Neutral Citation Number: [2018] EWHC 829 (Admin)
Case No: CO/6499/2016, CO/6510/2016, CO/6512/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/04/2018

Before :

THE HONOURABLE MR JUSTICE LEWIS

- -

Between :

GREGORY CONNOR **TAREK SHAMMAS** **MARK HERBERT**	**Appellants**
- and - **PUBLIC PROSECUTOR'S OFFICE AUGSBURG, GERMANY**	**Respondent**

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Hugh Southey Q.C. and Graeme L. Hall (instructed by **Kaim Todner Solicitors**) for the **first appellant**
Hugh Southey Q.C. and Saoirse Townshend (instructed by **Bark & Co.**) for the **second appellant**
Hugh Southey Q.C. and Malcolm Hawkes (instructed by **Kaim Todner Solicitors**) for the **third appellant**
Ben Lloyd and Florence Iveson (instructed by **CPS**) for the **respondent**

Hearing dates: 23 March 2018

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Judgment Approved

Mr Justice Lewis :

INTRODUCTION

1. These are three appeals against decisions of District Judge Zani, each given on 20 December 2017, in the Westminster Magistrates' Court ordering the extradition of each of the three appellants to Germany. Permission to appeal was originally refused on the papers by Sweeney J. By order dated 19 September 2017, Sir Ross Cranston ordered that there be an oral hearing of the renewed application for permission to appeal with the substantive hearing following immediately if permission to appeal is granted. In the event, full argument was heard on 23 March 2018.

2. In brief, the three appellants are each the subject of a European Arrest Warrant ("EAW") seeking their extradition to Germany for offences connected with VAT fraud in Germany. The appellants each contend that the district judge erred in

deciding that the particulars of the offences given in the EAWs are sufficient to meet the requirements of section 2 of the Extradition Act 2003 ("the 2003 Act"). They contend that the particulars are not adequate and, consequently, that the EAWs in their cases are not valid. In addition, the appellants contend that the German authorities now no longer seek extradition in relation to all of the offences set out in the EAW and contend that it would, therefore, be an abuse of process to extradite them in relation to any of the offences included in the EAWs. The respondent contends that the particulars do meet the requirements of the 2003 Act. They further submit, if necessary, that any issue concerning the offences for which the appellants are to be returned to Germany can be dealt with by allowing the appeal in respect of any offences where extradition is no longer sought and dismissing the appeal in respect of the other offences.

THE LEGAL FRAMEWORK

3. Part 1 of the 2003 Act deals with extradition to territories designated as a category 1 territory. Germany is designated as a category 1 territory. Part 1 applies where a designated authority receives a Part 1 warrant in respect of a person. Section 2 of the 2003 Act provides, so far as material in relation to cases where a person is accused (but has not yet been convicted) of an offence, that:

> "(2) A Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains—
>
> (a) the statement referred to in subsection (3) and the information referred to in subsection (4), or
>
> (b) the statement referred to in subsection (5) and the information referred to in subsection (6).
>
> "(3) The statement is one that—
>
> (a) the person in respect of whom the Part 1 warrant is issued is accused in the category 1 territory of the commission of an offence specified in the warrant, and
>
> (b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being prosecuted for the offence.
>
> "(4) The information is—
>
> (a) particulars of the person's identity;
>
> (b) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;
>
> (c) particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which he is alleged to have committed the offence and any provision of the law of the category 1 territory under which the conduct is alleged to constitute an offence;
>
> (d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence if the person is convicted of it."

4. There are provisions providing for the accused person to be brought before an appropriate judge. That judge (and the High Court on appeal if necessary) will need to determine if the EAW complies with section 2 of the Act and is valid: see *Boudhiba v*

Central Examining Court No.5 of the National Court of Justice Madrid [2007] 1 W.L.R. 124. Section 10 of the 2003 Act provides that where a person is brought before the appropriate judge, that judge must determine whether the offence is an extradition offence within the meaning of the Act. If so, there are a series of further questions that the judge must consider including whether there are any statutory bars to extradition (section 11 of the 2003 Act), whether there has been a decision to charge or to try the accused person (section 12A of the 2003 act) and whether extradition is barred because there are no speciality arrangements in place in the category 1 territory. Speciality arrangements are, broadly, arrangements ensuring that the person is only prosecuted in respect of an offence for which he is extradited or which arises out of the same facts, or where the appropriate judge consents or in certain other categories of case (see section 17 of the 2003 Act). There are also provisions requiring the appropriate judge to consider whether extradition would be compatible with rights derived from the European Convention on Human Rights and would be proportionate (section 21A of the 2003 Act) or whether it would be unjust to extradite the person because of his physical or mental condition (section 25 of the 2003 Act).

5. Section 26 of the 2003 Act provides for an appeal to the High Court if permission to appeal is granted. Section 27 of the 2003 Act provides that:

> "**27 Court's powers on appeal under section 26**
>
> " (1) On an appeal under section 26 the High Court may—
>
> (a) allow the appeal;
>
> (b) dismiss the appeal.
>
> "(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
>
> "(3) The conditions are that—
>
> (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
>
> (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.
>
> "(4) The conditions are that—
>
> (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
>
> (b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;
>
> (c) if he had decided the question in that way, he would have been required to order the person's discharge.
>
> "(5) If the court allows the appeal it must—
>
> (a) order the person's discharge;
>
> (b) quash the order for his extradition."

6. The provisions of the 2003 Act refer to an offence. An EAW may, however, deal with more than one offence. Article 1 of the Extradition Act 2003 (Multiple Offences)

Order 2003 ("the Order ") provides that unless the context requires otherwise any reference in the 2003 Act to an offence is to be construed as a reference to offences. Specific modifications are made to particular provisions so that, by way of example, an appropriate judge must consider under section 10 whether any of the offences are extradition offences and, if one or more are not, may order discharge in respect of those offences only (see, for example, *Brodziak v Circuit court in Warsaw Poland, and others* [2013] EWHC 3394 (Admin.)). Section 27(5) of the 2003 Act is modified by Article 7 of the Order so that where the High Court allows an appeal it must "in relation to each offence" order the person's discharge and quash the order for his extradition.

THE FACTS

The EAWs

7. The first and third appellants are both the subject of EAWs in respect of a particular VAT fraud alleged to have been perpetrated in Germany. In relation to the first appellant, Gregory Connor, the warrant is said to relate to 266 offences. In essence, it is said that companies outside Germany (referred to as the missing traders) purportedly sold goods to other companies (referred to as buffer companies). The invoices showed that VAT had been included within the purchase price when in fact it had not. The buffer companies then purported to sell the goods abroad and wrongfully claimed tax refunds from the German authorities for the amount of tax allegedly paid in respect of those goods. The companies claiming to have sold the goods never themselves accounted to the German authorities for tax. As a result, tax refunds were claimed for amounts of tax which had never been paid to the German authorities.

