PERMANENT REPRESENTATION OF DENMARK to the European Union,
Brussels

Ref. Ares(2012)282830 — 09.03.2012

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BY HAND

Annexes	Reference number	Office	
1	500.A.5-0-1.		05 March 2012

The Danish Government’s comments on the Commission’s Green Paper “Strengthening mutual trust in the European judicial area — A Green Paper on the application of EU criminal justice legislation in the field of detention”

Enclosed please find the Danish Government’s comments on the Commission’s Green Paper “Strengthening mutual trust in the European judicial area — A Green Paper on the application of EU criminal justice legislation in the field of detention”.

Yours faithfully

[signature]
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Date: 20 February 2012
Office: EU Presidency Secretariat
Case handler: Anne Høgenhaven Simony
Case no: 2011-304-0034
Doc.: 349278

Comments from the Danish Government on the Commission's Green Paper on Strengthening mutual trust in the European judicial area — A Green Paper on the application of EU criminal justice legislation in the field of detention (COM(2011) 327)

The Danish Government acknowledges receipt of the Commission's Green Paper, which has been put out for consultation to a wide circle of affected authorities and organisations in Denmark.

Based *inter alia* on the comments received, the Government hereby submits the following observations on the questions asked in the Green Paper:

Re Question 1: Pre-trial: What non-custodial alternatives to pre-trial detention are available? Do they work? Could alternatives to pre-trial detention be promoted at European Union level? If yes, how?

Section 765(1) and (2) of the Danish Administration of Justice Act provides that, with the consent of the person under judicial investigation, the court can initiate a number of measures in place of pre-trial detention, if the conditions for pre-trial detention are otherwise met, and the purposes of pre-trial detention can be fulfilled with less restrictive measures (alternatives to custody).

In this context, the court can determine that instead of pre-trial detention, the person under judicial investigation shall 1) submit to supervision as established by the court, 2) comply with specified provisions relating to place of residence, work, use of leisure time and interaction with specified persons, 3) stay in a suitable home or institutions, 4) submit to psychiatric treatment or detoxification treatment, 5) report to the police at specified times,

6) surrender his/her passport or other identity documents to the police, or 7) furnish financial security established by the court to guarantee his/her attendance at hearings and for enforcement of any sentence.

The list of alternatives to custody given in Section 765(2) of the Danish Administration of Justice Act is not exhaustive, and the court can thus decide to apply measures in place of pre-trial detention other than those listed.

There has been no overall examination of alternatives to custody in Denmark, so there is no information concerning the scope of their use. However, it should be noted that, as a rule of thumb, the vast majority of young people under 18 are subject to alternatives to custody in a suitable home or institution, cf. Section 765(2)(3) of the Danish Administration of Justice Act, and that the mentally ill will normally be given psychiatric treatment, etc., cf. Section 765(2)(4) of the Danish Administration of Justice Act.

It is considered that the rules of the Danish Administration of Justice Act in relation to alternatives to custody function appropriately as possible alternatives to pre-trial detention. Thus, it is not the view of the Danish government — in the light of the principle of subsidiarity — that there is any general need for the EU to promote increased use of national legislation relating to alternatives to custody except in cases where more detailed regulation would be appropriate having regard to Council Framework Decision 2009/829/JHA of 23 October 2009 concerning mutual recognition of decisions on supervision measures as an alternative to pre-trial detention.

It should be noted in this connection that the purpose of the framework decision in question includes, in particular, promoting the application of measures not involving deprivation of liberty for individuals who are not resident in the Member State where the court case is taking place, cf. Article 2(1)(b) of the Framework Decision.

Re Question 2: Post trial: What are the most important alternative measures to custody (such as community service or probation) in your legal system? Do they work? Could probation and other alternative measures to detention be promoted at European Union level? If yes, how?

In Denmark, it is possible to apply a number of measures other than custodial sentences:

Conditional sentences:

Under the Danish Penal Code, the court can impose a conditional sentence. The judgment can stipulate that the matter of sentencing can be postponed and that it will lapse after a probationary period. Where a sentence is passed, enforcement can be postponed and may lapse after a probationary period.

