automatically taken to have waived his or her specialty rights. Such particular consent must be explicit.

Denmark has informed the General Secretariat of the Council that it will remain possible to revoke consent to surrender and express renunciation of entitlement to the »speciality rule« under Danish law, cf. Article 13 (4) FD. Consequently, consent may be revoked at any time prior to surrender.

The person must be legal represented at the time of consent.

In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given, cf. Article 17 (2) FD. Under Danish law, the Ministry of Justice should make the decision regarding the person’s extradition »as soon as practicable« and, »if possible«, within 10 days of consent being given, cf. Extradition Act Section 18 d (1).

In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person, cf. Article 17 (3) FD.

Under Danish law, a final review decision made by the courts should, »if possible«, be made within a 60 days limit if the arrested person wants to challenge the decision in court, cf. Extradition Act Section 18 d (2).

Article 13 (2) FD states that Member States are to adopt the measures necessary to ensure that consent to extradition on the basis of an EAW is established in such a way as to show that the person concerned has expressed consent voluntarily and in full awareness of the consequences. Regarding Denmark's implementation of this provision, the Commission alleges in the report on the EAW that Danish legislation does not contain any specific reference to consent being »voluntary«. Denmark has commented that the expression »consent« (»samtykke«) as applied in the amended Extradition Act means a free expression of will by the person whose extradition is sought. Thus, there is no need to add in the legislation that consent must be voluntary. Furthermore, Section 18 c of the Extradition Act states that consent to extradition may be given only at a court hearing, and that the court shall provide guidance to the requested person on the consequences of giving consent. Denmark therefore does not accept that the Commission has found grounds to comment on the Danish legislation transposing this provision.

Specific questions in the research questionnaire

a. Which judicial authority in your country decides on executing of the EAW?

The Ministry of Justice, please see above.

b. Is the decision on execution of the EAW performed ex officio or on request of other domestic judicial authority. If yes – what is that judicial authority?

The executing authority is the Ministry of Justice, please see above.

c. Does your domestic law envisage a period in which the decision on the execution of the EAW should be made? If so, what is that period of time?

The Ministry of Justice shall make a decision on the case within a 10 days limit, cf. the Extradition Act Section 18 d. The Ministry of Justice will inform the relevant local police commissioner of the decision made regarding extradition. The police commissioner will then
notify the person concerned of the Ministry's decision and, if extradition has been decided, of the possibility of judicial review and the three days time limit within which to file a request, cf. the Extradition Act, cf. Section 18 b (4).

d. Can the judicial authority deciding upon the execution of the EAW verify the information provided in the EAW? Can it perform evidence?

The Ministry of Justice will have to rely on information presented by the local police/prosecution.

e. How does your domestic law regulate the solution of concurrent EAWs?

The Ministry of Justice has expressed a willingness to deal with an EAW involving a number of offences and an expectation that other EU Member States are willing to accept an EAW issued for more than one offence.31

From one member state

It is likely that if a Member State issues more than one EAW in respect of the same person, the Ministry of Justice will treat them as competing requests, but nothing has been officially stated regarding this issue.

From different Member States

If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order, cf. Article 16 (1) FD. The executing judicial authority may seek the advice of Eurojust when making the choice, cf. Article 16 (2) FD.

31 Cf. part 3.2.1 in the guidelines issued by the Ministry of Justice, 5348/04, COPEN 14, EJN 6, EUROJUST 6: link.
Article 16 is bluntly cited in the 2003 amendment Act travaux préparatoires, but nothing is said regarding the issue in the Act or in the administrative guidelines.