8. The EAW in Connor's case is dated 12 November 2015 and was issued by the Public Prosecutor's Office in Augsburg. It was certified by the National Crime Agency on 17 November 2015. It relates to 266 offences. The EAW begins by stating that the accused persons, including Connor, established a criminal association in 2010 to manage a VAT carousel fraud which caused a loss in Germany of over 60 million euros. It stated that the carousel was operated by three organisations known as "the English Crew", "Truesay" and "DJ". The English Crew involved Connor amongst others. It said that the English Crew were responsible for procuring and controlling the companies who purported to sell to companies in Germany and who were supposed to declare VAT due in Germany but which did not do. They are also said to have procured and controlled the companies which purchased the goods, allegedly with VAT having been paid by them as part of the purchase price for goods, and then made the claims for tax refunds from the German authorities when they purported to sell the goods abroad.

9. Connor was the managing director of one of the companies, Masyras GmbH ("Masyras"), which made claims for tax refunds. Masyras was registered in Germany and was assessed for tax at the Tax Office in Berlin, and the EAW gave the details of its tax number. The amount wrongfully claimed by Masyras in the period July 2012 to August 2013 was said to be over 6 million euros. The EAW also provided details of other companies who were involved in the VAT carousel. The EAW states that the English Crew, which included Connor amongst others, created a network of companies which they integrated into the chain for the purpose of the fraud. The EAW states that Connor, amongst others, acted with the intention of filing false tax returns for specified, named companies including Eurotrade GmbH ("Eurotrade"), Gina Bella GmbH ("Gina Bella"), Cyrinia GmbH ("Cyrinia") and Masyras. The EAW stated that Connor and others were charged with having become associated with a criminal organisation and gang at the beginning of 2010 and with having committed

together "the following 266 criminal offences" and there is then produced a table showing the companies who were missing traders (that is, who failed to account for tax), giving the period and the number of occasions during that period when they failed to declare duties, and the buffer companies (that is, the companies which made claims for refunds of tax) with the periods and the number of times during that period when they claimed VAT refunds. By way of example, two of the missing traders were listed as Eurotrade which was said to be involved in 8 offences during the period July 2012 until February 2013 and Gina Bella said to be involved in 5 offences between February 2013 until June 2013. By way of further example, one of the buffer companies were Masyras (of which Connor was the managing director until 16 October 2012, when the third appellant was appointed managing director although Connor in fact controlled the third appellant) was said to be involved in 14 offences in the period July 2012 until August 2013. A second buffer company was said to be Cyrinia which was involved in 14 offences in the period 2010 until July 2013. The EAW noted that, in relation to Masyras, the first and third appellants, Connor and Herbert, wrongly claimed tax refunds. The total amount involved was said to be 6,002,261.71 euros and of that Herbert was said to be responsible for a loss of 5,244,73.20 euros in the period October 2012 to August 2013, The EAW explained that each incorrect filing of a monthly tax return and each failure to file a required tax return amounted to a separate case and, as a result, the total number of cases (as demonstrated in the table of offences) was 266. The EAW stated that until the end of 2014, the criminal organisation operated from Marbella, in Spain, and met several times from the end of 2014 in Poland. The majority of the criminal offences were said to have been committed by means of laptops (sending invoices and using online banking) which could be done anywhere. The EAW then identified the offences as turnover tax evasion by organised gangs in 266 cases and referred to the relevant provisions of the German Fiscal Code and German Criminal Code. The EAW stated that the maximum sentence for each individual offence was 10 years' imprisonment and the maximum for all offences was 15 years' imprisonment.

10. The EAW in relation to the third appellant relates to the same VAT carousel fraud. It too was issued by the Public Prosecutor's Office in Augsburg on 12 November 2015 and was certified by the National Crime Agency on 17 November 2015. It relates to 29 offences. The EAW is in materially similar terms to that in Connor's case. It sets out the nature of the criminal association involved and the nature of the fraud, and alleges that the third appellant, Herbert, amongst others, acted with the intention of filing false tax returns for named companies including Eurotrade, Gina Bella, Masyras, Wupperwelt GmbH ("Wupperwelt"), Cyrinia and others. It then sets out a table showing the companies which were missing traders (that is, which failed to account for tax), giving the number of occasions during a specified period when they failed to declare tax, and the buffer companies which made claims for refunds of tax with the periods and the number of times during that period when they claimed VAT refunds. The table included Eurotrade, Gina Bella and Wupperwelt as missing traders (giving the number of offences involved as being 8, 5 and 2 respectively). The number of offences for Masyras was given as 14 and for Cyrinia as 14. The EAW states that Herbert was appointed as managing director of Masyras from 16 October 2012 with Connor in fact directing him. The EAW alleges that, in relation to Masyras, Connor and Herbert wrongfully claimed tax refunds of 6,002,261.71 euros and that Herbert was responsible for a loss of 5,244,73.20 euros in the period October 2012 to August 2013. The EAW states that at that stage it had only been able to prove that the members of the lower level of the criminal organisation (which included Herbert) were responsible for the incorrect filing, or failure to file, tax returns for the company of which they were the managing director and the companies that issued invoices to these companies. In the case of Herbert, that amounted to 29 offences comprising Masyras (14 offences) and the missing traders who supplied goods to that company,

namely Euro Trade (8 cases), Gina Bella (5 offences) and Wupperwelt (2 offences). Again, the EAW noted that the organisation had operated in Marbella in Spain until the end of 2014, met in Poland after that date and committed the majority of the offences by means of laptops and online banking which could be done anywhere. The offences were identified as turnover tax evasion by organised gangs in 29 cases and the provisions of the relevant German Fiscal and Criminal Codes were identified. The EAW stated that the maximum sentence for each individual offence was 10 years' imprisonment and the maximum for all offences was 15 years' imprisonment.

