



**In the Court of Magistrates (Malta)  
As a Court of Preliminary Inquiry**

**(For purposes of the Extradition Act referred to as a Court of Committal)**

**Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)**

**The Police  
(Inspector Dr Mario Cuschieri)  
(Inspector Chris Galea Scannura)**

**-vs-**

**Erwin Aloysius FUNK**

Today the 11<sup>th</sup> September, 2017

The Court,

Having seen that on the 2<sup>nd</sup> September, 2017, the prosecution arraigned under arrest Erwin Aloysius FUNKholder of German Identity Card number 219928785 and Maltese residence card bearing number MT2093108.

Having seen the European Arrest Warrants issued by the Public Prosecutor's Office of Trier dated 18th July, 2017 and that issued by the Public Prosecutor's Office of Mainz dated the 30<sup>th</sup> June 2017,<sup>1</sup> and the Schengen Information System Alerts number DEP931790317071000001 of the 18<sup>th</sup> July, 2017 and the 30<sup>th</sup> June, 2017;<sup>2</sup>

Having heard submissions by the Prosecution on the European Arrest Warrant and having seen the Certificates of the Attorney General in terms of Article 7 of the Extradition (Designated Foreign Countries) Order, S.L. 276.05;

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<sup>1</sup> Doc MC9-MC11

<sup>2</sup> Doc MC2-MC5

Having heard submissions by counsel for the requested person;

Having taken cognizance of the examination of the requested person as well as the documents exhibited by the prosecution;

Having taken note of the supplementary information transmitted by the requesting judicial authorities;

The Court,

Whereas the two European Arrest Warrants issued by the Public Prosecutor's Office of Trier indicate that the accused is to serve a five month custodial sentence less two weeks and a six month custodial sentence respectively;<sup>3</sup>

Whereas the European Arrest Warrant issued by the Public Prosecutor's Office of Mainz<sup>4</sup> relates to two offences namely, those of fraud for which the requested person is to serve a custodial sentence of 8 months, and that of abuse of an emergency line for which the accused was ordered to pay a fine;

Whereas Article 60(2) of the Order provides:

The conduct constitutes an extraditable offence in relation to the scheduled country if these conditions are satisfied:

(a) the conduct occurs in the scheduled country and no part of it occurs in Malta;

(b) a certificate issued by an appropriate authority of the scheduled country shows that the conduct is scheduled conduct;

(c) the certificate shows that a sentence of imprisonment or another form of detention for a term of twelve months or a greater punishment has been imposed in the scheduled country in respect of the conduct.

(3) The conduct also constitutes an extraditable offence in relation to the scheduled country if these conditions are satisfied:

(a) the conduct occurs in the scheduled country;

(b) the conduct would constitute an offence under the law of Malta if it occurred in Malta;

(c) a sentence of imprisonment or another form of detention for a term of four months or a greater punishment has been imposed in the scheduled country in respect of the conduct.

Having decided that all offences barring that of abuse of an emergency line are extraditable offences in terms of the said Article 60 of the Order given that the conduct of which the requested person has been convicted constitute offences under Maltese law

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<sup>3</sup> Doc. MC9-MC10

<sup>4</sup> Doc. MC11

had the conduct occurred in Malta, coupled to the second requirement that a custodial sentence for a term of four months or a greater punishment has been imposed by the District Court of Bitburg, the Higher District Court of Trier and the Bingen Municipal Court;

Having heard the requested person consent to his return to Germany for the crimes which have been declared as extraditable by this Court, that is all offences barring that for abuse of an emergency line;

Having seen that the provisions of Article 43 of the Order have been complied with;

Having heard the requested person declare that he is not waiving his rights to the rule of specialty, that is he does not waive any right he would have (apart from the consent) not to be dealt with in the scheduled country for an offence committed before his return;

Having seen Article 15(5) of the Extradition Act, Chapter 276 of the Laws of Malta, rendered applicable to the proceedings by Article 44 of the Order;

The Court,

Commits to custody and orders the return of the requested person, Erwin Aloysius FUNK, to Germany on the basis of the European Arrest Warrants and Schengen Information System Alerts issued against him on the 18th July, 2017 and 30<sup>th</sup> June, 2017, referred to above. The said return is limited to the sentences delivered with respect to the offences of fraud, driving without a driving licence and illicit trafficking in narcotic drugs and psychotropic substances.

**Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)**  
**Magistrate**