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THE MINISTER FOR
FOREIGN AFFAIRS

April, 2006

Dear Secretary-General,

In response to your letter dated 7 March 2006 in which you request supplementary explanations in accordance with Art. 52 of the European Convention on Human Rights, I hereby forward explanations of the manner in which Danish Law ensures the effective implementation of the relevant provisions of the European Convention on Human Rights.

Yours Sincerely,

Per Stig Møller

Mr. Terry Davis
Secretary-General of the Council of Europe

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Enclosure	File	Department	
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1. Introduction

In accordance with Article 52 of the European Convention of Human Rights the Secretary General of the Council of Europe has by letter of 7 March requested the Danish Government to provide supplementary explanations on two points regarding the effective implementation in Danish law of certain provisions of the European Convention on Human Rights.

In answer to the first supplementary question two primary control mechanisms exist in Denmark.

2. National Intelligence Services

There are two intelligence services in Denmark, the Danish Defence Intelligence Service (DDIS, in Danish: FE) and the Danish Security Intelligence Service (DSIS, in Danish: PET).

2.1 The Danish Defence Intelligence Service (DDIS)

The mandate of the Danish Defence Intelligence Service is defined in Act on the Aims, Tasks and Organisation etc. of the Armed Forces; Act. No. 122 of 27th February 2001, Chapter 4 (The Defence Intelligence Service), Article 13, which says:

> *§ 13. The Defence Intelligence Service is subject to, and operates under the responsibility of the Minister of Defence.*
> *(2) The task of the Defence Intelligence Service is to collect, process and disseminate information concerning conditions abroad, which are of significance to Denmark's security, including Danish units etc., abroad.*

In the legislative preparatory work of the above-mentioned Act, it is stipulated: "the intelligence activity is directed abroad, where the Defence Intelligence Service gathers military, political, financial and technical/scientific information of significance to Danish security interests. This information is gathered from a broad spectrum of opportunities, including electronic eavesdropping, just as the Defence Intelligence Service also co-operates with foreign partners" (unofficial translation).

It must be emphasized that the activities of the DDIS are directed towards conditions abroad. The DDIS, in pursuing its own tasks, is thus not aiming at matters within the Danish borders. Such matters are instead the objective of The Danish Security Intelligence Service (PET). The PET is described below in paragraph 2.2.

DDIS is subject to control in respect of a number of issues by several authorities and bodies. The three relevant control mechanisms are described below. Furthermore, as all Danish government agencies, DDIS is subject to control by the National Audit Office of Denmark (in Danish: Rigsrevisionen) to ensure that the money granted to the institution is spend as the Danish Parliament (in Danish: Folketinget) has decided.

2.1.A. Ministry of Defence

On behalf of the Government, the Minister of Defence supervises DDIS, and the Service is subject to the directions of the Minister of Defence. The Minister of Defence has laid down two directives to the DDIS. One directive, dated 28 March 2001, is about the DDIS activities. The second directive, dated 23 August 1978, deals with the DDIS registrations of Danish citizens in matters of security investigations/clearances.

The management and responsibility for carrying out the tasks and activities of the DDIS rest with the Director of the Service.

2.1.B. Parliamentary Control

The Danish Parliament (Folketinget) has parliamentary control with the DDIS through a special committee: The Danish Parliament's Committee on the Intelligence Services, constituted by Act No. 378 of 6 July 1988. The committee consists of five MPs, who are appointed by the five major parties in parliament. In accordance with the law, the committee must be informed of the general guidelines governing the activities of the

DDIS and must be kept informed of important matters of security or foreign political issues that are relevant to the activities of the intelligence services. The members of the committee and its secretary are under the obligation to keep confidentiality of the information they are given in the committee.

2.1.C. The Wamberg Committee

The DDIS registrations of Danish citizens in matters of security investigations/clearances have since 1978 been subjects to a special control by the Wamberg Committee. The members of the committee must be considered apolitical, and they are appointed, because they enjoy general confidence and respect.

