

The Chief Senior Public Prosecutor

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Judicial assistance dealing with Switzerland

Request for investigation of account information and bank records in an investigation regarding a contravention of the International Corruption Act, fraud of an especially serious nature and attempted tax evasion

Coordination meeting at EUROJUST on 28/03/2007 (3/NMDE-2007)

Schedules

- 1 Copy of this application
- 1 Search and seizure order

Dear Mrs Schnebli,

An investigation was instituted at the Office of the Public Prosecutor in Düsseldorf

against

the German nationals

a) **Jürgen Gerhard Koopman**,
born on 01/05/1942 in Krefeld,
resident at 15 Büttgerwald, 47877 Willich

b) **Peter Jürgen Wohlgenut**,
born on 13/02/1940 in Königsberg,

resident at 7 Marie-Juchacz street, 40470 Düsseldorf

c) **Christoph Hoenings,**

born on 19/09/1948 in Opladen,

resident at 60 Wildenbruchstrasse, 40545 Düsseldorf

d) **Ulrich Scheel,**

born on 03/02/1944 in Morsbach,

resident at 26 Am Rittersberg, 40595 Düsseldorf

additional residence: 44 Kaarstar Heide, 41462 Neuss

e) **Sven Möller,**

born on 14/07/1967 in Wuppertal,

resident at 31 Tanglewood, Robert Bruce Street, Beverly Ext. 27, Johannesburg,
Südafrika

f) **Dr. Erich Forster,**

born on 05/11/1940 in Flammersfeld,

resident at 51 Rossfeld, 40489 Düsseldorf,

g) **Herbert von Nitzsch,**

born on 28/09/1939 in Halle,

resident at 91 Walderseestrasse, 22605 Hamburg,

secondary residence: 31 Mellhörn, 25992 List,

h) **Klaus-Joachim Müller,**

born on 16/04/1948 in Bad Nauheim,

resident at 8 b Luisenweg, 21244 Buchholz,

secondary residence: 194 c Elbchaussee, 22605 Hamburg,

i) **Klaus Bauernsachs,**

born on 19/09/1948 in Hamburg,

resident at 5 Stader Strasse, 21641 Apensen

as well as the Greek nationals

c) Anthony Vassos Georgiadis,

born on 06/07/1945 in Mombasa,

resident at 4 Avenue Deauville, Fresnaye, Cape Town, South Africa, Director of the company Alandis London Ltd, 5 Bury Street, St. James as well as 14 Cork Street London, Great Britain,

on account of

contravention of the International Corruption Act, fraud of an especially serious nature and attempted tax evasion.

I. Participation of EUROJUST

The content of the present request for judicial assistance and the investigation which is the basis of the request for judicial assistance were cause and object of a preliminary discussion in the framework of a coordination meeting under the auspices of EUROJUST, Den Haag, on 28/03/2007 (Az: 3/NMDE-2007), to which you were a party.

II. Facts of the case

a).

The investigation is based on the following essential causes:

The companies Thyssen Rheinstal Technik GmbH, Blohm & Voss GmbH and Howaldtswerke - Deutsche Werft GmbH have, in 1994, joined together as a consortium, namely the German Frigate Consortium.

This consortium initially participated unsuccessfully in the invitation to tender for a project to modernise the South African navy, which project entailed the building and delivery of four Corvettes.

After the invitation to tender for the same project was repeated four years later, the consortium was successful and on 18/11/1998 it was appointed as "preferred bidder".

Negotiations to that effect then took place, which eventually, after several cabinet decisions of the South African government, resulted in the execution on 03/12/1999 of an agreement for the building and delivery of four corvettes.

The South African government, represented by the Department of Defence, the Department's purchasing organisation Armscor and the South African Department of Trade and Industry became the contracting parties to the consortium.

The agreement was to become effective on 28/04/2000 and was to be the basis for a commissioning value of Euro 611.842.759 as well as ZAR 1.469.227.105.

In the agreement, the purchasers were granted a period of notice as well as a claim for damages in the event of substantiated acts of corruption.

b).

