Neutral Citation Number: [2018] EWHC 3479 (Admin)

Case No: CO/1789/2017; CO/1791/2017; CO/1802/2017; CO/1837/2017; CO/1854/2017 & CO/2132/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2018

Before:

MRS JUSTICE MCGOWAN

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Between:

(1) REHAN MALIK **Appellants**
(2) SAMIR IFTIKHAR
(3) RIZVAN IQBAL
(4) JASMINDER DHILLON
(5) SEEMAB ALI
(6) WASEEM KHAN
(7) GURJINDER THIARA

- and –

PUBLIC PROSECUTORS OFFICE IN AUGSBERG, GERMANY **Respondent**

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Mr Ben Keith (instructed by **McMillian Williams Solicitors Ltd**)
for the **Appellant Malik.**
Ms Saoirse Townsend (instructed by **McMillian Williams Solicitors Ltd**)
for the **Appellants Iftikhar** and **Iqbal.**
Mr James Stansfeld (instructed by **Shearman Bowen Solicitors**)
for the **Appellant Dhillon.**
Mr Jonathan Swain (instructed by **Shah Law Group**)
for the **Appellant Ali.**
Mr Mark Smith (instructed by Criminal Defence Solicitors)
for the **Appellant Khan**
Ms Helen Malcolm QC (instructed by Hallinan Blackburn Gittings & Nott)
for the **Appellant Thiara.**

Mr Ben Lloyd and **Ms Florence Iveson** (instructed by **the Crown Prosecution Service**)

for the **Respondent**

Hearing date: 10th May 2018

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Approved Judgment

Mrs Justice McGowan:

Introduction

1. These are now five appeals against decisions of District Judge Snow. A number of cases have arisen from an investigation into revenue fraud in Germany, the fraud is alleged to have been committed between 2010 and 2012 and to have caused losses in the region of 60m Euros. Appeals in the cases of Lewis, Smith, Drake and Sohail were withdrawn, at an earlier stage, by consent. The appeal of Din was dismissed by Lang J on 13 March 2017. The cases of Shammas, Herbert and Connor were dismissed by Lewis J on 17 April 2018, see below. The cases of Waseem Khan and Gurjinder Thiara were argued before me but they are no longer being pursued as the appellants have withdrawn their appeals and have made arrangements with the authorities to return to Germany.

2. The cases arise out of the same criminal proceedings in Germany as ***R v*** (***Connor, Shammas & Herbert) v Public Prosecutor's Office, Ausburg, Germany [2018] EWHC 829 (Admin).*** It was submitted that I should not follow the decision in ***Connor*** and there was to be an appeal to the Supreme Court in that case. I have taken the unusual course of delaying the hand down of this judgment awaiting news of the progress or determination of that appeal and the resolution of discussions between the parties. That was done because these Appellants are alleged to have been involved in the **same** alleged offending as ***Connor*** et al. There is, in fact, no appeal. The application to certify a question of public importance was refused.

3. In ***R (T) v Secretary of State for the Home Department [2016] EWHC 1550 (Admin)*** I rejected an application to stay proceedings until an appeal in a similar case had been resolved.

> *"The general principle argued by the defendant today, and accepted by this court, is that there are inevitably going to be cases making their way from this court to the Court of Appeal, and sometimes beyond, which will raise some or sufficient factual links to the instant case for there to be a basis for saying this case should await the outcome of the decision in that other case. This court could simply not function if that happened on a regular and consistent basis. There will be cases so closely linked, factually and legally, that it is the proper course to stay them and await the outcome of a hearing in the Court of Appeal but, in my view, this is not such a closely linked case."*

This was cited and followed by Cranston J in ***R (Mahmoud) v Secretary of State for the Home Department [2016] EWHC 2934 (Admin).***

A stay was not sought in this case but it was appropriate to delay judgment to await information on any other allied case that was to have been appealed, as these cases are so closely linked. There are no appeals extant that have been brought to my attention.

4. The five appellants are each the subject of a European Arrest Warrant **("EAW")** seeking their extradition to Germany to be tried for offences related to a revenue fraud in Germany. In particular, they submit because the German authorities no longer seek extradition in relation to **all** the offences set out in the warrants, they contend that it would be an abuse of process to extradite them in relation to **any** of the offences remaining in the warrant.

5. Having issued the EAWs the Judicial Authority sought, by Further Information on 23 June 2017, to reduce the number of offences for which each Appellant is to be prosecuted on the German indictments.

6. Goss J granted permission to appeal on Ground 1A relating to section 2 of the Extradition Act 2003, **("the 2003 Act").** This is a challenge on the issue of the number of offences alleged against each appellant. This was limited to the extent of resolving any ambiguity as to which offences fall within and outside the scope of the extradition order in cases where the further information served on 23 June 2017 purports to reduce, rather than increase, the number of offences for which extradition is sought. He refused permission on the other grounds.