2.1.1. Handling and passing of information

When handling and passing on information about Danish citizens and foreign subjects residing in Denmark to other authorities than the Ministry of Defence or the DSIS (PET), the DDIS is subject to the same legal provisions and restrictions as any other official body, i.e. the provisions of the Act of Administration. This means, in short, that the passing on of any sensitive or private information to other authorities, including the DSIS (PET), can only be carried out according to a specific assessment made in each individual case. If the information is about security investigations/clearances of Danish citizens the Wamberg Committee has to approve the passing of the information.

2.2 The Danish Security Intelligence Service (DSIS, in Danish: PET)

PET is part of the Danish police and in terms of organisation; the Service is a department of the National Police. Due to its special assignments, however, PET reports directly to the Minister of Justice. The Minister of Justice has on 9 May 1996 issued statutory provisions regarding the PET that describe the tasks and responsibilities of PET. A copy of the provisions in English is enclosed.

In its capacity as the national security and intelligence service of Denmark, PET must prevent, investigate and counter operations and activities that pose or may pose a threat to the preservation of Denmark as a free, democratic and safe country. The actions that, in this connection, fall within PET's area of responsibility are primarily the actions as defined in accordance with chapter 12 and 13 of the Danish

Penal Code. Such actions include attacks on the Constitution, terrorism, and proliferation of weapons of mass destruction, extremism and espionage. Please find enclosed a copy in English of the said Chapters of the Criminal Code.

PET's actions are essentially preventive. From the information gathered, processed and analysed by PET, the objective is to procure as much information as possible on the capacity, determination and ability of PET's target persons and target groups to commit any such action as mentioned above.

On this basis, the Service prepares assessments and risk analyses that again provide the basis for an evaluation of what action that must be implemented to prevent any threats from developing further. Such actions may, among other things, consist of surveillance of target persons or target groups with the aim of assessing whether an identified and potential threat may develop further. By doing so the actions of PET differ from the investigations carried out by the rest of the police, where the police often find themselves in a situation where they have no knowledge of a criminal offence until it is already committed. Consequently, it is a characteristic of most of the matters that PET deals with that they do not develop into actual criminal cases.

2. 2. 1. Investigative methods

The work and methods of PET are regulated by the same rules of the Danish Administration of Justice Act that apply to the rest of the police. However, in some areas the Administration of Justice Act includes specific rules for the investigation of offences governed by Chapter 12 and 13 of the Criminal Code, which provide a specific framework for PET investigations.

Many of the procedures and methods used by PET to gather information, as part of the overall intelligence efforts, are those employed by the rest of the police. The investigative methods used are primarily interviews, checking records, and making enquiries through other authorities that do not require a judicial order. Intrusive methods of investigation are also used, e.g. telephone interception and bugging in addition to secret searches, all of which require a court order.

Unlike the rest of the police and the prosecution service, PET has no authority to indict in criminal cases. Should a PET investigation initiate legal proceedings in a criminal case, the case would be passed on to the ordinary police or the prosecution service. Specific indictments in cases governed by the stipulations of Chapters 12 and 13 of the Criminal Code

must, however, be instituted by the Minister of Justice in accordance with specific provisions in the Criminal Code. In any such matter, the Minister of Justice will make a decision on the basis of a recommendation from the Director of Public Prosecutions.

2.2.2. Control of PET

PET is subject to control in respect of a number of issues by several authorities and bodies. Furthermore, through a regular internal audit of records PET itself seeks to ensure that the working methods and case handling comply fully with rules and regulations.

2.2.3. Control exercised by the Minister of Justice

On behalf of the Government, the Minister of Justice supervises PET, and the Service is subject to the directions of the Minister of Justice. The Minister of Justice has laid down general written directions for the activities of PET (the above mentioned statutory Provisions) dated 9 May 1996), which stipulate that the Director of PET is obliged to keep the Minister of Justice informed of general as well as specific issues of essential importance to the activities of the Service.