The court may determine that a conditional sentence is to have conditions attached,, examples of which include the following: 1) the offender is put under a supervision order; 2) the offender must comply with special stipulations relating to residence, work, education, etc.; 3) the offender must reside in a suitable home or institution; 4) the offender shall refrain from abuse of alcohol, narcotic drugs or similar medication; 5) the offender shall undergo detoxification treatment for abuse of alcohol or narcotics; or 6) the offender shall undergo psychiatric treatment.

If a conditional sentence with conditions as described above is deemed insufficient, the court may, if the accused person is deemed suitable, pass a conditional sentence with conditions relating to community service. As a condition of postponing deprivation of liberty in such a case, it is determined that the offender shall perform unpaid community service for at least 30 hours up to a maximum of 240 hours. The offender is subject to supervision by the Danish Prison and Probation Service while on probation.

Particularly in relation to individuals who have driven under the influence of alcohol, the option exists to issue a conditional sentence subject to the condition that the offender undergoes structured, supervised rehabilitation of at least one year’s duration.

In 1997, a pilot scheme was set up involving increased care for sex offenders. The scheme, which was made permanent from 2001, comprises a treatment scheme and an assessment scheme. Under the treatment scheme, instead of receiving an unconditional custodial sentence, the offender can be given a conditional sentence subject to undergoing psychiatric/sex therapy for two years, provided that the circumstances do not include violence or unlawful coercion, and that the person in question would otherwise be given a shorter prison sentence. The treatment is administered in the general health system in a nationwide treatment network comprising three outpatient clinics.

Sanctions for juveniles:

Especially for young people under 18, there is the option of imposing a sanction for juveniles. Sanctions for juveniles are an alternative to a traditional, unconditional custodial sentence for juveniles who commit a serious crime.

This involves issuing a two-year order for structured, supervised socio-educational treatment. The process consists of a number of different phases, all under the supervision of the municipal authorities.

To enhance the response of the social services with regard to juveniles subject to sanctions for juveniles, the young people's action plans must set goals and targets for education and employment. All young people subjected to juvenile sanctions must have an assigned coordinator. This coordinator, who will be assigned for the duration of the process, must be the young person's contact and must ensure continuity of the various phases of the treatment process.

Administrative measures:

In connection with a court's decision to apply an unconditional custodial sentence, the Danish Prison and Probation Service may make an (administrative) decision making alternative arrangements.

Pursuant to Section 78 of the Act relating to enforcement of sentences, a decision can be made that, temporarily or for the remaining duration of the penalty, the offender may be put into a hospital, foster care, a suitable home or institution. The prerequisites here are 1) that the offender is assessed as needing special treatment or care that can substantially be provided in the institution etc. in question; 2) that, in view of the age, health or other special circumstances of the offender, there are special grounds not to place or keep the offender in prison or on remand; and 3) that essential considerations of law enforcement are not an argument against this placement outside prison or the remand system. The placement may be in a private or public institution or home, including the Danish Prison and Probation Service's own institutions (boarding houses). Offenders under 18 are not placed in prison or on remand unless there are essential law enforcement considerations which argue against this.

Furthermore, a decision can be made that the offender shall serve the remainder of the sentence at home under intensive supervision and monitoring, cf. Section 78a of the Act relating to enforcement of sentences. A number of different conditions must be met before a decision can be made for a sentence to be served in this manner, specifically that deprivation of liberty does not exceed 5 months, and that the person in question has a suitable home and employment.

Furthermore, a decision can be made to discharge the individual on probation on condition of unpaid community service after half of the penalty — although not less than two months — has been served pursuant to Section 40 a of the Penal Code.

Discharge under this provision is subject to there being no case against it in terms of law enforcement, and that the offender's circumstances so warrant.