11. The second appellant, Shammas, was alleged to be involved in a different fraud. The EAW in his case was also issued on 12 November 2015 by the Public Prosecutor's Office in Augsburg and was certified by the National Crime Agency on 17 November 2015. It relates to 96 offences. The EAW states that the second appellant became involved with a criminal organisation designed to sell copper cathodes in large quantities to German clients but avoiding tax. The copper cathodes were sold through a company, Metallwerke Bender GmbH ("Metallwerke"). The invoices showed Metallwerke as receiving goods from other companies for which the purchase price included turnover tax. No tax was in fact paid by Metallwerke but it subsequently reclaimed tax from the tax office at Krefeld in Germany (or offset the tax allegedly paid against sums of tax due from Metallwerke). The companies who purported to have supplied goods to Metallwerke included Peralia GmbH ("Peralia") and Michael Konnen. These companies were said to have included tax in their sales invoices but never accounted for these amounts of tax to the German authorities. The EAW asserts that there were, in fact, no genuine sales by these companies to Metallwerke and that the invoices were forgeries. The EAW states that the second appellant was responsible for procuring the companies which formed the delivery chains through which the copper cathodes were channelled and prepared the incoming and outgoing invoices for these companies. The EAW indicates that the amount of tax lost for which the second appellant, amongst others, was responsible was 10,342.36 euros during the period from May 2010 until November 2012. The EAW further states that after inquiries had been made by one of the tax offices, Peralia used invoices purporting to come from Eberwein Kegal-und Bowlingbahnen Services GmbH ("Eberwein") to cover its invoices. A total of 48 false invoices were issued during the period from 21 April 2010 until 30 July 2010. Hi Life Mode Express GmbH ("Hi Life") issued invoices purporting to show supplies to Michael Konnen (who had purported to supply goods to Metallwerke). A total of 23 false invoices were issued during the period from 1 September 2010 until 30 September 2010. The EAW also stated that the second appellant had acquired two other companies, Nahu GmbH ("Nahu") and Chaufa GmbH ("Chaufa"). It states that the second appellant used these two companies to issue false invoices stating that they had sold goods to, and received tax from, other companies but the companies did not declare the tax to the relevant German authorities. Nahu was registered in Mannheim and was assessed for tax at the tax office in Constance. Chaufa was registered in Mainz and the EAW gave the number in which the company was assessed for tax. The EAW stated that the second appellant evaded tax in the amount of 5,887,008.25 euros in the case of Nahu on 8 occasions between August 2010 until March 2011 and tax in the amount of 6,379,136.17 euros in the case of Chaufa on 10 occasions in the period August 2010 until May 2011. The EAW sought the extradition of the second appellant for 96 cases, 7 in respect of Metallwerke, 8 for Nahu, 10 for Chaufa, 48 for invoices involving Erbein (which must be a reference back to the Peralia invoices referred to earlier) between 21 April 2010 until 30 July 2010, and 23 for invoices involving Hi Life (which must be a reference back to the Michael Konnen invoices) in a period between 1 September 2010 and 30 September 2010. The EAW stated that the maximum sentence for each individual offence was 10 years' imprisonment and the maximum for all offences was 15 years' imprisonment.

The Decisions of the District Judge

12. In the case of each of the three appellants, the district judge ordered extradition. He found that the particulars were adequate and complied with section 2(4) of the 2003 Act. He considered that, in each case, the EAW gave adequate particulars of the conduct alleged on the part of each appellant, and the place where the offences were committed. In each case, the effects of the criminal conduct were felt in Germany where the tax was alleged to have been evaded. He referred to the fact that the conspirators had met in Spain, and then in Poland, (correct in the case of the first and third appellants but incorrect in the case of the second appellant). He was satisfied that the EAWs gave sufficient information to ensure that each appellant was only dealt with for offences for which he was extradited or which arose out of the same facts as those offences (referred to as speciality protection) and that a decision to charge, and to try, each appellant had been taken. He considered the position under Article 8 ECHR and considered the facts of each individual appellant and his family. He considered that the factors mitigating against extradition (which included the impact on family members) were outweighed by the factors in favour of extradition in each case, in particular, the public interest in the United Kingdom abiding by its extradition obligations and the seriousness of the offences and the likely sentences. He considered that extradition of each of the appellants would be proportionate and compatible with Article 8 ECHR and ordered the extradition of the appellants.

13. Permission to appeal was refused to each appellant on the papers by Sweeney J.

Subsequent Events

14. It transpired that the German authorities had prepared indictments in the case of each of the appellants and served the indictment on the first and second appellants (but not, it seems, on the third). In the case of the first appellant, the indictment relates to 33 charges, in the case of the second to 34 charges and in the case of the third, to 26 charges.

15. On 9 May 2017, the Public Prosecutor's Office in Augsburg replied to questions put by the Crown Prosecution Service. Given the nature of the arguments in this case, it is necessary to set out the terms of the letters sent in respect of each of the three appellants. In relation to Connor, the letter set out the questions asked and the responses as follows:

> "1. Does the indictment have a different number of offences to those summarized in the EAW?
>
> Yes.
>
> 2. If the indictment does have a different number of offences, please can you also answer these questions:
>
> i. Please summarise the changes between the number of charges on the EAW and the number of charges in the EAW.
>
> In the EAW there were 266 charges:
>
> In the indictment there are now 33 charges for tax fraud:

Cyrinia GmbH	December 2012 – July 2013	9 charges
Masyras GmbH	October 2012 – August 2013	14 charges
Euro Trade GmbH	October 2012 – January 2013	7 charges
Gina Bella GmbH	February 2013 – May 2013	3 charges

ii. Can you explain why there is a different number of charges on the indictment compared to the EAW?

The reason is only to tighten the trial

iii. Do any of the charges on the indictment relate to or arise from conduct which is not set out in the EAW?

No.

iv. Given the number of charges has changed, is all the information in the EAW still accurate?

The information in the EAW is still accurate.

v. In particular, is the summary in the EAW of the role played by the suspect still accurate?

The information of the role played by Mr. CONNOR in the EAW is still accurate.

vi. Given that there is a different number of charges in the EAW compared to the indictment, is the EAW still valid as a matter of German Law?

As the EAW is based on the German arrest warrant and this is still valid, also the EAW is still valid.

vii. Can you confirm you only seek return of the requested person for the offences set out in the indictment?

I can confirm this. "

16. In relation to the second appellant, Shammas, the letter set out the questions asked and the responses as follows:

"1. Does the indictment have a different number of offences to those summarized in the EAW?

Yes.

2. If the indictment does have a different number of offences, please can you also answer these questions:

i. Please summarise the changes between the number of charges on the EAW and the number of charges in the EAW.

In the EAW there were 96 charges:

a. Tax fraud:

MW Bender	Mai 2010 – November 2010	7 charges
Nahu GmbH	August 2010 – March 2011	8 Charges
Chaufa GmbH	August 2010 – May 2011	10 Charges

b. Forgery

Peralia GmbH	April 2010 – July 2010	48 Charges
Michael Konnen	September 2010	23 Charges

In the indictment there are now 34 charges for tax fraud only:

MW Bender	Mai 2010 – November 2010	7 charges
Nahu GmbH	August 2010 – March 2011	8 Charges
Chaufa GmbH	August 2010 – May 2011	10 Charges
Peralia GmbH	April 2010 – July 2010	5 Charges
Michael Konnen	September 2010	4 Charges

ii. Can you explain why there is a different number of charges on the indictment compared to the EAW?

The added charges in the indictment against the Peralia GmbH and Michael Konnen has only the reason to have all charges of this case in the indictment. These charges were not pointed out in the arrest warrant, but the charges were on behalf of the companies Peralia GmbH and Michael Konnen were described in the arrest warrant.

It doesn't make any charges for forgery in the indictment to tighten the trial.

iii. Do any of the charges on the indictment relate to or arise from conduct which is not set out in the EAW?

No. The added charges in the indictment were already mentioned in the description of the arrest warrant.

iv. Given the number of charges has changed, is all the information in the EAW still accurate?

The information in the EAW is still accurate.

v. In particular, is the summary in the EAW of the role played by the suspect still accurate?

