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WORKING PAPER

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From:	German delegation
To:	Delegations
Subject:	Judgment of the Court of Justice of the European Union of 27 May 2019 in joined cases C-508/18 and C-82/19 PPU

Delegations will find attached a note by the German delegation concerning the above-mentioned judgment relating to the question whether Public Prosecutor Offices can issue European Arrest Warrants.

Dear Mr. Chair,

According to the European Court of Justice's judgement of 27 May 2019 in the joined cases C-508/18 and C-82/19 PPU, the concept of an 'issuing judicial authority', within the meaning of Article 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as not including public prosecutors' offices of a Member State that are exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision to issue a European Arrest Warrant.

Therefore, Germany will adjust the proceedings to issue a European Arrest Warrant. From now on, European Arrest Warrants will only be issued by the courts. This can be achieved without changing the existing laws. We have already informed the courts and public prosecutors about the ECJ judgement.

Time will be needed in order to update European Arrest Warrants that have already been issued. We would therefore kindly ask, and suggest that the Member States decide, whether an existing European Arrest Warrant that has been issued and signed by a German prosecutor could be accepted as grounds for keeping a person in detention according to Article 12 of Council Framework Decision 2002/584/JHA. In such cases, the German court responsible for issuing a European Arrest Warrant would be required to assess within a very short time-frame whether the requirements for issuing a warrant are fulfilled, and where applicable, forward the warrant immediately to the competent authority in the executing State.

Germany will also review the notification on Art. 6 (1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009.

For the legal assessment of incoming European Arrest Warrants and to get an overview which other Member States might be affected by the ECJ's judgement, we kindly ask, if you could circulate the answers given by the Member States to the discussion paper by the Presidency of 16 May, 2019 (9385/19). For this purpose, it would be helpful to learn which public prosecutors' offices of other Member States are independent or not within the meaning of the ECJ case-law.

Kind regards,
Ralf Riegel