7. The issues to be determined are;

   i) Whether the EAWs issued against the appellants comply with s.2(3)(b) and 4(c) of the Act and whether the requesting state's attempt to change the number of offences for which the appellants face extradition is legally permissible. Ground 1A, upon which permission has been granted.

   ii) Whether the EAWs issued against the appellants comply with the requirements of s. 2(4)(c) of the Act. Ground 1B for which permission is sought.

   iii) Whether the EAWs disclose extradition offences as required by s.10 and s.64(3) of the act. Ground 2 for which permission is sought.

Background

8. Extradition is an essential part of the comity of nations. It demonstrates the cooperation between states in the resolution of criminal allegations, said to have been committed by individuals who have subsequently left the jurisdiction. A state must be able to seek the return for trial, and if necessary, punishment, of those who are alleged to have broken the law in the requesting state. The state of whom the request is made must, subject to following all proper safeguards, comply with that request. An individual who is the subject of such a request is entitled to the full protection of those proper safeguards. All requests must be justified and clear. All requested persons must know why they are to be extradited and tried and/or punished. The burden is on the requesting state to demonstrate sufficient clarity, and upon the state of whom the request is made to ensure that all requests meet proper standards. There are differences in the description and categorisation of criminal offences between states. Those differences are to be acknowledged and respected within the safeguards established by domestic and international law.

9. Extradition is not a licence to a requesting state to seek the return of individuals for trial against whom there is insufficient evidence to meet a proper test; or on offences which cannot be shown to meet international standards; or where the process is not guaranteed to comply with the minimum international requirements of a fair trial. The same international standards are applied to requests for the return of individuals to serve sentences.

10. Nor is extradition a series of legal complexities designed to frustrate the legitimate requests of states for the return of individuals to stand trial when all proper safeguards

are met. It is not a procedure in which technical arguments of little or no substance should succeed.

Law

11. Part 1 of the ***2003 Act*** deals with extradition to territories designated as a category 1 territory. Germany is a category 1 territory. Part 1 applies where a designated authority receives a Part 1 warrant seeking the extradition of a named person. Section 2 deals with the issue of arrest warrants:

> ***2 Part 1 warrant and certificate***
> *(1) This section applies if the designated authority receives a Part 1 warrant in respect of a person.*
> *(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.*

12. The issue of whether the EAW complies with section 2 is to be determined by the appropriate judge: a District Judge at first instance, a High Court Judge on appeal. The court must further determine that the offence is an extradition offence, under section 10; whether there is a statutory bar to extradition, under section 11; and whether the lack of speciality arrangements should prevent extradition. There is also a requirement that the appropriate judge consider the individual's rights under the European Convention on Human Rights and whether extradition would be incompatible with those rights.

13. The 2003 Act provides for an appeal from the District Judge, with leave, the procedure is governed by section 27,

> ***(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.

14. In 2003 the Act was amended by the ***Extradition Act 2003 (Multiple Offences Order) 2003 SI 2003/3150*** ('the Multiple Offences Order'), which requires an appropriate judge to treat each offence as a separate EAW. This gives the appropriate judge the power to discharge an individual in respect of separate offences. This requires the appropriate judge to consider the requirements imposed by section 2 for each offence, ***Taylor v Germany [2012] EWHC 475 (Admin).*** This provision means that the requesting state may withdraw its request for certain offences but proceed to seek extradition on the balance of offences remaining. Section 2(4) requires certain information be included:

(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.

15. That requirement must be read in the light the objectives of the Framework Decision. It is a balancing exercise between providing sufficient detail to enable the requested

person to understand the allegations and unrealistic requirements which may complicate the process to the point whereby it becomes ineffective and unenforceable. Cranston J in ***Ektor v Netherlands [2007] EWHC 3106 (Admin***).

16. **The Framework Decision 2002.** The 2003 Act represents the implementation by the UK of the Framework Decision of 2002:

Article 8

Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:
(a) the identity and nationality of the requested person;
(b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;
(d) the nature and legal classification of the offence, particularly in respect of Article 2;
(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
(f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;
(g) if possible, other consequences of the offence.
…
Article 11

Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.

17. The general principle has been re-stated in ***Alexander v France, Di Benedetto v Italy [2017] EWHC 1392 (Admin).***

> ***'whilst a balance must be struck between the need for an adequate description to inform the requested person and the object of simplifying extradition procedures, and whilst the amount of detail required may turn on the nature of the offence, the warrant must contain enough information to enable the requested person to understand, with a reasonable degree of certainty, the substance of the allegations against him, in particular when and where the offence is said to have been committed, what he is said to have done and (when dual criminality is involved) the detail must also be sufficient to enable the transposition exercise to take place.'***

In that case the court upheld the decision of the District Judge that the EAW could be "cured" by the addition of missing information relating to the maximum sentence available for offences which had been omitted from the original warrants.

The Facts

18. The parties have helpfully provided appendices setting out some of the points at issue on the content of the EAW's and the additional material provided in the Further Information of 23 June 2017. I have accepted the accuracy of these documents and relied upon them. I am very grateful to the parties for their carefully prepared skeleton arguments and the skill with which their oral arguments were presented, in particular I am grateful to Miss Malcolm QC who took the burden of dealing with joint submissions of all Appellants.