The consortium had, in fact, paid considerable bribes to achieve the conclusion of the agreement, in contravention of Section 2 paragraphs 1 and 2 of the Act for the Prevention of International Corruption (the Corruption Act), read with paragraphs 334 and 335 of the German Penal Code, in the course of which Thyssen Rheinstahl Technik GmbH, as per prior state of affairs, took the leading role within the consortium.

In addition, the corresponding undertakings to pay in favour of South African officials and members of cabinet, whose names were at the time only partly known, could have resulted from a time prior to the conclusion of the agreement on 03/12/1999.

The payment of the bribe money was tied up by the fact that Thyssen Rheinstahl Technik GmbH concluded a "commission agreement" with a letterbox [shelf/shell] company, namely Mallar Inc, a company registered in Liberia, for over 22 Million US Dollars, payable over the period from April 2000 to October 2001, in terms of which at least the predominate part of the aforementioned amount directly or indirectly flowed to South African officials and members of cabinet *after* the coming into effect of the Corruption Act on 15/02/1999.

Exactly when the corruption money reached the receivers thereof could as of yet not be finally confirmed within the framework of this investigation.

c).

The bribe payments were a part of the consortium's officially submitted offer. Nevertheless, with the submission of the offer by the consortium an untruthful misrepresentation was made to the subsequent contracting parties that the required total contract price comprised only the remuneration for the required performance, and not bribes.

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Because of the ignorance of the fact that the offer contained bribe money, those contracting parties who have themselves not received bribe money remained uncertain about the rights they expressly received in terms of the agreement in the case of corruption acts. The agreement namely provided, in the case of acts of corruption, for a notice period as well as the possibility of a claim for damages on the part of the purchaser.

From the portrayed connection, the suspicion of a criminal act of fraud arose against the accused, to the detriment of those contracting partners who themselves have not received any bribe money and consequently, acting on a misrepresentation, concluded an agreement at a price that was inflated due to the bribe money that was included therein.

d).

Thyssen Rheinstahl Technik GmbH intended to deduct the aforementioned payments from tax. For this purpose, with a letter dated 02/11/1999, a binding acknowledgement was applied for from the chairman of the tax office of Duisburg-Hamborn enclosing an opinion of attorney Dr. Thomas dated 17/08/1999, to the extent that the payments in question were deductible as operational expenses and that the tax authority did not have a notification obligation to the public prosecutor's office in this regard.

The German Income Tax Act (German Tax Act) prohibits, in section 4 subsection 5 S.1 Nr. 10, the deduction of operational expenses insofar as these expenses were applied in respect of an illegal act and this leads to a contravention of the provisions of a penal code or the breach of an administrative rule.

To circumvent the prohibition in s. 4 subsection 5 S.1 Nr. 10 of the German Tax Act, in terms of which expenses for the accounting year starting after 31 December 1998 can expressly no longer be deducted as operational expenses if the application thereof represents an illegal act, and this leads to a contravention of the provisions of a penal code or the breach of an administrative rule, a misrepresentation was made to the extent that the payments were a result of the consortium's award already carried out in 1998 and that no-one unfortunately knew who had received the amount.

On these misrepresented facts, the tax office of Duisburg-Hamborn acknowledged the fundamental deductibility as operational expenses as applied for by way of correspondence dated 25 November 1999.

As a result, the payments in question, was implemented as deductible operational expenses in the corporate and trade tax of Thyssen Rheinstahl Technik GmbH of 17 April 2002 and in the corresponding explanations of Thyssen Rheinstahl Technik Project Company mbH, which was already deregistered in 2000, as from 16 April 2002, despite the prohibition on deductibility in terms of s. 4 subsection 5 S.1 Nr. 10 of the German Tax Act and was recognised as such in the issued tax assessment.

Since ThyssenKrupp AG, which was fiscally controlling on account of control agreements and profit transfer agreements, recorded only losses since 2000, the unjust enforcement of the alleged deductibility of operational expenses have to date not resulted in any tax benefits.

Since the aim of the act complained of was, however, the obtainment of a tax benefit, the suspicion of an attempted evasion of corporate and trade taxes arose.

e).