The management and responsibility for carrying out the tasks that the Minister of Justice has assigned to PET rest with the Director of the Service. Thus, the Director of PET is obliged to keep the Minister of Justice at any time directly informed of all matters of importance to the national security and in general of all matters of major importance to the activities of the Service, including all important single issues and contacts with national as well as international authorities.

2.2.4. Parliamentary Control

The Danish Parliament (Folketinget) has the parliamentary control of PET through a special parliamentary committee set up under Act no 378 of 6 July 1988 with the role of "supervising the DDIS and PET".

This committee consists of five MPs who are appointed by the five major parties in Parliament. In accordance with the law, the committee must be informed of the general guidelines governing the activities of PET and must be kept informed of important matters of security or foreign political issues that are relevant to the activities of the intelligence services.

2.2.5. Judicial control

The activities of PET are as stated above subject to judicial review, as PET must obtain a warrant from the courts in order to carry out a number of investigative measures. Reference is made to the Danish Government's reply of 21 February 2006.

2.2.6. Records Control

PET's registry and the handling of personal information are also subject to supervision. When a person or an organisation has become the subject of an investigation, this may result in an actual file being made, a so-called personal file or organisational file. Such files are subject to special checks by the Wamberg Committee (named after the Committee's first chairman, A.M. Wamberg), which was set up by the Government in 1964. The Committee members must be considered apolitical and they are appointed because they enjoy general confidence and respect.

The Committee controls PET's records and the dissemination of information and in this connection the Committee must approve new files on Danes and foreign nationals resident in Denmark that the Service requests to be registered. The Committee meets 6-10 times a year at PET's offices to review cases and decide whether the criteria for recording them have been met. Furthermore, the Committee also takes random samples of old files to establish whether the deadlines for deletion are being kept.

2.2.7. National Audit Office of Denmark

PET's expenditures are subject to the general audit of the police accounts as undertaken by the national Audit Office in co-operation with the Audit Section of the National Commissioner and the auditors of the Ministry of Justice.

2.2.8. The Committee on the Danish Security Intelligence Service and the Danish Defence Intelligence Service

In April 1998 the Ministry of Justice established a Committee on the Danish Security Intelligence Service (PET) and the Danish Defence Intelligence Service (DDIS). The Committee was established for the purpose of considering questions relating to registration of persons and organisations resident in Denmark and the treatment and storage of such information by the services. On the basis of these considerations the Committee is to elaborate proposals for new and clear rules in this area.

In this connection the Committee also has to consider the question of citizens' access to receive information on whether or not he or she is registered in the files of the Services. Furthermore, the Committee shall consider if an arrangement concerning special access to historical information can be established.

The Committee has also been given the task of examining the legal basis and guidelines for the activities of the PET. Based on this examination the Committee shall consider the need for a new collected set of rules governing the activities of the PET, just as the Committee shall consider the elaboration of such guidelines.

The Committee is currently awaiting the result of an investigation concerning the practice of the Service in relation to the registration of political parties and movements in Denmark since 1968. The Committee will resume its work once the result of this investigation has been published.

2.2.9. Activities of foreign authorities within the Danish territory

As stated in the Danish Government's reply of 21 February 2006 to the Secretary General's request, it should be noted that pursuant to generally recognized principles of international law deprivation of liberty of persons in Denmark might only be made by Danish public authorities. No foreign authorities can perform such acts in Denmark except where international law would contain specific provisions to that effect. This fundamental rule of international law is also reflected in Danish constitutional principles. Any international agreement providing exception to this principle would require a fundamental constitutional scrutiny to determine, if it would be in conformity with the Danish Constitution and would – if it exceptionally were considered constitutionally possible – in any case require approval by the Danish Parliament (Folketinget).