19. The Respondent has set out the factual background to the warrants.

20. **Seemab Ali**

i) The EAW is an accusation warrant and when issued it related to a total of 14 offences. The further information of 28 June 2017 reduces that number to 6 of the original 14.

ii) In summary, the offences relate to a large-scale conspiracy to commit a VAT carousel or missing trader fraud. The loss is said to be over €60 million in Germany.

iii) Extensive details of the criminality alleged are found at Box E of the EAW. The carousel was controlled by three organisations: the 'English Crew', 'Truesay' and 'DJ'. The Appellant was a member of the 'DJ' organisation.

iv) The mechanism of the carousel fraud was that companies registered in Germany were purchased by the organisations to act as 'missing traders'. Goods were funnelled through the companies and 'sold' onwards, but although VAT was 'charged' on the goods, VAT payments were not made to the tax authorities.

v) The next companies in line were 'buffer companies' which 'bought' the goods and 'sold' them on to further companies. They were controlled by the ringleaders, with temporary office spaces and fictitious paper work created.

vi) The next layer of companies were used to generate the appearance of real business activity and to conceal the tax fraud. The company in Germany at the end of the chain that 'sold' the goods abroad, got a VAT refund from the tax office.

vii) The DJ organisation made goods available for purchase by companies controlled by the English Crew and in coordination with organisations Truesay and English Crew, the companies were integrated into the delivery chains of the missing trader carousel. Organisations DJ and Truesay operated from one office in Great Britain but due to the fact that the majority of the offences were committed using a laptop, the organisation was able to act from anywhere.

viii) The Appellant, along with a co-defendant Shazad Sohail, was involved with the company EFS International. The Appellant was the 'factual manager' of the company and he controlled its accounts. He knew that invoices from the named companies were issued with the VAT amount although they 'did not perform

any entrepreneurial activities' and these companies made unjustified applications for input tax refunds. He was also involved with the company ICI Global and the related VAT evasion.

ix) The Respondent has provided a copy of the indictment and further information (letter dated 28 June 2017) confirming that since the issuing of the indictment in Germany, the Appellant is sought for 6 charges of tax fraud, in relation to LSH GmbH only rather than 14. It is said that this is in order to "tighten" the trial but that all the information in the EAW, including the information about the Appellant's role is accurate.

x) A further letter dated 2 May 2018 ('the 2 May letter') has been provided, which clarifies that the reference to 6 offences in the letter of 28 June 2017 was an error and reflected an error made in the indictment (at page 21), which referred to 6 offences, when it should have referred to 7. The 2 May letter contains an unequivocal statement from the Respondent that extradition is only requested in respect of those 7 offences

xi) The offences in Germany carry a maximum sentence of 10 years' imprisonment for each offence, or a total 15 years' imprisonment for all of the offences. (Box C of the EAW.)

21. **Jasminder Dhillon**

There a number of common features common to the appellants but in addition to the above.

i) The Appellant was said to be head of the 'DJ' organisation.

ii) The Appellant is named as being a central part of the common agreement with the other conspirators in the creation of a network of numerous companies which were integrated as missing traders and buffer companies.

iii) It is alleged that the Appellant procured and controlled companies which were used to purchase goods. The goods were reduced in price via the VAT carousel which he organised. He controlled payment platforms, which were used for money laundering purposes in relation to the evaded 'turnover tax'.

iv) The EAW pertains to 282 offences set out in a table at the end of Box E. The Respondent provided further information (letter dated 9 May 2017) confirming that since the issuing of the indictment in Germany, the Appellant is sought for 278 charges of tax fraud. It is said that this is in order to "tighten" the trial but that all the information in the EAW, including the information about the Appellant's role, is accurate.

v) In the 2 May letter clarification has been provided confirming that Mr Dhillon is only sought for 266 offences. The 12 charges which pertained to NES GmbH, referred to in the letter of 9 May 2017, were included due to them having been included erroneously in a table in the indictment and his return is not sought for those offences. The letter also confirms that Mr Dhillon is still considered to be head or organization DJ, but that Mr Sabir also played an important/similar role.

vi) The 2 May letter contains an unequivocal statement from the Respondent that Mr Dhillon's extradition is only requested in respect of 266 offences.