In the Commission report on the EAW it is stated that Denmark has not specifically transposed this provision in its legislation. Denmark has commented that in the case of competing requests, the Ministry of Justice as competent authority will decide which request is to be complied with, taking into account the circumstances referred to in Article 16 FD. In the Commission report is further stated that this is not binding. Denmark does not accept the Commission's remark. The reasons for the Danish view are as follows: There is no requirement for framework decisions to be implemented in the national legislation of the Member States by specific legal provisions. What is important is that individual Member States should meet the aims of the Framework Decision. The question of whether this requires the use of specific provisions must depend on the legal system and legislative traditions of the individual Member State. In the Danish legal tradition there is no need for an international obligation with the content of Article 16 FD to be stated in a specific legal provision. As a result of Denmark's participation in the Council's adoption of the Framework Decision, Denmark is already committed towards the other EU Member States to take account of the circumstances set out in Article 16 FD when deciding on competing extradition requests. This commitment must be observed whether or not a provision on this has been transposed into Danish law.

**f. Does the domestic law in your country envisage the collision of an EAW and extradition procedure? If so, please clarify.**

*Competing warrants from a Member State and a third state*

In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances. Cf. Article 16 (3) of the Framework Decision.

Article 16 (3) is cited in the 2003 amendment Act travaux préparatoires, but nothing is said regarding the issue in the Act or in the administrative guidelines.
g. Is the EAW issued in other Member State of the EU a sole legal basis for the deprivation of liberty for the sake of procedure of execution of the EAW, or is a separate judicial authority decision on arrest (provisional arrest) required?

Since an EAW involves a request for detention for extradition purposes, a decision will have to be taken, in the course of the investigation, as to whether the person should be arrested and brought before the court, for remand in custody. On the basis of the EAW received, the local police commissioner will decide whether to make an arrest in the case. The Ministry of Justice is to be informed of any arrest straight away so that, should a preliminary assessment of the basis for extradition not already have been made, the Ministry can make a decision on this as soon as possible, before the person is brought before the municipal court for a hearing regarding remand in custody.

h. What is the maximum period for the arrest of the requested person before his or her effective surrender?

An EAW involves not only a request for extradition but also a request for arrest and custody for that purpose.

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall make a decision on whether the requested person should be remanded in custody (be kept or remain in detention), in accordance with the law of the executing Member State, cf. Article 12 (1) FD.

Under the Administration of Justice Act, there is no absolute maximum period to remand in custody. However, it is stated in the Extradition Act that any custody is to be terminated if extradition has not been carried out within 10 days following a final decision on extradition, cf. Extradition Act Section 18 e (3)(2).
Upon expiry of the 10 days limit after a decision to extradite has been made, if the person is still being held in custody he shall be released, cf. Article 23 (5) FD. Under Danish law, remand in custody may nevertheless be prolonged, if the court decides to extend the time limit for actual surrender, cf. Extradition Act Section 18 e (3)(3). In the travaux préparatoires of the 2003 amendment Act is was explicitly found that there is no obligation for the executing Member State to have such detention lifted. In the administrative guidelines issued by the Ministry of Justice it is said that courts may extend the extradition time limit in special cases, »one effect of this being that anyone in custody may, depending on the circumstances, continue to be held«.32

Procedural rules for dealing with an EAW have been set up in Section 18 b of the Extradition Act. Unless the EAW is rejected on the basis of information on the face of it,33 the Ministry of Justice sends the EAW to the police at the locality where the wanted person is presently staying. The police must then, without delay, carry out the investigation required to determine whether the conditions for extradition are fulfilled. With the necessary adaptations, such investigations are subject to the common provisions of the Administration of Justice Act, AJA, Part Four. The AJA provide a series of checks and controls on investigation procedures and police powers to arrest, stop and search, detain and question suspects. It also contains rules on compensation for wrongful arrest and imprisonment. The police may conduct hearings but cannot oblige anyone to make a statement, cf. Section 750 AJA. The police is obligated to attach any statements which have been given to their report, cf. Section 751 AJA.

In order to assist in the police investigation of the case and secure extradition, use may be made of coercive measures such as those regulated in Chapter 69 AJA (arrest) and Chapter 70 AJA (remand in custody). In principle, a person wanted on the basis on an EAW may be arrested or remanded in custody for an alleged offence fulfilling the substantive conditions under the Framework Decision. I.e. an arrest decision or remand order cannot be rejected with

33 E.g. if the act to which it relates cannot entail imprisonment for at least one year under the law of the issuing Member State.
a reference to the conditions in domestic law regarding the nature of the criminal act.34 Likewise, double criminality is not required if the alleged offence is covered by the list in Article 2 (2) FD.