Finally, there is the option of probation once two thirds of the sentence, but no less than two months, has been served, cf. Section 38(1) of the Penal Code. When special circumstances so warrant, and the offender has served one half of the sentence, but no less than two months, there is furthermore the option of early discharge, cf. Section 38(2) of the Penal Code.

The deterrent effect of alternatives to custodial sentences:

Recent research deals with the question of the deterrent effect of serving a sentence under home detention with electronic tagging and the imposition of conditional sentences subject to the performance of community service.

A study by the Ministry of Justice research unit in 2011 examines whether home detention with electronic tagging has a deterrent effect in the case of persons in breach of the Road Traffic Act and young people under 25.[1] The study finds a tendency towards less recidivism among persons convicted of traffic offences who served a sentence under home detention, although there was no distinct, significant reduction in recidivism. For young people under 25, on the other hand, the study shows that home detention does reduce recidivism. The evaluation demonstrates an effect in relation to both the general risk of recidivism and the risk of committing more serious crime, as well as the scope of new sentences. The evaluation — which also contains a questionnaire and an interview-based survey of individuals serving a sentence under home detention with electronic tagging — points out the importance of enabling the offender to keep his/her job or remain in education and in contact with family, while at the same time avoiding the negative effects that can exist in a prison environment.

Home detention with electronic tagging is also regarded as having a bearing on the future working life of the person sentenced. An analysis by the Rockwool Foundation Research Unit shows that home detention with electronic tagging instead of prison means that subsequently the offender has significantly better employment prospects, and that he/she is correspondingly less dependent on public assistance.[2]

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[1] Tanja Tambour Jørgensen: *Afsoning i hjemmet — En effektevaluering af fodlænkeordningen [Home detention — an evaluation of the effect of the electronic tagging scheme]* 2011

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[1] Lars Højsgaard Andersen & Signe Hald Andersen: *Losing the stigma of incarceration: Does serving a sentence with electronic monitoring causally improve post-release labor market outcomes?* Odense: Syddansk Universitetsforlag. 2012

A study conducted by the Rockwool Foundation in 2012 finds there is no significant difference in the risk of recidivism for those who are sentenced to community service compared to persons who have served a prison sentence.[3] However, lower recidivism is observed during the first year after the end of a sentence among individuals convicted of violent and less serious crimes such as theft, and who are sentenced to community service instead of prison.

In 2011, the Ministry of Justice research unit investigated whether offenders who are considered suitable for community service have a higher probability of reverting to crime depending on whether they were in fact given a conditional sentence contingent on community service, or whether the court instead opted instead to impose an unconditional prison sentence.[4] This study shows that, overall, there is a tendency towards less recidivism after community service, but not a statistically significant difference. In addition, an analysis involving only that part of the survey population convicted of offences in the area of care (robbery, violence, crimes involving narcotics and crimes of a sexual nature) indicates that there is significantly less risk of reverting to crime after serving a community service order than after an unconditional custodial sentence.

An earlier Danish evaluation of the effects of community service orders was also carried out. A doctoral thesis from 2007 concludes that individuals issued with community service orders exhibit the same or a lower level of recidivism compared to similar individuals given a prison sentence.[5] Young people convicted of traffic offences, as well as unemployed people who are convicted of violent crimes, were found to have a lower reoffending rate after community service than after a prison sentence. For other categories of persons, community service orders were not associated with any significant reduction in reoffending.

With regard to future prospects in the labour market, an analysis by the Rockwool Foundation Research Unit shows that, on average, individuals given a community service order instead of being sent to prison are on higher incomes, and that they are less dependent on public benefits. This applies in particular to individuals convicted either of driving while under the influence of alcohol, or of violent crime.[6]

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Signe Hald Andersen: *Serving time or serving the community? Exploiting a policy reform to assess the causal effects of community service on income, social benefit dependency and recidivism.* Odense: Syddansk Universitetsforlag. 2012

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Christian Klement: *Samfundstjeneste. En effektevaluering [Community service. An evaluation of the effects].* 2011