2.2.10. European Council and EU instruments on extradition, transit and joint investigation teams

Denmark has ratified the European Council Convention of 13 December 1957 on Extradition, the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union, the Convention of 27 September 1996 relating to extradition between the Member States of the European Union and the Council Framework Decision of 13 June 2002 on the European Arrest

Warrant and the surrender procedures between Member States all of which contain provisions on extradition as well as provisions on transit of surrendered persons.

In the Danish Government's reply of 21 February 2006 to the request of the General Secretary the Danish rules governing extradition are described. It should be noted, that according to Section 21 of the Danish Extradition Act the Minister of Justice, or the person he authorizes to do so, may allow a person who has been extradited from one foreign state to another to be brought through Denmark, if the provisions of Section 2, 2a or 4-6 do not prevent extradition from Denmark for the act at issue. Section 21(2) contains specific rules governing extradition to a Member of the European Union and Section 21(3) contains specific rules on extradition to Finland, Iceland, Norway or Sweden.

Please find enclosed an unauthorized copy in English of the Consolidated Act No. 833 of 25 August 2005 on extradition of criminals.

Denmark is also a party to the EU Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union, which contains a provision on joint investigation teams, just as Denmark is bound by the Council Framework Decision of 13 June 2002 on joint investigation teams. Both instruments allow for the Member States to set up joint investigation teams and contain provisions specifying that the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates. The leader of the team shall act within the limits of his or her competence under national law. It also follows from the provisions that the team shall carry out its operations in accordance with the law of the Member State in which it operates and that the members of the team shall carry out their tasks under the leadership of the leader of the team. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Member State of operations. However, the leader of the team may, for particular reasons, in accordance with the law of the Member State in which the team operates, decide otherwise. Furthermore, seconded members of the team may in accordance with the law of the Member State where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Member State of operation and the seconding Member State.

Both instruments contain provisions on criminal liability concerning officials from a Member State other than the Member State of operation. It follows from these provisions that such officials shall be regarded as officials of the Member State of operation with respect to offences

committed against them or by them.

Finally, Protocol of 28 November 2002 amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol contains provisions on joint investigation teams.

According to the Protocol Europol officials may participate in a support capacity in joint investigation teams, including those teams set up in accordance with the Framework Decision of 13 June 2002 on joint investigation teams or in accordance with the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union. This only applies to the extent that those teams are investigating criminal offences for which Europol is competent. Furthermore, Europol officials may, within the limits provided for by the law of the Member State where the joint investigation team operates and in accordance with the arrangement between the Director of Europol and the competent authorities of the Member States participating in the joint investigation team arrangement, assist in all activities and exchange information with all members of the joint investigation team. However, they shall not take part in the taking of any coercive measures.

Europol officials shall carry out their tasks under the leadership of the leader of the team, taking into account the conditions laid down in the arrangement referred to above. During the operations of a joint investigation team, Europol officials shall, with respect to offences committed against or by them, be subject to national law of the Member State of operation applicable to persons with comparable functions.

2.2.11. The Schengen Convention (hot pursuit)

Denmark is a party to the Convention implementing the Schengen Agreement of 14 June 1985, which contains an obligation for Denmark– when certain conditions are met – to allow the authorities of another Contracting party to operate within the Danish territory. Thus, the Schengen Convention contains rules according to which officers of one of the Contracting Parties who are pursuing in their country an individual caught in the act of committing or of participating in one of a number of specific offences listed in the Convention shall be authorised to continue a pursuit in the territory of another contracting Party without the latter's prior authorisation. This only applies where, given the

urgency of the situation, it is not possible to notify the competent authorities of the other Contracting Party prior to entry into that territory or where these authorities are unable to reach the scene in time to take over the pursuit. The same applies where the person being pursued has escaped from provisional custody or while serving a sentence involving deprivation of liberty. The pursuing officers shall, not later than when they cross the border, contact the competent authorities of the Contracting Party in whose territory the hot pursuit is to take place. The hot pursuit will cease as soon as the Contracting Party in whose territory the pursuit is taking place so requests. At the request of the pursuing officers, the competent local authorities shall challenge the pursued person in order to establish the person's identity or to make an arrest. Under Article 41 of the Schengen Convention it is possible for a Contracting Party to declare that pursuing officers of another Contracting Party shall not have the right to apprehend the pursued person.