In other respects, the Extradition Act brings proceedings in line with the provisions that apply regarding domestic criminal proceedings. Thus, reference in the Act to the aforementioned chapters in the Administration of Justice Act implies that apart from ordinary conditions regarding the nature of the offence, other statutory conditions must be complied with in accordance with common considerations before a person is remanded in custody.35

The most common reasons for remand in custody are that substantial grounds are found for believing that the defendant if released would:

(a) evade prosecution or execution; or
(b) commit an offence if at large; or
(c) interfere with investigation procedures.

The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding, cf. Article 12 (2) FD.

Under Danish law, alternate measures may be applied at the court’s discretion if the person’s presence and the integrity of the investigation are sufficiently secured in such a way and the person consents.36

A defence attorney must be appointed before the question of remand in custody is decided. The court may reject chosen counsel or decline to appoint a particular attorney as defence counsel if that person is found unable to cooperate in ensuring that the case is dealt with within the 50 days limit.

34 E.g. that the act is not punishable by imprisonment for 1 year and six months or more as required in the Administration of Justice Act with regard to cases prosecuted in Denmark.
35 Section 762 AJA.
36 Section 765 AJA.
A decision to detain the defendant may be appealed to the High Court.

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

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

By and large, the described procedure under the Extradition Act Section 18 b is equivalent to the procedure applicable under the Extradition Act Section 12 to cases regarding extradition to third countries. The Ministry of Justice decides whether a wanted person shall be extradited, whereas use of powers of arrest and custody, etc., in the course of police investigation of whether the conditions for extradition are fulfilled is considered by the local police commissioner.

Basically, a wanted person's consent to extradition does not basically affect the procedure to be followed.

A person who has been arrested under an EAW must be brought before a municipal judge as soon as practicable within a 24 hour time limit. As mentioned, the common rules regarding remand in custody applies with the necessary adaptations.

Under Article 11 FD, a wanted person who is arrested has to be informed of the European arrest warrant, of its contents and of the possibility of consenting to extradition. The arrested person is also entitled to be assisted by a lawyer and an interpreter, in accordance with the requested country's law.
Danish legislation was found to meet the requirements of Article 11 FD in this respect. Thus, no particular provisions have been introduced in order to comply with the Framework Decision. Accordingly, it is stated in the Extradition Act that the general rules regarding appointment of counsel are applicable, cf. Section 18 b (3) which is equivalent to the common provision in Section 14 that now only covers cases regarding extradition to third countries. The Extradition Act does not contain any specific provision regarding the assistance of an interpreter, but under general principles of administrative law an interpreter will always be used if the person to be extradited does not fully understand or speak Danish. Interpreters are provided at public expense.

The police shall provide the wanted person with information regarding the content of the EAW as required by the Framework Decision and explain to the person that he or she may consent to return to the issuing state.

As in all other extradition cases, the police shall conduct an interview with the wanted person.

Under Article 14 FD, an arrested person who does not consent to extradition is entitled to be heard by the executing judicial authority. Accordingly, the police shall inform the person of the right to a hearing and, if the person so wishes, make arrangements for a hearing. The hearing may be held either in court or out of court. Consent to extradition may only be given in court, cf. the Extradition Act Section 18 c. Records of hearings shall be sent to the Ministry of Justice, annexed to the police recommendation concerning extradition.

In the Commission report on the EAW it is stated that all Member States have implemented Article 14 DF correctly. However, in relation to Denmark the Commission alleges that a full hearing before a court is possible only if the requested person brings the Ministry of Justice's decision on extradition before a court. In Denmark's comment to the report it is stated that the Commission's interpretation of Danish implementation of the Framework Decision is not correct on this point. It is pointed out that with regard to the conducting of investigation, the provisions of Part Four of the Administration of Justice Act shall apply mutatis mutandis, see above for further details.

