



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 18 September 2009 (21.09)
(OR. de)**

13361/09

**COPEN 170
EJN 34
EUROJUST 54**

NOTE

from :	German delegation
to :	Working Party on Judicial Cooperation in Criminal Matters (European arrest warrant)
Subject :	Information ("Fiche française") from the German delegation on the handling of European arrest warrants

The following information explains how European arrest warrants are dealt with in practice in the Federal Republic of Germany. It provides an overview and makes no claim to be exhaustive.

The law of 20 July 2006 implementing the Framework Decision on the European arrest warrant and the surrender procedures between Member States (European arrest warrant law) entered into force on 2 August 2006. The text of the law was published on the Council website (http://ue.eu.int/cms3_Applications/applications/PolJu/details.asp?lang=EN&cmsid=545&id=66).

The declarations made regarding the Framework Decision are contained in Council document 12509/06 COPEN 94 EJN 22 EUROJUST 43. They read as follows:

"Re Article 6(3) of the Framework Decision: Under Article 6 the competent judicial authorities are the Ministries of Justice of the Federal Republic and of the Länder. As a rule, these have transferred the execution of the powers resulting from the Framework Decision for the submission of outgoing requests (Article 6(1)) to the public prosecutor's offices of the Länder and to the regional courts, and the powers to meet incoming requests (Article 6(2)) to the chief public prosecutor's offices of the Länder.

Re Article 8(2) of the Framework Decision: The Federal Republic of Germany recognises a European arrest warrant in any official language of any issuing state which recognises European arrest warrants in German issued by German judicial authorities.

Re Article 25(2) of the Framework Decision: The authority responsible for receiving transit requests is the chief public prosecutor's office in whose territory the requested person is to be transferred for transit purposes.

Re Article 31(2), subparagraph 4, of the Framework Decision: The multilateral agreements and conventions referred to in Article 31(1) remain alternatively applicable provided that they offer the possibility of going beyond the aims of the European arrest warrant, that they contribute towards simplification or streamlining of the procedures and that the Member State in question also continues to apply them. The same applies to bilateral agreements which the Federal Republic of Germany has entered into with individual Member States.

No further declarations."

In addition, the following guidelines apply:

Alerts entered in the Schengen Information System (SIS) are, irrespective of when they were entered, in principle treated as European arrest warrants.

Extradition requests already pending when the European arrest warrant law entered into force are also dealt with under the new legislation, i.e. as European arrest warrants.

Germany made no statement under the third sentence of Article 32(1) of the Framework Decision, which means that the rules of the European arrest warrant apply retrospectively without any timebar.

Once a requested person is arrested, he is immediately, no later than the day after his arrest, brought before the nearest district court. There he is, *inter alia*, asked whether he consents to his surrender. The consent should be recorded in the court proceedings and cannot be withdrawn. Where the requested person does not consent to his surrender, the higher regional court in whose jurisdiction the requested person was arrested decides on the admissibility of the surrender. If the higher regional court deems the surrender admissible, the decision on approval of the surrender is taken by the competent judicial authority in accordance with the German statement on Article 6(2) of the Framework Decision (see above), i.e. as a rule, the chief public prosecutor's office in whose jurisdiction the requested person was arrested. Upon the arrest of the requested person in Germany, the requesting State is notified of the competent judicial authority (address, telephone number, fax number).

Under Section 83c of the German implementing law, and in keeping with the provisions of Article 17 of the Framework Decision, the surrender of the requested person should be decided no later than within a period of ten days after consent is given if the requested person consents, and otherwise no later than within a period of 60 days after arrest. Until the decision is taken, the issuing Member State has the opportunity to forward additional information.

Decisions of the competent judicial authorities cannot in principle be contested.

For admissibility requirements and obstacles to granting extradition, please refer to Sections 80 to 83b of the German implementing law.

Under Section 83c(3) of the German implementing law, surrender of the requested person should, in keeping with the provisions of Article 23 of the Framework Decision, take place no later than ten days after the decision on granting extradition, with the possibility to extend the time limit provided for in Article 23 of the Framework Decision.