The information of the role played by Mr. SHAMMAS in the EAW is still accurate.

vi. Given that there is a different number of charges in the EAW compared to the indictment, is the EAW still valid as a matter of German Law?

As the EAW is based on the German arrest warrant and this is still valid, also the EAW is still valid.

vii. Can you confirm you only seek return of the requested person for the offences set out in the indictment?

I can confirm this."

17. In relation to the third appellant, Herbert, the letter set out the questions asked and the responses as follows:

"1. Does the indictment have a different number of offences to those summarized in the EAW?

Yes

2 If the indictment does have a different number of offences, please can you also answer these questions:

i. Please summarise the changes between the number of charges on the EAW and the number of charges in the EAW.

In the EAW there were 29 charges:

In the indictment there are now 26 charges for tax fraud:

Cyrinia GmbH	December 2012 – July 2013	8 charges
Masyras GmbH	October 2012 – August 2013	11 charges
Euro Trade GmbH	October 2012 – January 2013	4 charges
Gina Bella GmbH	February 2013 – May 2013	3 charges

ii. Can you explain why there is a different number of charges on the indictment compared to the EAW?

The reason is only to tighten the trial.

iii. Do any of the charges on the indictment relate to or arise from conduct which is not set out in the EAW?

No.

iv. Given the number of charges has changed, is all the information in the EAW still accurate?

The information in the EAW is still accurate.

v. In particular, is the summary in the EAW of the role played by the suspect still accurate?

The information of the role played by Mr. Herbert in the EAW is still accurate.

vi. Given that there is a different number of charges int eh EAW compared to the indictment, is the EAW still valid as a matter of German Law?

As the EAW is based on the German arrest warrant and this is still valid, also the EAW is still valid.

vii. Can you confirm you only seek return of the requested person for the offences set out in the indictment?

I can confirm this."

The Proceedings

18. The appellants each renewed their application for permission to appeal. In each case, there were initially two grounds of appeal, namely that the district judge had erred in finding that the particulars were adequate and complied with section 2(4) of the 2003 Act and in finding that there had been a decision to try the appellants within the meaning of section 12A of the 2003 Act. In the event, no argument was advanced orally in relation to this second ground at the hearing and I deal briefly with it below. Following the service of the indictments on the first and second appellants, and the disclosure of the letters of 9 May 2017, the appellants applied to amend their grounds to add a third ground namely that taking the circumstances of the extradition in the round (including the May 2017 letters), the extradition of the appellants would be an abuse of process. The appellants also sought permission to rely on the indictments and the letters of 9 May 2017, as material not before the district judge, for the purpose of the ground alleging that extradition would be an abuse of process. There was initially an issue as to whether the material could be admitted for the purpose of the appellants' amended grounds but not for the purpose of any argument by the respondent that the indictment and letters provided any details missing from the EAWs. In the event, the respondent did not seek to rely on the material for those purposes and this particular issue does not arise for decision.

19. I grant permission to appeal in the case of each of the appellants. I grant each application to amend each of the appellant's grounds of appeal to include the allegation that extradition would be an abuse of process. I grant the application by each appellant that, in his case, the indictment and letter of 9 May 2017 relevant to his case, be admitted in evidence pursuant to section 202 of the 2003 Act.

THE ISSUES

20 Against that background, and having regard to the grounds of appeal, and the written and oral submissions made at the hearing, the following two principal issues arise in relation to each of the appellants:

(1) Did the EAW comply with the requirements of section 2(4)(c) of the 2003 Act? and

(2) Should any of the appellants now be extradited pursuant to that EAW in the light of the indictments and letters of 9 May 2017?

THE FIRST ISSUE – THE VALIDITY OF THE EAWS

21 Mr Southey on behalf of each of the appellants contends that each individual EAW fails to give adequate particulars as required by section 2(4)(c) of the 2003 Act. He emphasises that the extradition of each appellant is sought for specific offences (266 offences in the case of Connor, 96 in the case of Shammas and 29 in the case of

Herbert). The appellants are not sought to be extradited for a single offence of conspiracy. Mr Southey relies upon the decision of the Divisional Court in *Dhar v National Office of the Public Service of the Netherlands* [2012] EWHC 697 (Admin.) at paragraph 64 as establishing that "a broad omnibus description of the alleged criminal conduct" will not suffice and the particulars required must "enable the person sought by the warrant to know what offence he is said to have committed" and "to have an "an idea" of the nature and extent of the allegations against him". Similar observations were made in *Pelka Regional Court in Gdansk, Poland* [2012] EWHC 3989 (Admin), especially at paragraph 6; and see also *Taylor v The Public Prosecutor's Office, Berlin, Germany* [2011] EWHC 475 (Admin.).

22 In relation to the first appellant, Mr Southey submitted that the only 14 offences with which the appellant is specifically linked are those involving Masyras where the first appellant is said to have been the managing director. Even then, there were no specific dates given for each of the 14 offences and no amounts given in relation to those 14 offences. He further submitted that there were no details of the first appellant's involvement with the companies in respect of the 252 other offences included within the EAW and, in some cases (such as those involving Cyrinia) no particularisation of the alleged wrongdoing on the part of the company. He submitted that a simple statement of knowledge that the companies were involved in tax evasion was insufficient particularisation of the acts that the first appellant was alleged to be responsible for. He further submitted that no specific dates or amounts were given for those 252 offences. There was therefore, he submitted, insufficient particularisation of each offence within the EAW. He submitted that the first appellant did not know with sufficient particularity what it was that he was actually charged with and he would be unable, for example, to ensure that he could assert any speciality protection from prosecution in Germany. Mr Southey made similar submissions in relation to the third appellant (who is said to be part of the same criminal organisation as the first appellant). He was charged with 29 offences. However, his role was limited to one company, Masyras, and there were no particulars of the dates of each of the 14 offences linked to that company, the amounts of each allegedly fraudulent tax return and no details of the third appellants' involvement with the other companies in respect of the other 15 offences and no particulars of the amounts and dates of those offences.

23 In relation to the second appellant, Mr Southey again submitted that there was a lack of particularity as to the dates and places when the 96 individual offences were said to be committed and no sums were specified for each of the allegedly false invoices or wrongful tax returns. He noted that the summary of charges did not refer to Peralia or Michael Konnen but, by contrast with the indictment and letter of 9 May 2017, referred to different companies, namely Eberwein and Michael Konnen. There was, he submitted, insufficient particularisation of each offence within the EAW. He submitted that the second appellant did not know with sufficient particularity what it was that he was actually charged with and would be unable, for example, to ensure that he could assert any speciality protection from prosecution in Germany.

