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COVER NOTE

from:	Dr Sigrid JACOBY, Permanent Representation of the Federal Republic of Germany to the European Union
to:	Mr. Rafael Fernández-Pita y González, Director-General f.f., Council of the European Union
date of receipt :	15 March 2012
Subject :	Council Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings - Notification of the implementation of the Council Framework Decision by Federal Republic of Germany

Sir,

The Council Framework Decision of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (2009/948/JHA) has been transposed into German law.

Requests received by Germany from any State in the areas covered by the Framework Decision may be dealt with in accordance with Section 59 of the Law on International Legal Assistance in Criminal Matters. That provision also applies to legal assistance in respect of all EU Member States. Requests for legal assistance must be dealt with pursuant to that provision insofar as the margin for discretion thereby allowed is reduced to zero. The discretion exercised with regard to requests for legal assistance involving EU Member States must take account of all EU mechanisms (including this Framework Decision). If such mechanisms impose an obligation to cooperate, this must be taken into account in terms of the discretion exercised. In such cases there is an obligation to cooperate pursuant to the aforementioned provision.

German requests for legal assistance may be submitted to other EU Member States pursuant to the Code of Criminal Procedure. They must be submitted (zero margin of discretion) where this is mandatory in the case in question (Section 160 of the Code of Criminal Procedure). If a German public prosecutor establishes that parallel proceedings are pending in several EU Member States, that is an important fact of relevance to the proceedings which must be taken into account in the investigative measures. Naturally, the discretion exercised must also take full account of mechanisms including this Framework Decision.

The competent authorities within the meaning of Article 4(1) of the Framework Decision are the public prosecutors' offices.

(Complimentary close)

(s.) Dr Sigrid JACOBY