Denmark has informed the Commission that in the administrative instructions it is stated that the clear starting point when handling extradition cases on the basis of such a warrant will be that – “as far as

37 Cf. Circular 12154 of 12 June 2001 from the Ministry of Justice to the police and public prosecutors concerning the rights of those arrested, including the possibility of being assisted by an interpreter.
38 Under Article 19 FD, the requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.
possible” – the police will hear the person whose extradition is sought. The guidelines also state that the requested person – under Article 14 FD – has the right to be heard if that person does not give their consent to the extradition, and that accordingly, in connection with the investigation, the police should inform the person of that possibility, and organise a hearing if the requested person so wishes. Material from the hearing must be sent to the Ministry of Justice along with the police's opinion on the question of extradition. The Ministry of Justice's assessment of whether extradition can take place is thus on the basis of an investigation undertaken by the police, which will include a hearing of the requested person, on condition that that person – in accordance with the abovementioned provision of Section 750 AJA – has voluntarily asked to be heard. Furthermore, the requested person or his lawyer is always able to present observations on the question of extradition to the Ministry of Justice. Given the above, Denmark finds that it has implemented Article 14 FD in full.

i. **What rank – and panel – of the court decides on surrender (the execution of the EAW)?**

As already mentioned, the executing authority is the Ministry of Justice. The Ministry’s decision to execute an EAW may be presented in municipal court for review, and each party may appeal to the High Court.

j. **Do parties or other participants of the proceedings have the right or duty to take part in the session?**

The matter is handled by the Ministry of Justice on a written basis. The wanted person or other participants do not take part in any sessions. However, is the issue regarding remand in custody is handled in court where the wanted person will be present in hearings. On judicial review, the wanted person is entitled to be present, too.

k. **Can the decision on surrender be complained. Who has the right to complain? Which judicial authority reviews this decision?**

As previously mentioned, the Ministry’s decision to execute an EAW may be taken to court for judicial review. If the Ministry of Justice decides to execute an EAW, the person concerned has a right to court review concerning the lawfulness of the decision to extradite. The provision to that effect is found in the Extradition Act Section 18 b (4) with a reference to
common provisions regarding court review in the part of the Act covering the procedural aspects of cases regarding extradition to States outside the EU, cf. Sections 15 (2) and 16.

The local police commissioner shall notify the person concerned of the Ministry's decision and of the possibility of judicial review as well as of the statutory three days limit within which to file a request. If the person declines to seek judicial review or fails to request it within the time limit, the Ministry of Justice shall be informed. Where a request is made for the matter to be referred to the courts, the Ministry of Justice shall likewise be informed. The Ministry shall be notified regarding the result of the court review, too.

If the person wants to challenge the decision in court, a final review decision should, »if possible«, be made within a 60 days limit, cf. Extradition Act Section 18 d (2).

In the administrative guidelines issued by the Ministry of Justice, the following is stated:

»If the Ministry of Justice decides that the person is to be extradited and the case is then referred to the courts, a final judicial ruling on it should, as far as possible, be given within 50 days following the Ministry's decision, so that the total processing time does not exceed 60 days, in accordance with section 18 d of the Act and Article 17 of the Framework Decision.«

Under the Extradition Act Section 18 c, a person who consents to his or her surrender must do so in court. As previously mentioned, Denmark has informed the General Secretariat of the Council that it will remain possible to revoke consent to surrender and express renunciation of entitlement to the »speciality rule« under Danish law, cf. Article 13 (4) FD. Consequently, consent may be revoked at any time prior to surrender.

The court may approve or quash the Ministry’s decision to extradite the person. Remand in custody is decided by the courts, see above.