Discussion

24 The approach to the assessment of the adequacy of particulars in an EAW for the purpose of compliance with section 2(4)(c) of the 2003 Act is usefully summarised by Moore-Bick L.J., building on the earlier case law, in paragraph 117 of *Dhar v National Office of the Public Prosecution of the Netherlands* [2012] EWHC 697 (Admin) where he observed that an EAW:

> "must contain enough information to enable the requested person to understand with a reasonable degree of certainty the substance of the allegations against him, namely what he is said to have done, when and where, and also, in a case where

> knowledge of particular matters is an essential ingredient of the offence, sufficient information to enable him to understand why it is said that he had the necessary knowledge."

25 In my judgment, the district judge was correct to conclude that each of the three EAWs did provide sufficient information to comply with the requirements of section 2(4)(c) of the 2003 Act. That sub-section requires "particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which he is alleged to have committed the offence" and any provision of the law under which the conduct is alleged to constitute an offence. In the present case, each EAW starts with a description of the alleged criminal organisation, and the alleged wrong doing. In the case of the first and third appellants, for example, that involves a VAT fraud involving three organisations. The first and third appellants were said to be members of one of those organisations. The EAWs then explain that the offences involved companies purporting to sell goods to buffer companies and invoices showing that the purchase price included tax when, in fact, it did not. Claims for repayment of tax were then wrongly made by the buffer companies. The supplying companies should have, but did not, declare tax. The first and third appellants were managing directors of one buffer company, Masyras, (or, in the case of Connor after 16 October 2012, controlled the managing director). The tax office where Masyras was assessed for tax and its tax number were given. The total amount of the tax wrongly claimed by Masyras was given for each of the first and third appellants. The period within which the 14 offences were said to have occurred were given in the EAW. In relation to the first and third appellants, the EAWs state that they were a member of the organisation that procured buffer companies (those making claims for refunds) and had acted with the intent of filing false tax returns for companies including Masyras and Cyrinia. The first and third appellants were said to have procured other companies (the missing trader companies) to issue invoices and alleges they acted with others with the intent of filing false invoices. The names of the missing trader companies involved, the number of invoices issued and the period within which the offences were allegedly committed, are given in the EAW. The total amount of the tax subject to the wrongful claims and failures to declare taxes was said to be over 60 million euros and the place where the claims were made, and where tax returns should have been filed is Germany, and the loss was suffered in Germany. In all the circumstances, the first and third appellants did know with reasonable certainty what offences each was charged with, what each is said to have done, when and where the offences are said to have occurred, and the relevant provisions of German law said to constitute the offences.

26 That conclusion is reinforced by, but not dependent on, the decision of Lang J. in *Din v Director of Public Prosecutions of the Augsburg Public Prosecutors Office, Germany* [2017] EWHC 475 (Admin.). That case concerned another individual, Naveed Din, alleged to have been involved in the same fraudulent activity as the first and third appellants. The EAW appears to have been drafted in a materially similar way to the EAW in their cases. Lang J. dismissed an appeal against the finding of the district judge that the particulars complied with section 2(4)(c) of the 2003 Act. At paragraphs 14 to 16, Lang J. said this:

> "14 In my judgment, the EAW gave a detailed and sufficient description of the alleged tax fraud. In summary:
>
> i) The Appellant was one of a group of named individuals who in 2010 established a criminal association in order to manage a VAT tax carousel fraud to evade German VAT. The loss in Germany was over 60 million euros. They were able to operate from any place by means of laptops and online banking. They met in Marbella, Spain until the end of 2014, and thereafter in Poland.

ii) The carousel was controlled by three organisations: the "English Crew", "Truesay" and "DJ".

iii) The ringleaders of the English Crew organisation purchased companies registered in Germany and set up a network of further companies through which goods were funnelled, and ultimately sold abroad. These companies were known as missing traders.

iv) Goods were imported from abroad and sold by missing trader companies, having "charged" VAT on the goods without paying it to the tax authorities. The next companies in line "bought" the goods and "sold" them on to further companies – these were known as buffer companies, controlled by the ringleaders, with temporary office spaces and fictitious paper work created. DB Wealth GmbH served as a buffer company, and the Appellant was its managing director.

v) The next layer of companies then channelled the goods abroad to give the appearance of real business transactions taking place and to conceal the tax fraud. These companies were also controlled by the ringleaders with strawmen directors, who were part of the conspiracy. Payment platforms were then created by the ringleaders in order to launder the proceeds of the fraud.

vi) The Appellant was a member of the English Crew. The other members were also named.

vii) The Appellant's role and alleged criminal activity was described in detail:

"On the lower hierarchy level of the English Crew, there are the managing directors of companies which the English Crew integrated as buffer companies into the missing trader carousel. They had the task of being available as contact partners for tax authorities, of keeping contact with the tax consultant and of filing the invoices in the accounting records. These were in particular the Appellants KHAN, DIN and HERBERT."
"On 07 March 2011 the defendant DIN acquired DB Wealth Management GmbH upon the instruction of the defendants JOHN SHAW, DRAKE, WELLER, LEWIS and JAMIE GIBSON. The defendants JOHN SHAW, DRAKE, WELLER AND JAMIE GIBSON, in collusion with the organisations of Truesay and DJ, used DB Wealth Management GmbH in the delivery chains of the missing trader carousel."
"In accordance with the common plan to commit the offence, the defendants …… DIN …and other members of the criminal organisation acted with the intent of filing false advance turnover tax returns for the companies …..Goldstern Elektro-Handle GmbH and Z & V Trading GmbH…. by not declaring the invoices prepared as 14c tax and by wrongfully claiming the turnover tax from the invoices received, with the objective of evading turnover taxes in Germany in order to secure for themselves a permanent source of income as a result of this."
"The member of the English Crew, the Appellant DIN, was appointed managing director of DB Wealth Management GmbH.?Although all members of the criminal organisation knew that the "suppliers" of DB Wealth GmbH, namely Z&V Trading GmbH and Goldstern Elektro Handels GmbH, did not perform any entrepreneurial activity and "delivered"' goods that had been reduced in price by evading the value-added tax, the Appellant DIN nonetheless wrongfully claimed the input tax on the basis of these invoices from that tax of which the members of the criminal organisation were aware, and therefore, in violation of his duty, did not declare the 14c tax from the invoices of DB Wealth GmbH.
As a result of this, turnover taxes in the total amount of 6,104,468.17 Euros were evaded during the period from July 2011 until June 2012 – of which all the members of the gang and members of the criminal organisation were aware – of which in respect of an amount of 1,176.82730 Euros merely a direct attempt was made."

viii) The EAW was in respect of a total of twenty offences, committed between July 2011 and June 2012, for incorrect filing or failure to file advance turnover tax returns by the buffer company DB Wealth GmbH (8 offences); the missing trader company Z&V Trading GmbH (7 offences); and the missing trader company Goldstern Elektro Handels GmbH (5 cases).