22. **Samir Iftikhar**

i) The EAW is an accusation warrant and when issued it related to a total of 199 offences.

ii) The Appellant was a 'ringleader' of the 'Truesay' organisation.

iii) The Appellant is wanted for allegedly having established the criminal organisation with other named individuals, which operated from the beginning of 2010 until June 2012, when organisation Truesay exited the conspiracy following a search carried out by the Augsburg Public Prosecution Office. The Appellant is named as being a central part of the common agreement with the other conspirators in the creation of a network of numerous companies which were integrated as missing traders and buffer companies.

iv) The EAW particularises 199 offences in relation to the Appellant which arise from the activities of missing trader and buffer companies involved in the VAT carousel between 2010 and 14 June 2012. The offences are broken down in the table contained in the warrant. The table sets out the companies involved in the VAT scheme controlled by the criminal organisation. Each offence relates to either an incorrect filing of a monthly VAT return or a failure to file the required monthly VAT return.

v) The Respondent provided further information dated 5 May June 2017 confirming that since the issuing of the indictment in Germany, the Appellant is accused of 197 charges of tax fraud which are particularised in a table. It is clear that the Appellant is no longer sought for the 12 offences relating to NES Netto GmbH which are particularised in the EAW but not set out in the letter of 5 May 2017. It is said that this is in order to "tighten" the trial but that all the information in the EAW, including the information about the Appellant's role is accurate.

vi) Additionally, the letter of 5 May 2017 sets out that 8 offences have been added to the indictment relating to the companies: Outstanding Trade and Tradius AG. However, it is accepted that the Appellant cannot be extradited for those offences.

vii) The 2 May letter contains an unequivocal statement from the Respondent that extradition is only requested in respect of those offences contained in the indictment.

23. **Rizvan Iqbal**

i) The EAW is an accusation warrant and when issued it related to a total of 91 offences.

ii) The Appellant was a member of the 'Truesay' organisation and he is described as being a 'further member'.

iii) The Truesay organisation made goods available for purchase by companies controlled by the English Crew and in coordination with organisations DJ and English Crew, the companies were integrated into the delivery chains of the missing trader carousel. Organisations DJ and Truesay operated from one office in Great Britain but due to the fact that the majority of the offences were committed using a laptop, the organisation was able to act from anywhere. Truesay was active between 2010 and June 2012, when it exited the conspiracy following a search carried out by the Augsburg Public Prosecution Office.

iv) The Appellant as a 'further member' of the Truesay organisation was allegedly managing director of What Next Media, which was located outside Germany and was being used to channel goods through to conceal tax fraud and give the appearance of legitimacy to business operations. The company had temporary office space and filed fictitious invoices to give the appearance it was trading.

v) The Respondent has provided further information (letter dated 9 May 2017) confirming that since the issuing of the indictment in Germany, the Appellant is sought for 85 charges, in respect of tax fraud, 6 fewer than originally set out in the EAW, found at the end of Box E of the EAW. The letter sets out precisely how many charges are faced in respect of each company; as referred to in Box E of the EAW, each charge is for a single VAT evasion.

vi) The 2 May letter contains an unequivocal statement from the Respondent that extradition is only requested in respect of those 85 offences.

24. **Rehan Malik**

i) The EAW is an accusation warrant and when issued it related to a total of 199 offences.

ii) The Appellant was a 'ringleader' of the 'Truesay' organisation.

iii) The Appellant is wanted for allegedly having established the criminal organisation with other named individuals, which operated from the beginning of 2010 until June 2012, when organisation Truesay exited the conspiracy following a search carried out by the Augsburg Public Prosecution Office. The Appellant is named as being a central part of the common agreement with the other conspirators in the creation of a network of numerous companies which were integrated as missing traders and buffer companies.

iv) The EAW particularises 199 offences in relation to the Appellant which arise from the activities of missing trader and buffer companies involved in the VAT carousel between 2010 and 14 June 2012. The offences are broken down in the table contained in the warrant. The table sets out the companies involved in the VAT scheme controlled by the criminal organisation. Each offence relates to either an incorrect filing of a monthly VAT return or a failure to file the required monthly VAT return.

v) The Respondent provided further information dated 5 May 2017 confirming that since the issuing of the indictment in Germany, the Appellant is accused of 197 charges of tax fraud which are particularised in a table. It is clear that the

Appellant is no longer sought for the 12 offences relating to NES Netto GmbH which are particularised in the EAW but not set out in the letter of 5 May 2017. It is said that this is in order to "tighten" the trial but that all the information in the EAW, including the information about the Appellant's role is accurate.

vi) Additionally, the letter of 5 May 2017 sets out that 8 offences have been added to the indictment relating to the companies: Outstanding Trade and Tradius AG. However, it is accepted that the Appellant cannot be extradited for those offences.

25. The Appellants additionally assert that the Further Information causes uncertainty in the following way in the instances of each individual.

26. **Seemab Ali**

i) His role is not set out in any detail. Notably, at EAW internal page 11 - the "common agreement" for the companies procured and dominated by DJ and Truesay is set out. Mr Ali does not appear as a party named in the "criminal association" established.

ii) The height of the specific description as regards Mr Ali can be found at page 26 of the EAW, as regards ICI Global OU and EFS International SA. However, even that description is materially lacking and, as referred to below, inherently contradictory with other facts relied upon in the EAW.

iii) There is no description whatsoever as to where any the alleged participation of Mr Ali is said to occur, and it cannot be inferred that it took place where the companies were registered (Estonia and Norway respectively).