39 Under particular circumstances, the Ministry of Justice may grant permission to bring the case before the courts even if the three days limit has expired, cf. Extradition Act Section 16 (2)(2) as referred to in Section 18 b (4).
The European Arrest Warrant (EAW) and its Implementation in the Member States of the European Union – International Conference, Kraków, 9-12 November 2006

Country Report: Denmark – Author: Jørn Vestergaard

The rules of court referred to can be found in Part 4 of the Administration of Justice Act as amended.41

1. Does the person in question have the right to:
   - the assistance by the defense lawyer?
   - the right to interpreter?

The answer to both questions is Yes.

m. Does the domestic law in your country envisage any barriers as refers to the surrender of own nationals?

Extradition of own nationals was not allowed under Danish law before 2002, except when the specific requirements under the 1960 Act regarding extradition to another Nordic country were fulfilled.

Where a person who is the subject of an EAW for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State, cf. Article 5 (3) FD.

Denmark has transposed Article 5 (3) FD into domestic law by enacting a provision to the effect that surrender of a person who is a Danish national or resident in Denmark may, subject to a discretionary decision, be subject to the condition that the person is returned to Denmark in order to serve a custodial sentence or detention order passed against him in the issuing Member State, cf. Section 10 b (1) of the amended Extradition Act. Such a condition may be renounced in cases regarding very serious crimes and instances where a person is closely affiliated with the issuing Member State.

n. How many EAWs issued by other MS was executed by your country from the date mentioned in 1g of the questionnaire. In how many cases was the person effectively surrendered?

In 2005, the Danish Ministry of Justice received 33 EAWs. In all cases handled finally by medio 2006, a decision to execute was made.

No statistics have been available regarding 2006. However, information has been issued by the Ministry of Justice that execution has been refused in one case.

o. In how many cases did judicial authority in your country refuse to execute the EAW. What were the grounds for non-execution?

As mentioned above, execution has so far only been refused in one instance. Further information is not available.

p. For what “crimes” listed in art. 2.2 of the FD were EAWs executed in your country. If possible, please specify by providing exact numbers.

Information is not available.

q. Was the EAW executed for crimes other than listed in the above mentioned art. 2.2. FD? If so, in how many cases?

Information is not available.

r. Were there cases in your country, in which courts rejected the executing of the EAW because of possible violation of guaranties of the requested person in the country of issuing of the EAW (esp. human rights)?

No.
s. How often does the requested person consent to the “fast track” surrender procedure?

Information is not available.

t. In how many cases was the decision on the execution of the EAW subject of the judicial control? What were the results of such control? In how many cases was the decision on the execution of the EAW revoked?

Statistical information is not available. There seems to have been no cases in which a decision to execute an EAW has been revoked by the courts. In one reported case, execution was refused for two of alleged offences as the double criminality requirement was not fulfilled. For one other count, execution was refused as available information was not sufficient to establish whether a statutory limit had been reached. However, as all requirements were met for two other counts, the remaining part of the EAW was executed.

u. What is the average period of time between the execution of the EAW and the effective surrender of the requested person?

According to information issued by the Ministry of Justice, surrender is always effectuated within the 10 days limit in cases where the wanted person does not require court review. In the remaining cases, surrender is always effectuated within the 60 day limit.

Immediate surrender
Surrender must take place as soon as possible, normally within 10 days following a final order for a person’s extradition, cf. Extradition Act Section 18 e (2).

Normally, the person may not be surrendered before the expiry of the three days limit set up for the person to decide whether or not to have the decision of the Ministry of Justice referred to the courts. The same applies with regard to the three days limit for appealing against a

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42 Cf. Extradition Act Section 16.
judicial ruling on extradition. However, if the person renounces the right to a court review or an appellate review, the surrender may be accelerated, cf. Extradition Act Section 18 e (1)(1).

Under particular circumstances, the court may extend the extradition time limit, cf. Extradition Act Section 18 e (3)(3). In that case, remand in custody may be extended, too.

The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant. Cf. Article 23 (1) and (2) of the Framework Decision.