"15 Whilst it is true to say that the previous EAW, which was quashed by the High Court (*Germany v Khan & Lewis; Din v Germany [2014] EWHC 1704 (Admin)*) contained a helpful table setting out the dates of each offence and the amounts involved, which was not included in this EAW, I do not consider that the lack of these details invalidates this warrant. This warrant met the requirements of section 2(4)(c) EA 2003 by providing detailed particulars of the circumstances in which the offences were committed and the conduct alleged to constitute the offences. Whilst it did not provide precise dates for each fraudulent act, it specified a period of time within which the offences were committed, which was sufficient. It also identified the total losses incurred as a result of the offences. The location of the offence was Germany, since German VAT was being evaded by German-registered companies. However, this was an international fraud and so the Appellant and other members of the organisation were operating in different places across Europe.

"16 In my judgment, the DJ was correct to conclude that:

> "30. The period of the criminal conduct is set sufficiently out, and the place where the effects of that conduct has been established as being Germany. The named perpetrators of the fraud are individually named, as are all the companies. The method used by the alleged fraudsters is also detailed as well as the roles of each individual Appellant."
> …
> "34. I am satisfied that the information set out in the EAW enables Mr Din to know not only what charges he faces but also the role he is said to have had within the criminal organisation in respect of the charges for which his return is sought. It also enables him to be able properly to consider what challenges to extradition he might wish to advance to this court."

27 Similar observations apply, in my judgment, to the first and third appellants, Connor and Herbert. Mr Southey submitted that Lang J. wrongly focussed on the offence as a single conspiracy offence and did not correctly consider whether the particulars of each of the alleged offences were adequate. Reading the judgment in *Din*, it is clear that Lang J. did not approach the issue in that way. At paragraph 12, the judge expressly records that the appellant was submitting that there was "insufficient detail in respect of the twenty offences referred to in the EAW". It is clear from paragraph 15 of the judgment that Lang J. applied the relevant principles to the offences described in the EAW (not to a single offence of conspiracy).

28 In relation to the second appellant, the EAW again began by describing the fact that the second appellant and others became associated in an arrangement intended to evade turnover taxes in Germany on a large scale. The EAW identified that the arrangement was to provide for the apparent sale of copper cathodes through Metallwerke. Companies were set up and false invoices prepared showing that the companies had supplied goods to Metallwerke and the price was shown as including taxes. Metallwerke then reclaimed the taxes from the German authorities. The EAW stated that the second appellant was "responsible for procuring the delivery chains through which the copper cathodes were channelled. Moreover, he prepared the incoming invoices and the outgoing invoices for these companies". Metallwerke was assessed for tax at the tax office in Krefeld and its tax number was provided. The EAW alleged that the suppliers of Metallwerke did not in fact supply goods but provided invoices showing that tax had been charged on goods falsely said to have been supplied. Metallwerke then wrongly reclaimed tax. The EAW states that Shammas, with others, evaded tax in the way described in the amount of 10,342,361 euros. The EAW also gave details of the companies procured by the second appellant who provided allegedly false invoices. These included Peralia (which used invoices of a company called Eberwein) and issued a total of 48

false invoices and Michael Konnen (using the invoices of a company, Hi Life) which issued 23 false invoices. The EAW states that the return of the second appellant is sought for 7 offences committed by Metallwerke in the period April 2010 until November 2010, and the 48 false invoices using the missing trader Eberwein during the period 21 April 2010 until 30 July 2010 and the 23 invoices involving Hi Life during the period 1 September 2010 until 30 September 2010. The EAW states that the German authorities lost the amount of tax shown on the invoices. The second appellant was also sought in relation to tax evasion through two other companies, Nahu and Chaufa. In each case, the tax office in Germany, or the tax details of the company is given, the role of the second appellant was set out (he acquired the companies and was the managing director of Nahu and controlled its activities and, in the case of Chaufa, was in fact acting as the managing director). The second appellant is said to have issued invoices for both companies showing tax as having been paid to them (although in fact the invoices were fraudulent) and then failing to account for the tax to the relevant authorities. In Nahu's case, the amount of tax evaded is said to be 5,887,008.25 euros during the period from August 2010 until 21 March 2011 and in Chaufa's case, 5,379,136.17 euros during the period from August 2010 until May 2011. The number of offences in relation to Nahu is said to be 8 during that period and in relation to Chaufa, 10 during the relevant period. In all the circumstances, the second appellant did know with reasonable certainty what offences he was charged with, what he is said to have done, when and where the offences are alleged to have occurred, and the relevant provisions of German law said to constitute the 96 offences.

29 For those reasons, the district judge was correct to dismiss the appellants' claim that the EAWs in their respective cases did not provide sufficient particulars of the offences. This ground of appeal therefore fails.

THE SECOND ISSUE – WHETHER THE APPELLANTS SHOULD BE RETURNED NOW

30 Mr Southey submits that in the light of the indictments and, in particular, the letters of 9 May 2017, it would be an abuse of process to extradite any of the appellants now for any of the offences included within the EAWs. He submits that the letters make it clear that the German authorities are not now seeking to have the appellants extradited to be tried for all the offences in the EAW. Rather, they are each to be extradited and tried for the smaller number of offences set out in the letters of 9 May 2017. In those circumstances, he submits, the EAWs are now wrong. He relies on the decision in *Zakrzewski v District Court in Torun, Poland* [2013] 1 W.L.R. 324, and the observations at paragraph 11 that a court has the ability to ensure its process is not abused and one situation in which that might arise is where the particulars are wrong in a material respect. Mr Southey submits that where, as here, the appellants are each sought to be extradited for a different number of offences from that set out in the EAWs, the particulars have become wrong in a material sense and it would be an abuse of process to extradite the appellants for any of the offences referred to in the EAWs.

31 Mr Lloyd, for the respondent, submits that if the position were that the particulars in the EAW were now to be regarded as wrong because of a change in the number of offences for which extradition was sought, then the appropriate course for the court to take would be to allow the appeal in respect of any offences where extradition was no longer sought but to dismiss the appeal in relation to those offences in the EAW in respect of which extradition was still sought. That would be consistent with section 27(5) of the 2003 Act, as modified by Article 7 of the Order, where, if an appeal is allowed in relation some offences, the discharge of the appellants is ordered in relation to those offences (but not other offences). He submitted that this was not a situation where the concept of abuse of process was applicable and that it would not be appropriate to refuse to extradite in relation to offences set out in the EAW and for which extradition was sought.

Discussion

32 The situation in this case is properly to be analysed by reference to whether or not the appeal should be allowed in respect of some offences and dismissed in respect of others. Section 2(1) of the 2003 Act refers to a Part 1 warrant as a warrant which contains a statement that the warrant is issued with a view to the person's arrest and extradition for the purpose of being prosecuted for the offence. That is to be read as a reference to the offence or "offences" in accordance with paragraph 1 of the Order. That is consistent with the approach of the court in *Kubin v District Court of Warszawa-Praga* [2012] EWHC 3036 (Admin). If it were clear that extradition were not sought in respect of some offences, then, at most, the appropriate course of action would be to allow the appeal in relation to those offences, not to refuse extradition in relation to all the offences in the EAW.