5

Susanne Clausen: *Samfundstjeneste — Virker det? [Community service — does it work?]* Copenhagen: Jurist- og Økonomforbundets Forlag. 2007

6

Signe Hald Andersen: *Serving time or serving the community? Exploiting a policy reform to assess the causal effects of community service on income, social benefit dependency and recidivism.* Odense: Syddansk Universitetsforlag. 2012

The effect of juvenile sanctions has also been evaluated.[7] A study by the Ministry of Justice's research unit from 2009 shows no overall deterrent effect of juvenile sanctions as compared to unconditional prison sentences. However, lower recidivism is noted where sanctions for juveniles were imposed on juveniles after Phase I of the sanction as well as after the end of the sanctions, as compared to recidivism after custodial sentences. The deterrent effect of sanctions for juveniles will be evaluated again in 2013.

Re Question 3: How do you think that detention conditions may have an effect on the proper operation of the EAW? And what about the operation of the Transfer of Prisoners Framework Decision?

The European Arrest Warrant:

Pursuant to Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant, it is not, as a basic principle, possible to refuse to extradite an individual where the conditions for extradition have been satisfied, having regard to matters relating to, for example, conditions during future custody in the receiving country.

Nevertheless, recital 13 of the Framework Decision states that persons must not be removed, expelled or extradited to a State where there is a serious risk that they will be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. This is reiterated in Section 10(h)(2) of the Danish Extradition Act, where extradition is not allowed if there is a danger that, following extradition, the individual would be subjected to torture or other inhuman or degrading treatment or punishment.

The question of conditions attached to deprivation of liberty in the receiving country, e.g. conditions during deprivation of liberty, access to examination by a court of the basis for pre-trial detention or an increase in the length of time of pre-trial detention, could thus, from the point of view of principle, be included in the assessment of whether extradition can go ahead on the basis of a European Arrest Warrant.

More detailed consideration should thus be given to whether extradition is excluded *inter alia* on the basis of Section 10 h(2), based on an assessment of the practice of the European Court of Human Rights, relating *inter alia* to Articles 3, 5 and 6 of the European Convention on Human Rights.

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[7] Susanne Clausen & Britta Kyvsgaard: *Ungdomssanktionen. En effektevaluering [Juvenile sanctions. An evaluation of the effects]*. 2009.

Furthermore, it follows from Article 23(4) of the Framework Decision that surrender may by way of exception be temporarily postponed on serious humanitarian grounds, e.g. if there are substantial grounds to assume that it would manifestly endanger the life or health of the person sought. Such circumstances could in principle be linked to the question of deprivation of liberty in the receiving country. This provision is implemented in Section 10 i of the Danish Extradition Act.

The Danish government is not aware of any extradition cases where an examination by a court of the Ministry of Justice's decisions to extradite based on a European Arrest Warrant were rejected or extradition was postponed with reference to the aforesaid provisions, including reference to circumstances linked to the anticipated deprivation of liberty in the receiving country.

Framework Decision on the transfer of prisoners:

The Council Framework Decision of 27 November 2008 relating to the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union is designed to ensure that judgments on prison sentences or other measures involving deprivation of liberty are mutually recognised and enforced between Member States with a view to facilitating the social rehabilitation of the sentenced person.

According to the framework decision, the primary purpose of transferring sentenced persons to their home country or to a country with which they have other close links is to ensure the best opportunities for social rehabilitation of sentenced persons; such measures are thus based on humanitarian considerations. In order to facilitate the social rehabilitation of the person sentenced, the competent authority in the issuing State should take account of various elements such as the person's links to the executing State, whether the individual regards that State as his/her family, linguistic, cultural, social or economic domicile, and whether the individual has any other links to the executing State.

The Commission states *inter alia* in the Green Paper that more extensive access to information about prison conditions and criminal justice systems in other States would make it possible for the issuing States to take account of all relevant factors before initiating a transfer.