Article 41 states that hot pursuit shall be carried out only under a number of general conditions. Amongst these conditions are, the requirement that the pursuing officers must comply with the provisions of Article 41 and with the law of the Contracting Party in whose territory they are operating and that they must obey the instructions issued by the competent local authorities. Furthermore, pursuit shall take place solely over land borders, entry into private homes and places not accessible to the public shall be prohibited and the pursing officers shall be easily identifiable, either by their uniform, by means of an armband or by accessories fitted to their vehicles. According to Article 41(9) each Contracting Party at the time of signing the Convention shall make a declaration in which it shall define for each of the Contracting Parties with which it has a common border the procedures for carrying out a hot pursuit in its territory. Please find enclosed an English copy of the Convention implementing the Schengen-agreement of 14 June 1985.

In order to implement the Schengen Convention Denmark has entered into bilateral agreements with Germany and Sweden on police cooperation in the border areas and the Oresund Region respectively.

2.2.12. The Agreement between Denmark and Germany

According to the Danish declaration made pursuant to Article 41(9) in the Schengen Convention German police officers can only continue a pursuit initiated in Germany into the Danish territory in connection with the serious crimes listed in Article 41(4)(a) (manslaughter, rape, drug trafficking etc.). Furthermore, hot pursuit can only be continued 25 km

into the Danish territory and the pursuing officers cannot apprehend persons within the Danish territory.

It follows from Article 4 and 5 of the Agreement between Denmark and Germany of 21 March 2001 that the competent authorities can exchange liaison officers to the extent necessary and in accordance with Article 47 and 125 of the Schengen Convention. The authorities can also enter into agreements on joint exercises, participation in education, participation of representatives of one party as observers in police operations of the other party and exchange of personnel without the exchanged personnel being authorized to exercise authority.

Furthermore, according to Article 9 of the Agreement cross border pursuit shall take place in accordance with Article 41 of the Schengen Convention and the national declarations made pursuant to Article 41(9) on hot pursuit. It follows from Article 10 of the Danish/German Agreement that police officers of a Contracting Party can move in the territory of the other contracting Party, but have to return to the territory of the first Contracting Party as soon as the transport structure allows for them to turn around. In these situations the police officers cannot exercise police authority within the territory of the second Contracting Party. According to Article 12 of the agreement police officers of another Party are subject to the national legislation of the Party in the territory of which a hot pursuit takes place.

Finally, Article 14 states that if a Contracting Party is of the opinion that a request cannot be fulfilled or that a measure cannot be implemented without this damaging the sovereignty or the national security or other essential national interests of the Contracting party or if the request or measure is contrary to national law, the Contracting Party can refuse to cooperate or make the cooperation dependent on certain conditions being fulfilled.

2.2.13. The Agreement between Denmark and Sweden

In 2000 the Oresund Connection across the Oresund Strait, which separates Sweden and Denmark, was inaugurated. The Oresund Connection consists of a bridge, an artificial island and a tunnel of 3,510, thus establishing a land border between Denmark and Sweden. For this reason Denmark and Sweden entered into an agreement of 6 October 1999 on police cooperation in the Oresund region. It follows from the Danish declaration made pursuant to Article 41(9) of the Schengen Convention that Swedish authorities can continue a pursuit into the Danish part of the Oresund Connection. On the Danish part of the Oresund Connection pursuit can take place in connection with any

indictable offence under Danish and Swedish law. Furthermore, according to the Danish declaration Swedish authorities can apprehend persons on the Danish part of the Oresund Connection in accordance with Article 41(2)(b) of the Schengen Convention. It also follows from the Danish declaration that Swedish authorities are only authorized to continue a pursuit 25 km beyond the end of the Oresund Connection. Finally, it follows from the declaration that a pursuit that takes place within Danish territory but outside of the Oresund Connection must concern a crime covered by Article 41(4)(b) of the Schengen Convention and that Swedish authorities in this situation are not authorized to apprehend the person pursued.

