



RIGSADVOKATEN

Europarådet
dgl.ccpe@coe.int

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DIRECTOR OF
PUBLIC PROSECUTIONS

FREDERIKSHOLMS KANAL 16
DK-1220 COPENHAGEN K
DENMARK

TELEPHONE (45) 33 12 72 00
FAX (45) 33 43 67 10
E-mail: rigsadvokaten@ankl.dk

Reply to questionnaire on ways to improve international co-operation in the criminal field (CCPE-Bu (2006) 06)

The 22 December 2006 I received the abovementioned questionnaire containing 4 questions related to international co-operation between prosecutors. I hereby provide you with the reply from the Danish delegates to the CCPE.

In order to give thorough and useful answers I have consulted prosecutors around Denmark to get their views as practitioners. The general opinion according to the answers I have got is that international co-operation is generally running quite smoothly and in a satisfactory way among the EU and Council of Europe member states. Especially among neighbouring countries the contacts are very good and extensive.

As **answer to question 1 and 2** I enclose descriptions of 5 cases received from the Danish Special Prosecutor for Serious Economic Crime, where case 1-3 are examples of cases where difficulties were experienced and case 4 and 5 are examples of good practice.

I also enclose a contribution from the Danish national member of Eurojust where an example of swift, effective co-operation is mentioned. Other issues of relevance to the questionnaire are also mentioned in the contribution.

Generally, again, the main difficulties experienced concern the fact that in some case the reply to a request is not forwarded until a considerable time has passed and another difficulty is sometimes the lack of information about what is happening and who is handling the request in the requested state. Direct contacts between prosecutors from the involved authorities are considered highly useful. It has also been mentioned that unclear requests and translations of poor quality may cause difficulties.

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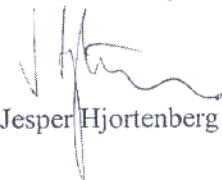
As to **question 3** – suggestions to be made to improve cooperation – it is probably not as much changes and amendments of conventions that are needed as it is practical issues that need to be addressed.

Suggestions from prosecutors in Denmark include issues such as improved possibilities of networking, study visits to improve knowledge of foreign legal systems and better language training. What seems of paramount importance in specific cases is the establishment of direct personal contacts between the involved prosecutors. This could take the form of a procedure, where the requested state always within a limited time frame should inform the requesting state about who is handling the case, what will be done and about the estimated time foreseen to be spent on the different steps to be taken.

Better general information as to possibilities of international cooperation should also be considered. This should, in my view, be a shared responsibility between national services and international institutions.

I have no further comments to make (**question 4**).

Yours sincerely



Jesper Hjortenber

Questionnaire

1. Difficulties when working with cross border criminal cases occur in all kind of cases – both in cases, where the legislation in the executing country is very different from that of the issuing country but also in other cases.

Reasons for the difficulties:

- in case of different legislation the co-operation and co-ordination between two or more countries is of course more difficult because of lacks of double criminality or because of the possible lacks of similarity in the penal proceedings, for instance the possible coercive measures, in the countries involved.
 - In general, it is often the experience that other issues than different legislation are of more importance for the effective and efficient co-operation and co-ordination between two or more countries.
 - Lack of direct contacts or effective facilitators of contacts, e.g. Liaison Magistrates/Prosecutors, EJN contact points and Eurojust, or insufficient knowledge of language and problems linked to translation are common and important difficulties in the fight against cross border crime in the EU.
 - Another important point is the possible lack of resources and knowledge on a national level to deal with cross border co-operation and co-ordination in criminal cases.
2. Examples of best practice where everybody were satisfied with the process and the results are also possible to find in all kind of cases.

A successful operation is often the result of direct and open contact with the other country – often facilitated by somebody who has the necessary contacts.

An example:

For about six months, the Danish police had investigated a major case of drug trafficking concerning 13 tons of hashish and a large shipment of cocaine. The suspected leader was a Danish citizen residing in South America and with a number of accomplices in Luxembourg and Denmark.

For operational reasons there was an urgent need to arrest the main suspect and his accomplices. During his detention, the main suspect made reference in a telephone call to a person the police were able to identify as a Danish citizen residing in Spain with three known addresses. As it was believed that this person would be warned off and might destroy evidence on these premises, a search in Spain was urgently needed.

The Danish prosecution service referred the case to Eurojust on a Friday afternoon. The National Members of Eurojust assisted in formulating the MLA request, identifying the competent Spanish courts, contacting the relevant judges, solving a problem regarding the reasons for having the search on a weekend, and ensuring a court hearing on the next day, Saturday.

The search was permitted and was carried out on Saturday at midday. Valuable evidence was obtained.

To have a search arranged within 24 hours at three premises in two different court districts in another country would have been impossible without facilitation efficiently done by somebody with direct contacts in both the issuing and the executing country.

DENMARK

CASE 1

D1 and D2 were charged with VAT fraud amounting to DKK 74 million and, in complicity with D3, fraud amounting to DKK 9 million. The subjects were arrested and charged on 21 May 2003.

D3 is a German citizen with a business and residence in Germany.