In the framework of this investigation the investigation committee consisting of officials of the State Office of Criminal Investigation in Nordrhein-Westfalen, the Investigation Service into suspected tax offences of Essen as well as the Office of the Public Prosecutor in Düsseldorf have already searched the business premises of ThyssenKrupp AG as well as several daughter companies in Düsseldorf and Essen, and Howaldtswerke-Deutsche Werft GmbH in Cologne, Blohm and Voss GmbH in Hamburg, Man Ferrostaal AG in Essen as well as to a large extent the private residences of the named accused and have seized extensive evidence.

With the help of the seized records, proof can already be lead that the abovementioned agreements of Thyssen Rheinstal Technik GmbH were abided by and the promised funds indeed paid. In this way the consortium paid, through the middleman Ian Pierce who had signed the commission agreement on behalf of Mallar Inc, 3 million US Dollars to the South African official Shabir Shaik who acted for Armscor, so that he [Shaik], in violation of his official duty, could promote the conclusion of the agreement for the delivery of the Corvettes.

III. Extent of the requested action for judicial assistance

a).

For the further advancement of this local investigation, I pray for the incorporation, as far as the content is concerned, of the attached search and seizure orders of the local court of Düsseldorf dated 01/03/2007 (151 Gs 292/07) with regard to which Credit Suisse First Boston Zürich will take responsibility.

With regard to the evidence that has to be secured, reference is made to the content of the attached search and seizure orders.

Through the aforementioned records, disclosure regarding the end-receivers as well as the channels of payment of the aforementioned bribe money would be obtained.

b).

To supplement, I request permission to make enquiries as to whether the accused who are individually named in the attached search and seizure order, and the companies/corporations, if appropriate, have maintained further current account connections which are not known as of date.

V. [Claiming partner]

For potential further enquiries of any kind,

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are available at any time.

VI. Provisions

The authoritative provisions of the German Penal Code and the German Income Tax Act, insofar as these are not reproduced in the attached search and seizure order, read as follows:

Paragraph 78 Penal Code - Period of limitation

Paragraph 1: The limitation excludes the punishment of the act and the decree of measures (S 11 Para 1 Nr 8)

...

Paragraph 2: ...

Paragraph 3: Insofar as the prosecution prescribes, the period of prescription runs

Number 1-3: ...

Number 4: five years for acts which are punishable with imprisonment of a maximum of more than one to five years

Number 5: ...

Paragraph 4: The period of prescription acts in accordance with the threat of punishment by the act, whose elements results in the act, without reference to fierceness or leniency that is provided in accordance with the provisions of the general section or for particularly serious or less serious cases

Paragraph 78a German Penal Code - Beginning

Prescription begins as soon as the act is completed. If a consequence related to the facts of the matter only takes place later, prescription starts at this point in time.

Paragraph 78c German Penal Code - Interruption

Paragraph 1: Prescription is interrupted by

Number 1: the first interrogation of the accused, the notification that an investigation has been instigated against him, or the order of such interrogation or notification,

Number 2-3: ...

Number 4: each judicial order for attachment or search and judicial decisions, which maintains these...

Number 5-12: ...

Paragraph 2: ...

Paragraph 3: After each interruption the prescription starts from the beginning. The prosecution prescribes, however, by the latest when, since the period of time designated in s 78a double the legal prescription and, when the period of prescription is shorter in terms of special laws; at least three years have passed.

Paragraph 4-5: ...

Paragraph 4 Income Tax Act - The term profit in general

Paragraph 1-4: ...

Paragraph 5: The following operational expenses shall not decrease the profit:

Number 1-9: ...

Number 10: the bestowal of benefits as well as the connected expenses, if the bestowal of benefits represents an illegal act, which leads to the contravention of the provisions of a penal code or the breach of an administrative rule, which allows for a monetary penalty. Courts, Offices of the Public Prosecutor or

administrative authorities have facts which they experience in their official capacities and which confirms the suspicion of an act as intended in Sentence 1, the tax authority for purposes of offences against tax laws and to communicate the prosecution of tax crimes and offences against tax laws. The tax authority notifies the public prosecutor authority of facts which confirm the suspicion of an act as intended in Sentence 1. They inform the tax authority of the outcome of the prosecution and the facts that are the basis of the matter.

Paragraph 6-8: ...

My sincerest thanks for your endeavours.

Your sincerely

Acting for

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Wassen

Chief Public Prosecutor