It follows from Article 6 of the Danish/Swedish agreement that the competent authorities can enter into agreements on the exchange of liaison officers in accordance with Article 47 of the Schengen Convention. The authorities can also enter into agreements on participation of representatives of one party as observers in police operations of the other party and on exchange of personnel without the exchanged personnel being authorized to exercise authority.

According to Article 6(1) of the Danish/Swedish Agreement one party's police officers that – due to the transport structure of the Oresund Connection – have to move on the other party's territorial part of the Oresund Connection, can do so, but they have to return to their own territory as soon as the transport structure allows for them to do so. The transport structure of the Oresund Connection means that police officers of the one party have to be able to move on the other party's territorial part of the Connection in order to carry out police tasks on their own part of the Connection. Otherwise it would not be possible for the police officers to return to their own territory. Thus, the provision in Article 6(1) allows Swedish police officers, who have arrested a person on the Swedish part of the Oresund Connection, to use the Danish part of the Connection as a transit area when transporting the arrestee back to Swedish territory without the Danish authorities having to authorize the transport.

According to Article 6(2) of the Agreement the police officers of one party that move on the other party's part of the Oresund Connection can if necessary perform ordinary police tasks of a public order nature. In this connection, ordinary police tasks of a public order nature could f.i. be stopping a car when there is a suspicion that the driver is drunk, or directing traffic in case of an accident. Such tasks can only be performed until such a time when the other party's authorities – which are to be informed immediately – arrive or demand that the measures are discontinued. The police tasks shall in all cases be performed in accordance with the legislation and administrative regulations of the

party in the territory of which the police officers are performing the tasks. The rules only apply to situations where the task cannot be postponed. According to Article 6(3) of the Agreement police officers can initiate a pursuit on the other party's territorial part of the Oresund in accordance with Article 41 of the Schengen Convention and the declarations made in accordance with Article 41(9). This provision goes further than Article 41 of the Schengen Convention according to which it is a prerequisite for hot pursuit that the pursuit is initiated before the border line is crossed, however, in these cases the Swedish authorities' pursuit within Danish territory has to be terminated 25 km from the end of the Oresund Connection.

According to Article 8 a pursuit that is initiated within one party's territory and continues into the other party's territory shall take place in accordance with Article 41 of the Schengen Convention and the declarations made pursuant to Article 41(9). It follows from Article 9 of the Agreement that police officers of one party that perform tasks on the other party's territory shall adhere to the legislation of the latter party. This means that Swedish police officers that move within the Danish territory have to comply with the directions of Danish police received by radio etc. In Article 10 it is stated that decisions on the conduct of police officers, including on disciplinary measures, are to be made by the party that employ the police officers. Furthermore, according to Article 11 police officers that perform tasks in the territory of the other party shall be treated as if they were police officers of that party, when it comes to handling criminal offences committed by or against them and Article 12 of the Agreement contains rules on compensation for damages that have been caused by a police officer of one party in the territory of the other party. Finally, Article 14 of the Agreement contains an obligation that corresponds to 41(5)(d) of the Schengen Convention according to which police officers that move in the territory of another Contracting party are obliged to carry their national uniform or another visible identification.

2.2.14. Agreements with the United States of America

In the context of the General Secretary's request it should be noted, that extradition from Denmark to the United States of America and transport of persons extradited to the United States, through Danish territory takes place in accordance with the Treaty of 10 June 1972 on extradition between the Kingdom of Denmark and the United States of America. An English copy of the Treaty is enclosed. Furthermore, the Agreements between the European Union and the United States of America on extradition and mutual legal assistance in criminal matters will be applied when they enter into force.

