

MINISTRY OF FOREIGN AFFAIRS OF DENMARK

Promotion of the ratification and full implementation of the Rome Statute

The Kingdom of Denmark

In its resolution **ICC-ASP/8/Res.9** of 25 March 2010, the Assembly decided to request the Secretariat of the Assembly of States Parties to reissue the questionnaire on the measures undertaken in respect of implementing legislation of the Rome Statute of the International Criminal Court (note verbale ICC-ASP/8/S/PA/19) and to encourage States Parties to provide information to the Secretariat in advance of the Review Conference to be held in Kampala, Uganda, from 31 May to 11 June 2010. With reference to **ICC-ASP/S/PA/07** the Kingdom of Denmark is pleased to provide the following information regarding the implementation of the Rome Statute in Danish law.

A. Questionnaire

Implementing legislation questionnaire for States Parties

1. *Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”)?*

Yes; Denmark implemented the Statute by the passing of Act no. 342 of 16 May 2001 “Lov om den Internationale Straffedomstol” (Act on the International Criminal Court).

IF NOT

Part A

Not applicable

IF YES**Part B**

5. *In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?*

According to section 1, subsection 1, of the above-mentioned Act no. 342 of 16 May 2001, the provisions of the Statute form part of Danish law. A Danish translation of the Statute itself is annexed to the Act.

Denmark chose to incorporate the Statute into Danish law as it contains a detailed regulation of the duty of the States Parties to cooperate with the Court. The implementing Act essentially consists of those supplementary rules that the Government deemed necessary to enable Danish authorities to cooperate fully with the Court in practice.

6. *Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?*

The implementation of the Statute through Act no. 342 does not imply the incorporation of the Statute's substantive crimes in Danish substantive criminal law. It should be noted, however, that the acts constituting all three categories of crimes contained in the Statute, are criminalised under Danish law.

7. *Does the implementing legislation fully incorporate all modes of cooperation under part 9 of the Statute?*

Yes; it follows from section 1, subsection 1, of the implementing Act no. 342, that Danish authorities are legally fit and able to comply with all cooperation obligations prescribed in part 9 of the Statute. For example, Denmark will be able to meet requests concerning legal aid, including investigation under the use of force and requests for extradition. Section 2 of the implementing Act contains detailed rules regarding the procedure of extradition to the Court.

8. Does the implementing legislation designate a channel of communication with the Court?

The implementing Act no. 342 does not designate a specific channel of communication with the Court; however, all communication may be directed to the Government through the usual diplomatic channels, including the Danish Embassy in The Hague and the Ministry of Foreign Affairs of Denmark.

B. Additional questions

The following information is provided pursuant to paragraph 6, sub-paragraph (h), of the Plan of Action.

i) Information on obstacles to ratification or full implementation facing States

During the parliamentary negotiation of the Danish implementation bill (cf. L20 presented 4 October 2000 by the Foreign Minister) the compatibility between the ratification of the Statute and sections 13 and 20 of the Danish Constitutional Act of 5 June 1953 (Grundloven) was discussed. Reference is made to the answer provided below in paragraph vii) regarding solutions to constitutional issues.

ii) National or regional strategies or plans of action to promote ratification and/or full implementation

Denmark is a member of the European Union and reference is therefore made to the EU's reply of 2 September 2009 to the request for information by the ASP. Denmark is an active member of the EU working group of ICC experts (COJUR Subarea ICC). Bilaterally, Denmark pursues a number of avenues with a view to providing financial, political and practical support to the Court.

iii) Technical and other assistance needs and delivery programmes

No answer.

iv) Planned events and activities

1) At the Eighth Session of the Assembly of States Parties, held in The Hague 18-26 November 2009, it was decided to promote a number of concrete proposals for amendment of the Statute in light of the upcoming Review Conference in Kampala, Uganda. This conference will furthermore include stocktaking to consider the holistic success and impact of the Rome Statute, with a particular focus on inter alia the principle of complementarity as a focal point in the battle against impunity. Following an invitation by the ASP, Denmark and South Africa have been given lead on the stocktaking segment on complementarity at the Review Conference in Kampala 31 May-11 June.

2) In connection with the pre-review conference, which was held in Uganda 25-29 January 2010, the Danish delegation availed itself of the opportunity to travel to northern Uganda together with delegations from Kenya, Sierra Leone and South Africa and the President of the ASP, Christian Wenaweser. During this visit, the delegation encountered a number of people, who were victims of violence related to cases currently pending before the International Criminal Court. The visit was funded by the Danish Embassy in Kampala, Uganda, with 50,000 Euros.

v) Examples of implementing legislation for the Rome Statute

Act no. 342 of 16 May 2001 (Act on the International Criminal Court) may be found on the website <https://www.retsinformation.dk/Forms/R0710.aspx?id=22925> in the authoritative Danish version. Unfortunately, the Act is not available in English.

vi) Bilateral cooperation agreements between the Court and States Parties

Denmark and the Court are currently looking into the last details with a view to finalizing an agreement on enforcement of sentences.

vii) Solutions to constitutional issues arising from ratification

No major constitutional issues arose at ratification. However, as is evident from the parliamentary process (cf. L20 presented 4 October 2000 by the Foreign Minister), which led to the passing of Act no. 342 of 16 May 2001 (Act on the International Criminal Court), two possible obstacles to ratification and full implementation of the Statute, both of a constitutional nature, were discussed.

First, the Government considered the ratification in relation to section 20 of the Danish Constitutional Act of 5 June 1953 (“Grundloven”). This provision provides that “(1) Powers vested in the authorities of the Realm under this Constitutional Act may, to such extent as shall be provided by statute, be delegated to international authorities set up by mutual agreement with other states for the promotion of international rules of law and cooperation. (2) For the enactment of a Bill dealing with the above, a majority of five-sixths of the members of the Folketing [parliament] shall be required. If this majority is not obtained, whereas the majority required for the passing of ordinary Bills is obtained, and if the Government maintains it, the Bill shall be submitted to the electorate for approval or rejection in accordance with the rules for referenda laid down in section 42.” The Government concluded, after thorough consideration, that Danish ratification of the Statute would not imply the transfer of constitutional powers within the meaning of section 20.

Second, the Government considered whether Danish ratification of the Statute would be in conflict with section 13 of the constitution, according to which the Danish monarch as Head of State enjoys full immunity against prosecution. However, taking note of the fact that the

authority exercised by the Danish monarch in the Danish democracy is of a strictly formal nature, the Government considered it to be highly hypothetical, indeed, that any Danish monarch should ever commit a crime within the jurisdiction of the International Criminal Court. In this light, the Government concluded that section 13 of the constitution did not constitute an obstacle to ratification and full implementation of the Statute.

viii) National contact points for matters related to the promotion of ratification and full implementation

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