33 That approach is also consistent with the decision of the Divisional Court in *The Criminal Court at the National High Court, 1st Divison v Murua* [2010] EWHC 2609 (Admin). There the Divisional Court was dealing with an EAW seeking extradition of a person for three offences involving conduct endangering lives. The domestic courts, however, had already ruled that those offences did not as a matter of fact endanger lives. The individuals involved could not therefore be extradited to stand trial for those three offences. The Divisional Court, therefore, exceptionally treated the particulars in the EAW as not accurate as they did not contain a description of conduct capable of constituting a viable extradition offence. Alternative lesser charges were not identified in the EAW and the only alternative lesser charges were time-barred. The Divisional Court considered that the EAW was not a valid Part 1 warrant and that conclusion was determinative of the appeal. The Divisional Court considered that it was not necessary to consider the alternative issue of whether extradition would involve an abuse of process as the "invalidity argument is available on the very special facts of this case and it stands on its own without reliance on abuse" (see paragraph 69 of the judgment).

34 The first question then is to consider whether, on the material available, extradition is being sought in respect of the offences in the EAW. The starting point is the EAWs themselves. Each EAW notes that it is based on a domestic warrant and that the person named is charged with having committed the criminal offences mentioned in the EAW and the EAW is "issued with the objective of arrest and extradition of the defendant to Germany, so that he can be subjected to criminal prosecution on the grounds of the criminal offences therein". The EAW then sets out the offences in respect of which each appellant is charged and for which his extradition is sought. The domestic courts should give great weight to those statements, bearing in mind the mutual trust which exists between states which are parties to the Framework Decision upon which the extradition regime is based. The precise offences for which the person will ultimately be tried after his return to the requesting state may differ. The prosecution authorities in the requesting state may, for legitimate reasons, decide that it cannot or will not proceed in relation to some of the offences. That prospect does not of itself mean that the EAW is no longer seeking the extradition of a person for the purpose of being prosecuted for that offence.

35 In the present case, there is no unequivocal statement by the German authorities that they are no longer seeking the extradition of the appellants for the purpose of prosecuting them for the offences in the EAWs. The letters of 9 May 2017, read as a whole, do not unequivocally qualify the EAWs or unequivocally state that the German authorities are no longer seeking the extradition of the appellants for the offences in the EAW. Each letter is, it seems, a response to a request for information. In response to a question as to whether the indictment in the case of each appellant

has a different number of offences in relation to those summarised in the EAW, the answer given is yes, and the explanation given for that is to "tighten the trial". The letters each say that the domestic warrant and the EAW remain valid. The letters confirm that the information in the EAW as to the role played by each appellant is accurate. It is correct to note that in response to the question put by the United Kingdom authorities "Can you confirm you only seek return of the requested person for the offences set out in the indictment?" the answer in each case is "I can confirm that". In circumstances where the German authorities confirm that the domestic and the EAW warrants are still valid and accurate and where they have prepared an indictment containing a particular set of offences in order "to tighten the trial", it would not be correct to regard the answer to the question about the indictment as being an unequivocal, or unqualified, assertion that the German authorities are no longer seeking the return of the appellants for the purposes of the prosecution of the offences in the EAW. It is clear that, at present, in order to tighten the trial process, the German authorities are focussing on a subset of the offences, involving a subset of the companies involved in the alleged fraud. That is not, however, an unequivocal indication that the German authorities are no longer seeking the extradition of the appellants for the purpose of, or with a view to, prosecuting the appellants for the offences in the EAWs. For those reasons, the EAWs ought to be treated at face value and the appellants ought to be extradited for all the offences for which extradition is sought by the EAW. The precise offences in the EAW for which the appellants are ultimately prosecuted and tried will be a matter for the prosecution authorities in the process of managing the trial process. The prospect that the appellants may be tried for fewer offences than the total number of offences set out in the EAWs does not invalidate the EAWs nor does it require the appeals to be allowed in respect of any of the offences set out in the EAWs.

36 Even if I had considered that the information amounted to an unequivocal statement that the German authorities were not seeking the extradition of the appellants for all of the offences in the EAWs, I would still not have allowed the appeal in relation to all the offences in the EAWs. Taking the first appellant first, the information indicates that the current trial will involve 33 of the 266 charges. They include the 14 charges relating to Masyras during the period July 2012 to August 2013. They are the same 14 offences identified in the EAW. The offences relating to Eurotrade involve 7 not 8 offences, and cover a period which is one month shorter than the period in the EAW (July 2012 to January 2013 not February 2013). The offences relating to Gina Bella involve 3 not 5 offences and again relate to a shorter period February 2013 to May 2013 not June 2013. The offences relating to Cyrinia involve 9 not 14 offences and relate to a shorter period (July 2012 to July 2013 not 2011 to July 2013). The rest of the letter makes it clear that the charges in the indictment arise out of conduct which is set out in the EAW. In those circumstances, if there had been an unequivocal indication that the German authorities no longer sought the extradition of the first appellant in relation to 233 offences in the EAW, I would, at most, have allowed the appeal in relation to those 233 offences. I would have dismissed the appeal in relation to the 33 offences contained within the EAW and the indictment. On any analysis, there would have been no basis for allowing the appeal, and refusing the extradition of the first appellant, in relation to the 14 charges involving Masyras. The exact number of charges in the indictment, comprising the exact conduct described in the EAW, are the subject matter of 14 charges involving Masyras in the EAW. There could be no logical basis for allowing the appeal in relation to those 14 offences.

37 In relation to the third appellant, the position is slightly different. The indictment and letter of 9 May 2017 refer to 26 instead of 29 charges. Eleven charges involve Masyras and are a subset of the 14 offences listed in the EAW. There are 11 offences as the period of time is shorter, i.e. October 2012 to August 2013 (as appears from the

indictment and the letter). The number of offences relating to Eurotrade (4) and Gina Bella (3) are fewer than those listed in the EAW and relate to a shorter period. They are, however, a subset of the offences included in the EAW and arise out of the conduct identified in the EAW. In those circumstances, even if I had found that there had been an unequivocal indication that the German authorities no longer sought the extradition of the third appellant for 11 of the offences in the EAW, I would, at most, have allowed the appeal in relation to those 11 offences but would have dismissed the appeal in relation to the 18 offences relating to Masyras, Eurotrade and Gina Bella listed in the letter and forming the subject matter of the indictment and included in the EAW. There is an additional feature. The indictment and letter of 9 May 2017 refer to 8 charges in relation to Cyrinia. Those were not listed as offences in the EAW. The third appellant could not be ordered to be extradited in relation to those 8 charges (and if prosecution were permissible in Germany that would, it seems, have to be because they arise out of the same facts as the offences for which he was extradited). It would not be possible, when exercising the powers under section 27 of the 2003 Act, to order the third appellant to be extradited for the 8 charges relating to Cyrinia as they were not offences for which extradition was sought in the EAW.