According to Article 1 of the Extradition Treaty between Denmark and

the United States of America, each Contracting State agrees to extradite to the other, in the circumstances and subject to the conditions described in the Treaty, persons, found in its territory who have been charged with or convicted of any of the offences listed in Article 3. These offences include murder, aggravated injury or assault, rape, kidnapping, robbery etc. and attempt to commit, conspiracy to commit or participation in any of these offences. Extradition shall only be granted if the offences have been committed within the territory of the requesting State or if they have been committed outside the territory of the requesting State and the law of the requested State provides for the punishment of such an offence committed in similar circumstances.

Extradition shall according to Article 2 be granted, when the law of the requesting State, in force when the offence was committed, provides a possible penalty of deprivation of liberty for a period of more than one year and if the law in force in the requested State generally provides a possible penalty of deprivation of liberty for a period of more than one year which would be applicable if the offence was committed in the territory of the requested State. When the person sought has been sentenced in the requesting State, the detention imposed must have been for a period of at least four months.

It follows from Article 6, that extradition shall be granted only if the evidence be found sufficient, according to the law of the place where the person sought is found either to justify his committal for trial if the offence of which he is accused has been committed in that place or to prove that he is the identical person convicted by the courts of the requesting State. In the case of a request made to the Government of Denmark, the Danish authorities, in accordance with Danish extradition law, shall have the right to request evidence to establish a presumption of guilt of a person previously convicted. Extradition may be refused if such additional evidence is found to be insufficient.

Articles 7 and 8 list a number of situations in which extradition shall not be granted and Article 11 establishes that the request for extradition shall be made through the diplomatic channel. Article 11 also contains a list of the documents that shall accompany a request for extradition, such as a description of the person sought, information as to his nationality and residence if available, a statement of the facts of the case, the text of the applicable laws of the requesting State including the law defining the offence, the law prescribing the punishment for the offence and a statement that the legal proceeding or the enforcement of the penalty for the offence have not been barred by lapse of time.

Article 12 concerns provisional arrest and Article 18 contains provisions on transit. Thus, according to Article 18 the Contracting States shall

grant a right to transport a person, who has been surrendered to the other Contracting State by a third State, through the territory of one of the Contracting States when a request is made through the diplomatic channel. This obligation is limited to situations where conditions, which would warrant extradition of such a person by the State of transit, are present and when reasons of public order are not opposed to the transit.

In relation to the US military base in Greenland (Thule Air Base) Denmark has entered into an Agreement of 27 April 1951 with the United States of America concerning the Defence of Greenland (Thule Airbase). The Agreement has been amended and supplemented by Agreement of 6 August 2004 on the Defence of Greenland. It follows from the amended Agreement that the provisions on jurisdiction of the NATO Status of Forces Agreement (NATO SOFA) apply. A copy in English of the Agreement of 6 August 2004 with appurtenant joint declaration on Economic and Technical Cooperation is enclosed.

2.2.15. Control of foreign agencies' activities in Denmark

As it can be derived from the conventions and agreements etc. described above, foreign agencies that operate within the Danish territory are subject to Danish legislation, they have to notify the relevant Danish authorities of their presence in the Danish territory (as stated above special rules apply to Swedish police in relation to the Oresund Connection) and they have to comply with the directions of the relevant Danish authorities, which will usually be the Danish police.

Furthermore, only the Danish Ministry of Justice is competent to grant the extradition of a person that is found in the Danish territory and the right to transport through the Danish territory of a person that has been surrendered to a foreign agency.

If foreign agencies operate within the Danish territory without observing Danish legislation, without notifying the Danish authorities or without the authorization of the relevant Danish authorities, this constitutes an unlawful act. Reference is made to the Danish Government's reply of 21 February 2006 to the Secretary General's request.

In particular as regards foreign intelligence agencies it should be underlined, that according to Danish law it is an unlawful act if a foreign intelligence service carries out intelligence activities within Danish territory.