iv) The EAW contains inherent contradiction about the role of Mr Ali. For example, at page 8 of the EAW, it is specifically set out that DHILLON, as head of DJ, "controls the payment platforms, which serve for money laundering of the evaded turnover tax". The appellant is named as a "further member" of DJ, with the scant description "in charge of recruitment of managing directors for the payment platforms as well as for the deal management". For both companies in which Mr Ali was said to be involved, the named managing director (at page 26) is said to be the individual in charge of laundering the VAT, and with authority over disposal of the accounts for the company, and not Mr Ali.

v) The EAW then goes on to allege that Mr Ali managed and controlled the accounts of two companies. The degree of alleged involvement in the actual control of the accounts, his role in the alleged fraud, and his actual meaningful participation is therefore entirely unclear.

vi) The two companies referred to (described by the District Judge as 'linked companies') are not companies over which it is anywhere alleged that Mr Ali had any control, responsibility, direct or indirect dealing. The actual obligation apparently incumbent on those companies to submit tax returns, and that those tax returns be truthful and complete, is at no point attributed to the Appellant.

vii) The EAW sets out that the Appellant's return is sought in respect of 14 offences. In summary, these are broken down as 5 offences of VAT evasion through ICI Global and 9 offences of VAT evasion through EFS International SA. The letter from the Public Prosecutor dated 28 June 2017 states that the surrender of Mr Ali is sought on the basis of an indictment containing "6 charges on behalf of LSH GmbH for tax fraud". It does not specify which of the above charges remain, and which do not (or indeed, whether they are the same at all). There is no way for Mr Ali to know which charges he faces on the basis of that information and how the prosecution against him has, in fact, altered.

27. **Jasminder Dhillon**

i) Beyond a replacement table having been provided by the Judicial Authority, there has been no confirmation or correspondence detailing the precise offences for which Mr Dhillon no longer faces prosecution.

ii) It has become clear that the EAW is no longer accurate and the particulars are incorrect. It is alleged in the EAW that he is the "head of the organisation DJ and manages the carousel fraud". The same allegation appears in a warrant seeking the extradition of another person called Zulfiqar Ali Sabir, that warrant asserts that Jasminder Dhillon "controls the payment platforms…….He makes the money transfers"

iii) The change in allegations against Mr Dhillon starkly demonstrates the lack of sufficient particulars in his EAW. The payment platforms said to have been controlled by the organisation DJ are listed at page 8 of the EAW. Beyond the assertion that Mr Dhillon, with others, is said to have intended that those companies would have no entrepreneurial activity (pg.9), there are no particulars as to what Mr Dhillon is said to have done in respect of the payment platforms and how he is said to have controlled them. Further detail is provided about the payment platforms at pages 32 – 37. Of the 15 payment platforms particularised, there is only one reference to Mr Dhillon, and that is limited to the fact that Gary Smith's purchase of Vizon sp zoo was with a common criminal intent of Dhillon and others.

iv) The EAW is a broad omnibus description of offences alleged against Mr Dhillon. The table of offences is of little assistance. The 282 offences at pages 38-39 do not include any of the payment platforms. Thus, if Mr Dhillon is said to have committed 282, or 278, offences by being in charge of payment platforms, what is he said to have done in respect of the specific companies listed in the table? There is no such information.

v) The 282 offences are identified in the schedule at the end of Box E of the warrant, listing the number of cases for each company. The warrant states that the number of cases corresponds to either an incorrect filing of a VAT return or a failure to file each VAT return. The number of cases does not, however, correspond to the number of months within the time period set out for each case, which suggests that for some months the VAT tax returns were filed and filed accurately. There is no information in the EAW as to the months for which the returns were filed inaccurately or not filed at all and, at the material times, what

Mr Dhillon was said to be doing, what knowledge he had and what involvement he had in filing or failing to file the return

vi) Mr Dhillon is said to procure and control companies. The particulars of the Appellant's procurement of companies is limited to allegations that with the common criminal intent of those in the organisation Truesay and others in 'DJ', 13 companies were procured, see pages 14-17. Companies 8-13 do not form part of the 282 offences. There are no particulars in the EAW identifying companies over which the Appellant had control in, for example, a role as a manager, director or executive officer.

vii) Mr Dhillon is also said to have controlled payment platforms, details of which are given from pages 32-37 of the EAW. Of the fifteen payment platforms listed, the Appellant is said to have had involvement with one, Vizon sp zoo. His involvement is said to have been that he shared the common criminal intent with the purchaser, Mr Gary Smith. Vizon sp zoo is not a company which forms the basis of any of the 282 offences.

viii) Of the 29 companies listed in table at the end of the EAW, 17 have had their status changed from a missing trader to a buffer company and vice versa.