Under Danish law, the person shall be extradited as soon as possible, normally within 10 days following the expiry of preceding time limits, cf. Extradition Act Section 18 e (2).43

If the decision to extradite is referred to the courts, the person shall not be extradited before the decision has been found to be lawful by a final court ruling, cf. Extradition Act Section 18 e (1)(2). Thus, the 10 days deadline does not begin until the extradition decision has been held lawful in a final judicial ruling, including in cases in which leave is granted for appellate review.

As a point of departure, the wanted person may not be extradited before the expiry of a three days limit44 set up for the person to decide whether or not to have the decision of the Ministry of Justice referred to the courts. The same applies with regard to a three days limit for appealing against a judicial ruling on extradition. However, if the person renounces the right

43 If, in special circumstances, in particular having regard to the person’s age, health or other personal conditions, it is found that surrender would be incompatible with humanitarian concerns, actual extradition shall be postponed until the special conditions preventing surrender no longer apply, cf. Extradition Act Section 10 i. The cited provision reflects Article 23 (4) FD: “The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.”

44 Cf. Extradition Act Section 16.
to a court review or an appellate review, the surrender may be accelerated, cf. Extradition Act Section 18 e (1)(1).

If the surrender of the requested person within the stipulated period laid is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed. Cf Article 23 (3) FD. Under such particular circumstances, the Extradition Act authorises courts to extend the 10 days limit that normally applies in instances where the person has brought the decision to extradite made by the Ministry of Justice before the court, cf. Extradition Act Section 18 e (3)(3).

The Extradition Act does not mention the 10 days limit for an extension as stipulated in the Framework Decision. However, it was mentioned in the travaux préparatoires of the 2003 amendment Act, where the requirement to contact the issuing judicial authority was also cited. In the administrative guidelines issued by the Ministry of Justice it is stated that the police should notify the issuing judicial authority if the person to be extradited from Denmark cannot be surrendered within the 10 days limit. In that event, a new date shall be agreed for actual surrender, and it is mentioned that the extended time period for surrender may not exceed 10 days.

Where in specific cases the European arrest warrant cannot be executed within the time limits laid down, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay, cf. Article 17 (4)(1) FD. The Extradition Act does not mention this requirement or the obligation to inform Eurojust of failure to comply with the requisite time limits, cf. Article 17 (7) FD. However, the obligation to notify Eurojust is mentioned in the administrative guidelines issued by the Ministry of Justice.

Moreover, the Extradition Act does not mention the possibility of extending relevant time limits by a further 30 days as provided for in Article 17 (4)(2). However, the possibility of 30 days extension under exceptional circumstances was mentioned in the travaux préparatoires of
the 2003 amendment Act, where a presumption regarding expedient information of the issuing judicial authority was also stated.

The provisions in 2003 amendment Act was based on a notion that time limits stipulated in the Framework Decision are not of a binding nature, but merely guidelines. Thus, an excess of a time limit has not been found to imply immediate consequences for neither the decision regarding remand in custody nor the decision concerning extradition.

**Postponed or conditional surrender, Article 24 FD**

Article 24 (1) FD allows the executing judicial authority to postpone the surrender of a person so that he or she can first be prosecuted in the executing state for another offence or, if he or she has already been sentenced for another offence in the executing state, so that he or she may serve that sentence. Article 24 (2) FD allows the executing authority, instead of postponing surrender, to temporarily surrender the requested person to the issuing Member State under conditions agreed between the executing and issuing judicial authorities and binding on all the authorities in the issuing Member State. Article 24 FD is bluntly cited in the 2003 amendment Act travaux préparatoires, but nothing is said regarding the issue in the Act or in the administrative guidelines.

Where a person in respect of whom an EAW is issued is charged with an offence in Denmark, has been imposed an incarceration sentence or is currently serving such a sentence, surrender may discretionarily be postponed by the Ministry of Justice in accordance with the general provision stating that the person shall be extradited »as soon as possible«, and »if possible«, within 10 days, cf. Extradition Act Section 18 e (2).