The control mechanisms that apply to PET do not apply to foreign intelligence agencies, but PET plays a special role in relation to activities

of foreign intelligence agencies that take place within the Danish territory. Thus, it follows from the above mentioned statutory provisions regarding PET that one of the tasks of PET is to investigate any action that attacks or threatens the safety of the state, as according to Chapter 12 of the Criminal Code, including particularly the illegal intelligence activities of foreign powers or organisations, in accordance with sections 107 and 108 of the Criminal Code.

Investigations in this respect – like in general – must be carried out with all due respect for diplomatic and journalistic activities as well as for legal political activities.

According to section 107 of the Criminal Code any person who, being in the service of any foreign power or organisation or for the use of persons engaged in such service, inquires into or gives information on matters which, having regard to Danish state or public interest, should be kept secret, shall, whether or not the information is correct, be guilty of espionage and liable to imprisonment for any term not exceeding 16 years. If the information is of the nature indicated in Section 109 of the Criminal Code or if the act is committed in time of war or enemy occupation, the penalty may be increased to imprisonment for life.

Furthermore, it follows from section 108 of the Criminal Code that any person who, by any act other than those covered by Section 107 of the Criminal Code, enables or assists the intelligence service of a foreign state to operate directly or indirectly within the territory of the Danish state, shall be liable to imprisonment for any term not exceeding six years. If the information concerns military affairs or if the act is committed during war or enemy occupation, the penalty may be increased to imprisonment for any term not exceeding 12 years.

According to PET the espionage threat against Denmark and Danish interests has changed concurrently with the general development of the national and international scene. The espionage activities of the cold War era no longer take place in the same format. However, foreign intelligence activities are still being carried out in Denmark although today such activities concentrate on gathering factual information rather than involving social subversive activities.

PET has noted an interest in gathering information on defence and security issues, Danish politics, financial as well as any general social issues. Another object of interest has been Denmark's and other countries' attitude to the EU and NATO, as well as issues concerning their expansion. Furthermore, scientific and technical information on research is gathered from institutions of higher education and universities, as well as research in the private sector.

It is not illegal to gather publicly available information, but if the activities take on the character of being conspiratorial, e.g. if the actual information gathering takes places clandestinely, it may be considered a foreign intelligence activity and thus involve violating the provisions of espionage in accordance with e.g. section 107 of the Criminal Code.

Normally, foreign intelligence agents will stay in Denmark under the legal cover of business, education or research, etc. but diplomatic posts have also been used as cover. Consequently, PET is consulted on visa applications from certain countries allowing the Service to recommend to the Ministry of Foreign Affairs that the person in question be refused visa if that person is known to be an intelligence officer."

3. Control mechanisms regarding transiting aircraft

In answer to the second supplementary question as to control mechanisms regarding transiting aircraft which may be used for rendition purposes by foreign agencies and whether and to what extent the Danish authorities may exercise jurisdiction over such aircraft, it must be noted that according to article 1 of the Convention on International Civil Aviation (Chicago Convention), "every state has complete and exclusive sovereignty over the airspace above its territory". This includes jurisdiction over transiting aircraft.

An aircraft used for so-called "rendition" purposes by foreign state agencies is a state aircraft, which in Danish law is defined as an aircraft exclusively used for state purposes of a non-commercial nature.

Please find enclosed a copy in English of the Danish Air Navigation Act no. 252 of June 10 1960. (It must be mentioned that the last two amendments to the Act has not yet been integrated in the English translation of the Act regarding §§ 40, 57, 58, 58a, 75, 146b and 146c).

According to § 156 of the Danish Air Navigation Act, air traffic over Danish territory with foreign state aircraft may only be carried out after prior permission has been granted. Application for such permission shall be submitted through diplomatic channels.

According to § 84 of the same Act an aircraft may be ordered to land when required in the interest of public order and safety, for instance to prevent breach of law. If the order is not complied with, the competent authority may, using relevant means, prevent the aircraft from further operations.