28. **Samir Iftikhar**

i) The First RFFI Response states that eight charges are added because four offences concern "Outstanding Trade" and four offences concern "Tradius AG". However, no information is given as to whether the companies are "Missing Traders" or "Buffer" I, II or III companies as specifically categorised in the EAW [at p38-39]. This information would at least allow the Appellant to understand where the offences "fit in" to the description in the EAW, even though the Appellant submits this in itself is inadequate. Furthermore, the precise role in relation to the company and the Appellant's specific conduct in relation to these companies is missing.

ii) It is clear that 1) the 12 offences regarding NES Netto GmbH are not on the indictment therefore there is a reduction of 12 offences; and 2) a further two offences have been added in relation to Bergman Handelsvertretungen GmbH. Thus, the following calculation can be made (the total of which is confirmed in the First RFFI Response as 197 offences): a. 199 – 12 [12 charges for NES Netto GmbH not in indictment/further information] = 187 [not specified in the further information but on p.38 of EAW as a "Buffer II or II company" – no mention at all is made of these offences in RFFI response 1]. b. 187 + 2 [2 charges added for Bergman Handelsvertretungen GmbH on indictment] = 189 [not specified in the further information – There are 19 on RFFI 1 and 17 on p.38 of EAW. It is not mentioned in RFFI 2]. c. 189 + 8 [8 new charges added for "Outstanding Trade" and "Tradius AG" on RFFI 1/the indictment] = 197 charges (total). The further information is missing an explanation in relation to the NES Netto GmbH and Bergman Handelsvertretungen GmbH charges.

iii) The Second RFFI Response (27 June 2018) cannot provide any comfort or clarification for the Appellant. It states that the eight added charges in the indictment were not in the EAW and if there is no order for extradition in

relation to those eight charges, the German courts will not deal with them unless the Appellant gives his consent. (The Respondent acknowledges that the Appellant's consent would be required before he could be tried on these eight charges.)

29. **Rizvan Iqbal**

i) The EAW does not condescend to provide any details whatsoever as to how the Respondent alleges the conduct equates to 91 separate offences as required by s.2(4)(c) of the Act. Crucially, the EAW does not provide a schedule outlining how each offence is defined (i.e. by invoice submitted with a date period and number of 'cases').

ii) The Further Information states that the indictment now contains 85 charges (as opposed to 91 on the EAW). However, without a schedule in the EAW to compare with the schedule provided in the Further Information, it is impossible to pinpoint which of the 6 charges have been extinguished from the EAW.

30. A summary of the reduction in the number of offences in the EAW's

i) Seemab Ali, reduced from 14 to 7,

ii) Jasminder Dhillon reduced from 282 to 266

iii) Samir Iftikhar reduced from 199 to 197

iv) Rizvan Iqbal reduced from 91 to 85

v) Rehan Malik reduced from 199 to 197 (10 removed and 8 added).

Proceedings

31. The appeal, pursuant to s.26 of the 2003 Act, arises from a joint hearing for all Appellants (save Seemab Ali, 2 May 2017) on 12 April 2017. All Appellants are sought by the Respondent Judicial Authority pursuant to "accusation" EAWs for their alleged participation in a large-scale VAT carousel or missing trader fraud.

32. In each case the District Judge ordered extradition. He found that that the EAW in each case complied with the requirements of s.2(4) and that each Appellant could know, with sufficient particularity, what he was have alleged to have done, where and with whom.

33. On 23 June 2017, as set out above, the Respondent filed and served further information which reduced the number of offences of which each Appellant was accused. This is the basis of Ground 1A.

34. Although Goss J granted permission to argue Ground 1A in relation to the s.2 point, it was limited to the extent of resolving ambiguity about which offences fall within and without the extradition order where the further information of 23 June 2017 purports to reduce the number of offences for which extradition is sought.

35. It is accepted that the Judicial Authority could issue replacement EAWs to reflect the reduced number of charges and that proceedings could commence on those EAWs. That would inevitably cause delay and cost.

Submissions

36. The Appellants' argument is that the reduction in the number of offences alleged in an EAW means that if an extradition is ordered it will not be based on the EAW as issued. In simple terms, it is said that the changes are "errors" which have been corrected and are so fundamental as to render the warrants invalid. They submit that this would be to correct "wholesale failures" and would go beyond the limits of the principle in ***R (Alexander and Di Benedetto) v France and Italy [2017] EWHC 1392 (Admin***). The Divisional Court in that case held that further information can be used to amend or correct the terms of a warrant, provided there has not been a wholesale failure to comply with the requirements of s.2 of the Act.

37. They argue that to permit such alteration is to acknowledge or endorse the view that the validity of the warrant is transient. They argue that the decision of the Supreme Court in ***Zakrzewski v District Court in Torun, Poland [2013] 1 W.L.R. 324*** still prevents such amendments, notwithstanding the "sea-change" in approach discussed in Di Benedetto.

38. They submit that the proposed alterations render the terms of the EAWs unclear and therefore they no longer comply with the requirements of s.2 of the Act. Further, that such alterations offend the principle of specialty.

39. The Respondent argues that the information provided which seeks to reduce the number of charges to be faced does not render the warrants invalid, rather they argue, it serves to ensure that the warrants reflect more precisely to allegations upon which extradition and trial is sought.

40. They submit that to hold that the alteration in the number of allegations to be faced, as the only alteration to the warrant, would be to ignore the way in which the law has developed since *Zakrzewski* in cases such as *Di Benedetto*. They submit that these warrants were valid at the time they were drafted, that they remain valid, both before and after any alteration which goes simply to reducing the number of offences. The amendments are updates and, as such, comply with the requirements of the Framework Decision and of Article 15. They submit that this does not go as far as providing "supplementary information" designed to fill gaps or resolve ambiguities.