The principle of mutual recognition requires Member States to have confidence in one another's criminal justice systems. This confidence is based primarily on a common commitment to the principles of liberty, democracy, respect for human rights and fundamental rights and the fundamental rule of law. Effective collaboration presupposes close and trusting contact between the practices and institutions of the various Member States as well as efficient channels of communication. Basic knowledge of one another's legal systems and institutions is also important. Informal collaboration between authorities and personal meetings between colleagues, for example, can contribute significantly to strengthening cross-border cooperation, as this results in enhanced awareness of conditions and systems in the Member States.

It is also the opinion of the Danish government that quick and efficient transfer of sentenced persons to serve their sentence in their home country increases the scope for successful rehabilitation. At the same time, the Government is of the view that the attainment of the basic objectives of the Framework Decision — effective rehabilitation of the sentenced person — requires constant attentiveness to rehabilitation work in prisons on the part of the Member States at national level.

Re Question 4: There is an obligation to release an accused person unless there are overriding reasons for keeping them in custody. How is this principle applied in your legal system?

In general, the relevant conditions for applying pre-trial detention in connection with criminal proceedings are set out in Section 762 of the Danish Administration of Justice Act.

Section 762(1) of the Danish Administration of Justice Act states that a person under judicial investigation may be remanded in custody where there is a reasonable suspicion that the individual has committed an offence that is subject to public prosecution, if, pursuant to the Act, the offence could result in imprisonment of 1 year and 6 months or more. Furthermore, there must be specific grounds for assuming that 1) the person under judicial investigation would avoid proceedings or enforcement; 2) the person under judicial investigation, if left at liberty, would commit additional offences; or 3) the person under judicial investigation would pervert the course of justice, specifically by removing evidence or warning or influencing other people.

Furthermore, pursuant to the provision in Section 762(2) of the Danish Administration of Justice Act, pre-trial detention may be used where required in the interests of law enforcement (law enforcement arrest), and provided that there is a very strong suspicion that the person concerned 1) has committed an offence subject to public prosecution and which, pursuant to the Act, could carry a prison sentence of 6 years or longer, and the interests of law enforcement, according to the information about the seriousness of the matter, are deemed to require the person under judicial investigation not to be at liberty; or 2) has committed an offence under a number of specified provisions of the Danish Penal Code, whereby the offence can be expected to attract an unconditional prison sentence of at least 60 days, and the interests of law enforcement are deemed to require the person under judicial investigation not to be at liberty.

Section 762(3) of the Danish Administration of Justice Act also provides that pre-trial detention must be proportional, such that pre-trial detention cannot be applied if deprivation of liberty would be disproportionate in relation to the disruption to the circumstances of the person under judicial investigation, the importance of the case and the legal consequence that could be expected if the person under judicial investigation were found guilty. Pre-trial detention can never be applied in this connection if the offence can be expected to result in punishment by fine or imprisonment of up to 30 days.

Thus, in each case where pre-trial detention is sought, a specific assessment of proportionality will be undertaken in accordance with the above. Furthermore, the assessment of proportionality will include taking into account in the decision to continue pre-trial detention the length of time the person concerned has already spent in pre-trial detention, as the period of detention must not exceed the duration of the expected prison sentence.

Whether there are grounds for continued pre-trial detention in a particular criminal prosecution also depends on a specific assessment of the overall circumstances of the case.

Moreover, under Section 764(1) of the Danish Administration of Justice Act, the court shall decide whether the person under judicial investigation is to be placed in pre-trial detention at the request of the Public Prosecutor’s Office, and any request for continued pre-trial detention must be submitted in writing to the court. The request must state the conditions of imprisonment, the actual circumstances supporting the request, and the most significant investigative measures etc. expected to be taken.

Section 764(4) of the Danish Administration of Justice Act also lays down that, pending the conclusion of the investigation, the court’s order of pre-trial detention by imprisonment pursuant to Section 762(1), third indent, must include a statement of the most significant investigative measures etc. expected to be taken prior to expiry of the deadline for pre-trial detention.

