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NOTE

from:	German delegation
to:	Working Party on Cooperation in Criminal Matters
Subject:	Cross-border enforcement of costs of criminal proceedings – Information by Germany

Germany would like to bring the Member States' attention to a case regarding mutual assistance in enforcement of costs of criminal proceedings. The case in question is based upon the following facts:

By judgment of a German Court, a foreign national of an EU-Member State was sentenced to an aggregate term of imprisonment of 1 year and 6 months for fraud, among other offences, which was suspended on probation. As he was convicted he is also obliged to bear the costs of the proceedings in the amount of approx. EUR 45,000. Since the sentenced person is once again living in his home country, the claim for costs has so far been unable to be enforced against him.

According to the review thus far, there is no legal basis for isolated enforcement of the costs of criminal proceedings in a foreign country by means of mutual assistance in enforcement. Such a legal basis is not provided by the Convention on the Transfer of Sentenced Persons of 21 March 1983. Enforcement is also not possible under Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, as the claim for costs does not concern a financial penalty.

If there is a possibility of isolated enforcement of claims of costs of criminal proceedings, the question then arises as to whom accrues benefit from the proceeds of enforcement. Since the matter concerns enforcement of actual costs incurred, the proceeds should, in principle, benefit the requesting State. However, consideration could also be given to sharing the proceeds.

Germany would be interested in the other Member States' view on this topic and would like to put this issue up to discussion.