Discussion

41. The question to be answered is whether the EAW in each case complies with s. 2(4)(c). It appears not to be accepted that they did comply until the Judicial Authority provided the further information, (see Ground 1B, for the reasons below that is unargable). It is submitted that the further information has further changed the warrants in an existentialist sense: it is argued that they are no longer the same warrants. This is not a permissible amendment in the sense that was permitted in *Di Benedetto*, it goes further to the point where the Appellants cannot know what they are to be tried for, if returned to Germany.

42. There is no offence in German law of conspiracy to defraud the revenue. A large number of offences are drawn up to cover the conduct alleged to be the basis for the fraud. The nature of such a fraud involves a multiplicity of transactions with other real or apparent corporate institutions to facilitate the fraud. The lack of an overall conspiracy type charge means that the German authorities are obliged to draft a number of particular charges, in this case they have sought to revise by reduction. All charges are now specifically identified. Additional charges were added but he now faces a reduced number overall. No further additional charges are being pursued

43. The Supreme Court reviewed the principles to be applied in ***Zakrzewski v The Regional Court in Lodz, Poland [2013] UKSC 2,*** at paragraphs 12 and 13 Lord Sumption restated the *Murua* principle and added his own observations;

> ***12. The clearest statement of the principle is to be found in the decision of Sir Anthony May, President of the Queen's Bench Division of the High Court, in Criminal Court at the National High Court, First Division v Murua [2010] EWHC 2609 (Admin), which has been followed by the High Court on a number of occasions. Murua was an accusation case. The warrant alleged serious terrorist offences involving danger to life and concealment of identity. Both of these were significant aggravating factors under Spanish law, warranting imprisonment upon conviction for up to 48 years. The particulars of the offence specified the aggravating factors, and the maximum sentence associated with them. However, at the trial in Spain of seven other defendants for the same conduct, the prosecution had accepted that these aggravating factors could not be proved. The charges were reformulated, and the co-defendants convicted of lesser offences carrying a maximum term of imprisonment of three years. Sir Anthony May said, at paras 58-59:***
>
> > ***"58. The court's task -- jurisdiction, if you like -- is to determine whether the particulars required by section 2(4) have been properly given. It is a task to be undertaken with firm regard to mutual co-operation, recognition and respect. It does not extend to a debatable analysis of arguably discrepant evidence, nor to a detailed critique of the law of the requesting state as given by the issuing judicial authority. It may, however, occasionally be necessary to ask, on appropriately clear facts, whether the description of the conduct alleged to constitute the alleged extradition offence is fair, proper and accurate. I understood Ms Cumberland to accept this, agreeing that it was in the end a matter of fact and degree. She stressed, however, a variety of floodgates arguments with which in general I agree, that this kind of inquiry should not be entertained in any case where to do so would undermine the principles to be found in the introductory preambles to the Council Framework Decision of 13 June 2002.***
> > ***59. Ms Cumberland submitted that an argument of the kind which succeeded before the District Judge can be raised, but not with reference to section 2 of the 2003 Act. She said that the proper approach was to deal with it as an abuse argument, and this ties in with the appellant's third ground of appeal, to which I shall come in a few moments. I do not agree that the respondent's case could only be advanced as an abuse argument. It can properly be advanced, as it was, as a contention that the description in the warrant of the conduct alleged did not sufficiently conform with the requirements set out in section 2 for the reasons advanced by Mr Summers with reference to Dabas v High Court of Justice in Madrid, Spain [2007] 2 AC 31 and Pilecki v Circuit Court of Legnica, Poland [2008] 1 WLR 325. If that is shown, it is not a valid Part 1 warrant."***
>
> ***13. I agree with this statement, subject to four observations. The first is that the jurisdiction is exceptional. The statements in the warrant must comprise statutory particulars which are wrong or incomplete in some respect which is misleading (though not necessarily intentionally). Secondly, the true facts required to correct the error or omission must be clear and beyond legitimate dispute. The power of the court to prevent abuse of its process must be exercised in the light of the purposes of that process. In extradition cases, it must***

> ***have regard, as Sir Anthony May observed, to the scheme and purpose of the legislation. It is not therefore to be used as an indirect way of mounting a contentious challenge to the factual or evidential basis for the conduct alleged in the warrant, this being a matter for the requesting court. Third, the error or omission must be material to the operation of the statutory scheme. No doubt errors in some particulars (such as the identity of the defendant or the offence charged) would by their very nature be material. In other cases, the materiality of the error will depend on its impact on the decision whether or not to order extradition. The fourth observation follows from the third. In my view, Ms Cumberland was right to submit to Sir Anthony May in Murua that the sole juridical basis for the inquiry into the accuracy of the particulars in the warrant is abuse of process. I do not think that it goes to the validity of the warrant. This is because in considering whether to refuse extradition on the ground of abuse of process, the materiality of the error in the warrant will be of critical importance, whereas if the error goes to the validity of the warrant, no question of materiality can arise. An invalid warrant is incapable of initiating extradition proceedings. I do not think that it is consistent with the scheme of the Framework Decision to refuse to act on a warrant in which the prescribed particulars were included, merely because those particulars contain immaterial errors.***

44. A challenge to the accuracy of the particulars in the warrant can succeed if it establishes abuse. It cannot succeed if it is a challenge on the facts said to constitute the evidence in the case. To preclude correction the "error" must be material, by way of example the identification of the accused.