It should be noted that the Danish public prosecution service takes account of whether the basis for continued pre-trial detention still exists, cf. also Section 96(2) of the Danish Administration of Justice Act, relating to the principle of objectivity of the public prosecution service, whereby the public prosecution service not only has to ensure that culpable individuals are held to account but also that the innocent are not prosecuted. Where the basis for deprivation of liberty can no longer be assumed to be present, the public prosecution service will not, therefore, submit a request for continued pre-trial detention.

Re Question 5: Different practices between Member States in relation to rules on (a) statutory maximum length of pre-trial detention and (b) regularity of review of pre-trial detention may constitute an obstacle to mutual confidence. What is your view? What is the best way to reduce pre-trial detention?

As regards the question of rules concerning the maximum possible pre-trial detention, it should be noted that since 1997 the Danish Director of Public Prosecutions has administered a reporting mechanism in respect of long periods of pre-trial detention. The purpose of the reporting mechanism is to ensure that pre-trial detention periods are as short as possible, and it also serves as the basis for the annual statements to the Ministry of Justice concerning trends in relation to recourse to long periods of pre-trial detention, prepared by the Danish Director of Public Prosecutions since 2004. The annual statements are sent by the Ministry of Justice to the Legal Affairs Committee of the Danish Parliament.

Act No 493 of 17 June 2008 amending the Danish Administration of Justice Act (Restriction of long judicial investigations and pre-trial detention periods), which entered into force on 1 July 2008, resulted in a number of amendments to the rules in the Danish Administration of Justice Act with a view to restricting long periods of pre-trial detention in criminal cases and generally contributing to faster processing of criminal cases.

The Act is based on an expert opinion prepared by the Standing Committee on Criminal Procedural Law, No 1492/2007, relating to restriction of long-lasting judicial investigations and pre-trial detention periods. In the expert opinion, a majority of the committee members proposed the establishment of voluntary upper limits for the duration of pre-trial detention periods.

On that basis, Section 768a of the Danish Administration of Justice Act laid down limits on the duration of pre-trial detention periods. It follows therefore from Section 768a (1) that — unless special circumstances are present — pre-trial detention must not exceed a consecutive period of 1) six months where the judicial investigation concerns an offence which cannot, pursuant to the Act, lead to six years' imprisonment; or 2) one year where the judicial investigation concerns an offence which, pursuant to the Act, can lead to six years' imprisonment or more. If the detainee is under 18, the limits for pre-trial detention are four months and eight months respectively, and may only be derogated from in exceptional circumstances, cf. Section 768 a(2).

Furthermore, Section 764(4), fourth sentence, of the Danish Administration of Justice Act lays down that, in the orders of pre-trial detention, where imprisonment is maintained beyond the limits set in Section 768 a(1) and (2), the special circumstances of the case supporting the necessity of continued imprisonment must be cited.

With regard to the question of access to continuous scrutiny of the basis for pre-trial detention, Section 767 of the Danish Administration of Justice Act provides that the limit for pre-trial detention must be as short as possible and must not exceed four weeks. The rules further stipulate that the limit can be extended by up to four weeks at a time.

More generally, it should be noted that, in the opinion of the Danish Government, the difference in practices between the Member States of the European Union with regard to the maximum duration of pre-trial detention, and the difference in frequency of scrutiny of the basis for continued pre-trial detention, do not inherently create fundamental problems in relation to the question of the application of Acts etc. based on the principle of mutual trust.

As regards the application, for example, of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant, the Danish Government does not therefore consider that the differences between the rules of Member States with regard to pre-trial detention etc. have weakened the possibility of effective extraditions.

In the view of the Danish Government, general awareness and supervision of the use of pre-trial detention, including long periods of pre-trial detention, combined with legislation that requires a thorough assessment of proportionality, are appropriate means of reducing and, as far as possible, eliminating the unnecessary use of pre-trial detention.