It was material to the investigation of the case, as well as to the preparation of an audit report, that a search of T3's premises be conducted to recover accounting material.

On 5 September 2003, an international letter of request for assistance with obtaining relevant accounting and bookkeeping material regarding business dealings between D1, D2 and D3 and one more non-charged person was sent to the Ministry of Justice in Schleswig-Holstein.

The premises of the two persons in Germany were searched on 12 March 2004.

As far as can be seen, the delay was due solely to the processing time by the German prosecution's office.

CASE 2

The examining judge from the city court of Point-a-Pitre in the French province of Guadeloupe issued a European Arrest Warrant on 18 June 2004, which was telefaxed to the National Commissioner of Police on 23 September 2004. The warrant contained a request by the French authorities for the extradition of an Algerian citizen residing in Denmark for prosecution in France, more precisely Guadeloupe.

The person in question was arrested on 22 November 2004 and extradited to the French authorities on 14 March 2005. The extradition was conditional on the subject's being allowed to serve any sentence imposed in Denmark, if the subject so requested.

The French authorities never replied to enquiries about the outcome of the case in France.

The above case is linked to Case 3.

CASE 3

As early as 14 May 2004, an examining judge from the French authorities in Paris had issued a letter of request through the Ministry of Justice for the search and interrogation of the subject and another person, a Dane residing in Denmark. The case concerned charges for fraud committed in Paris.

Interrogations were carried out in Copenhagen on 21 December 2004 in the presence of the French examining judge.

Subsequently, on 18 October 2006 and 29 November 2006, the examining judge made requests for additional information, which has all been obtained and forwarded to Paris.

Enquiries sent to the French examining judge in Paris about the outcome of the cases against the Algerian citizen have all remained unanswered.

The Danish citizen charged in the case died in the autumn 2006, a fact of which the examining judge has been informed.

It can be established that the communication has been non-reciprocal.

CASE 4

VAT carrousel. The case concerns a small VAT carrousel involving the purchase of goods from an Italian business, which were then imported to this country through a Belgian business. After a couple of Danish

trading links, the goods were resold to the Italian business or businesses related to the business here. No VAT has been declared or settled in Denmark. In order to document the transaction trail, mutual legal assistance had to be requested from Italy and Belgium. The mutual assistance has been in the form of interrogations and obtaining company information and invoices. The mutual assistance has proceeded satisfactorily, largely because there has been regular contact (telephone/e-mail) with the case officers in the relevant countries and because communication in English has been possible. Timeframe about one year.

CASE 5

The case concerns a large-scale fraud committed against a financial holding company in Paris in 2004. By means of a false transfer order, the perpetrators had a shareholding worth approximately 15.5 million EUR transferred. The perpetrators had the shares redeemed in the United States of America, and subsequently about 11 million EUR of the proceeds was transferred to Danish bank accounts via Hong Kong. A Danish citizen transferred a large portion of the proceeds from these accounts to various persons at home and abroad. A money laundering notice from the bank in July 2004 prompted the initiation of a money laundering investigation. Furthermore, an amount of about 6.5 million EUR was frozen from the accounts of the Danish citizen.

Concurrently with the Danish investigation, the French authorities have investigated the fraud count committed in Paris.

In November 2005, a letter of request was received from France through the Danish Ministry of Justice. The letter of request was forwarded in accordance with the European Convention concerning Mutual Assistance in Criminal Cases of 20 April 1959, the Convention implementing the Schengen Agreement of 19 June 1990 and the European Convention concerning money laundering, search, seizure and confiscation of the proceeds from crime of 8 November 1990 (the Strasbourg Convention).

The French authorities requested material from the investigation in Denmark. The material was forwarded through the Ministry of Justice in January 2006.

In May 2006, the Danish citizen's lawyer in Denmark stated that the Danish citizen had been detained in custody in Paris on account of the fraud. This was confirmed by the French examining judge in June 2006.

Two officers from the Public Prosecutor's Office travelled to Paris in July 2006 to discuss the matter with the examining judge and to interview the Danish citizen.

In November 2006, the Public Prosecutor's Office received another letter of request from France sent direct to the Public Prosecutor's Office. The letter of request was issued in accordance with the European Convention concerning Mutual Assistance in Criminal Cases of 20 April 1959, Additional Protocol to Mutual Assistance in Criminal Cases of 17 March 1978, the Convention implementing the Schengen Agreement of 19 June 1990, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 and Protocol of 16 October 2001 to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000.

It appeared from the letter of request that the Danish citizen had been charged in France for fraud together with four other individuals and still detained in custody. The letter of request was answered in December 2006. In addition, the French authorities were advised that the investigation in Denmark was to be put on hold until the case against the Danish citizen had been concluded in France. This decision was made pursuant to the European Convention on transfer of prosecution in criminal cases.

We have enjoyed extremely rewarding and efficient working relations with the French authorities in this case, including with the French examining judge in Paris. The letters of request have been precise and well detailed. Furthermore, the case has been discussed at a meeting in Paris and through e-mail correspondence between the examining judge and the Public Prosecutor's Office. This communication has kept the Public Prosecutor's Office up to date on French progress in the investigation and on what was required of the Public Prosecutor's Office's investigation.