45. In the cases of Samir Iftikhar and Rehan Malik it is conceded that it would not be right to extradite on the basis of substituted charges. As a consequence no Appellant faces extradition to be tried on charges that did not previously appear on a valid warrant. The warrants cannot be said to be invalid by virtue of the provision and addition of the clarifying information.

46. In my view the changes to these warrants do not alter their status as valid warrants (subject to Ground 1B). The provision of that Further Information, provides clarification, rather than uncertainty. Each of these Appellants does know what they are to be tried for and they know that with sufficient particularity. The warrants, if valid, do not cease to be valid by the provision of this level of additional material. The complaint made of the detail provided in the EAWs is based on the uncertainty which it is argued that new material brings. The Further Information does not cause uncertainty. In my view the complaint is not founded, in each case the Appellant faces extradition on a reduced number of charges.

47. There is mutual trust between the parties to the Framework Decision, in this case the UK and Germany. Article 15 of the Framework Decision permits the state of whom the request is made to request further information and the requesting state to provide the same. That, in my view, is what has occurred here. It is more likely to arise in cases of complex allegations of fraud but, as a factor of the process of extradition between states it is not only permitted but often desirable that such enquiries are made and answered. It is specified in the German indictments which charges are being pursued.

48. There has been a "sea change" as described in *Di Benedetto* which strengthens my view that the alteration by reduction in the circumstances in this case does not offend s.2 of the Act. Further re-enforcement comes from the decisions in the allied cases of *Din* and *Connor & others*. The Russian Doll approach to judgments, containing judgments within judgments is not always helpful but in this instance, these are appeals arising out of the same set of allegations and so I do cite Lewis J citing Lang J in ***Connor,***

Shammas and Herbert v Public Prosecutor's Office, Ausberg, Germany [2018] EWHC 829 (Admin)

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).

49. The appeals in this case are dismissed. The charges in the warrants are not uncertain. The Appellants do know what they face on the German indictments, they do know what they are alleged to have done, where and with whom.

50. Turning to the renewed applications for permission on what are now described as Ground 1B and Ground 2.

51. Ground 1B is very closely tied to Ground 1A. The provision of sufficient detail has been dealt with on the main appeal. The District Judge dealt in detail with the particulars and concluded that they were sufficient and that each warrant complied with s.2. He

considered the Multiple Offences Order and directed himself correctly on the relationship between the Order and the 2003 Act. He correctly concluded that the level of detail provided allows each applicant to raise any bars, to take advantage of the protection of specialty and complied with the statutory requirements of s.2 of the Act. There is no arguable basis of challenge to his conclusions. For these reasons the decision of Goss J to refuse permission is correct and this application is refused.

52. Ground 2 is an application to appeal based on s.10 of the 2003 Act. The District Judge was required to decide whether the offence for which extradition is sought is "an extradition offence" under the Act. The definition is provided in s.64(3) of the Act;

> ***(3) The conditions in this subsection are that—***
>
> ***(a)the conduct occurs in the category 1 territory;***
>
> ***(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom;***
>
> ***(c) the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment.***

53. It is clear that this conduct would constitute an offence or offences if it occurred in the UK. It could be indicted here as a conspiracy to defraud or cheating the revenue amongst other possibilities. That would be the position even if some parts of the conspiracy or criminality took place or had some effect outside the UK. Whether the practice of drafting the equivalent charges under English law would assist in this case is moot. The English courts are familiar with Missing Trader type frauds. It is possible to identify the conduct alleged from the material in the warrants. Some of the Appellants are said to be members of a criminal organisation, it is submitted that as there is no equivalent offence in the UK, the warrants arguably fail the test under s.64(3). The Appellants in these charges are said to be involved in the criminal organisation which would in the UK be identified as being conspirators in the organisation or enterprise alleged. There are no arguable grounds upon which to challenge the approach of the District Judge in considering the application of s.64 to the terms of the EAWs in this case. There is no substance in this application and permission is refused.

54. This appeal is allowed only in respect of those offences for which the Respondent has made clear surrender is no longer sought. The Appellants fall to be discharged for those offences. In addition, given the position of Samir Iftiqar and Rehan Malik, it is appropriate that extradition should take place only on those offences which are set out in the indictment and which were already set out in the warrants. The additional offences, not contained on the EAW, cannot form the basis for extradition.

55. This appeal is dismissed for the remaining matters, namely all those offences which appear both on the indictment and which were already set out in the warrants.