Re Question 6: Courts can issue an EAW to ensure the return of someone wanted for trial who has been released and allowed to return to his home State instead of placing him in pre-trial detention. Is this possibility already used by judges, and if so, how?

The Danish Director of Public Prosecutions is not aware of the existence of any specific instances of alternatives to pre-trial detention in relation to the issuance of a European Arrest Warrant.

It should be noted that the public prosecution service normally asks the Ministry of Justice to issue a European Arrest Warrant only when an individual is wanted for prosecution, for example, in Denmark, and when the public prosecution service has reason to believe that the person concerned is resident in another Member State of the European Union. Once the person has been extradited from that Member State, a request is normally made to keep the individual in pre-trial detention pursuant to Section 762(1)(1) of the Danish Administration of Justice Act.

Re Question 7: Would there be merit in having European Union minimum rules for maximum pre-trial detention periods and the regular review of such detention in order to strengthen mutual trust? If so, how could this be better achieved? What other measures would reduce pre-trial detention?

In the opinion of the Danish Government, there is no need for European Union Acts to lay down any minimum regulations governing the maximum duration of pre-trial detention periods or regular scrutiny of the basis for continued pre-trial detention.

We would observe in this regard that more detailed regulation in the area of pre-trial detention is closely linked to an individual Member State's criminal procedural and investigation rules.

Harmonisation of this area at European level would therefore, in the case in point, raise significant issues and — in the light of the principle of subsidiarity — raise a number of questions in relation to the different fundamental criminal procedural principles in the individual Member States.

Re Question 8: Are there any specific alternative measures to detention that could be developed in respect of children?

Reference is made in general to the answer to Question 1 concerning Section 765(2), third indent, of the Danish Administration of Justice Act, which states that, as a rule of thumb, the vast majority of young people under 18 are subject to alternatives to custody in a suitable home or institution, cf. Section 765(2), third indent, of the Danish Administration of Justice Act, so pre-trial detention is not normally ordered in their case.

Re Question 9: How could monitoring of detention conditions by the Member States be better promoted? How could the EU encourage prison administrations to network and establish best practice?

In the Green Paper, the Commission states that the 2006 Optional Protocol of the UN Convention Against Torture to prevent mistreatment of detainees introduces a new programme of regular visits to detention sites. The unit in Denmark designated to undertake such inspections has visited many of the Danish Prison and Probation Service institutions.

In addition, the Parliamentary Ombudsman undertakes regular and systematic inspections of the Danish Prison and Probation Service institutions. The Parliamentary Ombudsman is appointed by the Danish Parliament and is an independent agency with duties including monitoring of government authorities including prisons and local prisons. The ombudsman may express criticism, issue recommendations or deliver a non-binding opinion.

There are no fixed rules governing the interval at which individual institutions must be inspected, but all prisons and remand centres have been inspected a number of times. In the course of the inspections, the ombudsman undertakes specific investigations, on the basis of reports and related material, concerning the rights granted to inmates by law (specifically, the Act relating to enforcement of sentences). The ombudsman then looks at some of the more general human considerations concerning the need to create a positive framework for the inmates of the institution, and in so doing examines the structural conditions, matters pertaining to the inmates' food, opportunity for leisure activities, education, work, social interaction with others etc.

As regards the question of how networking could be encouraged among prison administrators with a view to developing best practice, the Council of Europe's Conferences of Directors of Prison Administration (CDAP) are an important forum for mutual inspiration and exchange of views.

It is also expected that the recently instituted European Organisation of Prison and Correctional Services (EuroPris) will be a very important forum for networking between Member States.

Re Question 10: How could the work of the Council of Europe and that of Member States be better promoted as they endeavour to put good detention standards into practice?

Denmark works hard to comply with the European prison rules, even though these are only recommendations. The Danish Government has no detailed knowledge of the practices applied by the other Member States with regard to the European prison rules, but as a point of departure, it is not the view of the Danish Government that there is any generalised need for support by the EU for putting good detention standards into practice.

Yours faithfully,

Johan Legarth