38 In relation to the second appellant, the indictment indicates that the trial would include the 7 offences relating to Metallwerke, 8 offences relating to Nahu and the 10 offences relating to Chaufa. Those are the same number of offences included in the EAW in respect of those three companies. There can be no logical basis for allowing the appeal in relation to those 25 offences. The position in relation to Peralia and Michael Konnen is different. It is clear, reading the EAWs as a whole, the indictment and the letter of 9 May 2017, that the 5 charges relating to Peralia and the 4 charges relating to Michael Konnen are a subset of the 23 and 48 allegedly forged invoices prepared by those companies using Eberwein and Hi Life respectively. I do not regard the reference in the letter to the Peralia and Michael Konnen charges being "added" or the reference to them being for tax fraud as indicating that they are different charges from the offences included in the warrant. The letter makes it clear that the charges are for conduct already included in the EAW. In those circumstances, even if I had found that there had been an unequivocal indication that the German authorities no longer sought the extradition of the second appellant in relation to 62 offences in the EAW, I would, at most, have allowed the appeal in relation to those 62 offences. I would have dismissed the appeal in relation to the 34 offences relating to Metallwerke, Nahu, Chaufa, Peralia and Michael Konnen which are referred to in the indictment and which are included within the EAW. In any event, as indicated, there can be no basis for allowing the appeals in relation to the 25 Metallwerke, Nahu and Chaufa charges which are the 25 offences relating to those companies in the EAW.

39 For completeness, I note that I would have reached the same conclusion even if I had approached the issue on the basis of whether the extradition of the appellants would amount to an abuse of process. First, given that there is no unequivocal indication that the German authorities are no longer seeking the extradition of the appellants for the offences in the EAWs, I would not have regarded it as an abuse of process to extradite the appellants for any of the offences in the EAWs. The fact that, ultimately, the prosecuting authorities might not prosecute an appellant for all of those offences in the EAW in his case would not be an abuse of the extradition process. Secondly, and in any event, there would be no abuse of process in extraditing the appellants for offences which are a subset of the offences listed in the EAW. They would be extradited for prosecution for offences included within the EAW and which was adequately particularised. In any event, there could be no conceivable argument that extradition involved an abuse when the charge in the indictment corresponded exactly to the offences listed for a particular company in the EAW (as is the case of the 14

Masyras offences for the first appellant or the 25 Metallwerke, Nahu and Chaufa charges for the second appellant).

40 It was suggested that the difference in the number of offences might have affected the question of whether extradition was compatible with Article 8 ECHR and was proportionate. It is inconceivable that the reduction in the number of offences would have led to any difference. In each case, the district judge considered the particular facts of the appellant and considered that the public interest in respecting extradition arrangements and the serious nature and potential penalty outweighed those factors. In reality, that would be the same if the appellants were each extradited for a smaller number of offences. Furthermore, I am satisfied that extradition would be compatible with the rights of the appellants and their family members under Article 8 ECHR and proportionate on the facts of each case. In the case of the first appellant, I take account of the factors in favour of refusing extradition set out in paragraph 97 of the district judge's judgment (the fact that the appellant is a British national who has lived in the United Kingdom throughout his life) and the fact that he has accommodation here and is close to his 8 year old son whom he sees on a regular basis and in respect of whom he enjoys joint custody with his former wife. However, the public interest in respecting extradition arrangements and the serious nature of the offences included in the indictment outweigh those factors and render extradition compatible with Article 8 ECHR and proportionate. The alleged fraud in relation to Masyras alone involves sums in excess of 6 million euros and a maximum sentence of 10 years for each offence or a total maximum of 15 years' imprisonment for all the offences. Similarly, in relation to the third appellant, I have taken into account the factors in favour of refusing extradition set out in paragraph 111 of the judgment, namely the fact that he is a British citizen who has lived all his life in the United Kingdom, he is gainfully employed and has fixed employment, he has led a law-abiding life here, and there are concerns as to how his mother will cope if he is extradited. He is a single man with no dependant children. Those factors are far outweighed by the public interest in respecting extradition arrangements and the serious nature of the offences included in the indictment outweigh those factors and render extradition compatible with Article 8 ECHR and proportionate. The alleged fraud in relation to Masyras alone involves in the case of the third appellant sums said to be in excess of 5 million euros and a maximum sentence of 10 years' imprisonment for each offence or a total maximum of 15 years' imprisonment for all the offences.

41 In relation to the second appellant, I have taken into account the factors in favour of refusing extradition set out in paragraph 104 of the judgment of the district judge in his case. He has been settled in the United Kingdom since 1999, has led a law-abiding life in the United Kingdom and had been in regular employment and had privately-owned accommodation here and lived with his wife, their daughter and his mother and there are concerns as to how they will manage psychologically and financially if the second appellant is extradited. Those factors are far outweighed by the public interest in respecting extradition arrangements and the serious nature of the offences included in the indictment outweigh those factors and render extradition compatible with Article 8 ECHR and proportionate. The alleged fraud in relation to Metallwerke involves in the case of the second appellant sums said to be in excess of 10 million euros, that in relation to Nahu, sums in excess of 5 million euros and in the case of Chaufa, sums in excess of 6 million euros. Each offence has a maximum sentence of 10 years' imprisonment and a total maximum 15 years' imprisonment for all the offences.

ANCILLARY MATTERS

42 The grounds of appeal originally contended that extradition would involve a breach of section 12A of the 2003 Act on the ground that until the German court formally opened proceedings there was no decision to try the appellants. That ground, although not formally abandoned, was not the subject of written or oral argument. The decision of the district judge on this point was correct. It is clear from the material before the court that the prosecuting authorities have taken the decision to charge, and to try, each appellant. The fact that the German court has not yet formally opened proceedings does not mean that a decision to try the appellant has not been taken. As Lang J. held in *Din*, it is incorrect to say that the decision to try is only taken when the court formally opens proceedings. This ground, if maintained, is not sustainable.

43 In the appellants' written submissions, it was contended that the May 2017 letters were inadmissible for the purpose of supporting the district judge's decision and, in any event, that the EAW read with the May 2017 letters did not provide adequate particulars for the purpose of section 2(4)(c) of the 2003 Act. It was accepted in argument that those two issues did not arise on the appeal. First, as I have found, each EAW read on its own does provide sufficient particulars and complies with section 2(4) of the 2003 Act. Secondly, the respondent does not in fact seek to rely upon the letters of 9 May 2017 for the purpose of supplementing any gaps in the EAWs.

CONCLUSION

44 Permission to appeal is granted to each of the three appellants. Each appeal is, however, dismissed. The EAWs in each case provides adequate particulars of the circumstances in which each appellant is alleged to have committed the offences included within the relevant EAW. Each appellant does know with reasonable certainty what offences he is charged with, what he is said to have done, when and where the offences are said to have occurred, and the relevant provisions of German law said to constitute the offences. In the circumstances of this case, the particulars in each EAW have not ceased to be correct and the extradition of each appellant in respect of all of the offences included within the relevant EAW is therefore appropriate.